



Department for
Communities and
Local Government

Amendments to the Firefighters' Pension Scheme (1992) and New Firefighters' Pension Scheme (2006)

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. People are living much longer and the average 60 year old is living ten years longer now than they did in the 1970s. This means that the cost of public service pensions, which includes the firefighters' pension scheme, have increased by around a third in real terms over the last ten years to £32 billion a year. 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. The Proposed Final Agreement builds on the proposals brought forward by Lord Hutton in his independent report and aims to strike a balanced deal between public service workers and the taxpayer. The Government has already increased employee contribution rates in respect of both firefighter pension schemes over the last two years. The Government will continue to review the impact of contribution increases, including on the number of members opting out or choosing not to join the scheme, before taking final decisions on how future increases will be delivered.
4. Even after the reforms, public service pensions will remain among the very best available - a guaranteed level and inflation proofed. Only 1 in 10 private sector workers have access to such schemes.
5. Alongside the reforms process, the Department is also making amendments to both the 1992 and 2006 firefighter pension schemes as part of an ongoing programme of modernisation of the firefighter pension schemes.

Why the Department consulted

6. On 3 August 2011, the Department published the consultation paper, *Amendments to the Firefighters' Pension Scheme (1992) and the New Firefighters' Pension Scheme (2006)*. The consultation paper set out a number of proposals in relation to the two firefighters' pension schemes, namely the Firefighters' Pension Scheme (1992) and the New Firefighters' Pension Scheme (2006) and consulted and sought views on the following provisions:
 - Rule A14: Compulsory retirement on grounds of efficiency – remove Rule
 - Changes to indexation of additional pension benefits - to Pensions Increase
 - Commutation - discretion to permit the maximum payment
 - Pensionable pay - definition

- Age discrimination - contributions holiday
- Medical appeals - power to review decisions
- Appeals on non-medical issues - appeal to Pensions Ombudsman
- Withdrawal of pension whilst employed by a fire and rescue authority (abatement)
- Pensions tax - alignment with tax legislation
- Other, technical amendments (including the updating of statutory references)

Consultation Process

7. The consultation was open from 3 August 2011 until 26 October 2011. 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.
8. 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 an 'Immediate Bulletin' setting out the consultation proposals. This was sent 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. The proposals have also been discussed at meetings of the Firefighters' Pension Committee, before, during and after the consultation period.
9. In total, 63 written responses were received. These came from individuals, Fire and Rescue Authorities and representative organisations from the fire and rescue sector including Trades Unions, employer representatives and firefighter professional bodies. However, the Department reasonably believes that in two cases, the respondent submitted more than one response, making the number of unique respondents 61.

Type of organisation	Number of responses
Fire and Rescue Authority	28
Trades Union or Employee Association	4
Professional body or Employer representative group	3
Private individuals	28
Total	63

10. Whilst the majority of responses came from individuals and Fire and Rescue Authorities and Services, responses were also received from the principal representative organisations, including the Local Government Association, the Chief Fire Officers' Association, the Fire Brigades Union, the Fire Officers' Association, the Retained Firefighters' Union and the Association of Principal Fire Officers.
11. 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. The publication of this response had been delayed whilst the Department re-considered its approach to a number of the proposals following consultation responses.

Summary of Responses

12. The following sets out the summary of responses received to each of the main policy proposals, and the Government's final approach in light of those responses. A further, detailed table of changes can be found at paragraph 90.

Removal of Rule A14 to compulsory retirement on grounds of efficiency

13. The intention of this proposal was to revoke Rule A14 so that in future any decision to compulsorily remove a firefighter from employment would be dealt with in accordance with employment and equalities legislation rather than the pension scheme rules.
14. There were 35 responses received in relation to this proposal, of which 23 were in favour of removing Rule A14. An additional five responses were also in favour if there was an accompanying proposal to introduce discretions to encourage volunteers for early retirement or exit was made. Five respondents did not agree with the removal of the rule and two respondents stated that they were neutral on the issue.
15. The majority of responses were either in support of or did not object to the removal of Rule A14. The principle that the removal of staff should be an employment issue and was covered by existing employment legislation was largely accepted. It was also suggested that this proposal should be considered in conjunction with the proposal for offering enhanced commutation or other incentives, such as providing added pension years, to encourage early retirement or voluntary exit.
16. Those respondents who did not agree with the proposal explained that given the current financial position and the required savings to be generated by fire and rescue authorities, it would be unwise to remove the Rule unless there was evidence that it was discriminatory. Respondents identified that there was a similar provision within the police scheme which had not been challenged to date. The responses indicated that there were few "tools" available to authorities when seeking to rebalance their workforces, and that the provision in its current form had been originally endorsed by the Firefighters' Pensions Committee.

Government response

17. The Department is grateful for the comments that have been received in respect of the removal of Rule A14. Following consideration of the responses, the Department's position remains that decisions to compulsorily remove an employee from employment should be made in accordance with employment and equalities legislation and not through the rules of the pension scheme. The Department intends to proceed with the amendment as consulted upon.

Change in indexation from Retail Prices Index to indexation under the Pensions Increase Act 1971 for additional pension benefits

18. The intention of this proposal was to change the mechanism for index linking additional pension benefits, in the accrual phase, to be in line with the *Pensions*

(Increase) Act 1971. At present this has the effect of index linking additional pension benefits in the accrual phase at the Consumer Prices Index rather than the Retail Prices Index, in line with the Government's announcement at the Emergency Budget 2010.

