



**NOTTINGHAMSHIRE**  
**Fire & Rescue Service**  
*Creating Safer Communities*

Nottinghamshire and City of Nottingham  
Fire and Rescue Authority

# **AMENDMENTS TO FIREFIGHTERS' PENSION SCHEMES - CONSULTATION**

Report of the Chief Fire Officer

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**Agenda Item No:**

**Date:** 16 September 2011

**Purpose of Report:**

To inform Members of the current consultation document recommending changes to both Firefighters Pension schemes.

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## **1. BACKGROUND**

- 1.1 Uniformed Firefighters are currently eligible to be members of one of the Firefighters pension schemes. Staff employed before 2006 are usually in the 1992 scheme and the remainder in the 2006 scheme.
- 1.2 The history of the Firefighters scheme is that until recently all the costs of the scheme were met from the revenue budget of the Fire Authority and all the contributions retained. This created significant uncertainty around revenue budgets and arrangements were changed such that the Authority now maintains a pensions account, the balance of which is either paid over to government or topped by government depending on whether the account is in surplus or deficit. This effectively means that government take the risk of volatility. Employers are also required to make contributions into the account as their pension contribution.
- 1.3 As part of the general review of public sector pensions (although by no means the final position) government have issued a consultation paper which addresses a number of distinct issues upon which they are seeking views. This paper considers the proposals and sets out a proposed Authority response.

## **2. REPORT**

- 2.1 Government are proposing changes around ten specific areas of the scheme:
  - i) Compulsory Retirement on the grounds of efficiency.
  - ii) Changes to indexation of additional pension benefits.
  - iii) Commutation – discretions.
  - iv) Pensionable Pay – definition.
  - v) Age discrimination.
  - vi) Medical Appeals – power to review.
  - vii) Non-medical appeals.
  - viii) Abatement.
  - ix) Pensions Tax alignments with tax legislation.
  - x) Other technical amendments.

### **COMPULSORY RETIREMENT**

- 2.2 Rule A14 of the Firefighters' Pension Scheme permits a fire and rescue authority to compulsorily retire a firefighter who is at least 50 years old and can reckon at least 25 years' pensionable service.
- 2.3 Government policy is to prevent age being a consideration for compulsory retirement or redundancy. For instance, the Government is phasing out the default retirement age, which means in future it will be discriminatory to compulsorily retire an employee who is aged 65 or without objective justification. In addition, the Employment Rights Act is also being amended to

mean that retirement will no longer automatically be a fair reason for dismissal.

- 2.4 Any member of the Firefighters' Pension Scheme who has attained age 50 and can reckon at least 25 years pensionable service already has a right to retire with immediate payment of their pension. Any removal of Rule A14 does not change this position. As such, the Department is seeking views on the need to retain Rule A14 in light of the Government's general direction of travel in this area and the announced changes to employment and equalities legislation, and on whether its contractual application might give rise to indirect discrimination.
- 2.5 The proposal, in paragraph 1(b) of the draft Order, is to revoke Rule A14 so that, in future, any decision to compulsorily remove a firefighter from employment is dealt with in accordance with employment and equalities law.
- 2.6 The A14 rule is rarely applied in Nottinghamshire and its removal although taking away an option for redundancy seems wholly consistent with equalities legislation and as such should be supported.

#### **CHANGES TO INDEXATION OF ADDITIONAL PENSION BENEFITS**

- 2.7 This is essentially a technical change where certain pensionable emoluments are indexed following the Retail Prices Index (RPI). It is government policy to index all public sector schemes at the consumer price index (CPI) and allowing payments in respect of Continuous Professional Development and Long Service Increments to continue to be indexed at RPI makes little sense.
- 2.8 It is suggested that NFRS support this proposal.

#### **COMMUTATION – DISCRETIONS**

- 2.9 Currently, under rule B7, members who have reached the normal pension age (55) or have accrued at least 30 years' service may commute up to one quarter of their pension for a lump sum. In all other circumstances, the amount that a member may commute is limited under rule B7(5) and may not exceed 2.25 times the amount of annual pension.
- 2.10 A member may retire if they are aged 50 or over and have 25 or more years' service. However, as the commutation limit is likely to apply in these circumstances, members may be reluctant to take retirement voluntarily. Fire and rescue authorities have asked for the discretion to disregard the limit.
- 2.11 Paragraph 2(j) of the draft Order makes provision for the limit on the amount of pension that may be commuted for a lump sum to be increased up to a quarter of the pension at the discretion of the fire authority. As set out in paragraph 14(a) of the Order, should a fire authority elect to exercise their discretion, the additional costs will be met from a fire authority's operating fund, not from the pension account.

- 2.12 It should be emphasised that this discretion is not something which a Fire Authority *must* do but provides an Authority with the discretion to do this if it wishes to. It may be a useful tool in circumstances where redundancy might be the only other option and whilst it will be a direct cost to the organisation this cost may still be less than a redundancy payment to another member of staff.
- 2.13 The consultation points out that under certain circumstances if the Authority exercises this discretion there may be a liability to sanction charges (see later section) under HMRC regulations. This would need to be part of the consideration as to whether to exercise any discretion.
- 2.14 It is suggested that the Authority should support this proposal to be given discretion in this matter.

### **PENSIONABLE PAY AND AVERAGE PENSIONABLE PAY – DEFINITION**

- 2.15 The definition of pensionable pay in the Firefighters' Pension Scheme (1992) and the New Firefighters' Pension Scheme (2006) is the amount determined in relation to the performance of the duties of a firefighters' role and to reflect the additional pension benefit arrangement in place for any amount paid in respect of continual professional development. Temporary allowances or emoluments should not be included as pensionable pay.
- 2.16 Additional pension benefits were introduced to the fire pension schemes in 2007 to protect pension benefits accrued by members on elements of earnings which could vary and to protect the schemes from the cost of past service costs which arose when members received an increase on these variable earnings in the last three years' of service.
- 2.17 Following a survey of pension administrators within fire and rescue authorities in 2009, it became clear that as fire and rescue authorities responded to new operational demands, new allowances and emoluments were being introduced locally and deemed pensionable, despite often being temporary in nature. This is a significant issue for the scheme as the additional allowance generates a liability for both the future cost of the increase in pension payments required, and also for the past cost which has not been covered by earlier pension. There is also an inequity caused by the pooled nature of the costs of the pension scheme in that those authorities not paying these additional allowances will ultimately face increased pension contributions to pay for them as the actuaries raise contribution rates globally.
- 2.18 The Department proposes to amend Firefighters' Pension Scheme rule B5C (additional pension benefit) and New Firefighters' Pension Scheme rule 7(B) of Part 3 to:

*“adopt additional pension benefit arrangements for temporary allowances and emoluments, at the fire and rescue authority’s discretion, similar to those introduced in 2007 for Continued Professional Development.”*

- 2.19 This proposal appears reasonable on the face of it but the issue of what does and does not constitute pensionable pay is key to its impact. Crucially the department are proposing that flexi duty allowances should not form part of basic pay for pension purposes.
- 2.20 This does not mean that the 20% flexi duty allowance cannot be included as a pensionable allowance but that if it is then the Authority will have to bear all of the costs as this will be outside the pensions account.
- 2.21 There are three reasons why the Authority may wish to raise objection to this approach:
- i) Flexi duty allowance is not a temporary allowance and once granted cannot be removed under Grey Book conditions of service. They are also common to all Fire Authorities.
  - ii) Allowing central government to shift the pension liability for this significant item of officers pay back to fire authorities will create the same uncertainties that existed before the scheme was centralised.
  - iii) The cost of this will be transferred from the pensions account (met by CLG) back to Fire Authorities.
  - iv) Representative Bodies may well claim that this constitutes a change in conditions of service and bring pressure to bear nationally to ensure that their members' rights are protected. It would create an anomaly if some Fire Authorities treated flexi allowances as pensionable where others do not and therefore the pressure will always be to include them.
- 2.22 It is proposed that the Authority should welcome the proposal to exclude temporary allowances from the pension scheme but that objections should be raised in respect of the exclusion of flexi-duty allowances for the reasons set out above.
- 2.23 The issue of average pensionable pay is not quite as it sounds. There is no proposal to use career average pay as has been suggested in the media. This proposal seeks to prevent Fire Authorities promoting officers temporarily or giving them allowances in the last three years of their service to enable their pension payments to be increased. This has never been done in NFRS as a deliberate ploy to increase pension although there have been numerous instances of officers seeking secondments onto higher roles to increase pension payments.
- 2.24 The principle that seems to be suggested is that any temporary allowance or temporary promotion which is allowed to an officer in the "latter years of their active service" and which would ordinarily give rise to additional pension rights will not do so automatically. Fire Authorities will be given the discretion to continue to provide these emoluments but the pension rights that accrue will be assessed by the actuary and only the additional benefits accrued as a consequence of receiving a temporary payment will added to pension. In all

cases all of the costs will be met by the Fire Authority and not by the pension fund.

