



Department for
Communities and
Local Government

Retained Firefighters' Pension Settlement: A consultation to provide access to a modified pension scheme

Summary of responses to the consultation

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Introduction

Public service reforms

1. Public service pensions are currently undergoing reforms to make them more sustainable and affordable in the long term, and fair to both the employer and taxpayer. Despite recent reforms, most of these increased costs are being met by taxpayers.
2. On 24 May 2012, the Department published a Proposed Final Agreement on the scheme design for the Firefighters' Pension Scheme in England to be introduced from April 2015. This can be accessed at: <https://www.gov.uk/government/publications/firefighters-pension-scheme-proposed-final-agreement>.
3. People are now living much longer and, as a result, the cost of public service pensions have increased by around a third. Despite recent reforms, most of these increased costs are being met by taxpayers. As a result, all public service pension schemes, including the firefighters' pension scheme, are being reformed.
4. Currently for every £1 paid into the Firefighters' Pension Schemes by the employee, the taxpayer contributes £5. The reforms to the Firefighters' Pension Scheme will therefore ensure a fairer balance between what firefighters' pay and what other taxpayers contribute.
5. Under the reforms, firefighters will continue to get one of the most generous public service pensions – with guaranteed levels of benefit and inflation proofing. A firefighter who earns £29,000 and retires after a full career aged 60, will get a £19,000 a year pension. The total pension that a firefighter will receive rises to £26,000 when they become entitled to their state pension.
6. Alongside the reforms process, the Department is also making amendments to the 1992 and 2006 firefighter pension schemes and Firefighters' Compensation Scheme as part of the Retained firefighters' pension settlement.

Why the Department consulted

7. Retained firefighters provide vital cover from home or their place of work. They perform an important role, supporting their communities by providing a flexible and effective service. Historically they were not permitted to be members of the now closed Firefighters' Pension Scheme 1992.
8. On 23 July 2013, the Department published the consultation paper, *Retained Firefighters' Pension Settlement – a consultation to provide access to a modified pension scheme*. The consultation paper set out the proposed terms, that have been negotiated between the Department and Fire Brigades' Union, to provide retained firefighters employed by Fire and Rescue Authorities in England between 1 July 2000 and 5 April 2006 inclusive with access to a pension scheme. The consultation set

out the proposals which are intended to provide these retained firefighters with comparable pension rights to those enjoyed by regular firefighters employed during the same period.

Consultation process

9. The consultation was open from 23 July until 3 September 2013. The consultation document was available on the Department's website and responses could be returned to the Department for Communities and Local Government by email or by post.
10. On publication, the Department drew the consultation paper to the attention of members of the Firefighters' Pension Committee, which includes trade unions, the Local Government Association and other key representative bodies. The Department also issued a notification to the chairmen of all fire and rescue authorities, the chief executives of the county councils, the clerks to all fire and rescue authorities, the London Commissioner, and the chief fire officers of all fire and rescue authorities alerting them to the publication of the consultation. The proposals have also been discussed at meetings of the Firefighters' Pension Committee, before, during and after the consultation period.
11. The Department also held meetings with a selected number of members of the Firefighters' Pensions Technical Working Community to discuss the implementation of the Settlement agreement from the administrator's perspective, and to assess the enabling Statutory Instruments to ensure that they deliver the policy intention.
12. In total, 28 written responses were received. These came from individuals, Fire and Rescue Authorities and representative organisations from the fire and rescue service sector including Trades Unions, employer representatives and firefighter professional bodies.

Type of organisation	Number of responses
Fire and Rescue Authority	21
Trades union or employee association	2
Professional body or employer representative group	2
Private individuals	3
Total	28

13. The Department has considered the comments and evidence provided in each consultation response and, in the next section, offers a summary of the responses to the particular proposal and the Department's final position.

Summary of responses

14. The following sets out a summary of the responses received to each of the four questions that were asked as part of the consultation.

Question 1 – Do the amendments to the New Firefighters’ Pension Scheme 2006, the Firefighters’ Pension Scheme 1992, and the Firefighters’ Compensation Scheme deliver the terms of the proposed new pension arrangements?

