Purpose of Report

1. This report is intended to seek approval to proposed changes to the Re-Employment Policy, now entitled the Re-Employment and Pension Abatement Policy, that have been made as a result of The Firefighters’ Pension Scheme (Amendment) (No.2.) (England) Order 2013 and HMRC Guidance on Protected Pension Age (PPA).

2. The matters in this report have been referred to senior members of the Fire Authority, Policy Approval Group and the FBU has been consulted.

Recommended That:

[1] the report be noted;

[2] the policy be approved; and

[3] the Head of People and Development be authorised to make minor changes to the policy as necessary without further reference to Members.

Background

Pension Abatement

3. Abatement is the process of reducing or stopping a scheme member’s pension if that member retires and then returns to work for the Fire and Rescue Service. Pension payments should be abated where a scheme member is reemployed by a Fire and Rescue Service and they are in receipt of pension and salary that exceeds their earnings before retirement. Prior to The Firefighters’ Pension Scheme (Amendment) (No.2.) (England) Order 2013 Fire and Rescue Services only had discretion to abate all or part of the pension of the scheme member when they were reemployed as a regular firefighter.

4. The Firefighters’ Pension Scheme (Amendment) (No.2.) (England) Order 2013 took effect from 1st July 2013. It amended FPS Rule K4 to
expand the definition of reemployment so that abatement of pension may apply to a scheme member reemployed in any role by any Fire and Rescue Service, including non operational and on call firefighter roles.

5. In addition, the Order has changed Rule LA2 to require a Fire and Rescue Service that elects not to exercise the discretion to abate a scheme member’s pension, to pay the amount of pension paid to the member that could have been abated within the financial year, into the pension fund. In other words, the cost of deciding not to abate is covered by the Fire Authority making the decision.

Protected Pension Age

6. Members of the FPS are able to access their pension before they reach the age of 55 and so for HMRC purposes have been given a Protected Pension Age. However, any scheme member retiring before the age of 55 and returning to employment without an adequate break risks incurring additional tax liability on their pension. This is because they ‘lose’ the protected pension age status.

Information

7. The Authority’s policy in respect of abatement of pension has been that re-employment of any employee following retirement would only occur following an open and competitive recruitment and selection process and that abatement of pension of any FPS/NFPS member would be considered if they were appointed into a firefighting role. Abatement was not applied to FPS/NFPS members who were reemployed into any other role including on call and support staff roles.

8. In all cases in the above paragraph a break in service of one complete calendar week (Sunday to Saturday inclusive) was required before an individual was reemployed.

9. The policy with regard to the re-employment of support staff differed only by the fact that abatement of pension was not a consideration in the Local Government Pension Scheme (LGPS) as it ran contrary to the flexible retirement option for those scheme members.

10. The revised policy that members are being asked to approve has been amended to incorporate pension scheme amendments and HMRC guidance. It is attached to this report as Appendix A.

11. The policy title has been amended to include the word “Re-Employment” as it is felt that this will enhance understanding of the purpose of the policy.

12. The Authority’s policy on re-employment has been amended so that re-employment to any role, (except that of an on call firefighter), following retirement or voluntary redundancy would only occur in exceptional
circumstances and with the approval of Members. The Head of Service Delivery will consider the re-employment of retired wholetime firefighters as on call firefighters.

13. The revisions in respect of abatement are that the pension of any FPS/NFPS member re-employed into any role would normally be abated in whole or in part but each potential abatement case would be considered on its merits (with abatement applying unless there were exceptional circumstances).

14. Re-employment, would only occur in exceptional circumstances and prior to engagement, (except in respect of on call firefighters), approval must be sought from the Staffing Committee and would require a detailed business case justifying ‘need’ and containing all relevant financial information outlining the cost to the Authority.

15. Re-employment of FPS/NFPS members would only take place after a break in service of one complete calendar week (Sunday to Saturday inclusive) or six calendar months where the retiree was under 55 years of age.

16. The same re-employment considerations will apply to employees subject to Green or White Book conditions of service. However, abatement rules do not apply so support staff whose pensions would not be abated upon re-employment. A break in service of one complete calendar week (Sunday to Saturday inclusive) would be required before the individual could be re-employed. However, an employee who has received a redundancy payment will be required to have a break in service of four weeks before re-employment.

17. Employees who are members of the FPS who are able to retire between 50 and before 55 years of age are able to do so because they have a “Protected Pension Age”. HMRC guidance states that re-employment under certain conditions can result in them losing protections afforded to them under the “Protected Pension Age” rules and could result in them incurring a tax liability on pension. Any tax liability incurred continues until they reach the age of 55 irrespective of the length of the contract of employment.

18. HMRC guidance states that an individual must meet one of the four re-employment conditions in order to keep their “Protected Pension Age” status. These are:

i) “recall by the armed forces”

ii) “a break of employment of at least six months”

iii) “a break in employment of at least one month and benefits may be abated”
iv) “a break in employment of at least one month and the employment is materially different”

19. The Service following discussions with senior members of the Fire Authority and Policy Approval Group and in light of the HMRC guidance it is appropriate to determine that those with a “Protected Pension Age” must have a break of 6 months and prior to re-employment will be required to provide written confirmation that they have taken their own tax advice before any offer of employment would be confirmed.

20. In addition to the revisions to the policy, in order to ensure that the Service is made aware of any potential abatement and “Protected Pension Age” issues, the recruitment process has been adapted in order that these matters can be identified at the earliest opportunity.

Financial Implications

21. With regard to the changes around abatement imposed by The Firefighters’ Pension Scheme (Amendment) (No.2.) (England) Order 2013, if the Service chooses not to abate the pension of an individual then it is required to pay the amount that would have been abated, into the pension fund.

22. Tax liability arising from the loss of “Protected Pension Age” status applies to the individual scheme member and not to the employer.

Legal Implications

23. The rules about abatement arise as a result of The Firefighters’ Pension Scheme (Amendment) (No.2.) (England) Order 2013 and those about “Protected Pension Age” arise from the Finance (No.2) Bill 2006.

Equality and Diversity Implications

24. An Equality Impact Assessment was completed at date of origin and has been refreshed as part of this review.

Environmental Implications

25. There are no environmental implications.