- 2.25 Transitional arrangements will be put in place to protect existing allowances.
- 2.26 The issue of using average pay in respect of temporary allowances is quite broad and not fully addressed by this proposal. It may be considered reasonable to preclude a scheme member from gaining huge past service benefits for a temporary promotion or temporary allowance at the end of their career but many officers would also have paid pension contributions on temporary promotions earlier in their career for which there are no benefits accruing. In this respect the proposal seems a little one sided.
- 2.27 The complexity of dealing with temporary promotions and emoluments fairly for all officers (including those who have temporary promotions during a long career) in addition to the costs of securing actuarial assessments of benefits arising seems rather bureaucratic. Assuming that that there has been no assessment of the relative cost of making the change compared with leaving things as they are (including the mid career issues) it would not seem unreasonable to suppose that they might be balanced. The easiest option of course would be to take the view that all temporary promotions and emoluments are temporary and therefore not pensionable at all.
- 2.28 The Authority may wish to consider making a response along the lines of not wanting to see any temporary allowances or emoluments being pensionable or alternately retaining current arrangements.

## **AGE DISCRIMINATION**

- 2.29 Under the terms of the Firefighters' Pension Scheme, the earliest a member can retire is at age 50, having completed at least 25 years service. The maximum pension entitlement that a Firefighters' Pension Scheme member can accrue is 30 years service (i.e. 40/60ths).
- 2.30 Members of the Firefighters' Pension 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 aged 50. They are required to pay employee contributions without accruing any further pension entitlement and do not have any option to retire.
- 2.31 The Department's view is 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. However, the matter is not discriminatory once the member turns 50 as they may elect to retire with a pension.
- 2.32 Various options were considered with the Government Actuary's Department including allowing members to accrue more than 30 years' pensionable service. The issue also has been discussed in detail at the Firefighters' Pension Committee.

- 2.33 The draft order makes provision at paragraph 7(f) to allow 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. At this point, the member would then be able to choose between retirement with pension or continued employment and payment of contributions, or continued employment without paying contributions and electing to defer their pension.
- 2.34 Under this proposal, the employing authority would need to continue to make contributions.
- 2.35 It is proposed that the Authority's response to this proposal should be supportive save that there seems to be no logic for the employer to be required to continue to make contributions in respect of an employee who is having a contributions holiday. This can only be a means of keeping contributions flowing into the pensions account and should be resisted for that reason.

### **MEDICAL APPEALS – POWER TO REVIEW**

- 2.36 Under the existing arrangements of Part H (Determination of questions and appeals), if an Independent Qualified Medical Practitioner has provided an authority with an opinion in an ill-health case, they are unable to review that case should further medical evidence be identified. Where the member wishes to appeal the original decision, the full process of determination must be undertaken again, with a second, impartial Independent Qualified Medical Practitioner. Similarly, there is no mechanism for a Board of Medical Referees to reconsider its opinion in light of new medical evidence.
- 2.37 The draft order makes provision to amend the procedures for the consideration of medical questions. The intention is to reduce instances where an appeal occurs unnecessarily. The proposals are:
- to allow Independent Qualified Medical Practitioners to review their opinion if further medical evidence is provided by the Scheme member so as to avoid unnecessary referrals to a Board of Medical Referees; paragraph 8(a) – new rule 1A (review of medical opinion)
  - to provide for a member of the Board of Medical Referees to review medical papers when an appeal is received to ensure that there is a sufficiency of evidence to enable an appeal to be heard; paragraph 23(c) – Schedule 9 (appeals)
  - to allow the Board of Medical Referees to review its opinion if the appellant and fire and rescue authority are satisfied that the board has made an error of fact that materially affects its decision; paragraph 23(f) – Firefighters' Pension Scheme Schedule 9 (appeals), New Firefighters' Pension Scheme Annex 2 (Appeals to Board of Medical Referees).
- 2.38 It should be noted that the current cost of a medical appeal is in the region of £7,500 which has to be fully met by the employer.

2.39 is suggested that the Fire Authority accepts the proposed change

## **NON-MEDICAL APPEALS**

2.40 If an authority does not admit a person's claim to an award or payment in respect of an award, rule H3 of the Firefighters' Pension Scheme currently provides for appeal to the Crown Court. Whilst this may have been appropriate when no mechanism existed to appeal the decision of an authority, alternative arrangements are now in place. For example, schemes are now required, under pensions legislation, to have internal dispute resolution arrangements in place and a subsequent process for appeal to the Pensions Ombudsman. The relevant dispute resolution arrangement for the both the 1992 and 2006 Schemes is set out in the Internal Dispute Resolution Procedures document which is available on the Department's website, and summarised in Firefighters' Pension Scheme Circular 1/2009.

2.41 Paragraph 8(c) of the draft order substitutes the provision for appeal to the Crown Court if an authority does not admit a person's claim to an award or any payment in respect of an award, with the provision for appeal through the Pensions Ombudsman. This substitution is intended to ensure that the most appropriate mechanism for appeal is used; ultimately reducing reliance on the Courts and making the appeals process easier to undertake and follow for both the member and the fire and rescue authority.

2.42 It is suggested that this proposal is supported.

## **ABATEMENT**

2.43 The purpose of a pension is to provide a member with regular income during retirement. Abatement is the process of reducing or stopping a member's pension if a member retires and then returns to work in the public sector. Government policy is that pension payments should be abated where a member is reemployed in the public sector and receives a pension and salary which exceeds their earnings before retirement. At present, the fire and rescue authorities only have the discretion to withdraw all or part of the pension of a Firefighters' Pension Scheme member employed as a regular firefighter, and the option is not frequently exercised.

2.44 Paragraph 12(c) sets out the Department's proposal to amend Rule K4 to expand the definition of reemployment, so that abatement of pension may apply to a member reemployed in any role by any authority, including non-operational and retained firefighter roles. Paragraph 14(a)(iv) of the draft Order also changes rule LA2 (special payments and transfers into Firefighters' Pension Fund) to require an authority who elects not to exercise the discretion to abate a member's pension, to pay the amount of pension paid to the member within the financial year into the pension fund.

2.45 Presently NFRS policy is to abate pensions when an employee retires and returns to a uniformed role on re-engagement however this is not the policy of all fire and rescue authorities which results in some anomalies. As abatement is a reduction of pension then those authorities who do not abate pension are



paying out more in pensions than they have to. This cost is then spread over all authorities as part of the actuarial valuation of employer contributions.

- 2.46 Whilst it is accepted that the principle of abatement is an issue for debate it would not seem unreasonable for those authorities opting not to apply abatement to reimburse the pensions account in respect of this decision.
- 2.47 Where this becomes complex of course is when a retired member takes up employment in say the NHS in a different part of the country where the abatement should be applied by the old employer. This seems almost impossible to police and any guidance on this would be welcomed. Only applying abatement to retired members who work for their “home” authority would clearly be inequitable.

### **PENSIONS TAX - ALIGNMENTS WITH TAX LEGISLATION**

- 2.48 These proposals are simply changing terminology within the schemes to match the terminology with tax legislation.
- 2.49 Whilst not technically part of this consultation it is important to note the issue of sanction charges which will be levied against the authority in respect of unlawful payments which are required to be made under the pension regulations. Actuaries have recently revised the pension commutation rules for firefighters to grant greatly increased commutations such that a commutation rate of 22:1 is now allowed. This means that for every £1 of pension forgone £22 of lump sum will be paid. Inland Revenue rules state that the maximum that may be paid tax free is 25% of the total value of the pension which would equate to about 20:1. Anything paid above this amount is deemed to be unlawful and is subject to an HMRC sanction charge of 40% which must be paid by the employer in addition to the tax payable by the employee.
- 2.50 It is becoming clear that many retiring officers are happy to pay the additional tax in order to get access to the additional lump sum which leaves the authority having to pick up the sanction charges. These charges can be £10,000 or more per officer. Representations must be made to government to either make the granting of increased commutation optional for employers or the sanctions charges transferable to the pensions account.

### **OTHER TECHNICAL AMENDMENTS**

- 2.51 Again this is a technical area where changes are required to the rules to reflect changes in legislation and the regulatory framework.

## **3. FINANCIAL IMPLICATIONS**

Outline financial implications are set out within the body of the report.

#### **4. HUMAN RESOURCES AND LEARNING AND DEVELOPMENT IMPLICATIONS**

Human resources implications are contained within the report. Any future decisions regarding the application of discretions will be subject to the agreement of the Human Resources Committee.