15. There were twelve responses received in relation to this question. Eight of the responses held the view that the proposed amendments did deliver the terms of the proposed pension arrangements. The four remaining responses felt that as the draft amendments have been subject to extended discussions between the Department and the Fire Brigades’ Union, then it should be assumed that they deliver the policy objectives.
16. A number of responses had also questioned the rationale behind the statement on page 9 of the consultation paper which stated that “*Individuals who were employed on retained duties and as a wholetime regular firefighter by the same employer are not eligible to benefit from these proposed pension arrangements*”. They were unsure of why having a second, separate employment contract as a regular firefighter would affect an individual’s entitlement to join the modified scheme.

Government response

17. The Department is grateful for the comments that have been received. An individual’s eligibility to join the modified scheme will be determined on the basis of his employment as a retained firefighter during the period 1 July 2000 and 5 April 2006 inclusive and would not be affected by any secondary employment contracts as a regular firefighter. However, as set out on page 13 of the consultation, any firefighter employed on a single contract which covers a combined wholetime and retained role will not be eligible as they are not a part-time worker.

Question 2 – Does Annex A set out the correct range of scenarios for potential groups of retained firefighters who will be eligible for access to the pension scheme?

18. There were fifteen responses to this question. Thirteen of the responses held the view that the correct range of scenarios for potential groups of firefighter members had been identified. The two remaining respondents suggested that the following groups had been overlooked:
- individuals who had employment as a retained firefighter between 1 July 2000 and 5 April 2006 and who remain employed by the Fire Authority in another capacity other than as a firefighter; and

- individuals who would have been entitled to join the modified scheme but who die prior to having an opportunity to join.

Government response

19. The Department is grateful for the comments received. Where an individual left their employment as a retained firefighter after 5 April 2006 and without a break in service took up employment as a regular firefighter then the individual will have the option to combine these periods of service under the modified scheme. This option would be subject to the member paying the full amount of past service contributions. Where there was a break in service the member will be eligible to apply for membership as a special deferred or special pensioner member. Any individual who is entitled to join the modified scheme in respect of service as a retained firefighter prior to April 2006 and then was employed by a local authority in another capacity (not as a firefighter) may join as a special deferred member whether or not they are again employed as a firefighter.
20. The Department set out in the consultation paper that the Settlement terms make provision for the payment of a time-limited death grant to the surviving spouse, or civil partner, of any person who was employed as a retained firefighter on or after 1 July 2000 and who continued in service until they died on or before 5 April 2006. This will be subject to the submission of an application on or before 31 March 2015. Those individuals who died after 5 April 2006 would have had an opportunity to join the New Firefighters' Pension Scheme 2006 (the "2006 Scheme") with entitlement to in-service death benefits.

Question 3 – Is any difficulty envisaged by the retrospective commencement of some of the amendments to the Firefighters' Compensation Scheme?

21. There were nine responses to this question. Three of the nine responses held the view that there would be no difficulty with the retrospective commencement of the proposed amendments to the Firefighters' Compensation Scheme. Three respondents highlighted that the removal of the protected injury awards for retained firefighters would mean that in the future any injury awards would have to be prorated to reflect service throughout their career. This would require employers to assess a member's earnings over their full career and may be problematic for those authorities that do not have access to this historic data.
22. Two responses highlighted that the amendments to the Firefighters' Compensation Scheme would require authorities to make a retrospective assessment on an individual's entitlement to an ill-health pension. They suggested that this could be problematic in cases where the individual had left employment without being medically dismissed by the authority. One respondent also requested for the Department to clarify how the proposed amendments would be applied to cases which are being processed during the period that the enabling legislation is made.

Government response

23. The Department is grateful for the comments received. The Department will introduce an arrangement for determining a retained firefighter's historic earnings

where no data is available. The new arrangements will mean that employers should, in the order given, consider the following when determining a firefighter's historic pay:

(i) any relevant documentation provided by the employee where the fire and rescue authority is unable to access historic pay records; or

(ii) pay data and/or turnout rates for retained firefighters at the specific fire stations that each retained firefighter was located in order to determine an average pay rate.

