



Department for  
Communities and  
Local Government

## Firefighters' Pension Scheme 2015

Proposals for new governance arrangements

Government response to the consultation

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# Introduction

The Government commissioned Lord Hutton to chair the Independent Public Service Pensions Commission to review public service pensions and to make recommendations on how they can be made sustainable and affordable in the long term, and fair to both public service workers and the taxpayer.

Lord Hutton identified that there is a case for stronger governance of all the public service pension schemes and that there is a legitimate role for representatives of the workforce to be formally involved. He recommended that every public service pension scheme should have a properly constituted, trained and competent Pension Board, with member nominees, responsible for meeting good standards of governance including effective and efficient administration. In the case of the locally administered schemes, these should be local pension boards. Lord Hutton also found that there should be a pension policy group for each scheme at national level for considering major changes to scheme rules.

The recommendations made by Lord Hutton were accepted by the Government and were carried forward into the Public Service Pensions Act 2013 (“the 2013 Act”). This Act gained Royal Assent on 25 April and put in place the legislative framework for the new governance arrangements for public service pension schemes. In relation to the Firefighters’ Pension Schemes in England, it set the “responsible authority” to be the Secretary of State for Communities and Local Government.

A key objective of the 2013 Act is to ensure a fair balance of risks between scheme members and the taxpayer. To achieve this, the Government has established an employer cost cap mechanism to provide backstop protection to the taxpayer and to ensure that the risks associated with pension provision are shared more fairly between employers and scheme members.

The 2013 Act imposed various requirements on schemes made under section 1 of that Act. Sections 5 to 7 imposed requirements in respect of local pension boards and a scheme advisory board and sections 11 to 12 in relation to valuations and employers’ costs. Those provisions were not commenced initially in relation to the Firefighters’ Pension Scheme (England) Regulations 2014 (“the 2014 Regulations”) but no significant practical consequences arise out of the initial absence of such provisions from regulations. This is because all significant functions of the boards, in particular in relation to cost control, will arise only after the first triennial valuation of the Scheme which is due to take place in 2016.

A consultation exercise on draft regulations to introduce new provision to the 2014 Regulations on governance arrangements, including cost control, was held between 10 October 2014 and 21 November 2014.

In addition to the main statutory consultation, members of the Firefighters’ Pension Committee were consulted separately in October 2013 on the “Advice on Assumptions” and later in October 2014 on the “Report on Methodology”, both prepared by the Government Actuary’s Department for the purpose of publishing the scheme’s valuation report, including the scheme’s employer cost cap figure. The employer cost cap figure was

not available at the time of the main October 2014 consultation but the figure which emerged from the report based on the methodology and assumptions was shared with members of the Firefighters' Pension Committee during the period 30 January to 11 February and no objections were raised.

Details of the consultation and related documents can be found at <https://www.gov.uk/government/consultations/firefighters-pension-scheme-2015-proposals-for-new-governance-arrangements>.

The comments received and the Government's response to the main consultation are summarised beneath the table below.

## Summary of main consultation responses

### Background

In October 2014 the first of two consultations on Firefighters' Pension Scheme governance was issued. The respondents to this consultation were as follows;

October 2014 - Type of Respondent	Total Number	% of Total
Local Government bodies	36	87 %
Companies (eg actuarial, legal or software)	1	2%
Professional associations	1	2%
Trades unions	3	7 %
Public Body	1	2%
<b>TOTAL</b>	<b>42</b>	<b>100%</b>

In addition to the draft regulations issued for consultation in October, comment was also invited on six key questions. These are summarised at **Part 1** below. The government's response to the draft regulations is set out at **Part 2** below.

### Part 1 – Key Questions

**1. Do the draft regulations deliver the policy objective on the introduction of local pension boards and a Scheme Advisory Board as set out in this consultation document?**

#### Comments

The majority of respondents (28 out of 42) believed that the draft regulations delivered the policy objectives set out in the consultation document. A small number argued that the policy was misdirected because local pension boards served no useful purpose in an unfunded scheme.

#### Government Response

Good administration and management are key elements of any public service pension scheme, whether unfunded or funded like the Local Government Pension Scheme. Fire and Rescue Authorities are no different in being responsible for deciding a wide range of questions and discretions in discharging their pension functions and for being accountable for the effective and efficient governance of these decisions. The Government notes that the majority of respondents agreed with the policy of establishing local pension boards, reflecting the requirement under the Public Service Pensions Act 2013.

## **2. Do you have any comments on the terms of the local pension boards or Scheme Advisory Board as set out in the regulations?**

### **Comments**

Although the majority of respondents were generally satisfied with the terms of the local pension boards and Scheme Advisory Board as set out in the regulations, many argued that more detail was needed on the role, functions and scope of local pension boards in particular.