#### **5. EQUALITY IMPACT ASSESSMENT**

An initial equality impact assessment has not been prepared in relation to this matter.

#### **6. CRIME AND DISORDER IMPLICATIONS**

There are no crime and disorder implications arising from this report.

#### **7. LEGAL IMPLICATIONS**

There are no legal implications arising from this report.

#### **8. RISK MANAGEMENT IMPLICATIONS**

There are no Risk Management implications arising from this report.

#### **9. RECOMMENDATIONS**

Members are requested to approve the responses set out in the body of the report and request Officers to seek guidance in relation to abatement of pensions when retired staff take up employment with other public bodies.

#### **10. BACKGROUND PAPERS FOR INSPECTION (OTHER THAN PUBLISHED DOCUMENTS)**

None.

Frank Swann  
**CHIEF FIRE OFFICER**

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



Amendments to the Firefighters' Pension Scheme (1992)  
and the New Firefighters' Pension Scheme (2006)  
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## The consultation process and how to respond

### Scope of the consultation

<b>Topic of this consultation:</b>	This consultation seeks views on a range of proposed changes to the Firefighters' Pension Scheme (1992) and New Firefighters' Pension Scheme (2006).
<b>Scope of this consultation:</b>	<p>This consultation seeks views on the following key proposed changes to the firefighters' pension schemes:</p> <ul style="list-style-type: none"> <li>• The removal of rule A14, compulsory retirement on the grounds of efficiency</li> <li>• Changes to the indexation of additional pension benefits</li> <li>• Changes to the maximum commutation payment</li> <li>• Proposals to deal with potential age discrimination</li> <li>• Amendments to the medical and non-medical appeals processes</li> <li>• Abatement of pensions</li> <li>• Technical amendments and alignment with tax legislation</li> </ul>
<b>Geographical scope:</b>	This consultation applies to England only.
<b>Impact Assessment:</b>	An Impact Assessment has not been completed for this consultation, but will be published following the consultation. However, costing information has been included within the consultation document. The Department intends to use the evidence and views provided by the consultation to fully inform all Impact Assessments. These Assessments will then be provided to Ministers to inform any final decisions, and will be published on the Department's website.

### Basic Information

<b>To:</b>	This consultation is primarily aimed at fire and rescue authorities, members of the firefighters' pension schemes, and key employer and employee representative bodies including the Local Government Group, Chief Fire Officers Association and Fire Brigades Union.
<b>Body/bodies responsible for the consultation:</b>	The Department for Communities and Local Government.
<b>Duration:</b>	This consultation will run for 12 weeks, from 3 August 2011 to 5pm on 26 October 2011.

<p><b>Enquiries:</b></p>	<p>For any enquiries, please contact the Firefighters' Pension Team: firepensions@communities.gsi.gov.uk</p> <p>Alternatively, please call: Vickie Edwards: 0303 444 4057 Andrew Cornelius: 0303 444 2171</p> <p>Any complaints about the way this consultation is being handled should be addressed to: consultationcoordinator@communities.gsi.gov.uk</p>
<p><b>How to respond:</b></p>	<p>Please respond by email to: firepensions@communities.gsi.gov.uk</p> <p>Alternatively, please send postal responses to: Firefighters' Pension Team Zone 5/F6, Eland House Bressenden Place London SW1E 5DU</p>
<p><b>Additional ways to become involved:</b></p>	<p>Key interest groups, including the fire and rescue authorities and relevant unions, will be engaged directly to ensure their awareness of the consultation. It will also be discussed at the Firefighters' Pension Committee meeting in September.</p>
<p><b>After the consultation:</b></p>	<p>A summary of responses to the consultation will be published on the Department's website within three months of the end of the consultation period.</p>
<p><b>Compliance with the Code of Practice on Consultation:</b></p>	<p>The consultation complies with the Code of Practice on Consultation, with the exception of the concurrent publication of the Impact Assessment. The Impact Assessment will be published following the consultation, so that respondents' views may inform the Assessments made.</p>

## Background

<p><b>Getting to this stage:</b></p>	<p>The Government is consulting on a number of changes to the firefighters' pension schemes for England. The existing practices for the Firefighters' Pension Scheme (1992) and the New Firefighters' Pension Scheme (2006) are set out in full in the consultation document.</p>
<p><b>Previous engagement:</b></p>	<p>Prior to publishing this consultation, the Department has engaged with key stakeholders including Employer and Union representatives through the Firefighters' Pension Committee, where the key proposed changes to the Firefighters' Pension Scheme outlined in this consultation have been discussed. This consultation also takes into account the results of an earlier consultation in 2009 on the proposed changes to the definition of pensionable pay.</p>

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## Introduction

1. This paper sets out a number of policy proposals in respect of suggested changes to the two fire service pension schemes, namely, the Firefighters' Pension Scheme (1992) and the New Firefighters' Pension Scheme (2006) and consults on the following provisions:
  - Rule A14: Compulsory retirement on grounds of efficiency – remove rule
  - Changes to indexation of additional pension benefits - to the Consumer Prices Index
  - 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)
2. Attached at **Annex A** is a draft Order to amend the Firefighters' Pension Scheme (1992). This draft instrument proposes amendments to give effect to the policy proposals set out in this consultation in relation to the Firefighters' Pension Scheme (please note, that references are to the Schedule to the Order, unless specified to the contrary).
3. Where the provisions consulted on in this document have equivalent provisions in the New Firefighters' Pension Scheme (2006), the Department's intention is for this to satisfy the requirement on consultation in respect of policy proposals for suggested changes to the New Firefighters' Pension Scheme. The Department will circulate a draft Order to amend the New Firefighters' Pension Scheme to business partners for comment in due course.

## Public service pension reforms and Scope of consultation

4. 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 sector workers and the taxpayer.

5. In his interim report, Lord Hutton explained that the value and cost of a public service pension has increased by around a third because of longer life expectancy over the last fifty years, and that these costs had generally fallen to the taxpayer. Lord Hutton therefore recommended that if the Government wished to make short term savings, then raising contribution rates would be the most effective way to achieve that objective. This would also make for a fairer balance between what employees pay and what other taxpayers have to pay. At the Spending Review the Government accepted Lord Hutton's rationale and announced the intention to increase employee contributions by 3.2% on average by 2014-15.
6. Lord Hutton's final report was published on 10 March 2011. In that report he made clear that change is needed to "make public service pension schemes simpler and more transparent, fairer to those on low and moderate earnings." Lord Hutton set out 27 recommendations<sup>1</sup> for public service pension reform, including protection of accrued rights, the retention of a form of defined benefit and the fairer sharing of risk between taxpayers and scheme members.
7. The Government accepted the broad principles set out in Lord Hutton's report as a basis for consultation. The Government has committed to ensuring that public service pensions remain among the very best available, providing a guaranteed pension level for all employees; a benefit very few private sector employees still enjoy.
8. On 19 July the Chief Secretary to the Treasury set out to Parliament the Government's timetable for the proposed increase in employee contribution rates and discussions with business partners around the wider pension reforms.<sup>2</sup> The Department set out its approach to taking forward the proposed reforms for the firefighters' pension schemes in its letter of 28 July<sup>3</sup>, and will publish a separate consultation on the proposed 2012-13 increase in employee contribution rates shortly. Therefore, this consultation does not deal with the recommendations of the Independent Public Service Pensions Commission, or the Spending Review announcement to increase employee contribution rates.
9. This consultation applies to proposed changes to both of the fire service pension schemes in England only, each of which has already been the subject of consultation or discussion at the Firefighters' Pension Committee (containing representatives from the Employers, Unions and other interested parties).

1 The reports from the Commission can be found at: [http://www.hm-treasury.gov.uk/indreview\\_johnhutton\\_pensions.htm](http://www.hm-treasury.gov.uk/indreview_johnhutton_pensions.htm)

2 The Chief Secretary to the Treasury's Written Ministerial Statement to Parliament is available at [http://www.hm-treasury.gov.uk/press\\_83\\_11.htm](http://www.hm-treasury.gov.uk/press_83_11.htm)

3 This letter is available on the Department's website at <http://www.communities.gov.uk/fire/firerescueservice/firefighterpensions/>

10. Responses to this consultation should preferably be sent by email to: [firepensions@communities.gsi.gov.uk](mailto:firepensions@communities.gsi.gov.uk). Alternatively, responses can be posted to:

Firefighters' Pensions Team  
5/F6  
Eland House  
Bressenden Place  
London  
SW1E 5DU

The closing date for responses is 26 October 2011.

# 1. Provisions and proposals

## Firefighters' Pension Scheme (1992) Rule A14: Compulsory retirement on grounds of efficiency

### Issue

- 1.1 To consider the continued need for Rule A14 of the Firefighters' Pension Scheme given that the means to compulsorily remove any employee from employment should be undertaken under employment law.