24. Where a retained firefighter left employment without being medically dismissed, the Department would expect these cases to be treated in the same way as those where the firefighter was medically dismissed. The onus will be on the firefighter to inform their authority that they wished to be considered for a retrospective ill-health pension. This option should be set out in the template letters sent to individuals who have an entitlement to join the modified scheme.
25. The consultation proposals included transitional protections that will ensure that any firefighter, with unbroken retained service from before 6 April 2006, whose permanent disablement was occasioned by a qualifying injury before the date the legislation comes into force (i.e. 1 April 2014) will be treated under the unamended compensatory provisions. This will also apply to those members who receive 'after-appearing' injuries.

Question 4 – Are there any other considerations applicable to the proposed new pension arrangements and their implementation?

26. A number of other issues were raised in the consultation responses, which are set out below.

(i) Terms of the Modified Scheme

27. Twenty two of the responses provided comments on the proposed terms of the modified schemes. Two responses suggested that the terms on offer were above and beyond what was legally required and, as such, the associated employer costs were greater than they needed to be. They called for any deviations between the modified scheme and the 1992 Scheme to be explained.
28. One response also disagreed that members should be credited with the full past service that they had elected to purchase during the limited period if they were to die during the pay back period. Another response argued that as all retained firefighters had the option to join the standard 2006 Scheme for service accrued on or after 6 April 2006, there should only be an option to join the modified scheme in respect of retained service accrued prior to the 6 April 2006. One response expressed disappointment that employer representatives had no involvement in the negotiations on terms of the Settlement.

29. Eleven responses requested for the Department to provide greater clarity on the potential size of the scheme deficit that will be created by the past service employer costs and the likely impact on future employer contribution rates.
30. Three responses suggested that offering a fixed accrual rate of 1/45th may be subject to legal challenge. They explained that as regular firefighter members of the 1992 Scheme could only attain a 1/45th accrual rate after accruing maximum service (30 years) prior to retirement and, as such, the accrual rate would be less than 1/45th if the member retired prior to the point of accruing maximum service. The guaranteed offer of a fixed accrual rate would appear to be an improvement on the terms on offer to regular firefighters.
31. One response disagreed that the time limited death grant should be payable to the surviving spouse/children of anyone who left their retained employment and died prior to getting the opportunity to joining the modified scheme. Another respondent suggested that the period for special members to pay back the historic contributions in respect of their retained service during the limited period was overly generous. It was highlighted that this would encourage membership take up rates and, therefore, exacerbate employer costs.
32. Seven responses expressed concerns at the complexity of the modified scheme rules. Two of the seven responses requested the Department to provide a detailed guide for employees.

Government Response

33. The Department is grateful for the responses received. Both the Department and the Fire Brigades' Union agreed that it would be more appropriate to provide access through a 'modified' section of the 2006 Scheme as opposed to modifying the 1992 Scheme. The main reason for this was that the 2006 Scheme already makes provision for retained firefighters, which includes mechanisms and formulas for calculating a retained member's pension. In addition to this, the 2006 Scheme is the more modern scheme.
34. The terms of the Settlement is a package and individual items should not be viewed in isolation. For example,
 - the earliest that a member can take their pension in the modified scheme will be age 55;
 - the commutation factors will be fixed at the current 1992 scheme factors, rather than actuarially neutral;
 - ill-health awards will be calculated in accordance with the 2006 scheme, rather than the 1992 scheme;
 - a survivor's pension in the modified scheme will be based on the member's post commutation pension, rather than the member's pre-commutation pension
 - the injury award for any individuals who suffer a qualifying injury will be calculated on a pro-rata rather than a whole time basis.

