DORSET & WILTSHIRE FIRE AND RESCUE AUTHORITY

Item 18/61

MEETING	Dorset & Wiltshire Fire and Rescue Authority
DATE OF MEETING	13 December 2018
SUBJECT OF THE REPORT	Firefighters' Pension Scheme - Voluntary Scheme Pays
STATUS OF REPORT	For open publication
PURPOSE OF REPORT	For approval
EXECUTIVE SUMMARY	This report sets out a recommendation to introduce a Voluntary Scheme Pays arrangement for the Firefighter Pension Schemes. In addition to paying tax on their earned income members of the firefighters and other pension schemes can become liable to pay tax on the benefits they build up in their pension pots. Each taxpayer has an annual allowance (AA) allocated to their pension pot. A liability to pay tax only arises if the value of benefits built up in the pot in a particular year exceed the AA. The AA is currently £40,000 per annum (where the member's annual 'adjusted income' is less than £150,000). Pay as you earn enables an employer to withhold tax on an employee's salary and the net balance is received by the employee after deduction of tax. The taxation of pensions pots works differently. A breach of the AA gives rise to a liability to a tax charge in the present but the increase in the value of the pension pot giving rise to that tax liability is not accessible to the individual to enable them to meet the tax charge. In some instances the tax charge arising from an increase in the value of a pension pot can be very considerable and beyond the ability of most people to pay.

	'Scheme Pays' is a process that allows the tax charge to be paid by the pension Scheme Administrator on a Scheme member's behalf. The tax charge is then recovered over time by the Scheme Administrator through a reduction in the pension paid to the scheme member. There are two types of Scheme pays arrangements: **Mandatory and Voluntary.** **Mandatory Scheme Pays (MSP)**: which applies where a scheme member has made a request and: • Pension savings growth in the Scheme exceeds the HMRC standard AA limit during the tax year; and • An AA tax charge exceeding £2,000 has been triggered. **Voluntary Scheme Pays (VSP)** where an employer can choose to introduce a scheme pays arrangement with different triggers or thresholds than those in the mandatory scheme (the tax still being recovered later through a reduction in pension benefits). Due to the introduction of the 2015 Firefighters' Pension Scheme and changes to tax rules on tapered AA, some Scheme members are no longer eligible for MSP but still face the burden of having to pay tax upfront on a pension that will be received in the future. The burden of meeting these upfront tax charges could be covered by a VSP arrangement as recommended in this report.
RISK ASSESSMENT	Given the reduction in the annual allowance, the potential increased tax liability faced by employees on promotion could dissuade individuals from applying for promotion and have a negative impact on recruitment and retention of middle and senior managers. A VSP would alleviate this problem to some extent, with no financial risk to the Authority.
COMMUNITY IMPACT ASSESSMENT	None for the purposes of this report
BUDGET IMPLICATIONS	There would be no additional cost to the Authority.
RECOMMENDATIONS	Members are asked to agree that: 1. A Voluntary Scheme Pays arrangement is introduced for the payment of pension Annual Allowance tax liabilities but applicable only in one (or both) of the circumstances set out in paragraph 3.6 of this report.

	2. This policy is applied retrospectively to any individual affected by the tax liabilities change (2015-16 onwards).
BACKGROUND PAPERS	None
APPENDICES	Appendix A - LGA Voluntary Scheme Pays in the Firefighters' Pension Schemes
REPORT ORIGINATOR AND CONTACT	Name: Jonathan Mair, Clerk & Monitoring Officer to DWFRA Email: j.e.mair@dorsetcc.gov.uk Tel: 01305 224181

1. Introduction

1.1. This report seeks to provide the Authority with background information relating to the personal tax liability on pension savings for a member of the Firefighters’ Pension Scheme 1992 and Firefighters’ Pension Scheme 2015.

1.2. It outlines the position on the annual allowance arrangements as they relate to firefighter pension schemes and detail changes to the annual allowance arrangements that lead to the need for the Authority to consider whether voluntary scheme pays arrangements should be put in place.