### Background

- 1.2 Rule A14 of the Firefighters' Pension Scheme permits a fire and rescue authority to compulsorily retire a firefighter who is at least 50 years old and can reckon at least 25 years' pensionable service.
- 1.3 Government policy is to prevent age being a consideration for compulsory retirement or redundancy. For instance, the Government is phasing out the default retirement age, which means in future it will be discriminatory to compulsorily retire an employee who is aged 65 or without objective justification. In addition, the Employment Rights Act is also being amended to mean that retirement will no longer be a fair reason for dismissal.
- 1.4 Any member of the Firefighters' Pension Scheme who has attained age 50 and can reckon at least 25 years pensionable service already has a right to retire with immediate payment of their pension. Any removal of Rule A14 does not change this position. As such, the Department is seeking views on the need to retain Rule A14 in light of the Government's general direction of travel in this area and the announced changes to employment and equalities legislation, and on whether its contractual application might give rise to indirect discrimination.

### Proposal

- 1.5 The proposal, in paragraph 1(b) of the draft Order, is to revoke Rule A14 so that, in future, any decision to compulsorily remove a firefighter from employment is dealt with in accordance with employment and equalities law.

### Benefits

- 1.6 Fire and rescue authorities are being given greater discretion under the changes to commutation rules to help incentivise voluntary exits. If Rule A14 is revoked, any moves to compulsorily remove individuals from employment would need to be undertaken in accordance with employment and equalities law. Individuals would no longer be able to be initially identified for compulsory exits based on their age and length of service.

- 1.7 The proposals will ensure that Firefighters' Pension Scheme Order reflects the Government's direction of travel on employment and equalities legislation.

## Costs

- 1.8 The removal of A14 would mean that authorities would need to consider all staff for reductions in the workforce, rather than using compulsory retirement to reduce staff levels. The Government Actuary's Department has estimated that savings to the Scheme in excess of £50,000 per person may be achieved where staff below pension age opt for voluntary exit and become deferred pensioners, rather than working to their minimum pension age.<sup>4</sup>

## Firefighters' Pension Scheme (1992) Rule B5B: Additional pension benefit: long service increment Firefighters' Pension Scheme (1992) Rule B5C: Additional pension benefit: continual professional development (Change in indexation from Retail Price Index to Consumer Price Index)

## Issue

- 1.9 To enable changes to make the up-rating of additional pension benefit in accordance with the *Pensions (Increase) Act 1971*.

## Background

- 1.10 The Emergency Budget on 22 June 2010 announced the intention to switch the basis of up-rating public service pensions from the Retail Price Index to the Consumer Price Index. The Budget set out that:

"The Government will use the CPI [Consumer Price Index] for the price indexation of benefits and tax credits from April 2011. The CPI [Consumer Price Index] provides a more appropriate measure of benefit and pension recipients' inflation experiences than RPI [Retail Price Index], because it excludes the majority of housing costs faced by homeowners (low income households are subsidised separately through Housing Benefit, and the majority of pensioners own their home outright), and differences in calculation mean it may be considered a better representation of the way consumers change their consumption patterns in response to price changes. This will also ensure consistency with the measure of inflation used by the Bank of England. This change will also apply to public service pensions through the statutory link to the indexation of the Second State Pension."<sup>5</sup>

<sup>4</sup> These figures are based on data provided in the 2007 Valuation, increased by the value of the 2007, 2008 and 2009 pay awards and using the corresponding discount rate of 3.5 per cent.

<sup>5</sup> [http://cdn.hm-treasury.gov.uk/junebudget\\_complete.pdf](http://cdn.hm-treasury.gov.uk/junebudget_complete.pdf)

1.11 As set out in the *Firefighters' Pension Scheme Circular 8/2010*, pensions in payment and deferred awards for members of both of the firefighters' pension schemes are index-linked under the Pensions (Increase) Act 1971 and the rate is set by Treasury in an order under that Act. Therefore, the change in indexation of pensions in payment, or deferred pensions, occurs automatically without any amendment to the 1992 and 2006 Schemes.

1.12 However Circular 8/2010 made clear that references to Retail Price Index in the schemes' rules should be amended to reflect the change to Consumer Price Index made by the Pensions Increase (Review) Order.

### Proposal

1.13 It is proposed that the following Scheme rules will be amended so that the amount of any additional pension benefit accrued at the end of the financial year shall be increased by any increase under the Pensions (Increase) Act 1971:

- Firefighters' Pension Scheme 1992 (paragraph 2(f) and 2(g) in the Schedule to the draft Order):
  - Rule B5B(3) (*Additional pension benefit: long service increment*),
  - Rule B5C(3) (*Additional pension benefit: continual professional development*); and
- New Firefighters' Pension Scheme 2006:
  - Part 3, rule 7A(3) (*Additional pension benefit: long service*)
  - Rule 7B(3) (*Additional pension benefit: continual professional development*).

1.14 Consumer Price Index up-rating was applied from 11 April 2011 in accordance with the annual Pension Increase (Review) Order. The intention is to amend the references to "Retail Price Index" in the Scheme rules so that the amounts are increased by "any increase under the Pensions (Increase) Act 1971". To fulfil this aim, it is necessary to apply the amendment retrospectively to 11 April 2011.

### Benefits

1.15 As the proposals bring the additional pension benefits in line with the Pensions (Increase) Act 1971, the impact may only be determined for this year. For 2011-12 the Act changed the rate of indexation from the Retail Price Index of 4.6 per cent to the Consumer Price Index of 3.1 per cent, representing a saving to the scheme.

1.16 The proposals should also reduce the administrative burden on fire and rescue authorities by ensuring that all pension benefits are linked to the Pensions (Increase) Act 1971 whether in the accrual, deferred, or payment stage.

## Costs and risks

1.17 As the allowances paid are locally determined, the exact savings to the fire and rescue authority or cost to the member cannot be calculated. As an indication of the immediate change in value, assuming a factor of 20, the annual additional pension benefit for a £500 continual professional development payment is about £10. If awarded in 2010-11 the additional pension benefit accrued in year would have been valued at £10.46 under the Retail Price Index, and is instead valued at £10.31 under the Consumer Price Index. It should be noted that the Consumer Price Index will also be applied to additional pension benefits accrued in previous years.

## Firefighters' Pension Scheme (1992) Rule B7: Commutation – general provision

### Issue

1.18 To provide fire and rescue authorities with a discretion to uplift the commutation limit to one quarter of their pension for a Firefighters' Pension Scheme member eligible for retirement.

### Background

1.19 Currently, under rule B7, members who have reached the normal pension age (55) or have accrued at least 30 years' service may commute up to one quarter of their pension for a lump sum. In all other circumstances, the amount that a member may commute is limited under rule B7(5) and may not exceed 2.25 times the amount of pension.

1.20 A member may retire if they are aged 50 or over and have 25 or more years' service. However, as the commutation limit is likely to apply in these circumstances, members may be reluctant to take retirement voluntarily. Fire and rescue authorities have asked for the discretion to disregard the limit.

### Proposal

1.21 Paragraph 2(j) of the draft Order makes provision for the limit on the amount of pension that may be commuted for a lump sum to be increased up to a quarter of the pension at the discretion of the fire authority. As set out in paragraph 14(a) of the Order, should a fire authority elect to exercise their discretion, the additional costs will be met from a fire authority's operating fund, not from the pension account.

### Benefits

1.22 The proposal will allow fire and rescue authorities to remove a disincentive for members to choose early retirement. It will also provide greater flexibility and choice over retirement dates for both scheme members and authorities.

## Costs

- 1.23 There are no additional direct costs to the pension scheme as a result of this policy. The cost to the Pension Scheme remains the same, as the Government Actuary's Department have advised the Department that these changes would be actuarially neutral. The proposal may, however, affect the cash flow of an authority, as a more substantial commutation payment may be made at the point of retirement.
- 1.24 Fire and rescue authorities will be provided with the discretion to increase the commutation limit to a quarter of the pension; there is no obligation to exercise this option. The effect on the cash flow of each authority will depend on the individual pension rights of any volunteers, and the Department expects that fire and rescue authorities will only exercise this option where it is fiscally responsible to do so.
- 1.25 The amount of pension commuted is dependant on actuarially determined commutation factors. As some of the existing factors are higher than 20:1, there may be additional tax implications for some members if the total sum commuted exceeds the maximum permitted by Her Majesty's Revenue and Customs, which is currently 25 per cent of the total value of benefits vested. If the sum exceeds that allowed, the fire and rescue authority may be subject to a Scheme Sanction Charge. As the Order makes provision to commute up to one quarter of the full amount of the pension, fire and rescue authorities may avoid these tax charges by giving consideration to the level of enhanced commutation offered.