35. The cost of the modified scheme is dependant on the number of retained firefighters that purchase past service rights and their service and pay history. The Department has requested this information from fire and rescue authorities but only received six responses. Using the data provided, the Government Actuary's Department (the "Government Actuary") undertook an initial costing. This established the potential capitalised scheme cost to be £85 million. If fire and rescue authorities provide further, detailed information these costings can be refined further.
36. The part-time worker regulations enable part-time workers to make an employment tribunal claim where they are less favourably treated than a comparable full time worker. The Department is confident that the Settlement agreement is not more generous to part-time workers. The Settlement needs to be viewed in the context of a package of pension benefits which ensures that the benefits available to part-time workers are comparable to those available to full-time workers.
37. As part of the terms of the modified scheme, a time limited death grant will be available to those individuals employed as retained firefighters that died between 1 July 2000 and 5 April 2006 inclusive. If these individuals had had access to a pension scheme for their retained service from 1 July 2000 and died whilst still in employment then a death grant would have been payable. As these individuals died in service and prior to having the option to join the membership of the 2006 Scheme, the Department believes that it is reasonable to provide their surviving spouses with an entitlement to a time limited death grant that is equivalent to that provided under the terms of the modified scheme. However, in order to take account of the employee contributions that the member might have paid, the death grant will be reduced to two and half times the pensionable pay that the member received in the last year of service prior to his/her death. The payment of the time limited death grant will be subject to the submission of an application to the relevant employing authority before the end of the options exercise.
38. Individuals will be given ten years, or until they become entitled to receive payment of their pension, to pay their past service contributions. This arrangement will ensure that access to the modified scheme will not be limited by an individual's ability to pay an upfront lump sum. It is the Department's view that 10 years to pay the past service contributions is reasonable and balances the needs of both the employing authorities and special members. In the case of claimants who are special pensioner members with pensions in payment, there would be no logical intention of requiring an upfront lump sum payment of contributions to join the scheme (other than the goal of dissuading claimants from taking up their right of access to the scheme) when these contributions can be immediately returned in the form of a commutation lump sum. It is the Department's view that these arrangements are appropriate and consistent with wider legal principles.
39. The Department recognises that the rules of the modified scheme will need detailed consideration. This is a consequence of having to retrospectively introduce new pension rights for retained firefighters. The Department is working with the firefighters' pension technical community to produce an employer guide and template letters for authorities to use when implementing the Options exercise. The Department is also liaising with the Government Actuary to provide an online

calculator to calculate the cost to members of purchasing their past service during the limited period.

(ii) Funding employer past service costs

40. Five responses objected to the proposal that authorities should pay the past service employer costs. It was their view that Government was responsible for setting the terms of the firefighter pension schemes and, as such, was responsible for denying retained firefighters from access to the 1992 Scheme. They also highlighted that the pension schemes are administered locally and that authorities can only make decisions that are permitted by the legislation. There was no discretion locally to admit retained firefighters to the scheme prior to 6 April 2006. Three of the responses felt that the Government should be liable to bear the past service employer costs.
41. Five responses also highlighted that there was no prescribed employer contribution rate for the period prior to April 2006. During this time employers did not pay contribution rates. They claimed that if retained firefighters had been permitted access to the 1992 Scheme during this period then any additional employer costs would have been centrally funded through the mechanism of the Formula Grant. Any requirement for employers to pay these past service employer costs should be considered as a new burden under the principles of the Department's 'new burdens' policy and, as such, be centrally funded.
42. One response set out that the Part-Time Workers regulations only imposes obligations on employers of part-time workers and, as such, any requirement for authorities that did not employ retained firefighters to contribute to the past service employer costs should be considered a new burden. The respondent suggested that either (i) the Government accepts that past service costs on authorities that did not employ retained firefighters is a new burden and should be centrally funded, or (ii) each authority to be responsible for the actual costs that its employees (present and past) incur. One response highlighted that the past service employer costs would disproportionately impact on metropolitan authorities and that this should be taken into account when determining how future scheme deficits should be recovered.
43. Five responses set out that employing authorities had little administration capacity to take on implementation of the Options exercise. It was their view that Government should recognise this additional work as a new burden and fund it accordingly.
44. One response accepted that the proposed method of recovering past service employer costs removed the risks associated with authorities having to make upfront contribution payments but did add to the uncertainty for future employer contribution rates. Another response recommended that the Government return future savings from the introduction of the 2015 Scheme to authorities to pay for these addition costs.

