



Department for
Communities and
Local Government

Amendments to the New Firefighters' Pension Scheme 2006 Consultation - summary of responses

Compliance with Workplace Pension Reform as set out in the
Pensions Act 2008 and Occupational and Personal Pension
Schemes (Automatic Enrolment) Regulations 2010

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1. Introduction

- 1.1 The Pensions Act 2008 (“the 2008 Act”) laid the foundations for a fundamental reform of workplace pensions (‘Workplace Pension Reform’) by requiring every employer to automatically enrol their eligible workers into a qualifying pension scheme, if they are not already in one, and to contribute to that pension. These reforms are being introduced on a rolling basis from October 2012, with larger employers (and, in turn, their staff) being subject to the new requirements first. Each employer has a date, known as the “staging date”, on which they are due to become subject to Workplace Pension Reform.
- 1.2 An informal consultation with Fire and Rescue Authorities indicates that the earliest staging date for an authority will be 1 January 2013.
- 1.3 There are two firefighters’ pension schemes: the Firefighters’ Pension Scheme (England) (“the 1992 Scheme”) and the New Firefighters’ Pension Scheme (England) (“the 2006 Scheme”). Both schemes are qualifying schemes for the purposes of automatic enrolment. The 1992 Scheme is closed to new members and re-joiners. Any former member of the 1992 Scheme, and any new employees, would be eligible to join the 2006 Scheme.
- 1.4 The 2006 Scheme already requires for new firefighters, on taking up employment with a fire and rescue authority, to be automatically admitted into the scheme. The 2006 Scheme, although largely unaffected by the changes required by Workplace Pension Reform, requires some amendments to ensure that employers can fully comply with the 2008 Act and the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (“2010 Regulations”), so that a fire and rescue authority can:
 - Enrol eligible workers into the 2006 Scheme on the authority’s staging date;
 - Comply with all other requirements regarding automatic enrolment and re-enrolment, including the need to ensure all firefighters are able to be members of the 2006 Scheme, are entitled to a refund of contributions if they opt out within a specific time scale and to ensure that the written notice to rejoin the scheme complies with the requirements set out in the 2010 Regulations.
 - Comply with requirements in respect of firefighters choosing to re-join the 2006 Scheme ahead of automatic enrolment or re-enrolment.

2. Consultation proposals

- 2.1 In October 2012, the Department for Communities and Local Government published a consultation which sought views on the amendments to the New Firefighters' Pension Scheme (England) ("the 2006 Scheme") in order for fire and rescue authorities to comply with their duties under Workplace Pension Reform ('automatic enrolment'). A draft Firefighters' Pension Scheme (England) (Amendment) Order 2012 accompanied the consultation document, with the proposed amendments set out in the Schedule to the Order.
- 2.2 As set out in the consultation, the closed 1992 Scheme does not need to provide for automatic enrolment or re-enrolment, and no change is necessary. The Department welcomed, in particular, comments on:
- whether the draft Order, which will amend the Firefighters' Pension Scheme (England) Order 2006, achieves the policy intention
 - whether the amendments are properly consistent with the 2008 Act and the 2010 Regulations
 - the coming into force date of 1 January 2013
- 2.3 The Department invited respondents' views on all aspects of the consultation and in particular to the following five questions:
- Do the proposed amendments allow fire and rescue authorities to meet their requirements under Workplace Pension Reform?
 - Are there any further amendments that you think are required and have not been addressed?
 - Do you agree with the Department's view that the removal of the current provision that enables fire and rescue authorities to stop a member rejoining the scheme unless they have undergone a medical examination and satisfied them that they are in good health is required to enable fire and rescue authorities to fully comply with their requirements under the 2008 Act and the 2010 Regulations? If not, what do you propose that would enable the Scheme to retain this provision whilst allowing fire and rescue authorities to fully comply with their duties under Workplace Pension Reform?