19. There were 29 responses to this proposal. Sixteen responses in total supported the proposal but four of these respondents supported the proposal on the condition that the Government was successful in defending the case at the Judicial Review¹. Ten respondents did not agree with the proposal and three respondents declared that they were neutral on the issue.
20. Seven respondents commented on the Government's original decision to change the indexation of pension benefits as announced at the Emergency Budget 2010. This decision resulted in an automatic change in the indexation used for uprating deferred pensions and pensions in payment for public service pensions, including firefighters.
21. Six respondents expressed the view that the proposal had been brought forward prior to the conclusion of the Judicial Review, and some therefore felt it premature to comment before the outcome was known. Two respondents expressed views about the retrospective application of the proposal and either suggested the change was an impingement on accrued rights or requested a costing of the impact of revaluation of existing additional pension benefits. Sixteen respondents had either accepted the Government's rationale or, if the indexation change was to be upheld by the judicial review, that it made sense for one rate of inflation to be used consistently throughout the Scheme.
22. Two alternative proposals were put forward. One respondent suggested that, in light of Lord Hutton's recommendations that these pensions, as they are similar to career average pensions, be up-rated in line with average weekly earnings, or that the Department should postpone this proposed amendment until the new post-2015 scheme was brought into effect. They suggested that it would make no sense post-2015 to have the main pension up-rated with average weekly earnings with supplementary benefits linked to a different inflation index. The other, alternative proposal was for a differential rate of indexation. As many firefighters retire between ages 50 and 55 and still have mortgages to pay, a combination of indexation rates should be used.

Government response

23. The Department is grateful for the comments received in relation to this proposal. A number of the responses misunderstood the impact of the proposal, which is about the uprating of additional pension benefits during the accrual phase. The proposal had no effect on the indexation of pensions in payment, or pensions that have been deferred, which are already uprated in accordance with the *Pensions (Increase) Act 1971*.

¹ A Judicial Review was launched against the Government's decision to use the Consumer Prices Index in the uprating of pension benefits. The Government subsequently defended the case at both the High Court and the Court of Appeal.

24. The Department believes that these changes will remain appropriate prior to the introduction of the 2015 Scheme as future scheme liabilities would continue to accrue in the Scheme under additional pension benefit arrangements. Following consideration of the responses received, the Department's intention remains to retrospectively amend the scheme so that the uprating mechanism for additional pension benefits during the accrual phase is in accordance with the *Pensions (Increase) Act 1971* from 11 April 2011.

Rule B7: Commutation general provision

25. The intention of this proposal was to provide fire and rescue authorities with the discretion to allow Firefighters' Pension Scheme 1992 members, eligible for retirement, to commute up to 25 percent of their pension. At present if a member retires before attaining age 55, or being able to reckon 30 years' pensionable service, their commutation lump sum is limited to 2.25 times their annual pension. In exercising this discretion, the fire and rescue authority would be required to pay the difference between the amount of lump sum currently permitted and the amount that the member actually chooses to commute in accordance with the authority's discretion.
26. The proposal attracted 36 responses of which over 50% were fully supportive of the approach. There were 19 respondents in favour of the proposal with a further eleven respondents supporting the principle of the policy but requested an alternative to the financing aspect of the proposal. Three respondents disagreed with the policy proposal and three respondents declared that they were neutral on the issue.
27. There was broad support in principle for this proposal, with 30 of the 36 responses agreeing that it would provide authorities with greater flexibility in managing their workforce. However, 11 of these responses, predominantly from employing authorities, believed that the short-term cost should be borne by the Department and the Pension Fund rather than by the authority's operating account, as the up-front cost of the higher lump sum would be met by a corresponding reduction in the annual pension in payment. The responses suggested that if there was a requirement for the authority to meet the additional cost up front then this would act as a significant disincentive for authorities to exercise the discretion. This view was echoed by a Union respondent who suggested that the option of commuting the full 25 percent of annual pension should be available to all members eligible for retirement. Some authorities mistakenly believed that they would be expected to pay the full commutation lump sum if the discretion was exercised.
28. In addition, three responses did not agree with the proposed funding arrangements. One respondent felt that if the objective of the proposal was to encourage voluntary exit then greater savings could be generated where staff left below retirement age. Furthermore, the National Employers suggested that the discretion to offer voluntary severance schemes would be the appropriate mechanism to reduce staff.
29. Another respondent highlighted the financial cost of applying the discretion to senior staff as an issue. A further response suggested that the proposal could give rise to discrimination as not all authorities would elect to exercise the discretion. Similarly,

some authorities may be required to make more substantial reductions in staff than others.

Government response

30. The Government is grateful for the responses received in relation to this proposal. The proposal is intended to help authorities manage workforce levels and, as such, the Department maintains that the effect on cash-flow of paying enhanced commutation should be met by the authority and not by central government. This would ensure each authority gave full consideration to the appropriateness of offering the enhancement, ensuring that value for money is being achieved before making a final decision on whether or not to exercise the discretion available. Any savings would accrue to the scheme, for the benefit of employers, and reflected in subsequent valuations.
31. The Department does not agree that the proposal discriminates on the grounds of any of the nine protected characteristics set out in the Equality Act 2010. Each authority will need to give full consideration to the equalities impact before deciding whether to exercise the discretion. Clearly not all fire and rescue authorities will choose to exercise the discretion, and there may be other, more suitable mechanisms for managing workforce changes. Following consideration of the responses received, the Department intends to proceed on the basis of the consultation, but with modifications to ensure that employers fully consider the economical, effective and efficient management of their functions, and the costs likely to be incurred in the particular case.