Government Response

45. The Department is grateful for the responses received. It is established Government policy that the cost of providing a pension is an employer and employee responsibility and the funding of liabilities, whether past or future service, should be met by employers. The liability that arises from the Settlement remains a liability to the firefighters' pension scheme which is funded by both employers and employees.
46. The Settlement follows the introduction of new employment legislation in 2000, the part-time workers regulations, which apply equally to local authorities as to private sector bodies. There is no change in, or an introduction of new, Government policy as a result of the Settlement. The existing Government policy that pensions for unfunded public service pension schemes should be paid by employers and employees, and handled through periodic scheme valuations, remains unchanged. The Department has therefore concluded that any costs in relation to the Settlement do not constitute a 'new burden' as set out in the Department's New Burden's doctrine.
47. The introduction of the modified scheme will create a scheme deficit as employees purchase past service rights and the employee contributions paid do not match the full liability created in the scheme. The size of the scheme deficit will be established by valuations and will be recovered from employers over the long term. Any employer contribution increase arising from this Settlement, alongside other relevant matters, will form part of the Government's considerations for fire resources at the next Spending Review.

(iii) Implementation of Options' exercise

48. Seven responses highlighted that authorities may not be able to locate former employees. It was explained that as many retained firefighters left during the limited period without any entitlement to a pension, there was no reason why an authority would maintain up to date contact details. Six responses confirmed that they were not clear on how an authority could discharge its responsibility to use 'reasonable endeavours' to notify all current and former employees.
49. Six responses set out that the proposed timetable for implementing the Options exercise was challenging. Two responses proposed that the Options exercise should be administered centrally. One response suggested that the prescribed stages in the Options exercise should be fixed for all applications; this would make it easier for authorities to collect responses.
50. Two responses highlighted that there could be potential difficulties with asking an Independent Qualified Medical Practitioner to undertake a retrospective medical assessment on a retained firefighter to determine entitlement to an ill-health pension. One response also asked whether the costs of any subsequent appeals to the Board of Medical Referees would be centrally funded.

Government Response

51. The Department is grateful for the responses received. As part of their role as administrators, there will be a duty on employing authorities to use reasonable endeavours to identify potential claimants. Many of the individuals who will have an entitlement to join will already have been identified by employers and the Unions through the terms and conditions aspects of the same grievance. The Fire Brigades Union and the Retained Firefighters' Union will communicate with their current and former members to raise awareness of the Settlement and the right to join the modified scheme. In addition to this, there have been a significant number of claims submitted with the Employment Tribunal.
52. The original proposed options exercise timetable was set out in the consultation paper. Following the points raised, the Department has decided to retain prescribed stages but to also provide authorities with discretion to extend the deadlines of the different stages where necessary. Employers will still be required to conclude the Options exercise by 31 March 2015. This will ensure that there is sufficient flexibility within the process for those authorities who are unable to meet the prescribed timetable whilst still ensuring that the Options exercise concludes before the introduction of the Firefighters' Pension Scheme 2015. It is the Department's view that employing authorities are best placed to locally implement the Options exercise in respect of their current and former employees who have an entitlement to join the modified scheme. The Department will support this process where possible.
53. Having raised the point with medical professionals, the Department is confident that the requirement to make retrospective medical assessments on an individual's entitlement to ill-health retirement is achievable. The Government also considers that all costs associated with the administration of the scheme should be dealt in the normal way as other pension administration.

(iv) Loss of protected rights for retained firefighters

54. Two respondents indicated that financial hardship might be caused by the removal of the 'protected rights' for individuals who have been employed as retained firefighters from before 6 April where they suffer a Qualifying Injury.

Government Response

55. The Department is grateful for the comments received. Retained firefighters employed prior to 6 April 2006 who suffer a Qualifying Injury following the introduction of the modified scheme will receive a prorated injury award in the same way as a part-time regular firefighter, and a retained firefighter who was first employed after 5 April 2006. These individuals will also be entitled to an ill-health award if they are a member of a pension scheme.