- Do you agree that a member who has been automatically enrolled or re-enrolled in the Scheme, or who has opted in, should be able to opt out within the first month by giving written notice rather than by complying with all the formal notice requirements contained in the 2010 Regulations? Or would you prefer a specific, statutory requirement for the form set out in the 2010 Regulations to be used and the information specified in those Regulations to be required?
- Do you agree that a member should be entitled to a return of pension contributions if, following automatic enrolment or re-enrolment or opting in to the Scheme, the member gives notice to leave the Scheme within a three month timescale? If not, how much notice should a member be able to give to leave the Scheme in order to receive a return of contributions and be treated as though they were never a member of the Scheme on that occasion?

3. Consultation process

- 3.1 The consultation was open from 10 October 2012 until 7 November 2012. The consultation document was available on the Department's website¹ and responses could be returned to the Department for Communities and Local Government by email or by post.
- 3.2 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 the consultation document to all Fire and Rescue Authorities in England.
- 3.3 A total of 13 responses, two of which were submitted after the deadline, were received to the consultation, broken down as follows:

Individual scheme members	0
Fire and rescue service authorities	12
Representatives bodies	1

- 3.4 A full list of the organisations that responded is at Annex A.
- 3.5 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 consultation questions.

¹ <https://www.gov.uk/government/consultations/amendments-to-the-new-firefighters-pension-scheme-2006-automatic-enrolment>

4. Summary of Responses

- 4.1 The majority of respondents offered support for all, or some, elements of the proposals. However, 4 respondents (just over 30%) expressed strong concern over the removal of a scheme rule which currently gives fire and rescue authorities an option not to allow firefighters to rejoin the 2006 Scheme unless the firefighter has undergone a medical examination, and satisfied the authority that they are in good health. In addition, of those who responded, 6 respondents (50%) wished for the written notice, to be submitted by firefighters on choosing to opt out of the Scheme, to comply with the form of written notice as specified in the 2010 Regulations.
- 4.2 These issues, and others also raised, are expanded on under the relevant questions.

Question 1: Do the proposed amendments allow fire and rescue authorities to meet their requirements under Workplace Pension Reform?

Consultation responses:

- 4.3 There were 11 respondents who offered a specific response to this question, or who made comments which have been considered as responding to this question.
- 4.4 Of those responding to this question, 9 respondents (just over 80%) gave broad support for the proposals, agreeing that the amendments would allow fire and rescue authorities to meet their requirements under Workplace Pension Reform. However, some of these respondents did have concerns with the proposal to allow firefighters to rejoin the 2006 Scheme, irrespective of whether or not they were deemed to be in good health.
- 4.5 Of the remaining 2 respondents, one respondent expressed the view that the 2006 Scheme rules should be amended so that the proposals fully replicated the automatic enrolment requirements. A further respondent suggested that further amendments were required in light of their response to questions 4 and 5. These are considered below.

Department response:

- 4.6 Since the statutory consultation closed, the Department has considered the responses received. The Department concludes that it is appropriate to proceed with the changes that were proposed during the consultation period. Given that the 2008 Act and 2010 Regulations take precedence, apply automatically, and set out an employer's full duties under Workplace Pension Reform, the Department has concluded that there is no requirement to replicate those duties in the

2006 Scheme. Rather, the Department needs to ensure that the Scheme enables fire and rescue authorities to give effect to the requirements of the 2008 Act and 2010 Regulations.

Question 2: Are there any further amendments that you think are required and have not been addressed?

Consultation responses:

- 4.7 There were 10 respondents who offered a specific response to this question, or made comments which have been considered as responding to this question.
- 4.8 Of those who responded, 6 said that no further changes were required. Two respondents suggested that further amendments were needed so that the written notice given by firefighters who chose to opt out of the scheme fully complied with the form of written notice specified in the 2010 Regulations. This issue, and the Department response, is considered further at paragraphs 4.18 to 4.20.
- 4.9 Two other respondents proposed some further technical amendments to the 2006 Scheme so that it complied with automatic enrolment. These amendments and the Department's response to them are set out in **Annex B**.