## Firefighters' Pension Scheme (1992) Rule: G1 Pensionable pay and average pensionable pay

### Issue

- 1.26 To ensure consistency in approach to, and proportionate arrangements for, the definition of pensionable pay for "final salary" arrangements in the fire service schemes, in particular in relation to how allowances and emoluments are dealt with.

### Background

- 1.27 The definition of pensionable pay in the Firefighters' Pension Scheme (1992) and the New Firefighters' Pension Scheme (2006) is the amount determined in relation to the performance of the duties of a firefighters' role and to reflect the additional pension benefit arrangement in place for any amount paid in respect of continual professional development. Temporary allowances or emoluments should not be included as pensionable pay.



- 1.28 Additional pension benefits were introduced to the fire pension schemes in 2007 to protect pension benefits accrued by members on elements of earnings which could vary and to protect the schemes from the cost of past service costs which arose when members received an increase on these variable earnings in the last three years' of service.
- 1.29 Following a survey of pension administrators within fire and rescue authorities in 2009, it became clear that as fire and rescue authorities responded to new operational demands, new allowances and emoluments were being introduced locally and deemed pensionable, despite often being temporary in nature. This is a significant issue for the scheme as the additional allowance generates a liability for both the future cost of the increase in pension payments required, and also for the past cost which has not been covered by earlier pension.
- 1.30 Concerns were raised with the Firefighters' Pension Committee over the interpretation of pensionable pay and, in November 2009, a formal consultation was undertaken on two options to address this issue. The outcome of the consultation was considered and discussed at the Firefighters' Pension Committee. The proposal set out below represents the Department's final approach.

## Proposal

- 1.31 Following the outcome of that policy consultation, the Department proposes to amend Firefighters' Pension Scheme rule B5C (additional pension benefit) and New Firefighters' Pension Scheme rule 7(B) of Part 3 to:
- *adopt additional pension benefit arrangements for temporary allowances and emoluments, at the fire and rescue authority's discretion, similar to those introduced in 2007 for Continued Professional Development.*
- 1.32 Paragraph 2(g) of the draft Order reflects the Department's approach, amending rule B5C (additional pension benefit) to clarify the definition of pensionable pay and to make provision for a new additional pension benefit which will allow for temporary emoluments and allowances to be pensionable on a time limited basis. Paragraph 7(a) of the draft Order mirrors these changes in rule G1 (pensionable pay and average pensionable pay).
- 1.33 The application of this option should apply a more restrictive definition of pensionable pay so that only basic annual pay for the role should be pensionable under "final salary" arrangements. Additional pension benefit arrangements could then apply to all other allowances or emoluments at the discretion of the fire and rescue authority. This means that the amount of additional contribution paid in a year would receive an actuarially valued pension which would be linked to the Pensions (Increase) Act 1971 and would come into payment on retirement alongside the member's main pension benefits.

- 1.34 On the issue of London Weighting, this should continue to be pensionable as it forms part of a London firefighters' basic pay. However, for instance, Flexible Duty Allowance is a temporary allowance and all new recipients of Flexible Duty Allowance should be dealt with under additional pension benefit arrangements, at the discretion of the fire authority.
- 1.35 The draft Order amends rule B5C so that fire and rescue authorities shall credit the firefighter with an amount of additional pension benefit in respect of that year:
- *B5C (5) Paragraph (1) applies where a fire and rescue authority determines that any of the benefits listed in this paragraph are pensionable:*
    - (a) *any allowance or supplement to reward additional skills and responsibilities that are applied and maintained outside the requirements of the firefighters' day to day role but are within the wider functions of the job;*
    - (b) *the amount (if any) paid in respect of a firefighters' continual professional development;*
    - (c) *the difference between the firefighters' basic pay in their day to day role and any pay received whilst on temporary promotion or where he or she is temporarily required to undertake the duties of a higher role;*
    - (d) *any performance related payment.*

## **Benefits**

- 1.36 The implementation of an additional pension benefit arrangement provides pension protection to members who have accrued benefits under temporary arrangements, whilst providing a fairer and more proportional approach to financing pensions for the taxpayer.
- 1.37 Further benefits of this approach are that:
- fire and rescue authorities would retain the necessary flexibility to provide emoluments and allowances locally to their staff
  - adopting additional pension benefit arrangements would allow any new pension liability arising from emoluments and allowances to be borne by the employer and the member in direct proportion to the value of the allowance or emolument
  - members awarded allowances or emoluments in the latter years of their active service will receive a benefit related to their corresponding contributions
  - the taxpayer will not need to fund any additional past pension cost not covered by previous contributions
  - it should also have a downward pressure on the cost of the scheme as the future liabilities in relation to the final pensionable pay bill should be less

- should a member lose an allowance shortly before retirement, they will continue to receive a benefit proportional to the contributions they have paid.

### **Costs and risks**

1.38 It is intended that additional pension benefit arrangements should be self-funding and not an additional burden on the pension fund. As the benefit will only be generated over the period the allowance is paid, the additional past service cost which arises under the current arrangement, will not need to be funded.

### **Transitional protections**

1.39 As set out in paragraph 7(a)(v) of the draft Order, the Department is not proposing any retrospective application of the change to pensionable pay. Where a member is already receiving an allowance which is treated as pensionable at the time the scheme is amended (and that the authority had the *vires* to make that allowance pensionable), that allowance should continue to be regarded as pensionable pay. Therefore any benefits already accrued by scheme members will be protected.

## **Firefighters' Pension Scheme (1992) Rule G3A: Exemption from payment of pension contributions – 30 years pensionable service before age 50 (Age Discrimination)**

### **Issue**

1.40 To ensure that members who joined the Firefighters' Pension Scheme before the age of 20 do 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.

### **Background**

1.41 Under the terms of the Firefighters' Pension Scheme, the earliest a member can retire is at age 50, having completed at least 25 years service. The maximum pension entitlement that a Firefighters' Pension Scheme member can accrue is 30 years service (i.e. 40/60ths).

1.42 Members of the Firefighters' Pension 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 aged 50. They are required to pay employee contributions without accruing any further pension entitlement and do not have any option to retire.

- 1.43 The Department's view is 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. However, the matter is not discriminatory once the member turns 50 as they may elect to retire with a pension.
- 1.44 Various options were considered with the Government Actuary's Department including allowing members to accrue more than 30 years' pensionable service. The issue also has been discussed in detail at the Firefighters' Pension Committee.

### **Proposal**

- 1.45 The draft order makes provision at paragraph 7(f) to:
- *allow 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. At this point, the member would then be able to choose between retirement with pension or continued employment and payment of contributions, or continued employment without paying contributions and electing to defer their pension.*
- 1.46 Under this proposal, the employing authority would need to continue to make contributions.

### **Benefits**

- 1.47 This policy approach neutralises the effect of the current Scheme Rules which requires members to remain in the scheme and pay contributions without accruing any further pensionable service.

### **Cost to the pension scheme**

- 1.48 The question of potential age discrimination arises as a result of the introduction of the Employment Equality (Age) Regulations 2006<sup>6</sup>. The proposal is therefore to be applied retrospectively to 1 December 2006.
- 1.49 As the Firefighters' Pension Scheme is now closed to new members, the liability under this proposal is finite. The Government Actuary's Department has estimated that since 1 December 2006, about 350 members are affected and the cost of refunding their contributions would be £2.7m. In addition there are about 3,000 members who have the potential to accrue more than 30 years' service before age 50. The future cost of giving this group a contribution holiday will be approximately £16.5m. However, the Government intends to bring forward reforms to public sector pensions following Lord Hutton's review.

