



HMT Consultation

Public service pension scheme: changes to the transitional arrangements to the 2015 schemes

Response by the Civil Nuclear Police Federation October 2020

Introduction

The Civil Nuclear Police Federation (CNPF) welcomes this opportunity to respond to the above consultation document. Our response contains: firstly, our view on the proposed options for removing discrimination (caused by the transitional arrangements to the 2015 schemes between pension members). Secondly, and in the same vein, we also make the case that as part of eventual legislation required to address the transitional agreements, it should also include measures to address the impending breaches through discrimination by age, gender and race of the Equality Act 2010 by Government if the Civil Nuclear Constabulary (CNC) are denied retention of their current Normal Pension Age of 60.

(A) TRANSITIONAL ARRANGEMENTS

The CNC were due to onboard to a new career average Civil Service Pension Scheme – ‘ALPHA’ pursuant to the changes made by the Public Service Pensions Act 2013 (‘the 2013 Act’). In the case of CNC officers the same transitional arrangements contained in the consultation document (and as applied to police officers in other schemes affected by the 2013 Act) were also due to be used. Onboarding to the new CARE scheme was delayed in 2017 and more latterly in 2020 due to awaiting the outcome of the legal challenges to the transitional arrangement in various schemes (Sargeant & McCloud cases). The new pension scheme onboard is now due to take effect on the 1st April 2022. As such, for CNC officers, the transitional arrangement issue is less complex than for other interested parties due to all CNC officers having remained in their original pension scheme. The CNPF therefore welcome the Government’s proposal that CNC officers remain members of the original scheme until a clear, nondiscriminatory path is identified and implemented.

In the event that a new scheme is devised for CNC officers, in order to avoid further litigation, it is imperative that the transitional provisions (if any) do not discriminate in a manner similar to the Police Pension Regulations 2015. Specifically, there should be no provisions in the new scheme equivalent to and/or with the same effect as Paragraphs 11(2)(b), 11(3)(b) and 14(2)(b), Schedule 4 of the Police Pension Regulations 2015.

Further, CNC officers should have the option of choosing which scheme they join. This is particularly important as the continuing uncertainty disadvantages officers in making career choices, including matters such as future career progression and pay.

(B) RETENTION OF THE CNC NPA OF 60

1. The issue

1.1. As the representative body for CNC officers, the Civil Nuclear Police Federation (CNPF) is also seeking resolution of a related issue on the pension entitlement for CNC officers. Unlike



officers in Home Office maintained forces who can retire at age 60, CNC officers will have the unsustainable and inappropriate pension age of 67/68 set by the 2013 Act.

- 1.2. Given this consultation seeks to address a breach of its own equalities legislation with the issue of transitional arrangements for the 2015 Public Service Pensions Scheme, we invite the Government to consider the opportunity to also address the unsustainable pensions age of 67/68 for the CNC as part of the legislation resulting from this consultation. This anomaly can be addressed by addressing Section 10 of the 2013 Act and related definitions to make clear that 'members of a police force' includes CNC officers. We note that on Page 11 para 1.29 of the consultation, it states that: "It is the intention of Government to bring forward new primary legislation as soon as practicable".