Amendments to the definition of pensionable pay

32. The intention of this proposal is to ensure a consistent and proportionate approach is taken for the definition of pensionable pay for “final salary” arrangements, in particular by considering the use of additional pension benefits for temporary allowances and emoluments rather than being treated under final salary arrangements. Of the 32 respondents, five were in support of the proposal. A further nineteen respondents accepted the proposal in part or in principle but asked for further changes. Six respondents rejected the proposal outright and two respondents declared that they were neutral on the issue.
33. The majority (24) respondents suggested that flexible duty allowance was not a temporary allowance but was part of basic pay. Of the nineteen respondents who offered conditional support for the proposal, seventeen supported it in principle but not the treatment of flexible duty allowance as temporary. The main argument for considering the allowance as basic pay centres on the terms of the allowance set out in the Grey Book.
34. The respondents suggested that, as the allowance is often paid for 20 years or more and because the individual could not be removed from the system without giving their consent, the allowance must be considered to be permanent. Respondents also questioned the different treatment of London Weighting, seeing this as analogous with flexible duty allowance. Authorities also raised as an issue the level of

administrative resources that would be required to implement additional pension benefits and for monitoring allowances and producing annual pension statements.

35. It was noted that the issue of what constitutes pensionable pay was being addressed by the High Court in the case of *Norman v Cheshire Fire and Rescue Service*. One Union and a number of authorities suggested that the Department should wait until either the final outcome of this court case was known or until the development of the new 2015 pension scheme before bringing forward proposals to change the definition of pensionable pay. The Union also suggested that changing these arrangements now would have limited financial impact and would cause resentment amongst scheme members.
36. One respondent suggested that the pensionability of pay should be something that is prescribed centrally, although they also acknowledged that this did not fit with the Government's localism agenda. They suggested that the need for local flexibility was negated by the fact there was no evidence to suggest that employers were having problems with recruiting staff to operational firefighting roles or that opportunities for promotion were being declined due to the specifics of pensionable pay. The respondent believed that the proposed flexibility would be open to abuse. Two respondents expressed the view that the transitional arrangements for the proposal would lead to a two tier workforce, creating discrimination on the basis of age.

Government response

37. The Department is grateful for the responses received to this proposal. Following the closure of the consultation, the High Court judgment in the case of *Norman v Cheshire Fire and Rescue Service* was handed down by Mr Justice Smith.
38. That Judgment relied in part on Mr Justice Blackburne's Judgment in the case of *Kent & Medway Towns Fire Authority v Pension Ombudsman and anor* in 2001 that for pay to be pensionable it should broadly be:
 - calculated in accordance with the members' ordinary rate of pay for the role (i.e. excluding various allowances not determined by the firefighters' role)
 - pay for work done or to be done in the ordinary course of fulfilling their duties under their contract of employment, and
 - permanent and regular in nature (as opposed to payments of a one-off or episodic nature).
39. As a result of Mr Justice Smith's judgment, the Department has been reconsidering its approach to pensionable pay as set out in the consultation paper. The position of pensionable pay was considered at a series of meetings of the Firefighters' Pension Committee and, in particular one union raised as an issue the approach taken by several fire and rescue authorities to introduce significant pensionable pay enhancements as a result of changes to duty systems. It was the Union's view that savings were being made by individual employers at the expense of the pension scheme, and that future firefighter members could be asked to pay increased levels of employee contributions if the employer cost cap were to be breached as a result of these significant pensionable pay enhancements.

40. As a result, the Department commissioned the Government Actuary's Department to provide an estimate of the potential costs of the impact of the new duty systems in light of the Norman judgment. The report by the Government Actuary's Department was discussed at the 47th meeting of the Firefighters' Pension Committee on 17 January 2013. The report found that there was a large amount of uncertainty around the factors affecting the costs but:
- using central assumptions, there would be a past service capital cost of £35 million and an ongoing future service cost of £1.5 million per year from 2015 to 2019, and a future service cost of £1m per year from 2019
 - the costs could be up to three times higher, with a past service capital cost of £105 million, and
 - on a worst case scenario, the past service capital cost would be £650 million.
41. Despite the salary cost risks if the elements of pay meet the established criteria for pensionable pay, Ministers have determined that the Department should not change the regulations to prevent these elements of pay from being pensionable as it is a natural consequence of a final salary scheme. However, the Department will work with fire and rescue to ensure that they are aware of the potential impact of any decision which affects pensionable pay when looking at new duty systems. In addition, the employer cost cap to be introduced will protect the total cost to the taxpayer of providing the pension scheme.
42. On the flexible duty allowance, the Department has considered the responses and is content that the flexible duty allowance should continue to be treated as pensionable under final salary arrangements. The Department believes that no change is needed to the draft Order following the judgment of Mr Justice Smith on the flexible duty allowance. There are established arrangements for administering the additional pension benefits for Continual Professional Development and so should not add any additional burdens. In any case, it will be for fire and rescue authorities to determine that the allowance or emoluments should be pensionable under additional pension benefit arrangements. The Department proposes to proceed, as consulted on, subject to amendments to ensure that ongoing, consolidated performance related pay can be treated as pensionable; however performance related bonuses should not be treated as pensionable.