### **Government Response**

The Government's approach is to give Fire and Rescue Authorities as much local flexibility and discretion as possible within the framework of the Public Service Pensions Act 2013 to establish their local pension board. The Department has been working closely with the Local Government Association in preparing guidance which includes comprehensive information on this, and other matters outside of the regulations that will help Fire and Rescue Authorities to better understand the role and scope of their local board.

## **3. Are there any other powers or requirements that should be put in place for local pension boards or the Scheme Advisory Board?**

### **Comments**

A majority of respondents argued that the regulations should be extended to include provision for Fire and Rescue Authorities to establish either joint or regional pension boards.

### **Government Response**

In response to these representations, the Government is persuaded to make provision in the regulations for Fire and Rescue Authorities to seek approval from the Secretary of State to establish a joint board where administration and management is wholly or mainly shared across two or more authorities. On the matter of regional local boards, the Government has yet to be persuaded that regional pension boards would be consistent with the local nature of pension boards as set out in the 2013 Act.

## **4. Should the regulations be more, or less prescriptive about potential members of the local pension boards or the Scheme Advisory Board?**

## **Comments**

Respondents were generally satisfied with the level of prescription but there was a strong level of support for the regulations to be extended to include scheme member representatives beyond those in scheme employment. For example, it was argued that deferred or pensioner scheme members with valuable experience and skills should not be precluded from being appointed to local pension boards. In their response, the Fire Brigades Union (FBU) also made the point that appointees to the Scheme Advisory Board should be nominated and appointed by the people it was established to represent, not by Government., and that places for scheme member representatives should not be allocated on a proportionate basis across the four trade unions representing members of the firefighters' schemes.

## **Government Response**

In the light of these representations, the Government is persuaded to remove the restriction on scheme member representatives being appointed from scheme employment only. The regulations now allow any individual to be appointed as a scheme member representative provided that they have the capacity to represent scheme members and do not have a conflict of interest. Being responsible for discharging any pensions function within the same Fire and Rescue Authority would also debar a person from being appointed as a local pension board if that person was either an officer or member of the local pension board of the same Fire and Rescue Authority.

To address the concerns raised by the FBU, a meeting was held on 4 December with representatives from the four trade unions to discuss the basis on which places for scheme member representatives could be allocated. It was proposed that the number of places for scheme member representatives on the Board could be increased to 7 to give the FBU an appropriate weight on the Board of 4 places. Each of the other three trade unions would be allocated one place each. This was accepted by everybody apart from the FBU who maintained their position that the scheme membership as a whole should determine who occupies each of the seven places.

The Fire Minister subsequently wrote to the four trade unions on 13 January inviting them to confirm the Department's understanding of that meeting that no agreement had been reached. The letter explained that in the absence of any agreed position across all four trade unions, the Secretary of State would proceed to make appointments to the Board, with nominations invited from each of the unions on the basis of the allocation determined by the Secretary of State. The FBU did not respond the Minister's letter of 13 January and on that basis the Government will proceed on the basis that no agreement has been reached.

More generally, the Government takes the view that responsible authorities have a general duty under the Public Service Pensions Act 2013 to ensure that the Scheme Advisory Board advising them on the desirability of changes to the scheme are run efficiently and that members appointed to the board have the capacity to do so and do not have any conflict of interest within the meaning of the Act. Delegating the function of appointing members of the Board wholly to external parties could, in the Government's view, undermine these responsibilities.

**5. Is there an alternative funding mechanism for the Scheme Advisory Board which could be put in place rather than raising funds from scheme managers with the Secretary of State ensuring that the Board is delivering value for money?**

### **Comments**

A significant number of respondents objected to the cost of the Scheme Advisory Board being met from Fire and Rescue Authorities and suggested that as a national board advising the Secretary of State on scheme changes, the cost should be met by central government.

### **Government Response**

The Scheme Advisory Board is being established to assist and improve the scheme on behalf of participating employers and scheme members. It is appropriate, therefore, that the scheme, rather than central government, should pay the cost of the work undertaken by the Board on their behalf.

**6. Do you consider that any groups with protected characteristics under equalities legislation are being disproportionately affected? If so, what do you consider to be the nature and scale of that disproportionate effect?**

### **Comments**

One respondent claimed that restricting scheme member representatives to individuals in scheme employment could be held to be age discriminatory.

### **Government Response**

Removing this restriction in the final regulations should mitigate against the risk of age discrimination claims.