2. Context

- 2.1. The CNC was established under the Energy Act 2004 ('the 2004 Act') as the successor police service to the UK Atomic Energy Authority Constabulary. The CNC is a specialised armed national police service. Its core mission is to protect the UK's civil nuclear assets, including nuclear power stations and nuclear material on site or in transit (both at home and abroad). The CNPF is the statutory employee representative body for officers up to the rank of Chief Inspector.
- 2.2. The service comprises 1200 Authorised Firearms Officers (AFOs). Our AFOs are all accredited to the same national standards set by the College of Policing as all other UK Home Office AFOs. Apart from pension provisions, the CNC currently have the same pay and conditions parity, including retirement at 60, with the Home Office UK police service. Due to having a significant number of AFOs, CNC police officers regularly provide support for Home Office police forces, particularly in more rural areas. The CNC also has an important role as part of the UK's Strategic Armed Reserve and can be deployed alongside other UK armed police, for example as in Operation Temperer deployments following the terrorist attacks in London and Manchester in 2017.
- 2.3. The CNPF has been campaigning for five years for the retention of their current normal retirement age of 60. The 2013 Act introduced a normal retirement age of 65 rising to 67/68 for public sector bodies in line with state pension age. Through what we believe to be a legislative oversight, although referenced as a police service under the 2004 Act, the CNC was not defined as "a police force" for the purpose of the 2013 Act.
- 2.4. This interpretation was confirmed by judicial review in 2016. As a result, CNC officers will lose the current entitlement to retire at 60 on 31st March 2022. The judicial decision may be technically correct but the failure to be exempt does not reflect the recommendation of the 2011 Lord Hutton Report (Page 6 para 1.5 of the Consultation) which specified that "the uniformed services" should be able to retire at 60.
- 2.5. Furthermore, all parties to the Judicial Review (the Business, Energy and Industrial Strategy (BEIS) as sponsoring Department, the employer the Civil Nuclear Policing Authority (CNPA) and the CNPF) were in agreement in their Judicial Review submissions that there was little or no realistic prospect of our Armed Firearms Officers (AFOs), particularly female officers, physically serving beyond 60. The medical evidence that health and physical dexterity



necessary to be an AFO decline through ageing is indisputable and has never been challenged.

3. The Evidence

- 3.1.** The majority establishment of CNC operational police officers are AFOs. These officers work 12-hour shifts routinely wearing 20 kilos of protective equipment and respiratory gear and carry three separate weapon systems. All male and female AFOs in the UK Police Service must maintain the same mandatory standards as set by the College of Policing.
- 3.2.** CNC AFOs must maintain throughout their careers, even until retirement at 60, fitness and weapon competency standards set by the College of Policing. Failure of these regularly tested capabilities may mean an officer's employment is terminated due to lack of unarmed roles. By contrast, in the rest of the UK Police Service, test failure or voluntary surrender of the firearms role leads to reassignment to unarmed police duties without career penalty.
- 3.3.** We invite you to note that the HM Treasury (HMT) Consultation document states (Page 33 para 3.4) that "there are exemptions for the armed services, police and firefighters where the National Retirement Age (NRA) is set at 60 for those "retiring" from active service." Given the mandated standards required by CNC AFOs throughout their career there can be no argument that does not accept that they are "active service."
- 3.4.** All the medical evidence accepts that officers will naturally and inevitably lose their physical dexterity and flexibility, will have deteriorating respiratory capacity, poorer eyesight, and reduced hearing with the onset of their mid or late 50s. To serve as an effective AFO beyond 60 a male officer would need to be in significant athletic condition and a female officer would have to be of elite standard. It is significant that among the total number of the UK's Home Office AFOs, very few are over the age of 50, with no female AFOs believed to be over 55.
- 3.5.** Under the 2013 Act, CNC officers are scheduled to be on-boarded to the Alpha Scheme on the 1st April 2022. The Alpha Scheme proposes a NRA of 67 by 2026 and 68 by 2037. On the basis of the above evidence, which has not been disputed, the new NRA of 67/68 is beyond the career reach of a CNC AFO. As a consequence, officers will be denied a full pension or will be unable to maximise his or her pension. Under these terms, for an officer to retire at 60 would reduce their pension by as much as a 35 per cent. The Consultation document states at Page 5 para 3, "nobody is required to work longer if they do not wish to do so, but where pensions are accessed before Normal Pension Age, they are adjusted to reflect the fact that they are likely to be paid for longer." In respect of the CNC, if its NRA becomes 67/68, the majority of officers would be retiring early not because they wish to but because they will be forced out on fitness grounds and obliged to accept reduced pensions. We are not aware of any other public service employee group which will have imposed on it, knowingly by the employer, what will be almost certainly an unattainable NRA.