Exemptions from payment of pension contributions

43. In the consultation paper, the Department set out its objective to ensure that members who joined the Firefighters' Pension Scheme before the age of 20 did not suffer any potential indirect discrimination as a result of being unable to retire under the terms of the scheme once they have accrued full pension entitlement. The maximum pension entitlement that a member of the Firefighters' Pension Scheme can accrue is 30 years service and the earliest that a member can retire is age 50.
44. Some members of the scheme have alleged age discrimination as those members who joined before age 20 must pay pension contributions for over 30 years before having the option to retire, at age 50, without accruing any further pension entitlement. The Department's view, as set out in the consultation paper, was that the

action is not itself discriminatory; although there may be scope for potential indirect discrimination given the member does not have any discretion to retire.

45. As a remedy, the Department proposed to amend the scheme to permit members under the age of 50 who have accrued 30 years' service to take a contributions holiday from the time they attain 30 years' reckonable service until they reach age 50. This would mean a rebate of contributions for those members who, since the coming into effect of the *Employment Equality (Age) Regulations 2006* in 1 December 2006, have already paid contributions under those terms.
46. Out of the 34 responses received, fifteen were in favour, eleven supported the principle of the policy but raised questions about the solution proposed, three respondents did not agree with the policy, and five responses had no objections.
47. Of the eleven responses offering conditional support, nine responses identified two key issues for authorities. They asked for the Department to confirm that they will fund the reimbursements to members who had already paid the contributions, and also questioned the requirement for employers to continue paying the associated employer contributions during the period whilst any member was on a contributions holiday.
48. One authority respondent offered an alternative to offering an employers' contribution holiday; they suggested that the "overpayment" of contributions made in the period could be ring-fenced for re-investment, so that each authority only benefited in proportion to its own level of "overpayment". The authority also proposed that scheme members should be allowed to retire on full benefits after 30 years, irrespective of age which would address age discrimination claims and would allow for the reduction of workforces without the financial and industrial relation costs associated with making compulsory redundancies.
49. Two other respondents offered conditional support for the proposal with one suggesting that the proposals did not go far enough as members who wish to continue to work beyond 50 must continue to pay contributions for no additional benefit. The second respondent accepted the principle of the proposal but suggested that refunded employee contributions should reflect the contributions paid by a member currently employed in the role of a firefighter.
50. Two employing authorities did not agree with the proposal suggesting that these were the rules of the pension scheme the members signed up to when they joined the service. The potential age discrimination case arises because of a change to equalities law in 2006, which would not have been in place at the time these firefighters joined the Scheme. These authorities, therefore, did not accept the proposal. Several respondents requested that the Department provide clarity on the retrospective application of the proposal and how those members retiring on ill health grounds during a contributions holiday would be treated.
51. Some members have also alleged that, in the specific case of Chief Fire Officers, the discrimination continues until age 55, as they may only retire before age 55 with the permission of the authority. In the consultation paper the Department set out its view and rationale that the matter was not discriminatory under the terms of the scheme.

However, the consultation recognised that the matter was complicated as, due to the changes brought in by the Finance Act 2004, some Chief Fire Officers do not have a protected pension age of 50 under the terms of that Act.

52. Of the 19 respondents that commented on the proposal there was one response in favour of the proposal. Sixteen respondents did not agree with the proposal stating that Chief Fire Officers should be treated the same as all other members who accrued 30 years' service prior to their 50th birthday when they would have an option to retire. Two respondents declared that they were neutral on the issue and one respondent questioned the figures provided which stated that nineteen Chief Fire Officers were affected. The respondents who did not agree with the proposal suggested that there was no reason why Chief Fire Officers should be treated differently to any other member who was required to continue paying contributions for no additional pension benefit.
53. One respondent from an employing authority suggested that Chief Fire Officers would be at a particular disadvantage when compared to other persons for the purposes of the European Directive (2000/78 EC). The respondent maintained that the potential discrimination did not fall away because affected members could elect to draw their benefits at age 50. The respondent suggested that it would be unreasonable to expect a Chief Fire Officer (without a Protected Pension Age) to elect to draw their benefits from age 50 which would be subject to an unauthorised payment charge. The tax charge would arguably be less attractive than the option for those who joined before attaining age 20 to opt out of the 1992 scheme and rejoin the 2006 scheme. Six responses made the suggestion of providing a Protected Pension Age for those Chief Fire Officers who do not currently have one.
54. Two of the responses that disagreed with the proposal suggested that the consultation was wrong to state that those members without a Protected Pension Age could retire albeit with the imposition of a tax charge. Based on Counsel's advice and HMRC correspondence received, they believed that without the expressed consent from their employer the individual would not be able to retire until age 55. One Union respondent suggested that the Department should remove the proposal in relation to Chief Fire Officers and address it as a revised proposal published separately.

Government response

55. The Department is grateful for the responses received to the proposal. The proposal to provide a contributions holiday was based on a particular understanding of the Department's legal obligations, rather than representing a specific Departmental policy objective. The policy objective is to ensure that the scheme is not discriminatory, directly or indirectly, on the grounds of age.
56. Following consultation, the Department has reconsidered the legal position in light of responses received and is now of the view that the scheme is unlikely to be discriminatory on the grounds of age. However, there are arguments for and against the issue and, in order to get legal certainty on the position, the Department now proposes to seek a declaration from the Courts.