## **Part 2 - Main comments on the proposed new regulations.**

### **New Reg 4A**

#### **Comments**

In general, respondents agreed that the regulations should provide for local pension boards to be in place by 1 April 2015. However, concerns were raised as to the short time scale for their establishment and implementation.

#### **Government response**

The requirement in the regulations for administering authorities to establish local pension boards by 1 April 2015 follows from section 5 of the 2013 Act and no change in the regulations can affect that. .

### **Comments**

Several respondents suggested that the Regulations should include a process to resolve conflict between a Scheme Manager and a local board. A majority of respondents also favoured a more clearly defined role and powers for local pension boards but others welcomed the flexibilities and local discretion afforded by the regulations.

### **Government response**

Fire and Rescue Authorities will have the flexibility to determine procedures locally for their local pension boards. DCLG officials will work with the Scheme Advisory Board on any guidance that either the Secretary of State or the Scheme Advisory Board may publish. This will encourage a range of different solutions to be developed, and shared between Fire and Rescue Authorities and local pension boards.

### **Comments**

A significant number of respondents suggested that provision should be made in the regulations for Fire and Rescue Authorities to establish joint pension boards where administration and management is shared.

### **Government response**

The regulations have been amended to enable Fire and Rescue Authorities to seek approval from the Secretary of State to establish joint pension boards where administration and management is shared between two or more authorities.

### **Comments**

A number of respondents claimed that the decisive influence of employer and scheme member representatives could be at risk if the regulations allowed Fire and Rescue Authorities to appoint other members over and above the equal number of employer and scheme member representatives required by the regulations.

### **Government response**

The regulations have been amended to ensure that no member of a local pension board shall have a right to vote on any question unless that member is an employer or a scheme member representative. This will retain the decisive influence of employer and scheme member representatives on the board and at the same time, allow the Fire and Rescue Authority to appoint other, non-voting members to bring valuable experience and knowledge to the board.

## **New Reg. 4B**

### **Comments**

Several respondents suggested that there should be no pre-condition of understanding to be a member of a local pension board, as this may prove to be a significant barrier to finding a sufficient number of quality board members.

### **Government response**



The regulations have been amended to remove the pre-condition requirement of understanding but it remains essential that potential members can demonstrate the capacity to represent those who they have been appointed to represent.

### **Comments**

Many respondents commented on the size of the local pension board, or expressed concerns as to the potential influence of board members who are not employer or member representatives. Some also suggested that any guidance should include details of who should be eligible for membership.

### **Government response**

The minimum requirement for membership of a local pension board is two employer representatives and two member representatives. If a Fire and Rescue Authority wishes to have more members, they may do so, either by increasing the number of employer and member representatives in equal numbers, or by including other members for specific reasons. Regulation 4A(5) limits voting rights to employer and member representatives. In addition, members or officers of a Fire and Rescue Authority may only sit on the board as an employer or member representative. This ensures that the main influence of the board resides with employer and member representatives but at the same time, has access to the knowledge and experience of independent specialists and others.

### **Comments**

Some respondents questioned the wording of draft regulation 4B(3) which appeared to prevent anybody with a job that involved Firefighters' Pension Scheme responsibilities from sitting on any local pension board in any capacity.

### **Government response**

Regulation 4B(3) has been amended to clarify that the restriction only applies to members or officers of the same administering authority.

## **New Reg. 4C**

### **Comments**

A number of respondents suggested that the regulations should give Fire and Rescue Authorities more assistance on what constitutes a conflict of interest.

### **Government response**

Section 5 of the Public Service Pensions Act 2013 requires these regulations to impose a duty on Fire and Rescue Authorities to be satisfied that a person to be appointed to a local pension board does not have a conflict of interest, that is, a financial or other interest, apart from being a member of the Scheme, which is likely to prejudice the person's exercise of functions as a member of the board. Whether or not a conflict of interest arises can only be judged against the facts and circumstances of each individual case. Guidance on how to identify can be found in the Code of Practice issued by the Pensions Regulator.

## **New Reg. 4F**

**Comments**

One respondent objected to the terms of Regulation 4F(1) requiring the Secretary of State to appoint the Chairman and at least two, but no more than 14 persons to the Scheme Advisory Board. In their view, all members of the Board should be appointed by those who they seek to represent and not by the Department.

**Government response**

The Government takes the view that responsible authorities have a general duty under the Public Service Pensions Act 2013 to ensure that the Scheme Advisory Board advising them on the desirability of changes to the scheme are run efficiently and that members appointed to the board have the capacity to do so and do not have any conflict of interest within the meaning of the Act. Delegating the function of appointing members of the Board wholly to external parties could, in the Government's view, undermine these responsibilities.