(v) Other general comments

56. Three responses highlighted that the consultation was undertaken over the peak summer holiday period and only lasted six week. They did not feel that this was sufficient in order to provide an informed response. One respondent objected to the

exclusion of firefighters employed under a single 'daycrewing' contract during the period 1 July 2000 to 5 April 2006 from having an entitlement to join the modified scheme in respect of the retained element of their duties. Two responses questioned whether the Department had sought advice from HM Revenue and Customs with regards to potential tax and national insurance implications.

Government Response

57. The Government's consultation principles identify that there can be different types of consultation and that the timeframe should be proportionate and realistic. The amount of time required will depend on the nature and impact of the proposal and might typically vary between two and 12 weeks. The Department engaged with the principal representative bodies early, prior to consultation, and throughout development of the Settlement terms by sharing the draft terms of Settlement with the Local Government Association and the Retained Firefighters' Union. The Fire Brigades' Union was involved throughout as the other party to the negotiated Settlement. It was considered that, notwithstanding the summer holiday, a six week period was sufficient to seek the range of views on the terms of implementing the Settlement. The Department was content to accept any late responses and received a couple of responses after the deadline. The consultation on implementation of the Settlement has continued after the deadline through the firefighters' pension technical community.
58. It is the Department's view that any individuals employed under a single contract of employment that includes additional retained duties (such as daycrewing) would not be considered as a part-time worker and, as such, would not fall under the scope of the part-time worker regulations. The Department has engaged with HM Revenue and Customs to consider the tax implication of the Settlement.

Drafting amendments

59. A number of responses to the consultation provided alternative legal drafting to some of the provisions included in the draft statutory instruments. The Department has reflected the comments as appropriate.

Technical Working Community

60. As part of the consultation process the Department also set up two bespoke meetings with the Firefighters' Pensions Technical Working Community to discuss the implementation of the Settlement agreement. Following an analysis of the points raised during these discussions, the Department intends to make the following adjustments:

(i) Individuals who joined the standard 2006 scheme and have already retired with a pension before having the option to join the modified scheme

61. This scenario could arise where the individual has continuous retained service from before 6 April 2006, joined the standard 2006 in respect of subsequent retained service, and has since retired and is receiving payment of the pension. The

Department proposes that the member will continue receiving the payment of their pension under the standard scheme but will be able to convert an equivalent amount of service into special service in the modified scheme. There will be an offsetting mechanism to deduct the value of the pensions paid under the standard scheme from the pension that would be paid under the modified scheme. The special member will end up receiving two pensions (one from the standard scheme and one from the modified scheme) but with a value equal to what they would have received from the modified scheme had they converted all their standard membership to special membership.

(ii) Converting standard 2006 Scheme service to special membership

62. Where an individual has taken the opportunity to convert their standard 2006 scheme service into special service in the modified scheme and subsequently permanently defaults in the payment of these increased contributions, the Department's view is that the member's election to convert should be revoked as there will not be continuity of service between memberships of both schemes.

(iii) Converting standard 2006 Scheme service to special membership

63. Under the current terms of the Settlement, conversion of standard membership to modified membership is conditional on the payment of contributions (and associated interest). On payment of the contributions (and interest), the service in the standard scheme would be credited to the member's special service at a rate of 1/45th for every full year accrued. However, it has been highlighted that there may be an added issue where the individual, making the conversion, has received a service credit in respect of a transfer in from another exporting pension arrangement.
64. In these cases, the member's service in the standard scheme will include a service credit (in 1/60ths) that will have been purchased by a transfer in. The Department has concluded that in these cases the member would be allowed to convert any service actually accrued in the standard scheme into special membership on the terms set out above. However, any service credit in respect of a transfer in would be converted in accordance with bespoke factors and guidance provided by the Government Actuary to ensure that the service credit in the standard scheme would convert to an actuarial equivalent service credit in the modified scheme.

(iv) Qualifying Service

65. The Department has also concluded that individuals who join the modified scheme will be able to include any retained service accrued prior to 1 July 2000 for the purposes of considering their eligibility to receive awards only. For example, to qualify for a retrospective higher tier ill-health pension, the member would have to have at least 5 years' qualifying service. The member will be able to count service prior to 1 July 2000 towards this qualifying service. Retained service accrued prior to 1 July 2000 will not be used for the calculation of the member's pension.