

FIREFIGHTERS' PENSION SCHEME 1992

**NEW FIREFIGHTERS' PENSION SCHEME
2006**

**FIREFIGHTERS' COMPENSATION SCHEME
2006**

**WORK IN PROGRESS REVISIONS AS AT 15
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**Guidance for Independent Qualified
Medical Practitioners (IQMPs) providing an
opinion on permanent disability, fitness for
regular work, qualifying injury and degree
of disablement.**

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Introduction

1. The Firefighters Pension Scheme 1992 (FPS) and the New Firefighters' Pension Scheme 2006 (NFPS) provide for early payment of benefits to scheme members who are found to be permanently disabled to undertake the duties of their role (formerly rank). The Firefighters' Compensation Scheme (FCS) allows the award of further benefits where the incapacity has been occasioned by a qualifying injury. The level of benefits payable to a member is determined not only by his or her earnings capacity but also his or her capability to undertake regular work.
2. Certain benefits can also be provided to firefighters who chose to opt out of the FPS or NFPS, or for those who before 2006 were not permitted entry to the FPS, i.e. those employed as Retained Duty System (RDS) or volunteer Firefighters.
3. In the case of a former firefighter who is in receipt of an injury award and in respect of whom a determination was made before April 2006; and whose case is the subject of review, the matter would be dealt with under the provisions of the FPS rather than the FCS. In practice this has no significance as the FCS mirrors the provisions which were repealed. In the circumstances this guidance does not refer to such cases separately.

Ill health retirements

4. The medical prognosis is the key input to the final decision as to whether to grant ill health retirement. But the decision to grant ill health retirement, or refuse it, should not be taken by the medical practitioner. This is a decision that can only be taken by the employer, although the authority will be bound by the opinion of the medical practitioner on medical issues.
5. In effect, three decisions have to be taken during the consideration process:
 - First, the decision whether to end an employee's contract. This can only be taken by the employer. Management need to make decisions on any non-medical aspects of the case before consideration for onward referral.
 - Second, the medical decision on whether or not the case meets the criteria within the pension scheme for ill health retirement, which must be determined by an occupational health practitioner.
 - Third, the decision on the terms under which the employee should leave.
6. This guide is concerned with the second stage of the process, i.e. the medical decision. The FPS and the NFPS require that the medical assessment is objective and impartial and both schemes require a clear separation in the role and responsibilities of the Medical Adviser (MA) to the Fire and Rescue Authority (FRA) who first sees the applicant, and the independent qualified medical practitioner (IQMP) who advises whether the

scheme criteria have been met. The role of the MA is to compile the medical evidence relevant to the case and the role of the IQMP is to consider the evidence and if necessary, examine the applicant, and advise the FRA whether the scheme criteria are satisfied. The opinion of the IQMP is binding on the FRA on all matters referred under Rule H1 of the FPS, Part 8(2) of the NFPS and Part 6 1(2) of the Compensation Scheme including those which are wholly or partly of a medical nature.

7. As made clear in Communities and Local Government's circular XX/2008, the onus is on a fire and rescue authority to make every effort, through reasonable adjustments, including reasonable re-designing of jobs within an authority, to enable and encourage firefighters to stay in work if they can within their role, rather than be retired early. In the case of retained duty system firefighters, any redesign and readjustment should be consistent with the duty system. But, of course, it will not always be possible for firefighters to stay in work. In considering the case for ill-health retirement, the fire and rescue authority will need to consider the application of the criteria in the regulations in the light of the facts and circumstances of individual cases. These facts and circumstances include the realistic prospect of suitable employment. This is not a simple matter: before reaching a final determination as to the absence of any suitable employment within the role the fire and rescue authority must consider whether they can create a suitable post through adjusting posts within their structure, rather than simply look at matching the employee to existing opportunities. The absence of a realistic prospect of suitable employment in the role at the end of this process is material to the decision on whether the criteria apply and whether an award is made.

8. Before considering ill health retirement fire and rescue authorities should consider the possibility of redeployment within the role, or the reasonable prospect of redeployment within the role, to such posts as are available for firefighters to take up either at that time, or within a reasonable period. CLG consider that - whilst it is not possible to lay down a rigid time frame - it would be reasonable to give three months as an indicative time, subject to the circumstances of the case. Accordingly, if there is a realistic prospect that a job within the role is likely to be available in that timescale, the fire and rescue authority should defer reference to the IQMP in order to redeploy. When that is not the case such that reference is made to the IQMP, the fire and rescue authority should set out in its report to the IQMP all the steps it has taken in its management of the case.

9. As outlined, issues relating to redeployment should be considered by the FRA before the case is referred to the IQMP, but there is also the opportunity within the process for an IQMP to seek further clarification or for the FRA to raise particular points they would find helpful to get advice on.