57. The Department does recognise that statements have been made since March 2010 that it would take steps to implement a contributions holiday under the terms consulted on in 2011, and that members may have relied on those statements in abandoning, or not lodging, any grievances. Following consultation, the Department has concluded that there is an overriding policy justification to change its previous position given that further legal consideration has cast significant doubt on the position that the Department adopted previously. The Department has concluded that, by seeking a declaration, this will provide certainty, and clarity, about the legal position and therefore will ensure that the scheme complies with equalities legislation.
58. If the Courts determine that the current position is discriminatory, then the Department will proceed quickly to implement a contributions holiday – no further consultation would be required. If the Court finds that the matter is not discriminatory, or is discriminatory but can be objectively justified, then the Department would consider that the question of discrimination is settled, and no contributions holiday would be implemented. The Department will seek to work closely with the firefighter trades unions in seeking an appropriate declaration.
59. On the specific issues raised during the consultation, a contributions holiday would mean that the scheme will either not be receiving as much income from employees as expected, or previous contributions made will have to be paid out from the scheme in compensation. This is likely to create a scheme deficit which will need to be recovered from employers and, if it contributes to breaching the employer cost cap, employees. The ‘in year’ payments to scheme members would be paid via the top-up grant as usual. Employers will need to pay their element of contributions during the contributions holiday period given that there will still be salary and longevity cost risks in respect of these individuals.
60. Allowing members to retire once they have accrued 30 years service would be a significant cost to the scheme and to future scheme members. The scheme has not been costed on the basis of pension being paid to some members for an additional two years and this enhancement of benefits would mean that employer and employee contributions would need to be reviewed to account for that extra benefit. A similar issue applies in relation to extending the contribution holiday beyond the age of 50, as those members would have the ability to receive potentially significant salary increases which affect pension benefits, but not pay pension contributions on that larger salary.
61. In relation to Chief Fire Officers, nineteen Chief Fire Officers have the ability to accrue 30 years’ service before reaching age 55 and is based on data provided as part of the 2011 Valuation. It is possible that these individuals could be prevented from retiring by their authority, although they may have a Protected Pension Age, and would be required to pay contributions under the terms of the scheme without accruing any additional service. The associated cost of providing a full seven year holiday has been provided for illustrative purposes but the total cost of the refund or holiday in each case will ultimately depend on the age that the affected Chief Fire Officer joined the Service. The legislation responsible for introducing Protected Pension Ages, the Finance Act 2004, is clear in that the rules of a Pension Scheme cannot be changed retrospectively in order to provide someone with a Protected

Pension Age; the right to retire before age 55 must have been in the scheme's rules on 12 December 2003. The Department will consider the matter in relation to Chief Fire Officers further, once a determination of the legal position has been made.

Review of Medical Opinion

62. The intention of the proposal is to amend the procedures for the consideration of medical questions so that appeals may be dealt with quicker and more efficiently. The proposals seek to bring the appeals process for members of the 1992 Scheme into line with the arrangements for the 2006 Scheme. There is one additional amendment which enables the correction if an error of fact is made by the Board of Medical Referees who heard the appeal where this is agreed by the authority and the appellant.
63. Of the 30 responses received, 27 supported the proposal. The majority acknowledged that the amendments would streamline the process and would provide a more efficient means of dealing with appeals. Two respondents raised issues about the proposal, with one union suggesting that a more sensible approach would be to re-design the process completely.
64. An authority raised issues about the additional costs associated with the Board of Medical Referees reviewing their earlier decision. The authority suggested that any review should take place "offline" so as to improve the timescale of reconsidered opinions and to reduce costs to employers. They suggested that a more practical solution would be to allow an Independent Qualified Medical Practitioner to review the Board's decision if new evidence came to light and only when the authority agreed that the new evidence was likely to impact on the member's entitlement.

Government response

65. The Department is grateful for the responses received to this proposal. Whilst the Department would welcome any proposals that had the effect of simplifying the process further, and would be content to discuss this with anticipated parties in due course, the proposal will still reduce the costs to the authority by reducing the need for a judicial review. The purpose of a Board of Medical Referees is to review the decisions of Independent Qualified Medical Practitioners; to reverse this process would undermine the Board's role. Following consideration of the responses, the Department intends to proceed with the proposal as consulted on but with an amendment to the language used so that when a Board member undertakes an initial review of the documentation submitted for the appeal he can make a determination as to whether there is "sufficient" information available to carry out a hearing,

Appeals on other issues (non-medical issues)

66. The intention of this proposal is to ensure that the appeal for a non-medical issue is undertaken through internal dispute arrangements which are required to be set up under the Pensions Act 1995 and a subsequent process of appeal to the Pensions Ombudsman.

67. 28 of the 30 responses supported the proposal. The remaining two responses did not disagree with the approach suggested. There were no objections to the policy which was generally welcomed as making the appeals process less onerous and costly for both the appellant and employing authority.

Government response

68. The Department is grateful for the responses received to this proposal and, following consideration of the responses, will proceed with the proposal as consulted on.