2. Background

2.1 Each taxpayer has an annual allowance which may be allocated to his or her pension ‘pot’ without incurring liability to tax. Tax is usually paid if savings in the individual’s pension increase by more than the annual allowance which is currently £40,000 a year. This annual allowance has been significantly reduced over the last six years from £255,000 to the current £40,000 level. Put another way, the annual allowance is the maximum amount of tax exempt pension savings, from all registered pension arrangements, that can be built up in one tax year. In a defined benefit scheme, such as the firefighters’ pension scheme, the "value” of the amount of pension and lump sum which is built up across the tax year is estimated. Any increase in value of pension and lump above the annual allowance is subject to the annual allowance tax charge. Annual allowance tax charge will be at the individual’s marginal rate of tax.

2.2 Any increase in the value of a pension over the year is multiplied by a factor of 16 meaning that a middle or high earning employee who receives a significant promotion or pay rise has is likely to be affected by this tax liability.

2.3 Changes to the annual allowance, known as "tapering”, see the annual allowance reduce as low as £10,000 for high earning individuals, from April 2016.

2.4 Scheme pays is a mechanism that allows an individual to ask the pension scheme administrator to pay any tax charge due in relation to an excess of pensions savings above the annual allowance. In return there is a reduction pension benefits. Fire authorities must agree to a ‘mandatory scheme pays’ election under section 237B of the Finance Act 2004 provided that the election is made within the relevant timescales. Mandatory scheme pays has been used with the firefighters’ pension schemes since 2012.

2.5 Mandatory scheme pays is only required to meet the charge arising from the element of pension input in the scheme over £40,000. However, due to HMRC introducing "tapering” of this £40,000 allowance for the 2016/17 tax year there are now circumstances where the firefighter doesn’t have the right to make a mandatory scheme pays election for the tax relating to the difference between the "tapered” (a minimum of £10,000) allowance and the £40,000 previous allowance.

2.6 With the introduction of the 2015 Scheme, members of the 1992 Firefighters’ Pension Scheme and 2006 Firefighters’ Pension Scheme who have transferred into the 2015 Scheme on or after 1 April 2015 will effectively be members of two pension schemes and will see pension benefit growth in both schemes until retirement.

2.7 By virtue of accruing their pension growth across two, rather than one pension scheme, there is an increased likelihood that although the member's total annual pension growth across both schemes may exceed £40,000, the pension growth in any one of the schemes may fall short of the HMRC annual allowance limit. As such they will not be eligible to use mandatory scheme pays to pay the annual allowance tax charge.

2.8 In these circumstances the additional tax liability could be covered by a voluntary scheme pays arrangement. This is a relatively common practice in other pension schemes.

2.9 Voluntary scheme pays works in the same way as mandatory scheme pays where the tax liability is paid by the pension scheme and the cost recovered by a reduction in the individual's pension pot. Unlike mandatory scheme pays however, there will be no joint and several liability and the individual remains wholly liable for the tax.

2.10 Following the introduction of "tapering" by HMRC, the Home Office have responded and set out their proposed approach which would allow fire authorities to grant voluntary scheme pays under the firefighters' scheme rules. The Scheme Advisory Board, at their meeting in March 2017, indicated they were in favour of the proposed approach and the Home Office are now examining how these arrangements could work. The working assumption indicated by the Firefighters' Pension Adviser at the Local Government Association (LGA) at that time was that this would be introduced via an amendment to the pension scheme regulations.

3. Summary of LGA Legal Advice

3.1 The LGA has recently sought legal advice on whether a FRA may lawfully offer a voluntary scheme pays arrangement without the need for a change in the law.

3.2 Although the LGA has shared its advice with FRAs its legal adviser has made the point that the advice was prepared for the LGA and that individual authorities must satisfy themselves as to the lawfulness of establishing any voluntary scheme pays arrangement.

3.3 The legal advice provided to the LGA is that a combined fire and rescue authority such as DWFRA (and for other reasons a county with fire and rescue functions) has the legal powers to operate a voluntary scheme pays arrangement.