10. The purpose of this guidance is to help IQMPs to understand what their role is in determining a medical opinion on the questions of permanent disablement for the member's role, capability for regular work, whether an injury is qualifying and calculation of degree of disablement. The ultimate

objective is to enable IQMPs to provide FRAs with an opinion that is fair, consistent and supported by clear evidence and reasoning.

11. Throughout this guide the individual who is being assessed is referred to as “the member”, since these procedures will normally apply to members of the FPS or NFPS being considered for ill-health retirement. However, there may well be occasions where the issue of permanent disablement for regular employment needs to be determined after the individual has retired from the service. In view of this the term “member” should be taken to include a retired member and also those individuals who are not members of the FPS or NFPS but may qualify for benefits as a result of a qualifying injury as part of an injury award under the FCS.

12. The guidance is divided into six sections:

1. Overview of the procedure

2. The role of the FRA and IQMP

3. Arrangements under the Firefighters' Pension Scheme, the New Firefighters' Pension Scheme and the Firefighters' Compensation Scheme

4. Reasonable Adjustments

5. IQMP assessment

6. Glossary of Terms

1 Part 1 **Overview of the procedure**

1.1 From April 2006 the way in which the ill-health benefits of the Firefighters' Pension Scheme (FPS) are calculated changed. The new system also applies to the New Firefighters' Pension Scheme (NFPS) and involves two tier ill health retirement awards. The lower tier provides for immediate payment of accrued pension, the higher tier provides a similar pension plus an enhancement. In addition provisions regarding injury awards have been transferred from the FPS to the Firefighters' Compensation Scheme (FCS) but remain unchanged.

1.2 A member of the FPS is entitled to an ill health pension if he/she has 2 years' pensionable service and of the NFPS if he/she has 3 months' eligible service; and are permanently disabled for the performance of duty. To satisfy the criteria for receipt of a pension, the member must be incapable of doing the job they are performing within their role (or would be performing but for the incapacity) or suitable available alternative job within the role taking account of reasonable adjustments which the FRA confirms it can and will make. This should be based on the job which they are performing when the case arises for consideration, but should also take full account of reasonable adjustments which the FRA confirms it can and will make to the job within the role, and suitable alternative jobs within the role identified by the FRA as actually available for the member to take up.

1.3 As set out in the introduction to this guidance, the onus is on the FRA to have carried out **all** the processes necessary to redesign and reasonably adjust such jobs within a reasonable timeframe, before referring a case to the IQMP, and to tell the IQMP what they have done. By the time a case is referred to the IQMP, in addition to details of the member's job within the role, the IQMP should also be given descriptions of any other jobs within the role which are actually available for him/her to take up and against which the disability may also be assessed.

1.4 In determining whether the disablement is permanent, regard must be had to whether it is likely to continue to normal pension age of 55 in the FPS or 60 in the NFPS. If the person has resigned with a deferred pension the relevant ages are 60 and 65. Where these criteria are satisfied a lower tier ill health pension would be payable.

1.5 If it is decided that not only is the member permanently disabled for the performance of their duties but also for any regular employment, the member becomes entitled to an additional higher tier pension provided they have at least 5 years' pensionable service (FPS) or qualifying service (NFPS). Regular employment in this context means employment for 30 hours a week on average over a period of not less than 12 consecutive months beginning with the date on which the issue of the person's capacity for employment arises. This requires consideration of the member's ability to work in any employment.

1.6 When a FRA is considering the question of ill-health retirement for a member, it is required to refer the question of whether that member is permanently disabled from engaging in firefighting and the other duties of their role to the IQMP. The IQMP will normally be asked also to provide an opinion on the member's capability for regular work.

Questions to be addressed by the IQMP

1.7 The questions to be addressed by the IQMP when providing a medical opinion fall into four stages and are as follows:

1. Is the member disabled from performing their duty, ie as applicable to the job within their role (with reasonable adjustments as appropriate) as set out in the introduction. If so, is that disablement likely to be permanent?

If so, under the provisions of rule A15 of the FPS, the FRA may retire the person compulsorily, and under both schemes a lower tier ill health pension can be paid.

2. If the member is permanently disabled for duty, is he or she also disabled for regular employment (defined as 30 hours a week on average over a period of not less than 12 consecutive months beginning with the date on which the issue of the person's capacity for employment arises).

This determines whether a higher tier award is payable.

3. Has any permanent disablement been caused by a qualifying injury?

If so this provides for an injury award to be paid.

4. If disablement has been caused by a qualifying injury what is the degree of disablement?

This determines the level of the injury award.

1.8 The two pension schemes and the compensation scheme require FRAs to carry out regular reviews of awards and therefore the IQMP may also be asked to determine if a retired member is still both permanently disabled for the last role they held in the fire and rescue service and/or is still incapable of regular work. This will occur when the FRA reviews the member's case once an award has been put into payment.