Department response:

- 4.10 The Department has considered whether any further technical amendments are required to the 2006 Scheme rules and has sought to discuss with the respondents the points further raised by them. The Department has concluded that no further amendments are required to the Scheme in order for it to comply with automatic enrolment requirements.

Question 3: Do you agree that the Department's view that the removal of the current provision that enables fire and rescue authorities to stop a member rejoining the scheme unless they have undergone a medical examination and satisfied them that they are in good health is required to enable fire and rescue authorities to fully comply with their requirements under the 2008 Act and the 2010 Regulations? If not, what do you propose that would enable the Scheme to retain this provision whilst allowing fire and rescue authorities to fully comply with their duties under Workplace Pension Reform?

Consultation responses:

- 4.11 All respondents offered a specific response to this question, or made comments which have been considered as responding to this question.

- 4.12 Of those who responded, 9 respondents (nearly 70%) agreed with the proposal although some were concerned that the removal of the current provision could be costly to employers and expressed regret that this was required to enable authorities to fully comply with the automatic enrolment requirements.
- 4.13 The remaining 4 respondents were strongly concerned with the proposals due to the cost implications associated with the predicted likelihood of increased future ill health retirements. Two of the respondents suggested that the National Employment Savings Trust (NEST) scheme, a workplace defined contribution pension scheme set up for automatic enrolment, should be available to those firefighters who wished to re-join a pension scheme, or were required to be re-enrolled into a pension scheme, but were deemed not to be in good health.
- 4.14 In addition, of those who expressed strong concern, two respondents suggested that the 2006 Scheme should allow access to firefighters, not in good health, but that the scheme rules should be amended to either refuse retirement on ill-health terms, or adapt the terms of ill-health retirement to require a longer qualifying period for re-joiners.

Department response:

- 4.15 The Department has carefully considered the responses and remains of the view that the removal of this rule is the most proportionate means of complying with the 2008 Act and the 2010 Regulations.
- 4.16 Although NEST has a public service obligation to accept any employer who wishes to use it to fulfil their automatic enrolment duties, it is not a default scheme. It would therefore be for public bodies to test the market in order to identify the most appropriate scheme for their needs, which may or may not be NEST. The Department's view is that this could be costly and is not persuaded by the proportionality of this approach. The Department previously asked Fire and Rescue Authorities if they had ever refused a member entrance into the scheme on health grounds and none confirmed that they had.
- 4.17 The Department will keep under review the impact of removing the existing provision and, if this does directly lead to an increase in ill-health retirements and, therefore, increased employer costs, the Department will give further consideration as to how the existing ill-health retirement rules can be modified.

Question 4: Do you agree that a member who has been automatically enrolled or re-enrolled in the Scheme, or who has opted in, should be able to opt out within the first month by giving written notice rather than by complying with all the formal notice requirements contained in the 2010 Regulations? Or would you prefer a specific, statutory requirement for the form set out in the 2010 Regulations to be used and the information specified in those Regulations to be required?

Consultation responses:

- 4.18 There were 12 respondents who offered a specific response to this question, or made comments which have been considered as responding to this question.
- 4.19 6 respondents were content with the proposed amendment that simply requires a written notice when someone wishes to opt out of the 2006 Scheme following automatic enrolment, re-enrolment or having opted in, which mirrors the existing way in which members can make a “contributions election” and cease to be a member of the Scheme. Their view was that this was a common sense approach and would simplify the process. However, the remaining respondents said that they would prefer the written notice to comply with the form of notice set out in the 2010 Regulations.