3.4 As a combined fire and rescue authority DWFRA has the legal power under 5A of the Fire and Rescue Services Act 2004 to do:

1. (a) anything it considers appropriate for the purposes of the carrying-out of any of its functions (its "functional purposes"),

(b) anything it considers appropriate for purposes incidental to its functional purposes,

(c) anything it considers appropriate for purposes indirectly incidental to its functional purposes through any number of removes,

(d) anything it considers to be connected with:

(i) any of its functions, or

(ii) anything it may do under paragraph (a), (b) or (c), and

(e) for a commercial purpose anything which it may do under any of paragraphs (a) to (d) otherwise than for a commercial purpose.

2. A relevant fire and rescue authority's power under subsection (1) is in addition to, and is not limited by, the other powers of the authority.

3.5 These are wide ranging powers, though not as wide ranging as a local authority's general power of competence under the Localism Act. The Monitoring Officer agrees with the advice provided to the LGA and that these powers do enable a combined fire and rescue authority both to operate a voluntary scheme pays arrangement and to adjust a scheme member's benefits to reflect the payment of a tax charge on behalf of the scheme member.

3.6 The advice also indicates that a FRA's powers must be exercised reasonably and that the introduction of a voluntary scheme pays arrangement would be reasonable in the following circumstances, (as proposed by the Home Office and agreed by the Scheme Advisory Board):

- where access to the Voluntary Scheme Pays arrangement for transitional members with service in one of the 1992 or 2006 Schemes and the 2015 Scheme would be the same as the access a protected 1992 or 2006 scheme member, or a member with service only in the 2015 Scheme, would have to the Mandatory Scheme Pays arrangement

- or where access to the Voluntary Scheme Pays arrangement is afforded to those Scheme members where the pension growth in one or more schemes is more than their own tapered annual allowance limit but less than the £40,000 annual allowance.

3.7 The legal advice goes on to state that any fire and rescue authority wishing to make a Voluntary Scheme Pays arrangement for reasons other than the two listed at paragraph 3.6 above should consider whether to do so would represent a reasonable exercise of powers.

3.8 Subsequently, the Police and Firefighters' Pension (Amendment) Regulations 2018 came into force on 8 October 2018 and those regulations do not include any amendments regarding Voluntary Scheme Pays as it was accepted that, in accordance with the advice set out in paragraphs above, Voluntary Scheme Pays arrangements could be introduced under the auspices of the Fire and Rescue Services Act 2004.

4. Summary

4.1 Changes to tax liabilities have adversely impacted on individuals who; through changes to pension schemes, have found themselves in two pension schemes.

4.2 Introducing voluntary scheme pays arrangements is considered to be lawful. It is also thought to be in line with future changes likely to be made to the legislative framework relating to firefighters’ pay and pensions.

December 2018

Appendix A

‘Voluntary Scheme Pays’ in the Firefighters’ Pension Schemes

Background

Mandatory Scheme Pays (‘MSP’).

1. Individuals whose annual growth in pension savings during the Scheme’s ‘Pension Input Period’ exceeds **HMRC’s standard Annual Allowance Limit (‘HMRC AA Limit’)**, currently set at £40,000, and who have no unused Annual Allowance to carry forward from the previous three tax years will be subject to an **Annual Allowance tax charge (‘AA tax charge’)**.

2. The individual can pay the AA tax charge from their own personal finances, however, the Finance Act 2004 provides that a pension scheme must provide a ‘Scheme Pays’ facility[1] where all of the following qualifying conditions are met:

   i. the HMRC AA limit (currently set at £40,000) has been exceeded in the pension scheme that the Scheme Pays election is made; and
   ii. an AA tax charge exceeding £2,000 has been triggered; and
   iii. the relevant time limits for making an election have been met.

Voluntary Scheme Pays ‘VSP’

3. Where a member does not meet the conditions for Mandatory Scheme Pays **‘MSP’** to apply or they do not make their nomination in time then a scheme may decide to pay the member’s annual allowance charge on a voluntary basis **‘VSP’.**

4. Changes to the tax rules now mean that some high earning members with income of more than £150,000 per annum are now subject to a **Tapered Annual Allowance (‘tapered AA’)** which

[1] A scheme pays facility works by having the pension fund pay the member’s tax charge initially. This is then repaid by the member as a debit is added to their pension once it comes into payment.

reduces from £40,000 to £10,000 incrementally for those earning between £150,000 and £210,000 per annum.