4. Public Sector Equality Duty on Government

- 4.1.** The Government has been provided with two equality impact assessments, one conducted by the CNC and one by BEIS. Both report the same conclusions. Firstly, there would be adverse effects in respect of a retirement age of 67/68 with the medical evidence indicating that the need to maintain the required physical fitness and firearms qualifications for the



CNC will adversely affect older officers who will be less likely to be able to meet those standards as they approach the proposed retirement age. Secondly, with regard to sex, according to the medical evidence, the need to maintain the physical standards will adversely affect older female officers in comparison with older male officers. Both impact assessments also highlighted discriminatory aspects in relation to Race.

4.2. Our preliminary legal advice is to the effect that both these findings seriously breach the public sector equality duty created by the Equality Act 2010 and/or constitute proscribed discrimination. The CNPF maintains that on-boarding the CNC AFO's to an Alpha Scheme with a NRA of 67/68 institutionalises discrimination by age, sex and race, thereby defying the legislation. The CNPA, as the employer, has been duly notified of impending legal proceedings, which will inevitably be enjoined by the relevant Government Departments. It seems to us that history will surely repeat itself as the Consultation document declares that the Government's intention is to remove discrimination considered by the courts in the *McCloud* and *Sargeant* cases to have constituted direct age discrimination and indirect race and sex discrimination.

4.3. We have also engaged with the Equalities and Human Rights Commission who are continuing to monitor our case to see whether the NRA of 67/68 will be imposed.

5. Financial Issues

5.1. The CNPF has understood from the beginning of its campaign that retaining a NRA of 60 would have cost implications for the public purse and has conceded that a higher member contribution may be required. Given that the CNC has pay parity with the UK police service it is not unreasonable that our members should consider higher pension contributions.

5.2. From a purely HMT perspective a key issue must be an appreciation of the additional costs to the public purse through the unnecessary economic costs incurred through the management of ageing officers beginning to perform below par and to recruit new officers. It is the CNPF's understanding, based on a study conducted by the CNC, that to allow officers to retire at 60 would be less costly than instituting a NRA of 67/68.

6. Progress towards resolution

6.1. Since 2016, the CNPF has had several meetings and much correspondence with successive Ministers and Departmental officials. The CNPF had a very productive meeting with HMT and Cabinet Office officials on 12th July 2018 and a further meeting, this time also attended by the CNC and the CNPA, in July 2019 with BEIS, HMT and Cabinet Office chaired by the BEIS Nuclear Director resulting in a clear understanding from all our perspectives of the issues and the difficulties. At no stage were the arguments in support of retention of the NRA of 60 challenged by officials.

6.2. At that meeting, it was apparent that there was a particular difficulty in that primary legislation would be required to allow the CNC exemption from the 2013 Act. The Government's understandable preoccupation with Brexit and a reluctance to accept exemptions were also referenced. However, this matter can and should be part of the legislation as suggested by this consultation to address issues regarding the implementation of the 2013 Act and its consequences.



7. Summary

- 7.1.** The major legislative obstacle to preventing the imposition of the entirely inappropriate NRA of 67/68 on the CNC can be overcome by including a measure to retain the current NRA of 60 through the timely availability of new legislation as suggested by this consultation.
- 7.2.** Without addressing this issue via the suggested legislation in this consultation or another other satisfactory remedy, the Government is now aware it will face legal challenges in court and tribunal discrimination cases supported by the CNPF, cases in which the Equality and Human Rights Commission has taken an interest. If the Government intends to eradicate one form of discrimination arising from police (and other public sector workers') pensions, this opportunity should also be taken to deal with another form of discrimination within police pensions for CNC officers.
- 7.3.** The argument justifying the Government conceding the CNC exemption from the imposition of an NRA of 67/68 remains irrefutable.
- 7.4.** In a more buoyant employment market, the failure to retain the NRA at 60 may also result in a renewed fall off in recruitment and retention to the extent that eventually the CNC may no longer be able to fulfil its vital mission of protecting the UK's civil nuclear assets and breach its obligations under the 2004 Act.
- 7.5.** Imposing an unattainable NRA on a discrete group of employees is unacceptable and unprecedented in the public service and should be addressed by the legislation as a result of this consultation

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