Department response:

- 4.20 The Department, in the light of the statutory consultation responses, have decided that there is not a compelling argument to require the written notice to mirror those in the 2010 Regulations and that the form of written notice set out in the 2006 Scheme should be non prescriptive. In order to mirror the 2010 Regulations would mean that the 2006 Scheme would need amending following any changes to these Regulations which would be unnecessary bureaucracy and use of Parliamentary time.

Question 5: Do you agree that a member should be entitled to a return of pension contributions if, following automatic enrolment or re-enrolment or opting in to the Scheme, the member gives notice to leave the scheme within a three month timescale? If not, how much notice should a member be able to give to leave the Scheme in order to receive a return of contributions and be treated as though they were never a member of the Scheme on that occasion?

Consultation responses:

- 4.21 There were 11 respondents who offered a specific response to this question, or made comments which have been considered as responding to this question.

- 4.22 Of those who responded, 9 respondents (over 80%) agreed with the proposal that a member should be entitled to a return of pension contributions if they give notice to leave the scheme within a three month timescale.
- 4.23 One respondent suggested that they would prefer the return of contributions to mirror the requirements set out in the 2010 Regulations, and that contributions should be only returned if one month's notice was given. A further respondent recommended a longer period of two years, to be in line with the Local Government Pension Scheme and to reduce the associated employer administration and transactional costs.

Department response:

- 4.24 The Department remains of the view that the proposal to refund contributions within three months is a reasonable timescale. This is a more generous provision than under Workplace Pension Reform where a worker is only entitled to a refund of contributions if they opt out within one month. The amendment to the 2006 Scheme will help negate against the increased likelihood of grievances raised through the internal dispute resolution procedures process relating to return of contributions and give firefighters' sufficient time to recognise the need to opt out of the scheme, should they wish to do so.
- 4.25 The Department's view is that it is not necessary to extend the timescale further than three month period, and that the amendment should mirror the current provision for new members of the 2006 Scheme who are entitled to a refund of contributions if they choose to leave the scheme within three months of joining for the first time.

5. Next steps

- 5.1 The Department for Communities and Local Government is grateful for responses received to the consultation and has given careful consideration to the issues raised and comments made. The Department has concluded that the proposed amendments to the 2006 Scheme, as set out in the statutory consultation exercise, should be made.
- 5.2 On this basis, the Amendment Order, will be made and laid with the intention of coming into force from 31 December 2012 in order for fire and rescue authorities to comply with their duties under Workplace Pension Reform.

Annex A

List of respondents

There were a total of 13 responses received.

No responses were received from individual members of the fire service pension schemes.

There were 12 responses received from fire and rescue service employers:

1. Derbyshire Fire and Rescue Service
2. Dorset Fire and Rescue Service
3. East Sussex Fire and Rescue Service
4. Leicestershire Fire and Rescue Service
5. London Fire Brigade
6. North Yorkshire Fire and Rescue Service
7. Northamptonshire Fire and Rescue Service
8. Nottinghamshire Fire and Rescue Service
9. Staffordshire Fire and Rescue Service
10. Tyne and Wear Fire and Rescue Service
11. West Midlands Fire Service
12. West Yorkshire Fire and Rescue Service

There was 1 response received from representative bodies:

1. Fire Officers' Association

Annex B

Further amendments proposed by respondents to ensure that the 2006 Scheme rules comply with Workplace Pension Reform and the Departmental rule.

The table below sets out further queries raised by two respondents and the Departmental response to those queries raised. One respondent asked for clarification on further points made and the Department has responded directly on these matters.

