

FIREFIGHTERS' PENSION SCHEME

NEW FIREFIGHTERS' PENSION SCHEME

DRAFT BLUE PRINT – D1 PAYMENT OF DEATH GRANT

NOTE BY ODPM

1. Section 3 of FPC(05)16 deals with the payment of the death grant under the new Firefighters' Pension Scheme. The draft Blueprint proposed that the grant should be paid to the estate but suggested that alternatively it could be paid to the surviving spouse or civil partner or (registered) unmarried partner or if none of these exist to the personal representative.
2. Under the FPS the death grant can be paid to any surviving spouse who qualifies, or if there is no such surviving spouse, the personal representatives.
3. Greater Manchester Fire and Rescue Authority has raised concerns that where the death in service payment is paid under the FPS directly to the widow:
 - the grant simply increases the estate for death duty purposes and can result in 40% taxation which could be avoided by allowing a nomination to trust; and
 - if the widow is on some form of means tested benefits, the receipt of capital could result in these benefits being disallowed;
 - does not protect the payment from the vicissitudes of life (e.g. divorce or creditors).
4. The FRA suggest that a nomination to trust would place the widow in the position of being the primary beneficiary but also allow the needs of other family members to be provided for.
5. This paper deals, therefore, with the issue raised by the FRA and whether the NFPS should provide for scheme member to be able to nominate someone for the payment of the death grant.
6. The advice we have had from HM Revenue and Customs (HMRC) about inheritance tax liability is set out in FPC (05)16.

Inheritance Tax

7. Exemptions from inheritance tax include anything left to the deceased's spouse/civil partners, anything left to a UK registered charity, and any bills outstanding at the date of death, including funeral expenses. The threshold for inheritance tax from 6 April 2005 is £275,000. Above that amount tax may be charged.

8. Where the death grant is paid to the legal personal representative or a nominated beneficiary, other than a widow or widower, there may be a liability to Inheritance Tax. However, the tax is not likely to apply where the lump sum is distributed by the scheme administrator under a discretionary power. It would seem, therefore, that the scheme would need to retain a discretion to make the payment of the death grant.

Options

9. The aim when paying the death grant must be to ensure the money is paid as quickly as possible to the beneficiary and with the minimum of fuss. The issue for discussion should be whether in the new scheme this would be better served by including a nomination for payment of the death grant.
10. At Annex A is a table showing what is happening in the Police, Local Government, Teachers, Civil Service and National Health Service Pension Schemes. They either include or will include an option for a scheme member to make a nomination. Not to do so in the NFPS may appear less than helpful to scheme members, despite the concerns of the Pensions Ombudsman that the facility is open to countless disputes.
11. The issues raised by the Pensions Ombudsman such as the administrative difficulties for pension schemes, and the responsibility on the scheme member to keep his/her wishes up to date, mean that while nomination may appear to address the aim of getting money paid quickly, there will be additional responsibilities for everyone concerned.

Proposal

12. Of the five possible models suggested by the schemes at Annex A, the Police option protects the rights of the surviving spouse/partner before permitting a nomination to take effect. It is therefore more limited than the others where a nomination can be made in respect of anyone regardless of whether there is a spouse/partner. Obviously, this is one area where disputes can arise. However, if the option is to be included it would seem inappropriate for the scheme to protect the rights of any particular beneficiary, if this is against the wishes of the scheme member.
13. The Police option does not provide for the grant to be divided between people, whereas the Teachers' and the Civil Service Premium Schemes offer this possibility. This option would seem to create another area for disputes, but there may be instances where a scheme member would want to divide the grant. For example, between adult children.
14. The Teachers' facility does not require a nomination if the intention is that the spouse should receive the grant. This offers a compromise between the Police and the other schemes.
15. A possible option could be for scheme members to be able to make a nomination if the intention is that the death grant should go to someone

other than the spouse/partner. This would offer some protection so the grant could be paid quickly without having to go to Personal Representatives where a nomination had not been made. Where a nomination is made there seems no reason not to extend it so that the grant can be divided between beneficiaries.

16. A nomination could also be declared invalid if after it was made the scheme member married or entered into a civil partnership or registered an unmarried partnership. Other areas of protection suggested by the Classic Civil Service Scheme might be that the nomination would be invalid if the nominee had died (so that it did not go into the nominee's estate), or the nominee was convicted of the murder or manslaughter of the scheme member.
17. The facility to nominate would seem to have been accepted by most public sector schemes and it would seem unfair to deny it to members of the new Firefighters' Scheme.

Conclusion

18. We would propose that:
 - The grant should be paid to the spouse/civil partner/registered unmarried partner, unless a nomination had been made;
 - If a nomination is made, more than one beneficiary can be named;
 - The nomination should be invalid if, after making it, the scheme member marries, enters into a civil partnership or registers an unmarried partnership;
 - The nomination would be invalid if the nominee had died, or if the nominee was subsequently convicted of the murder or manslaughter of the scheme member;
 - The onus should be on the scheme member to ensure that the nomination is amended if circumstances change.
19. The FPC is invited to discuss the issue.

ODPM
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Annex A

Other Public Sector Schemes

Nomination for Death Benefit

Guidance issued before Civil Partnerships have come into effect.

Scheme	Death Grant	Comments
Police	<p>Existing Scheme: Paid to spouse or personal representatives.</p> <p>New Scheme: the Death grant may be paid to:</p> <ul style="list-style-type: none"> - the surviving spouse or civil partner, - or if there is no such person, at the discretion of the police authority to a surviving unmarried partner for whom a declaration form has been completed and who has submitted a claim form, - or if there is no such person, at the discretion of the police authority to a person nominated by him/her, - or otherwise to the legal personal representative. 	A nomination in favour of someone who is not the current spouse etc is void.
Local Government	The administering authority may make payments to or for the benefit of the	If the administering authority has not made payment equalling in aggregate the member's death grant before the expiry of 2 years beginning on the date

Pension Scheme	member's nominee or personal representatives or any person appearing to the authority to have been his relative or dependant at any time.	of the scheme member's death they must pay an amount equal to the shortfall to the member's personal representatives.
Teachers	Nominate an individual or individuals setting out the proportions required.	If the intention is that the spouse should receive the grant there is no need to complete the nomination form. Scheme regulations provide for the spouse to automatically receive the death grant when there is no nomination. Where there is no valid nomination, the death grant is paid to the spouse or, if the scheme member is unmarried, to the personal representative named on Grant of Probate. If the nominee dies, or one of the nominees dies, the designated proportion of the death grant will be paid to the spouse or, if single, to the estate.
Civil Service	<p>Classic scheme (existing scheme): Nominate one person or an incorporated/unincorporated body (e.g. bank, partnership or firm of solicitors). The nomination is not binding on the pension scheme. If the scheme does not pay to the nominee named, it will pay to the personal representatives.</p> <p>Premium Scheme (new scheme): Nominate one or more individuals, or one incorporated or unincorporated body.</p>	<p>Classic: A nomination would not be valid if the nominee was the spouse and the marriage had since ended; or the nominee had died; or the nominee was convicted of the murder or manslaughter of the scheme member.</p> <p>Premium: If the nomination is in respect of more than one person and the scheme member fails to set out the proportions each should receive, the scheme administrator will divide the death benefit between the people named. The nomination would be considered invalid for the same reasons as set out for the Classic scheme.</p>
National Health Service	Nominate one person including a child or one organisation including a bank, trustee or firm of solicitors to receive the lump sum.	If married the death in Service Cash Lump Sum will automatically be paid to the spouse unless the scheme member completes a nomination. If single or divorced the lump sum would be paid to the estate.