Members who are subject to a tapered AA will incur an AA tax charge where their pension growth exceeds their tapered AA. The tapered AA will be lower than the £40,000 HMRC AA limit and therefore these members cannot use MSP to pay this charge.

5. With the introduction of the 2015 Scheme, members of the 1992 Firefighters' Pension Scheme ('1992 Scheme') and 2006 Firefighters' Pensions Scheme ('2006 Scheme') who have transferred into the 2015 Scheme on or after 1 April 2015 will effectively be members of two pension schemes and will see pension benefit growth in both schemes until retirement:

   By virtue of accruing their pension growth across two rather than one pension scheme, there is an increased likelihood that although the member's total annual pension growth across both schemes may exceed £40,000, the pension growth in any one of the schemes may fall short of the HMRC AA limit. As such, they will not be eligible to use MSP to pay the AA tax charge.

Home Office Proposal

6. At their meeting of 6th March 2017, the Firefighters Scheme Advisory Board considered and agreed an initial proposal from the Home Office to amend the Firefighter Pension Regulations to allow the charge to be met in the circumstances below using Voluntary Scheme Pays **(VSP)**

   (i) transitional members with pension growth of over £40,000 across both schemes (HMRC AA limit) and a corresponding tax charge, to use the scheme to pay this cost initially, before it is repaid by a pension debit added to the member's pension when it comes into payment

   (ii) members subject to a tapered AA, to use the scheme to pay their charge initially and then this be repaid via a pension debit. For this option, it is also recommended that the member should be required to make an initial contribution of £2,000 from their own finances towards the resultant AA tax charge.

7. It is now for the Home Office to seek the new administration's views on the proposal after the General Election. Assuming this is taken forward the working assumption is that these changes would be introduced via an amendment to the pension scheme regulations rather than guidance. Legislative amendments take time and therefore will not be introduced in the short term.

8. **It is important to note that this is simply a proposal at this time and is not a guarantee that legislation will change. It will be dependent on a number of factors.**

9. Therefore, unless or until that legislation is introduced it is for the FRA to consider their approach to this issue ensuring that what they do is both lawful and appropriate.

Can an FRA operate Voluntary Scheme Pays?

10. This note therefore considers whether FRAs have the ability to offer **Voluntary Scheme Pays 'VSP'** without an amendment to the Firefighter Pension Regulations, and that it is both lawful and appropriate.

11. LGA has recently sought legal advice on behalf of English FRAs, in order to determine whether an FRA can offer voluntary scheme pays, without the need for a change to legislation.

12. **The legal advice was prepared solely for the Local Government Association ("LGA"). Sharing of this legal advice does not amount to a waiver of legal privilege by Eversheds Sutherland.**

13. To operate voluntary scheme pays there are two different steps.

    1. The first is for the Fire Authority to pay the annual allowance charge on behalf of the scheme member to HMRC
    2. The second is for the Fire Authority to adjust the members benefit to reflect the payment made by the administrator

Step 1 – Can the Fire Authority satisfy a member's annual allowance charge on a voluntary basis?

14. The legal advice we have sought opines 'yes, we consider that it is possible for an FRA to operate voluntary "scheme pays"'.

    The instruction to Eversheds Sutherland from LGA was

    > "Does a FRA have the power to agree to voluntary "scheme pays", taking into account both the relevant provisions of the FPS Regulations and the FRA's general powers, and to pay the member's tax liability from the Firefighters' Pension Fund (the "FPF") maintained under the FPS Regulations?"

15. The short answer was 'yes' the longer answer (paraphrased) was 'yes because they have a power of general competence, which may be exercised reasonably where there are sufficient grounds for doing so'.

16. Extract from the 'executive summary' of the legal advice

    > 3. In relation to the specific questions posed:
    >
    > 3.1 Yes, we consider that it is possible for a FRA to operate voluntary "scheme pays":
    >
    > 3.1.1 A FRA which is a county council in England can operate voluntary "scheme pays" relying on s.1 of the Localism Act 2011 and reg.2 of the Modification Regulations. It would be possible to construct an argument that the necessary powers are conferred by virtue of s.111 of the Local Government Act 1972, but the position is less clear-cut than under the Localism Act.