<sup>6</sup> Statutory Instrument 2006 No. 1031

## Chief Fire Officers

- 1.50 Under the Scheme rules, Chief Fire Officers may only retire before age 55 with the permission of the authority. Some Chief Fire Officer members of the Firefighters' Pension Scheme have therefore alleged that in their case, the discrimination continues until age 55, at which point they may elect to retire with a pension. A Chief Fire Officer who joined the Firefighters' Pension Scheme before age 25 may therefore contribute more than 30 years service before being permitted to retire by their employer.
- 1.51 The Department's view is that the matter is not discriminatory as the existing Firefighters' Pension Scheme rules makes clear that with the accession to the role of Chief Fire Officer comes the expectation that these individuals may have to work until the age of 55 unless their employer agrees to their earlier retirement. The member therefore accepted the potential increase in retirement age aware of the additional contributions when deciding to take up the Chief Fire Officer post.
- 1.52 The matter has been complicated as some Chief Fire Officers have a protected pension age of 50 under taxation law, whilst some do not. This is due to the changes brought in by the Finance Act 2004. Those members without a protected pension age of 50 can still retire under the rules of the pension scheme before the age of 55 with full pension benefits. The allegation is that, because these members will be subject to an unauthorised payment tax charge, they are being discriminated against by the pension scheme on the grounds of age. As the pension scheme permits full access to the individual's pension rights before the age of 55, with the agreement of the employer, the Department's view is that discrimination does not arise under the terms of the scheme.
- 1.53 Based on the data submitted by fire and rescue authorities, an indicative cost of applying a contribution holiday until age 55 for a Chief Fire Officer has been estimated. Using the average Chief Fire Officer salary of £131,000, the cost of the holiday contributions to an average Chief Fire Officer's salary is £14,400 per annum. If the contribution holiday was applicable for the full 7 years, this would result in a total rebate from the Scheme to a Chief Fire Officer of £100,800. Based on current service, we anticipate that up to 19 current Chief Fire Officers have the potential to achieve more than 30 years' service before the age of 55.

## Firefighters' Pension Scheme (1992) Rule H1A: Review of medical opinion (Medical Appeals)

### Issue

1.54 To improve the efficiency of the medical appeals process by providing Independent Qualified Medical Practitioners and Boards of Medical Referees with the power to review previous decisions where further medical evidence is presented.

### Background

1.55 Under the existing arrangements of Part H (Determination of questions and appeals), if an Independent Qualified Medical Practitioner has provided an authority with an opinion in an ill-health case, they are unable to review that case should further medical evidence be identified. Where the member wishes to appeal the original decision, the full process of determination must be undertaken again, with a second, impartial Independent Qualified Medical Practitioner. Similarly, there is no mechanism for a Board of Medical Referees to reconsider its opinion in light of new medical evidence.

### Proposal

1.56 The draft order makes provision to amend the procedures for the consideration of medical questions. The intention is to reduce instances where an appeal occurs unnecessarily. The proposals are:

- to allow Independent Qualified Medical Practitioners to review their opinion if further medical evidence is provided by the Scheme member so as to avoid unnecessary referrals to a Board of Medical Referees; paragraph 8(a) – new rule H1A (review of medical opinion)
- to provide for a member of the Board of Medical Referees to review medical papers when an appeal is received to ensure that there is a sufficiency of evidence to enable an appeal to be heard; paragraph 23(c) – Schedule 9 (appeals)
- to allow the Board of Medical Referees to review its opinion if the appellant and fire and rescue authority are satisfied that the board has made an error of fact that materially affects its decision; paragraph 23(f) – Firefighters' Pension Scheme Schedule 9 (appeals), New Firefighters' Pension Scheme Annex 2 (Appeals to Board of Medical Referees).

## Benefits

1.57 This proposal should reduce the need for appeals to decisions made by an Independent Qualified Medical Practitioner to the Board of Medical Referees, or from the Board to the High Court by way of Judicial Review. Such appeals do not provide a cost effective or quick solution and, in some instances, may not be necessary if Independent Qualified Medical Practitioners and the Board of Medical Referees are permitted to review their decisions if the parties agree. Such an instance may be where new evidence has arisen which justifies reconsideration.

## Costs and risks

1.58 As the proposals seek to provide a more cost effective alternative to Judicial Review or appeal to the Board of Medical Referees, particularly where parties agree that the decision should be reconsidered; there is no expected total increase in costs for fire and rescue authorities.

1.59 The draft Order introduces the option for a review of the medical opinion by an Independent Qualified Medical Practitioner in rule H1A (review of medical opinion), but still allows the member to appeal to a Board of Medical Referees through rule H2 (appeal against a medical decision). As such, if the member remains dissatisfied with the result of their appeal under rule H1A, they may still appeal to a Board of Medical Referees. This could therefore generate additional costs to the fire and rescue authority. However, the proposal is designed to facilitate review only in instances where additional evidence has come to light or where parties agree there is a case for review.

## Firefighters' Pension Scheme (1992) Rule H3: Appeals on other issues (non-medical issues)

### Issue

1.60 To ensure that the appeal for a non-medical award claim, or payment, is undertaken through the appropriate mechanism.

### Background

1.61 If an authority does not admit a person's claim to an award or payment in respect of an award, rule H3 of the Firefighters' Pension Scheme currently provides for appeal to the Crown Court. Whilst this may have been appropriate when no mechanism existed to appeal the decision of an authority, alternative arrangements are now in place. For example, schemes are now required, under pensions legislation, to have internal dispute resolution arrangements in place and a subsequent process for appeal to the Pensions Ombudsman. The relevant dispute resolution arrangement for the both the 1992 and 2006 Schemes is set out in the Internal Dispute Resolution Procedures document which is available on the Department's website, and summarised in Firefighters' Pension Scheme Circular 1/2009.

**Proposal**

1.62 Paragraph 8(c) of the draft order substitutes the provision for appeal to the Crown Court if an authority does not admit a person's claim to an award or any payment in respect of an award, with the provision for appeal through the Pensions Ombudsman. This substitution is intended to ensure that the most appropriate mechanism for appeal is used; ultimately reducing reliance on the Courts and making the appeals process easier to undertake and follow for both the member and the fire and rescue authority.

**Benefits**

1.63 This proposal seeks to refocus appeals through a more appropriate mechanism, making any future appeals more cost effective and to seek to provide a quicker resolution.

**Costs and risks**

1.64 As the proposals seek to provide a more cost effective alternative to appeal to the Crown Court and to align the Orders with the existing dispute resolution arrangements, there is no additional cost expected.

## Firefighters' Pension Scheme (1992) Rule K4: Withdrawal of pension during service as regular firefighter (abatement)

**Background**

1.65 The purpose of a pension is to provide a member with regular income during retirement. Abatement is the process of reducing or stopping a member's pension if a member retires and then returns to work in the public sector. Government policy is that pension payments should be abated where a member is reemployed in the public sector and receives a pension and salary which exceeds their earnings before retirement. At present, the fire and rescue authorities only have the discretion to withdraw all or part of the pension of a Firefighters' Pension Scheme member employed as a regular firefighter, and the option is not frequently exercised.

**Proposal**

1.66 Paragraph 12(c) sets out the Department's proposal to amend Rule K4 to expand the definition of reemployment, so that abatement of pension may apply to a member reemployed in any role by any authority, including non-operational and retained firefighter roles. Paragraph 14(a)(iv) of the draft Order also changes rule LA2 (special payments and transfers into Firefighters' Pension Fund) to require an authority who elects not to exercise the discretion to abate a member's pension, to pay the amount of pension paid to the member within the financial year into the pension fund.



## Benefits

1.67 The proposal will enable fire and rescue authorities to follow Government policy on abatement, to protect public funds. As abatement limits the total public sector remuneration payable at any one time in respect of a particular job to the pensionable pay of that individual at retirement, it prevents both the cost of the pay and pension associated with that role falling to the public purse.

## Costs

1.68 The proposal seeks to reduce the overall cost to the Fund, and taxpayer, by refunding any pension paid by a fire and rescue authority in excess of the members' previous salary.

## Pensions tax

### Background

1.69 The Finance Act 2004 included tax simplification measures which defined the different forms of pension payments and how they should be treated for tax purposes. For example, taxation of pensions, lump sums and dependents' pensions.

### Proposal

1.70 The draft instrument amends scheme terminology to be consistent with HM Revenue and Customs' rules and definitions, as set out in the Finance Act 2004. A full list of the rules to be amended and the paragraphs in the Order effecting the changes is provided in **Annex B**.

### Benefits

1.71 The proposal will simplify the scheme legislation and ensure consistency with HM Revenue and Customs' rules and definitions, making tax implications easier to understand.

### Costs

1.72 As the proposal seeks only to revise the terminology of the Scheme to reflect existing definitions, there is no anticipated additional cost to fire and rescue authorities or the public.

## Other amendments

### Issue

1.73 To amend the existing Order to ensure they reflect the changes made as a result of this Order and that any statutory references mirror the current legislation.

### Background

1.74 The Firefighters' Pension Scheme rules were last updated in February 2008, since which time there have been a number of regulatory changes which have not been reflected in the terminology used by the Scheme. These amendments aim to ensure that all statutory references reflect the existing legislation, and that any changes made by this Order are shown consistently throughout the scheme Order.

### Proposal

1.75 A full list of amendments, including the rules scheduled for deletion and new parts to be added are provided in **Annex C**.

1.76 There are two amendments which are to be applied retrospectively, as set out in paragraph 1. Paragraphs 7(b) and 7(f) reflect the proposals listed as Age Discrimination, and are to be applied retrospectively to 1 December 2006 as the question of potential age discrimination arises as a result of the age discrimination regulations introduced under the Employment Equality (Age) Regulations 2006.