Abatement

69. The intention of the proposal is to widen the authorities' discretion to enable the abatement of a pension paid to a member of the scheme who is employed in any role by any fire and rescue authority. The proposal also requires the authority that is paying the pension to pay into the pension fund the amount of pension that is paid that could have been subject to abatement under the scheme rules.
70. The proposal received 49 responses, of which 37 did not agree with the policy. Six respondents supported the proposal and a further four respondents supported the principle but requested further clarity on the process for retrospective application. Two respondents declared that they were neutral on the issue.
71. Of the ten respondents who supported the proposal fully or in part, six indicated that the measures to apply it should not place too great a burden on the authority to police its implementation. Instead, they should place the duty on the employee seeking re-employment to declare that they were in receipt of a pension paid under the 1992 scheme, with appropriate sanctions for non-disclosure. Six respondents requested consistency with other public service pension schemes, particularly with the Local Government Pension Scheme, in order to avoid any potential discrimination between Green Book and Grey Book staff.
72. Of the responses received, 22 suggested that to extend the provisions for abatement would directly contradict Lord Hutton's recommendation that abatement should end. Sixteen respondents suggested that applying the ability to abate a pension to existing retirees, with authorities having to pay the difference into the pension fund, would be an unfair application of the discretion, since those individuals who had already retired had secured their employment on the understanding that abatement would not be applied in their case. Fifteen respondents suggested that the application of abatement would be a breach of the members' accrued rights, as they have paid their contributions to be able to take that pension, and that the proposals would force people out of work.
73. Employing authorities (21) in particular, raised issues about the potential impact on the knowledge and skill base of their workforce which could arise if fewer firefighters were re-employed after retirement. They suggested that the application of abatement to a member's pension can have a direct financial cost to the authority as re-engaging select staff enables the retention of key skills without the expense associated with recruitment and training. Respondents also claimed that the proposals may also affect the ability of authorities to recruit retained firefighters,

particularly in rural areas. Three responding employers also suggested that each authority should be able to locally determine their policy on abatement.

Government response

74. The Department is grateful for the responses received to the proposals. The purpose of a pension is to provide an income in retirement and the purpose of abatement is:
- to safeguard public expenditure by restricting the total remuneration made from public funds for those who have not genuinely retired from a public service career
 - on propriety grounds: to avoid accusations of favouritism or even corruption if public servants, senior managers and Board Members were allowed to receive both pay and pension from public funds whilst remaining in public service, particularly if they remain in the same job, and
 - to ensure value for money is achieved and that public funding targeted through expenditure and tax relief at long-term retirement provision is focussed on retirement or preparation for retirement, rather than being used during part of an employee's working life.
75. Whilst the Department fully supports the use of abatement, it has given further consideration to the implementation of the proposal following consultation. In particular, the Department intends to amend the proposal so that the associated pension fund payment would only apply to cases where the re-employment occurred after the coming into force of the amending statutory instrument. However, in line with Government policy, some fire and rescue authorities were abating an individual's pension when they were in a non-firefighter role. The proposal will provide the wider power to abate, retrospectively, to 25 September 2009.
76. Authorities should have procedures in place to identify pension members that have been re-employed in firefighter roles as this type of abatement is already provided under the terms of the 2006 Scheme. In employing new staff, fire and rescue authorities will be aware of whether the individual has previously been employed by a fire and rescue authority and will be able to establish if they are pension members of the 1992 Scheme. The proposal would also continue to allow authorities to maintain their own local policies as it does at present and would extend each authority's discretion to abate the pension.
77. In relation to Lord Hutton's recommendations, the greater use of flexible retirement and removal of abatement rule is in the context of employees having later retirement ages and a career average pension scheme. Even after the reforms, abatement will still be expected to be applied for individuals who are in receipt of a pension under the 1992 and 2006 schemes and are re-employed by an authority. However, pension accrued under the 2015 scheme will not be subject to abatement.

Pension tax and other amendments

78. The intentions of the proposals were to amend the scheme terminology to be consistent with the tax simplification measures introduced under the Finance Act 2004, and to update the scheme rules so that they are consistent with the legislation passed since they were last amended.

79. On the proposed changes in relation to the pensions tax, nineteen respondents commented on these proposals, with thirteen in favour of the proposals, five who neither agreed nor disagree with them on the assumption that the Department's explanation in the consultation document was accurate, and one respondent disagreed with the proposals as they could not understand the effect of the changes. The majority of the responses accepted the proposals and recognised the approach as being sensible.
80. On the other 'tidying' amendments, again nineteen responses were received, of which fifteen were favourable and the remaining four neither agreed or disagreed with the amendments on the basis of DCLG's assurance that they had no effect on benefits and were purely changes to terminology

Government response

81. The Department is grateful for the responses received to these proposals. Whilst the Department consulted on the contents of the draft amending Order, the effect of some of the proposals, which could have the effect of changing a members' pension entitlement, may not have been made clear enough as part of the consultation exercise. The Department therefore proposes to proceed with the some of the proposals set out, but has decided to omit the following changes that are set out in the table at paragraph 90 below.

Additional amendments

82. Two additional proposed changes were commented on.

Removal of rule A15 – compulsory retirement on the grounds of disablement

83. One of the Unions suggested that, although rule A15 is omitted for good reasons, the opportunity should be taken to reinforce this by stating that an ill-health pension is available where the authority decides to terminate employment by reason of the member's permanent disablement. They suggested that this would not repeat Rule A15 but it would reinforce the authority's power to make an ill-health award in these circumstances. The Department is grateful for the comment but does not consider this necessary, as this is provided for within the scheme rules on ill-health retirements.