3.1.2 For those FRAs which are metropolitan county FRAs or created by Order as a combined FRA the power to operate such a scheme is derived from s.5A of the Fire and Rescue Services Act 2004 which was inserted by s.9 of the Localism Act 2011.

3.1.3 Where a FRA agrees to operate voluntary "scheme pays", it can properly pay the amount of the tax charge which is due to HMRC from its FPF without contravening the FPS Regulations.

17. Extract from the 'detailed advice' of the legal advice

3.2 First, as regards the question of whether a FRA may agree to meet a member's liability to the annual allowance charge, the arrangements for the administration of the FPS are set out in regulations which are complex in nature and very prescriptive. This is true of many areas of local government activity, and through the Localism Act 2011 the then Government introduced a means by which specific regimes can be supplemented by the exercise of a broad general power of competence for local authorities.

3.3 Those FRAs which are county councils may exercise this power to enter into the necessary arrangements with the member and HMRC. This power cannot be exercised where there is express prohibition of the action proposed. However, since there is no express prohibition of the action proposed here, the FRA may participate in such an arrangement.

3.4 The power of general competence, like all local authority powers, must be exercised reasonably. The FRA must be satisfied that there are sound reasons to make the payments and that the interests of the authority are not harmed by so doing.

3.5 We believe that there are sufficient grounds on which the authority could conclude that there are sound reasons for offering a voluntary "scheme pays" facility, given that (for instance) the effect of the recently introduced tapered annual allowance is that scheme members may now face a substantial tax charge without being able to access the mandatory "scheme pays" facility (because the latter provisions remain based upon the standard annual allowance). Similarly, the interests of the authority will not be harmed, provided that the authority is able to make a consequential adjustment under the Modification Regulations, because the payment will ultimately be met from the member's benefit entitlement, and because the authority will have discretion as to when to offer voluntary "scheme pays", meaning that the administrative burden of such arrangements can be retained within manageable bounds.

3.6 It should be noted that the Localism Act 2011 provisions apply only to English local authorities.

3.7 For those English fire and rescue authorities which are not county councils there is power in the Fire and Rescue Services Act 2004 to enter into voluntary "scheme pays" arrangements subject to the same principles and constraints as apply to county councils.

3.8 Section 5A of the Fire and Rescue Services Act 2004 was inserted by s.9 of the Localism Act 2011. This provides as follows:

*"**Powers of certain fire and rescue authorities***

(1) A relevant fire and rescue authority may do—

(a) anything it considers appropriate for the purposes of the carrying-out of any of its functions (its "functional purposes"),

(b) anything it considers appropriate for purposes incidental to its functional purposes,

(c) anything it considers appropriate for purposes indirectly incidental to its functional purposes through any number of removes,

(d) anything it considers to be connected with—

(i) any of its functions, or
(ii) anything it may do under paragraph (a), (b) or (c), and

(e) for a commercial purpose anything which it may do under any of paragraphs (a) to (d) otherwise than for a commercial purpose.

(2) A relevant fire and rescue authority's power under subsection (1) is in addition to, and is not limited by, the other powers of the authority.

(3) In this section "relevant fire and rescue authority" means a fire and rescue authority that is—

(a) a metropolitan county fire and rescue authority,

(b) the London Fire and Emergency Planning Authority,

(c) constituted by a scheme under section 2, or

(d) constituted by a scheme to which section 4 applies."

[Sections 2 and 4 relate to combined FRAs.]

3.9 Reliance upon s.111 of the Local Government Act 1972 requires the FRA to be satisfied that it is doing something *"which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions".* The purpose of the incidental power is to enable actions to be taken in support of statutory functions, so it is necessary to identify the function before the authority can be said to be acting incidentally to it. The functions of a local authority acting as a FRA and as scheme administrator (for tax purposes) are defined by statute and regulation, and it can be argued that entry into a voluntary "scheme pays" arrangement is incidental or conducive to the performance of those functions (though the position is necessarily not as clear-cut as with the general power of competence under the Localism Act). Again, the test of reasonableness is to be applied.