Queries raised by respondents	Departmental response
<p>1. There is a need for a specific reference within Rule 8 of Part 3 of the 2006 Scheme so that a refund made to a firefighter who is automatically enrolled or re-enrolled in the Scheme, is shown as never having been in the Scheme during that period. Currently they would be treated as being a refund member. This could impact on those firefighter members with enhanced or fixed protection.</p>	<p>The Amendment Order contains a provision so that a firefighter member who makes a contributions election within 3 months, subsequent to being automatically enrolled or re-enrolled, would be treated in the same way as the current rules treat someone who has accrued less than three month's qualifying service.</p> <p>Rule 2 of Part 2 of the 2006 Scheme, sets out that a firefighter member is eligible for a pension if he has at least three month's qualifying service. Rule 5(3) of Part 2, sets out that a person who makes a contributions election within three months of joining the Scheme shall be treated as never having been a member. Rule 2(1)(a) of Part 10 also sets out that a person's pensionable service accrues as pension contributions are paid, and consists of any period in respect of which he has paid pension contributions as a member of the Scheme. It is the Department's view, therefore, that these rules would prevent any firefighter becoming a member of the Scheme on that occasion if they opted out within three months of being automatically enrolled or re-enrolled.</p>

Queries raised by respondents	Departmental response
<p>2. Any refund within the three month opt out period must be via the payroll in order to comply with automatic enrolment requirements. The existing scheme rules, and the proposed amendments to the rules, do not allow for the refund through payroll.</p> <p>There is an existing inconsistency between Rule 8 of Part 3, paragraph (1)(b), which describes the method of a standard refund through a pension “fund”, and Rule 5(3) of Part 2, “A person who makes a contributions election within 3 months of joining the Scheme shall be treated as if he had never been a member”, which implies a return of contributions through payroll.</p>	<p>The Department’s view is that rule 8 of Part 3, describes when a firefighter is entitled to a refund of contributions, and the amount to be deducted. It does not specify the mechanics of the refund, that is whether this is a refund through payroll or the pension fund.</p>
<p>3. Draft amendment Order, Paragraph 2(a)(ii) – should this provision also refer to re-enrolment ie “where a person who has made an election not to pay pension contributions under the 1992 Scheme is automatically enrolled or re-enrolled in this Scheme, that enrolment...”</p>	<p>The Department’s view is that paragraph 2(a)(ii) of the Amendment Order will allow for a former 1992 Scheme member to be automatically enrolled into the 2006 Scheme on an authority’s staging date. If the member then opts out (by making a contributions election) of the 2006 Scheme then the Amendment Order allows for re-enrolment in new rule 6(1A) of Part 2 (inserted by paragraph 2(c)(ii) of the Amendment Order) “where a person who has made a contributions election (under the 2006 Scheme) is subsequently automatically enrolled or re-enrolled in the Scheme, that enrolment or re-enrolment shall constitute a cancellation of their contributions election”.</p>

Queries raised by respondents	Departmental response
<p>4. Rule 4(1)(b) of Part 2 defines the last day of membership and includes the reference “..that the last day of membership shall be taken to be (a) where he leaves retirement at normal retirement age, his last day of service; and (b) in any other case, subject to paragraph (2), the last day on which he pays contributions.” The words “In any other case” does not include a case where a firefighter member has paid contributions but, upon opting out, has had those contributions returned.</p>	<p>The Department’s view is that this rule does include those cases where a firefighter member has opted out and had contributions returned. Rule 5(2) of Part 2 sets out the day on which a contributions election (ie when a firefighter elects to make no further pension contributions) is to take effect and specifies that membership of the Scheme ceases on the day on which the contributions election takes effect.</p>
<p>5. Rule 2 of Part 10 explains the reckoning of pensionable service: “.. a person’s pensionable service accrues as pension contributions are paid, and consists of – (a) any period in respect of which he paid contributions as a member of this Scheme.” If contributions are returned to an optant-out there should be no entitlement to count as pensionable service the period over which they were paid. Should there be an addition to Rule 3 of Part 10, which sets out non-reckonable service, which has the effect of excluding the period relating to returned contributions?</p>	<p>The Department agrees that if contributions are returned to an optant out then there should be no entitlement to count the period over which they were paid as pensionable service. Eligibility for a pension is determined by qualifying service – see the Departmental response at 1) above.</p>