1.77 Paragraphs 2(f) and 2(g) reflect the proposals to up-rate additional pension benefits in line with the Pensions (Increase) Act 1971. Consumer Price Index up-rating was applied from 11 April 2011 in accordance with the annual Pension Increase Review Order. As the proposal intends to link additional pension benefit up-rating to any increase under this Order as announced by the Chancellor in the Budget, it is necessary to apply the amendment retrospectively to 11 April 2011.

### Benefits

1.78 These changes will ensure that changes are made consistently throughout the Order and that the Order is consistent with primary legislation. It is expected that these changes will make it easier for fire and rescue authorities and individual members to understand and follow the Order.

### Costs

1.79 No additional costs are expected as these changes only seek to ensure the consistency of terminology and current legislation across the Statutory Instrument.

## About this Consultation

This consultation document and consultation process have been planned to adhere to the Code of Practice on Consultation issued by the Department for Business Enterprise and Regulatory Reform and is in line with the seven consultation criteria, which are:

1. Formal consultation should take place at a stage when there is scope to influence the policy outcome;
2. Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible;
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals;
4. Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach;
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained;
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation;
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that

confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The Department for Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please contact

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# Annex A: Draft Firefighters' Pension Scheme (Amendment) (England) Order

STATUTORY INSTRUMENTS

2012 No.

## FIRE AND RESCUE SERVICES, ENGLAND

### PENSIONS, ENGLAND

#### The Firefighters' Pension Scheme (Amendment) (England) Order 2012

*Made* - - - - - \*\*\*  
*Laid before Parliament* - - - - - \*\*\*  
*Coming into force* - - - - - 1st April 2012

The Secretary of State, in exercise of the powers conferred by section 26(1) of the Fire Services Act 1947(a) and section 12(b) of the Superannuation Act 1972, as applied by section 16(3)(c) of that Act, makes the following Order:

#### Citation and commencement

1.—(1) This Order may be cited as the Firefighters' Pension Scheme (Amendment) (England) Order 2012.

(2) This Order shall come into force on 1st April 2012, but the amendment made by article 2 and—

- (a) paragraph 7(b) of the Schedule so far as it relates to rule G2 (pension contributions); and
- (b) paragraph 7(f) of the Schedule so far as it relates to new rule G3A (exemption from payment of pension contributions – 30 years pensionable service before age 50),

shall have effect from 1st December 2006;

- (c) paragraph 2(f) of the Schedule so far as it relates to rule B5B (additional pension benefit: long service increment); and

- (d) paragraph 2(g) of the Schedule so far as it relates to rule B5C (additional pension benefit: continual professional development),

shall have effect from 11th April 2011.

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(a) 1947 c.41, repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c.21). Subsections (1) to (5) of section 26 continue to have effect, in relation to England and Scotland, for the purposes of the scheme established under that section as the Firemen's Pension Scheme and set out in the Firemen's Pension Scheme Order 1992 (S.I. 1992/129), by article 3 of S.I. 2004/2306. The name of the scheme was changed to the Firefighters' Pension Scheme, by article 4(1) of S.I. 2004/2306. Section 26 of the 1947 Act was amended by section 1 of the Fire Services Act 1951 (c.27), section 42 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c.65), section 33 of, and Schedule 3 to, the Theft Act 1968 (c.60), sections 16 and 29 of, and Schedule 8 to, the Superannuation Act 1972 (c.11), section 100 of, and Schedule 27 to, the Social Security Act 1973 (c.38), section 1 of, and Schedule 1 to, the Social Security (Consequential Provisions) Act 1975 (c.18), section 32 of the Magistrates' Courts Act 1980 (c.43), section 1 of the Police and Firemen's Pensions Act 1997 (c.52), and Schedule 25 to the Civil Partnership Act 2004 (c.33), and article 2 of the Social Security (Modification of Fire Services Act 1947) Order 1976 (S.I. 1976/551).

(b) 1972 c.11; section 12 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c.7).

(c) Section 26 continues to have effect, for the purposes of the Firefighters' Pension Scheme, by virtue of S.I. 2004/2306.

**Amendment of the Firemen's Pension Scheme Order 1992**

2. Schedule 2 to the Firemen's Pension Scheme Order 1992(a) (in which it sets out the Firefighters' Pension Scheme), as it has effect in England(b), shall be amended in accordance with the Schedule to this Order.

Signed by authority of the Secretary of State for Communities and Local Government

*Name*

Minister of State

Date

Department for Communities and Local Government

**SCHEDULE**

Article 2

**Amendment of the Firefighters' Pension Scheme (England Only)****1. In Part A (interpretation)—****(a) in rule A3 (exclusive application to regular firefighters)—**

- (i) in paragraph (1), for “the Social Security Act 1975” substitute “the 1993 Act”;
- (ii) omit paragraph (3);
- (iii) for paragraph (5) substitute —

“(5) This Scheme applies to a person who takes up employment with a fire and rescue authority on or before 5th April 2006 and remains in continuous pensionable service.”; and

**(b) omit rules A4 to A8, A12, A14 and A15.****2. In Part B (personal awards)—****(a) in rule B1 (ordinary pension), after paragraph (3) add—**

“(4) Paragraph (2)(b) shall not apply to a chief fire officer appointed after the date that the Order amending this rule comes into force.”;

**(b) in rule B2 (short service award)—**

- (i) in paragraph (1)(a), for “retires on or after normal pension age” substitute “retires at or after normal pension age”;
- (ii) in paragraph (2)(a), for “Part II of Schedule 2; and” substitute “for Part 2 of Schedule 2;”; and
- (iii) for paragraph (2)(b), substitute—

“(b) subject to sub-paragraph (c), in any other case, to a short service refund lump sum of an amount equal to the aggregate of his pension contributions; and

- (c) where a person is not entitled to a short service refund lump sum under paragraph 5 of Part 1 (lump sum rule) of Schedule 29 to the Finance Act 2004(c), he is entitled to a deferred pension under rule B5.”;

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- (a) S.I. 1992/129; amended by 1997/2309 and 2851, 1998/1010, 2001/3649 and 3691, 2004/1912, 2006/1810 and 3433 and 2008/214. The Scheme was made under section 26 of the Fire Services Act 1947 (c.41). That Act was repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c.21). Subsections (1) to (5) of section 26 were continued in force, for the purposes of the scheme established under that section as the Firemen's Pension Scheme, by S.I. 2004/2306. The name of the scheme was changed, in relation to England and Scotland, by article 4(1) of S.I. 2004/2306.
  - (b) The Secretary of State's functions under section 26 of the Fire Services Act 1947, in so far as they were exercisable in relation to Scotland, were devolved to Scottish Ministers by section 63 of the Scotland Act 1998 (c.46) and article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to Scottish Ministers etc) Order 1999 (S.I. 1999/1750). The Secretary of State's functions under section 3(5) of the Fire Services Act 1947 are now vested in the Welsh Ministers so far as they are exercisable in relation to Wales. They were previously vested in the National Assembly for Wales by the National Assembly for Wales Transfer of Functions) Order 1999 (S.I. 1999/672); see the entry for the Fire Services Act 1947 in Schedule 1 to that Order. By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c. 32), they were transferred to the Welsh Ministers.
  - (c) 2004 c.12.

- (c) in rule B3 (ill health awards)—
- (i) in paragraph (1), for “who is required to retire under rule A15 (compulsory retirement on grounds of disablement)” substitute “who retires by reason of permanent disablement<sup>(a)</sup>”;
  - (ii) for paragraph (2), substitute—
 

“(2) A regular firefighter who is entitled—

    - (a) to reckon at least two years but less than five years pensionable service becomes entitled on retiring to a lower tier ill-health pension calculated in accordance with paragraph 2 of Part 3 of Schedule 2; or
    - (b) to reckon at least five years’ pensionable service becomes entitled on retiring—
      - (i) where paragraph (3) applies, to a lower tier ill-health pension calculated in accordance with paragraph 2 of Part 3 of Schedule 2, or
      - (ii) where paragraph (4) applies, to the pensions referred to in paragraph (5).”;
  - (iii) in paragraph (5)(a), omit “or 3 (as the case may be)”;
  - (iv) omit paragraph (6); and
  - (v) in paragraph (7), for “beginning with the date on which the issue of his capacity for employment arises” substitute “beginning at the time when the question of his disablement arises for decision”;
- (d) in rule B5 (deferred pension)—
- (i) in paragraph (1)(c), for “a period of other employment” substitute “a period of linked qualifying service”;
  - (ii) after paragraph (1)(d)(i)(bb), insert—
 

“(4B) any period of absence from duty without pay, reckoned as pensionable service under rule F2(3), and”;
  - (iii) in paragraph (1)(d)(ii), for “2 years or more.” substitute “2 years or more, or”;
  - (iv) after paragraph (1)(d)(ii), insert—
 

“(e) in respect of whom rule B2(c) applies (where a person is not entitled to a short service refund lump).”;
  - (v) omit paragraph (5);
- (e) in rule B5A (entitlement to two pensions)—
- (i) in paragraph (2), for “The amounts” substitute “Subject to paragraph (4A), the amounts”; and
  - (ii) after paragraph (4) insert—
 

“(4A) Where a firefighter is entitled to —

    - (a) a lower tier ill-health pension where rule B3(3) applies,
    - (b) a higher tier ill-health pension where rule B3(4) applies, or
    - (c) a deferred pension under rule B5,

the amount of the first and second pension shall be calculated in accordance with Part 3 or Part 6 (as the case may be) of Schedule 2 with the formula in this rule as modified by paragraph (4B).