'Exercised reasonably where there are sufficient grounds for doing so'

18. The power of general competence that allows an FRA to satisfy an annual allowance charge on a voluntary basis, must be exercised reasonably and the FRA must be satisfied there are sound reasons for doing so.

19. LGA consider that the circumstances below proposed by the Home Office and agreed by the Scheme Advisory Board should be considered as sound reasons.

- Transitional members with service in one of the 1992 or 2006 Schemes, and the 2015 Scheme, are able to access a VSP arrangement in the same way that a protected 1992 or 2006 scheme member, or a member with service only in the 2015 Scheme, can do so through Mandatory Scheme Pays.
- Scheme members with a tapered annual allowance are able to use a VSP arrangement to pay a tax charge in a circumstance where the pension growth in one scheme (or more schemes) is less than the £40,000 general AA limit but more than their own tapered AA limit.

20. Any fire authority wishing to make a Voluntary Scheme Pays arrangement for reasons outside of the two listed are advised to consider whether to do so is a reasonable exercise of their powers

and they would have sound reasons for doing so. For example they may not consider allowing a VSP arrangement for a member who would have been eligible for Mandatory Scheme Pays but did not notify the authority within the statutory limit to be a reasonable exercise of their powers.

Step 2 – Can a fire authority adjust a members benefits to reflect the payment made?

21. Having established that the fire authority has the vires in order to satisfy the members charge. The second question for consideration, is does the Fire authority have the power to adjust the members benefit (ie the scheme pays debit) to recover the charge?

22. The Modification of Scheme Rules [SI 2011/1791], Rule 2, Paragraph 2 allows for such an adjustment to be made to the pension (ie the scheme pays debit)

> **2.**—*(1) This regulation applies where a scheme administrator of a registered pension scheme ("the scheme") satisfies all or part of a member's liability to the annual allowance charge, either on a voluntary basis or pursuant to a liability under section 237B of the Finance Act 2004 (1).*
>
> *(2) The rules of the scheme shall be modified so as to allow for a consequential adjustment to be made to the entitlement of the member to benefits under the scheme on a basis that is just and reasonable having regard to normal actuarial practice. This paragraph is subject to paragraph (3).*
>
> *(3) Any modification to the scheme's rules made by virtue of paragraph (2) is subject to section 159 of the Pension Schemes Act 1993(2) or section 155 of the Pension Schemes (Northern Ireland) Act 1993(3) (inalienability of guaranteed minimum pension etc).*

23. The intent of this regulation is explicitly laid out in the explanatory memorandum paragraph 2.1

> *This instrument provides that where a scheme administrator of a registered pension scheme satisfies an annual allowance charge on behalf of a member of the pension scheme from the member's pension benefits, any rules of the pension scheme which prevent such an adjustment to the member's pension benefits are modified to allow for such adjustments.*

For the avoidance of doubt who is the 'scheme administrator'?

24. The modification of scheme rules refers to the 'scheme administrator' for the avoidance of doubt, LGA sought legal guidance onto whom this refers in the case of a Fire Authority.

> Does a FRA count as the *"scheme administrator"* for the purposes of reg.2(1) of The Registered Pension Schemes (Modification of Scheme Rules) Regulations 2011 (the "**Modification Regulations**"), taking into account the effect of The Registered Pension Schemes (Splitting of Schemes) Regulations 2006 (the "**Split Scheme Regulations**")?

25. The legal advice opines that the FRA in this case is the 'scheme administrator'.

> 4.1 Yes. The Split Scheme Regulations provide in reg.2(1)(a) that all registered pension schemes listed in Schedule 1 to the regulations are to be treated as "split schemes". Both the 1992 scheme and the 2015 scheme are listed by name, and although the 2006 scheme (the NFPS) is not expressly listed by name, it is clear that the intention is for the reference in Sch.1 to the "Firefighters Pension Scheme" to cover both the 1992 and the 2006 schemes, since reference is made expressly to s.34 of the Fire and Rescue Services Act 2004, which is the enabling legislation for the 2006 scheme.