Removal of rule B1(2)(b) – Ordinary pension

84. The Department has proposed to remove this rule, which requires Chief Fire Officers to secure the permission of the fire and rescue authority if they retire before age 55.

85. Three responses asked for the Scheme rules to be simplified by the removal of this requirement highlighting that modern human resource practice and contracts of employment should enable fire authorities to manage retirements without separate rules imposed by Government. One respondent suggested that the change was needed to ensure Chief Fire Officers were treated in the same manner as all other employees.

86. The Department had proposed for this provision to apply to Chief Fire Officers appointed on or after the coming into force date of the order and one respondent sought clarification on the position for those appointed before the coming into force of the order. A further two respondents supported the proposal, with one indicating that they felt that the age at which an employee could retire was a contractual matter and not a matter for an occupational pension scheme. One authority did not agree with the proposal as they did not feel that the issue of permission to retire should be dealt with through a contract of employment.

87. The Department is grateful for the responses received on this proposal. The proposal will not change the position of Chief Fire Officers appointed prior to the coming into force of the amending statutory instrument. There was a misunderstanding by respondents that to change this rule would retrospectively provide Chief Fire Officers with a Protected Pension Age. This is not the case.

Additional amendment in respect of the Auto-enrolment provisions: the Firefighters' Pension Scheme (England) (Amendment) (No. 2) Order 2012

88. Last year the Department consulted on and implemented legislative amendments to the 2006 fire scheme to enable Fire and Rescue Authorities to comply with the "auto-enrolment" requirements as set out in the Pensions Act 2008 and the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010. The

Department now considers that those firefighters employed before 6th April 2006 who were not eligible to be members of the 1992 scheme would not necessarily be within the new paragraph (2A) to rule 1 (scheme membership) of Part 2 (scheme membership, cessation and retirement) which was inserted by SI 2012/2988. It is proposed to omit that paragraph and to insert a new paragraph which ensures that those firefighters are treated as a member of the 2006 scheme when automatically enrolled into that scheme.

89. It is the Department's view that there is no further need to consult on this particular amendment.

Other proposed changes

90. The Department has also proposed the following changes to those consulted on in the Order:

FPS 1992	Provision	Final decision on proposed amendment
Rule B3	Ill-health awards	To proceed with the proposed amendments to Rule B3(1), B3(2), B3(5) and B(7) as consulted on. However, after further consideration the proposed amendments to Rule B3(6) has been withdrawn as the provision is still needed.
Rule B5	Deferred pension	The Department has removed proposed amendment to Rule B5(1)(c) as it is no longer required.
Rule B5A	Entitlement to two pensions	The policy intention as consulted on remains the same - to apportion the service enhancements so that the service enhancement (relating to the deferred, lower or higher tier pension) would be apportioned to the first of the two pensions in accordance with the proportion of the service accrued at the higher rate of pay that bears to the full pensionable service accrued; and, for the second of the two pensions, the service enhancement would be apportioned in accordance with the proportion of the service accrued at the lower rate of pay that bears to the full pensionable service accrued. However, following further scrutiny of the proposed amendment to the scheme's regulations at Rule B5A it was noted that the proposed amendment did not achieve the desired effect and, as such, has been corrected by the introduction of an appropriate formula .
Rule B5B	Additional Pension Benefit – Long Service Increment	The Department has proceeded with the proposed amendments to Rule B5B as set out in the consultation paper but has technical modifications to ensure the provision works effectively..
Rule B5C	Additional Pension Benefit – Continual Professional Development	The Department has proceeded with the proposed amendments to Rule B5C as set out in the consultation paper but has technical modifications to ensure the provision works effectively.
Rule B6	Repayment of aggregate pension	The Department has withdrawn the proposal to omit Rule B6 because after further consideration the Department

	contributions	believes the provision is still needed.
Rule B8	Commutation small pensions	<p>The Department has proceeded with proposed amendments to Rule B8(2) and Rule B8(3) as consulted on.</p> <p>The Department has withdrawn the proposed amendment to Rule B8(1) as changing the rule to refer to a tax reference could limit the pension benefits to what the tax rules prescribe and, as such, this may affect the member's pension entitlement.</p>
Rule B7	Commutation – general provision	<p>The Department has proceeded with the proposed amendments to Rule B7(3), B7(5) and B7(11). However, following consultation, the Department has modified the proposed new Rule B7(5A) to include a requirement for Fire and Rescue Authorities to consider the economical, effective and efficient management of their functions, and the costs likely to be incurred in each case before exercising their discretion to uplift the commutation limit.</p> <p>The Department has also withdrawn the proposed amendment to B7(2) as changing the rule to refer to a tax reference could limit the pension benefits to what the tax rules prescribe and, as such, this may affect the member's pension entitlement.</p>
Rule C6	Awards on death – spouses)	The Department has withdrawn the proposed amendment to Rule C6(5) as changing the rule to refer to a tax reference could limit the pension benefits to what the tax rules prescribe and, as such, this may affect the member's pension entitlement.
Rule C7	Award to spouse or civil partner where no other award payable	The Department has withdrawn the proposed amendments to Rules C7 as changing the rule to refer to a tax reference could limit the pension benefits to what the tax rules prescribe and, as such, this may affect the member's pension entitlement.
Rule C8	Limitation where spouses living apart	The Department has withdrawn the proposed amendments to Rules C8 as changing the rule to refer to a tax reference could limit the pension benefits to what the tax rules prescribe and, as such, this may affect the member's pension entitlement.
Rule C9	Effect of remarriage	The Department has withdrawn the proposed amendments to Rules C9 as changing the rule to refer to a tax reference could limit the pension benefits to what the tax rules prescribe and, as such, this may affect the member's pension entitlement.