1.9 There are a number of certificates available to the FRA to use when referring a case to the IQMP and the use of each is determined by the circumstances of the individual case. The FRA will determine what certificate is applicable and will include this in the referral papers.

Part 2 The Role of the FRA and IQMP

The Role of the FRA

2.1 It is the role of the FRA to ensure adequate arrangements are in place for maintaining the fitness of firefighters and to manage sickness absence throughout an employee's working life through the use of robust systems for recording the incidence and causes of sickness absence. The FRA should have policies in place regarding prevention, rehabilitation and redeployment within the role. These policies may include limited use of the private health market. Triggers for action will include early and wide referral to occupational health.

2.2 In managing a member, referral will be made to the MA from time to time to confirm that they continue to meet general fitness criteria, to consider appropriate treatment options and to assist the individual in preventing further absence.

2.3 In the consideration of each case there may come a point at which management consider that the member's ill health is such that ill health retirement should be considered. The FPS, NFPS and FCS provide the gateway to ill health and injury awards and set out the criteria to be met for pension awards to be made. Although in the first instance the schemes allow for the FRA to determine what awards might be payable there is a requirement for referral to an IQMP for an opinion on whether the criteria have been met. The opinion of the IQMP is binding on the FRA but it is the FRA who makes the final decision on awards and the level of award payable.

2.4 When seeking the opinion of an IQMP the FRA will refer the case to the MA to collate all the papers relevant to the incapacity under consideration. This **must** include all appropriate medical records e.g. GP records, occupational health records, X rays, Scans, consultants' reports etc. When making the referral the FRA will also provide the necessary certificate for completion by the IQMP. This sets out in detail the questions to be addressed and requests a date on which the case should be reviewed. There is a statutory requirement to review ill-health awards where the individual has been in receipt of the award for less than 10 years and is under age 60 (FPS, Rule K1) or under State pensionable age (Part 9, rule 1 NFPS). The FRA is also required to review injury awards under Part 9, rule 1 of the Firefighters' Compensation Scheme.

The IQMP's role

2.5 The qualifications for, and role of, the IQMP are set out in the regulations for the appropriate scheme, namely in Rule H1 and Schedule 1 of the Firefighters' Pension Scheme 1992 (SI 1992/129) (as amended), and Part 8, rule 2 and Part 1, rule 2 of the New Firefighters' Pension Scheme (England) Order 2006 (SI 2006/3432), and rule 2 of Part 1 and rule 1 of Part 6 of the

Firefighters' Compensation Scheme (England) Order 2006 (SI 2006 /1811). The regulations specify the questions which the FRA must refer to the IQMP for an opinion before a decision can be reached and associated guidance (currently within the Commentary on the FPS) provides the certificates that must be completed at each stage (i.e. when the eligibility of a member to receive ill health or injury benefits is being considered or when an award is being reviewed). This guidance and the relevant certificates are available on the DCLG website at <http://www.communities.gov.uk/index.asp?id=1124217>.

2.6 Since the FRA must refer a case to the IQMP in terms of a specific question or questions, the IQMP must frame his or her report in terms of answering the question or questions that have been put, normally by completion of the medical certificate provided.

2.7 The IQMP must understand the purpose of his/her role and the procedures to be followed. This guidance covers the medical aspects and those procedures which affect the IQMP directly. More general information on the wider policy is set out in Firefighters' Pension Scheme Circulars which are issued from time to time and are available at – <http://www.communities.gov.uk/index.asp?id=1124181> . The IQMP does not act as an occupational health advisor to the FRA, but performs a vital function in a process which will entail decisions about a firefighter's future employment and pension rights. The procedures followed during the assessment must be capable of being justified and the IQMP must be confident about the role which he/she is performing. If there is any doubt about any procedural issue the IQMP should contact the FRA before proceeding further. IQMPs are under an obligation to ensure that they are competent in performing the IQMP role and have the necessary knowledge and skills to perform this role. FRAs should ensure that the IQMP that they use is competent. Advice can be sought from ALAMA (The Association of Local Authority Medical Advisers).

2.8 The IQMP will need to be aware of any relevant case law. The human resources department of the Fire and Rescue Service will be able to provide this. Although medical evidence may indicate entitlement to an award under the pension scheme this cannot be recommended where a legal precedent prevents this. Whilst this would not affect the medical decision it will have consequences for the pension status. Historically this has had a greater impact on decisions connected with qualifying injury than ill health retirement, with the "Jennings" judgement being of particular importance.

2.9 When considering a case the IQMP should read carefully the documents in the file referred from the MA and the report provided by him or her. All the medical evidence provided by the FRA should be considered, including any GP records, occupational health notes, consultants' reports etc. The IQMP should have the full occupational health file and any management submissions relating to it, together with any relevant submissions made by the member or on his behalf, but would not necessarily be expected to examine the member before reaching an opinion.