4.2 On the basis that all three FPS schemes are to be treated as "split schemes", this therefore means that under reg.3(2) of the Split Scheme Regulations, in the provisions referred to in Schedule 3 to those regulations, *"any reference to the scheme administrator shall be read as a reference to the sub-scheme administrator*". Schedule 3 includes the Modification Regulations.

4.3 Under reg.1, the "sub-scheme administrator" for a split scheme is *"the scheme administrator of a sub-scheme appointed in accordance with the rules of the split scheme to be responsible for the discharge of the functions conferred or imposed on the sub-scheme administrator by or under these Regulations"*.

4.4 In relation to the 2015 scheme, this is clearly the FRA as "scheme manager" for the purposes of the 2014 Regulations. Under reg.177 of the 2014 Regulations:

> *"177 Scheme administrator for the purposes of the Finance Act 2004 The scheme manager is appointed to be responsible for all liabilities and responsibilities connected with the functions conferred or imposed on the scheme administrator by or under Part 4 of FA 2004 which the scheme manager assumes as sub-scheme administrator under regulation 3 of, and Schedule 3 to, the Registered Pension Schemes (Splitting of Schemes) Regulations 2006."*

4.5 In relation to the 2006 scheme and the 1992 scheme, there is no explicit statement under either the 2006 Order or the 1992 Order confirming who is to act as scheme administrator for the purposes of the Finance Act 2004. However, given that under both sets of provisions, the FRA is expressly required to deduct tax / lifetime allowance charges which are due on any payments, it can be inferred that the intention was for the FRA also to be the scheme administrator for Finance Act purposes.

4.6 Therefore, a decision by a FRA to operate voluntary "scheme pays" would constitute a *"scheme administrator"* satisfying *"all or part of a member's liability to the annual allowance charge"* for the purposes of reg.2(1) of the Modification Regulations. As such, it would trigger the operation of reg.(2(2), which would override the provisions of the FPS to the extent needed to make the *"consequential adjustment"* to the member's benefit entitlement.

Summary

26. In certain circumstances, an individual cannot use Mandatory Scheme Pays 'MSP' to pay a relevant HMRC tax charge. This note considers whether an FRA can satisfy the tax charge on a members behalf using Voluntary Scheme Pays 'VSP'

27. The Home Office is considering amendment to the legislation that would allow an FRA to use 'VSP' in certain circumstances only. However, unless or until that legislation is introduced it is for the FRA to consider their approach to this issue ensuring that what they do is both lawful and appropriate**.**

28. Having taken Legal advice on behalf of FRA's, LGA can confirm that an FRA (including County Councils, combined Fire Authorities and Metropolitans) can offer Voluntary Scheme Pays arrangements in order to pay the tax bill where a member of the scheme cannot use mandatory scheme pays because they have a power of general competence, which may be exercised reasonably where there are sufficient grounds for doing so'.

29. It is considered that FRAs should consider the test of 'exercised reasonably where there are sufficient grounds for doing so' to be in line with the two circumstances proposed by the Home Office and agreed by the Scheme Advisory Board:

- Transitional members with service in one of the 1992 or 2006 Schemes, and the 2015 Scheme, are able to access a VSP arrangement in the same way that a protected 1992 or 2006 scheme member, or a member with service only in the 2015 Scheme, can do so through Mandatory Scheme Pays.

- Scheme members with a tapered annual allowance are able to use a VSP arrangement to pay a tax charge in a circumstance where the pension growth in one scheme (or more schemes) is less than the £40,000 general AA limit but more than their own tapered AA limit.

30. The Fire Authority as the 'scheme administrator' have an express power under Rule 2, paragraph 2 of the Modification of Scheme Regs SI 2011/1791, to allow for an adjustment to be made to the pension (ie in this case a scheme pays debit)

Final Note

31. This note was prepared on 31st May 2017 for Fire Authorities consideration by the Local Government Association. It does not constitute legal advice and should not be treated as so.

Contact officer:	Clair Alcock
Position:	Firefighters Pension Adviser
Phone no:	07958 749056
E-mail:	Clair.alcock@local.gov.uk