Rule E1	Lump sum death grant	The Department has modified the proposed amendment to Rule E1(2) so that the provision includes a reference to “gratuity and lump sum”.
Rule E3	Dependent relative’s gratuity	<p>The Department has proceeded with the proposed amendment to Rule E3(2b) as consulted on.</p> <p>The proposed amendments to Rule E3(3) have been withdrawn as changing the rule to refer to a tax reference could limit the pension benefits to what the tax rules prescribe and, as such, this may affect the member’s pension entitlement.</p>
Rule E5	Lump sum in lieu of surviving spouse’s or civil partner’s pensions	<p>The Department has proceeded with the proposed amendment to Rule E5(1), E5(2), and E5(5) as in the consultation paper.</p> <p>Rue E5(6) has been slightly modified to include the term “whole of”.</p>
Rule F1	Reckoning of and certificates as to pensionable service	<p>The Department has proceeded with the proposed amendments to paragraphs (1), (3), (6) of Rule F1.</p> <p>The second proposed amendment to Rule F1(6) has been modified so that the provision includes a reference to “gratuity and lump sum”.</p>
Rule F2	Current service	The Department has withdrawn the proposed amendments to Rule F2 that relate to new Rule G3A which has also been withdrawn (see below).
Rule F8	Transfer payments to Scottish and Welsh Fire and Rescue Authorities	The Department has proceeded with the proposed amendments to Rule F8 as set out in the consultation paper but has modified the amendment to reflect the establishment of the Scottish Fire and Rescue Service.
Rule G1	Pensionable Pay	<p>Following views raised in the consultation responses, the Department is content for the Flexible Duty Allowance (FDA) to continue to be treated as pensionable pay if it is a permanent emolument.</p> <p>The proposed amendment to Rule G1(2b) has been withdrawn following the need to apply the amended rule retrospectively. The Department will consider its approach further as part of the next round of scheme amendments.</p>

Rule G2	Pension Contributions	<p>The Department has proceeded with the proposed amendments to Rule G2(4A) as set out in the consultation paper.</p> <p>The proposed amendment to Rule G2(1) has been withdrawn due to the withdrawal of the proposed G3A amendments (see below).</p>
Rule G3A	Pension contributions	The Department has withdrawn the proposal and instead intends to seek a declaration from the Court on whether the scheme is discriminatory and therefore whether the amendments are necessary.
Rule IA2	Commutation of pension credit benefits	<p>The Department has proceeded with the proposed amendment to Rule IA2(4).</p> <p>The Department has omitted the proposed amendments to Rule IA2(7) and IA2(8) as following consultation it was decided that the proposed amendment was not needed.</p>
Rule K4	Withdrawal of pension during service as regular firefighter (abatement)	The Department has proceeded with this proposal as set out in the consultation paper which will apply to members who retire and become re-employed on or after 25 September 2009.
Rule K6	Forfeiture of award	The Department has withdrawn the proposed amendment Rule K6 as there would be no power to prosecute a person committing the offence as section 26 is only preserved for the purposes of the pension scheme.
Rule LA2	Special payments and transfers into FPF	Following consultation the Department has provided some transitional arrangements as set out in paragraph 75 of the Government's response.
Rule L3	Payment of awards	<p>The Department has proceeded with the proposed amendment to Rule L3(1)(b).</p> <p>The proposed amendments to Rules L3(7) and L3(8) have been modified so that the provision includes a reference to "gratuity and lump sum".</p>
Schedule 1	Glossary of expressions	<p>The Department has proceeded with the proposed amendments to Schedule 1, with the exception of the following changes:</p> <ul style="list-style-type: none"> The proposed definition of "Club Scheme" has been modified so that it refers to occupational pension

		<p>schemes under the public sector transfer arrangements;</p> <ul style="list-style-type: none"> • The proposed definition of “Defined benefits lump sum death benefit” has been removed as changing the rule to refer to a tax reference could affect the member’s pension entitlement; • The proposed definition of “Brigade” has been removed as it is no longer required. • The proposed definition of “Pension Commencement Lump Sum” has been removed as changing the rule to refer to a tax reference could affect the member’s pension entitlement; • The proposed definition of Scheme Actuary has been revised; • The proposed definition of “Short service refund lump sum” has been removed as changing the rule to refer to a tax reference could affect the member’s pension entitlement; • The proposed definition of “Trivial commutation lump sum” has been removed as changing the rule to refer to a tax reference could affect the member’s pension entitlement.
Schedule 4	Awards on death – children	The Department has proceeded with the proposed amendments but following consultation has modified the drafting of the legislative amendment. The policy remains the same as consulted on.
Schedule 8	Purchase of increased benefits	The Department has proceeded with the proposed amendments with a slight modification to the proposed amendment to paragraph 1(1) to remove a redundant reference.
Schedule 9	Appeal to the Board of Medical Referees	Following comments received from one of the Board of Medical Referees, the Department has modified the wording of the legislative amendment at Schedule 9, Part 1, paragraph 2B(3)(a).