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Retained Firefighters and Part-Time Workers
(Prevention of Less Favourable Treatment)
Regulations – House of Lords Appeal

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FIRE BRIGADES National Employers

**To: Chief Fire Officers
Chief Executives/Clerks to Fire Authorities
Chairs of Fire Authorities**

**Members of the Employers' Side of the NJC
Directors of Human Resources (Fire Authorities)**

8 March 2006

CIRCULAR EMP/2/06

Dear Sir/Madam

RETAINED FIREFIGHTERS AND THE PART-TIME WORKERS (PREVENTION OF LESS FAVOURABLE TREATMENT) REGULATIONS – HOUSE OF LORDS APPEAL

1. I write further to the Employers circular EMP/20/05 dated 11 November and our email message of the 1 March 2006, to give more detail about the House of Lords' decision concerning firefighters working the retained duty system (RDS).
2. Authorities will recall that RDS firefighters claimed access to the Firemen's Pension Scheme, equality on sick pay, and additional duty payments. This was the first case to consider the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 ("the Regulations"). RDS firefighters were selected from two fire authorities (Kent & Medway Towns and Royal Berkshire) who, supported by the FBU, argued that the Employment Tribunal had wrongly decided that:
 - Whole time and retained fire-fighters were employed under different types of employment contract;
 - Whole time and retained firefighters were not engaged to carry out the same or broadly similar work.
3. In a majority decision (two of the five law lords found in favour of the fire authorities) the House of Lords found for the RDS firefighters on the first point.

4. Further, on the second point, the majority of the House of Lords allowed the RDS firefighter appeal. However, that is not the end of the issue. Rather than make a ruling on the second issue, the House of Lords have decided that the claim should return to the Employment Tribunal to further consider the issues, based on guidance given by the House of Lords.
5. Without going into detail of the House of Lords decision (which is available on request via jacky.teasell@lg-employers.gov.uk) the House of Lords have decided that :
 - The meaning of “different type of contract” in the Regulations should be read restrictively. Since retained and wholetime firefighters are both employed on open ended contracts, that is enough for them to be employed on the same type of contract for the purposes of the regulations.
 - It was vital to give a broad interpretaion to the phrase “the same or broadly similar work” for the purposes of the Regulations. They were concerned that the Employment Tribunal had carried out an analysis of this issue in a way that was too similar to the way the analysis would be carried out under the Equal Pay Act. The House of Lords were concerned that the Tribunal should look at both the similarities and differences of the work undertaken by retained and wholetime firefighters being careful to look at the entirety of the job. They said that it was almost inevitable that the type of work undertaken by the two categories of firefighter would be different to some extent, but that did not prevent it being broadly similar, nor did the fact that wholetime firefighters undertook some extra tasks. As mentioned above, the case will now go back to the Employment Tribunal to apply those tests to the duties of wholetime and retained firefighters.
6. As the House of Lords found for the RDS firefighters, the Authorities will have to jointly meet the FBU’s legal costs in the Court of Appeal and House of Lords with the ODPM. Further information on this will follow once a figure is known.
7. This decision affects just under 12,000 RDS firefighter FBU members. It also impacts on similar cases brought by about 3,000 RDS firefighters represented by the RFU. Ultimately it has a potential impact on all retained firefighters.
8. Consideration will now be given to how this matter should be progressed and preparation for the re-hearing at the Employment Tribunal in the next few months, and you will be kept up to date about this.
9. Authorities will be advised of the outcome of those considerations in due course.

Yours sincerely
Gill Gittins
Principal Negotiating Officer