

Meeting of the Board 10 December 2020

## Temporary in the context of the pension schemes

### Introduction

1. The Scheme Advisory Board (the Board) has previously considered matters related to pensionable pay and eligibility to the scheme.
2. In May 2019, the budget committee approved the expenditure to request the Board's legal adviser to produce a note on temporary promotions.
3. As part of this work the broader definition of 'temporary' as it used in the regulations to define eligibility to the pension scheme was also considered.
4. The advice note has now been completed and has been published to the [confidential board page](#). This paper was drafted for the Board's meeting on 11 June 2020 and summarises the points in the advice note and is shared with the Board for their comments.
5. The note specifically comments on:
  - 5.1. Eligibility to the scheme
  - 5.2. Pensionable pay
6. The Board took the issue away to consider with legal advisers and is re-tabled for the meeting on 10 December 2020.
7. Steven Pope, Head of Human Resources from Devon and Somerset Fire & Rescue Service is attending to talk to this paper, and how the issues identified might affect the use of fixed term contracts (FTC), which are typically used to provide workforce planning flexibility for on-call staff who undertake a wholetime contract for a period of up to 2 years performing the normal duties of a firefighter.

### Conclusions

#### Eligibility

8. The definitions of regular firefighter, retained firefighter, and voluntary firefighter are broadly the same across the FPS 1992, FPS 2006, and FPS 2015, and each require employment to not be temporary.
9. The definitions of regular, retained and volunteer firefighters are the same in the compensation scheme as the pension schemes.

10. The note confirms firefighters who are employed under a temporary contract are excluded from FPS 1992, and are most likely excluded FPS 2006 and FPS 2015.
11. Although the legal advice does not expressly comment on the compensation scheme, as the interpretations are the same, the same conclusion regarding firefighters employed under temporary contracts must be drawn.
12. The legal advice has been shared with the Home Office who informally agree that firefighters employed under a temporary contract of employment are excluded from being members of the pension scheme and compensation scheme.
13. Employments that might be considered temporary are a matter for employment law not pension law.
14. We will now communicate to Fire and Rescue Authorities to ensure they are aware.

## **Pensionable Pay**

15. The note also comments that a payment has to be permanent for it to be pensionable.
16. Under case law 'permanent' means not occasional, one-off, irregular, or for a limited period of time only.
17. Therefore, payments made under a contract that is temporary or time limited are unlikely to be pensionable, as are payments made in relation to a secondment arrangement which is time limited.
18. Main points to note under paragraph 6.2 of the note are:
  - 18.1. The 1992 Scheme Regulations do not expressly exclude from being pensionable any allowance or emoluments paid on a temporary basis;
  - 18.2. Any difference in pay whilst undertaking a temporary promotion or duties of a higher role are pensionable under the 1992 Scheme as an 'Additional Pension Benefit' (APB), which is discretionary;
  - 18.3. Under the 2006 Scheme Regulations, any allowance or emoluments paid on a temporary basis are expressly excluded from 'pensionable pay'
  - 18.4. The same APB provisions apply under the 2006 Scheme Regulations, so any difference in pay whilst undertaking a temporary promotion or duties of a higher role are pensionable, subject to the agreement of the fire & rescue authority;
  - 18.5. Under the 2015 Scheme Regulations, any allowance or emoluments paid on a temporary basis are expressly excluded from 'pensionable pay'; and

18.6. There are no discretionary APB's under the 2015 Scheme Regulations.

19. As a general guide, the following payments are likely to be time limited and therefore non-pensionable:

19.1. Payments under a fixed-term contract which expires on a specific date, at the end of a specific period of time or on the occurrence of a certain event (including the withdrawal of funding);

19.2. Payments under a secondment arrangement, if the arrangement comes to an end on a specific date, on completion of a specific project or on the occurrence of some other event;

19.3. Payments in relation to duties carried out under a temporary contract, which comes to an end on a specific date or on the occurrence of a certain event;

19.4. Payments in relation to temporary promotion or carrying out duties of a higher role (although such payments may be pensionable under the 1992 Scheme or the 2006 Scheme as an APB, at the discretion of the fire & rescue authority); and

19.5. Payments under a zero hours' contract (on the presumption that such a contract is not used for employees working regular hours over a continuous period).

## **Board action**

20. The Board are asked to note the contents of this paper and provide comments.

Board Secretary  
December 2020