(4B) For the purpose of the calculation in paragraph (4A)—

    - (a) in the case of the first pension, A is the portion of the firefighter’s average pensionable pay for the year ending with his or her last day of service at the higher rate of pay that the firefighter’s pensionable service up to that day, bears to the whole of his or her pensionable service; and

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(a) Within the meaning of rule A10 (disablement).

- (b) in the case of the second pension, A is the portion of the firefighter's average pensionable pay for the year ending with his or her last day of service that the firefighter's pensionable service up to that day, bears to the whole of his or her pensionable service.”.
- (f) in rule B5B (additional pension benefit: long service increment)—
- (i) in paragraph (2), after the formula substitute—
- “Where—
- A is the number in years (counting part of a year as the appropriate fraction) by which the firefighter's continuous pensionable service in the employment of a fire and rescue authority up to and including 30th June 2007, exceeds 15 but does not exceed 20; and
- B is the number in years (counting part of a year as the appropriate fraction) by which his continuous pensionable service in the employment of a fire and rescue authority up to and including 30th June 2007, exceeds 20.”;
- (ii) for paragraph (3), substitute—
- “(3) The amount of additional pension benefit (as calculated in accordance with paragraph (2) and, if applicable, this paragraph) shall be increased by any increase under the Pensions (Increase) Act 1971(a) from 1st October 2007”; and
- (iii) in paragraph (5)(b), for “rule B5” substitute “rule B3”;
- (g) for rule B5C (additional pension benefit: continual professional development), substitute—

**“Additional pension benefit**

**B5C.**—(1) Where a fire and rescue authority determines that the benefits listed in paragraph (5) are pensionable, and in any financial year pays any such pensionable benefits to a regular firefighter, the authority shall credit the firefighter with an amount of additional pension benefit in respect of that year.

(2) Subject to paragraph (3), the amount of additional pension benefit in respect of that year shall be determined in accordance with guidance and tables provided by the Scheme Actuary.

(3) The amount of additional pension benefit accrued at the end of any financial year shall be increased by any increase under the Pensions (Increase) Act 1971.

(4) Any increase in accordance with paragraph (3) shall be applied with effect from the first Monday of the relevant tax year.

(5) Paragraph (1) applies where a fire and rescue authority determines that any of the benefits listed in this paragraph are pensionable—

- (a) any allowance or supplement to reward additional skills and responsibilities that are applied and maintained outside the requirements of the firefighter's day to day role but are within the wider functions of the job;
- (b) the amount (if any) paid in respect of a firefighter's continual professional development;
- (c) the difference between the firefighter's basic pay in their day to day role and any pay received whilst on temporary promotion or where he or she is temporarily required to undertake the duties of a higher role;
- (d) any performance related payment.

(6) In this rule—

“relevant tax year” means a tax year in relation to which—

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(a) 1971 c. 56.



- (a) the amount of a firefighter's pension benefits is calculated for the purposes of this Scheme, and
- (b) the firefighter is not in receipt of a pension under this scheme or entitled to a deferred pension under rule B3;  
 "tax year" means the period of 12 months beginning with 6th April.";
- (h) in rule B5D (additional pension benefits: supplementary provisions), in paragraph (3) omit "(rule A15)";
- (i) omit rule B6 (repayment of aggregate pension contributions);
- (j) in rule B7 (commutation-general provision)—
  - (i) in paragraph (2), for "may commute for a lump sum" substitute "may commute for a pension commencement lump sum,";
  - (ii) in paragraph (3), for "Government Actuary" substitute "Scheme Actuary";
  - (iii) in paragraph (5), for "In the case of" substitute "Subject to paragraph (5A), in the case of";
  - (iv) after paragraph (5), insert—  
 "(5A) Subject to paragraph (4), a fire and rescue authority may pay a lump sum in excess of two and a quarter times the full amount of the pension."; and
  - (v) in paragraph (11), for "serviceman" substitute "reservist".
- (k) in rule B8 (commutation-small pensions)—
  - (i) in paragraph (1)—
    - (aa) for "a person who has attained state pensionable age" substitute " a person who has reached the age of 60 but has not reached the age of 75"; and
    - (bb) for "a lump sum" substitute "a trivial commutation lump sum";
  - (ii) in paragraph (2), for "Government Actuary" substitute "Scheme Actuary"; and
  - (iii) after paragraph (3), add—  
 "(4) On the day on which the pension is commuted under this rule, all other entitlements to a pension under this Scheme are extinguished.";
- (l) in rule B9 (allocation)—
  - (i) in paragraph (7), for "the date on which he intends to retire" substitute "the day before the pension comes into payment"; and
  - (ii) in paragraph (13), for "Government Actuary" substitute "Scheme Actuary";
  - (iii) in paragraph (16), for "serviceman" substitute "reservist"; and
- (m) in rule B12 (pension debit members), in sub-paragraph (a), for "Government Actuary" substitute "Scheme Actuary".

**3. In Part C (award on death-spouses)—**

- (a) in rule C1 (spouse's ordinary pension), for paragraph (2) substitute—  
 "(2) Where this rule applies the surviving spouse is entitled to an ordinary pension calculated in accordance with Part 1 of Schedule 3.";
- (b) in rule C4 (spouse's accrued pension), omit paragraph (2);
- (c) in rule C6 (spouse's or civil partner's requisite benefit and temporary pension), for paragraph (5) substitute—  
 "(5) Subject to paragraph (6), if—
  - (a) the deceased dies while serving as a regular firefighter; and
  - (b) the amount of the capitalised value of the requisite benefit pension, as calculated by the Scheme Actuary, is less than that of his average pensionable pay,

the surviving spouse or civil partner is entitled to a defined benefits lump sum death benefit equal to the difference between those amounts.

(6) Where the firefighter received an award under rule B2(2)(b) (short service refund lump sum), the surviving spouse or civil partner is not entitled to an award under paragraph (5).”;

- (d) in rule C7 (award to spouse or civil partner where no other award payable)—
  - (i) for paragraph (1)(c), substitute—
    - “(c) rules C1 and C4 do not apply.”; and
  - (ii) for paragraph (2)(b), substitute—
    - “(b) subject to sub-paragraph (c), to a defined benefits lump sum death benefit equal to the deceased’s average pensionable pay;
    - (c) where the firefighter received an award under rule B2(2)(b) (short service refund lump sum), the surviving spouse or civil partner is not entitled to an award under sub-paragraph (c).”;
- (e) in rule C8 (limitation where spouses living apart), in paragraph (7), in both places where it occurs for “gratuity” substitute “defined benefits lump sum death benefit”;
- (f) in rule C9 (effect of remarriage), in paragraph (2), in both places where it occurs for “gratuity” substitute “defined benefits lump sum death benefit”; and
- (g) in rule C10 (pension debit members)—
  - (i) after “C5”, omit “C6”; and
  - (ii) for “Government Actuary” substitute “Scheme Actuary”.

4. In Part D (awards on death—children), for rule D5 (child’s allowance or special gratuity-limitations), substitute—

**“Child’s allowance: limitations and duration**

**D5.**—(1) Subject to paragraphs (2) and (3), a child is not eligible if he or she—

- (a) is 18 or older;
- (b) has ceased full-time education and is in paid employment; or
- (c) is married or has entered into a civil partnership.

(2) A child aged 18 but not more than 23 is eligible if he or she is in full-time education or attending a course of at least one year’s duration.

(3) A child aged 18 or more is eligible if, when the deceased dies, he or she is dependent on the deceased by reason of permanent disablement.

(4) A child is not eligible if he or she is convicted of the murder of the deceased, but this is subject to paragraph (6).

(5) Subject to paragraph (7), where the child is convicted of the manslaughter of the deceased, the authority may as they think fit, withhold the child’s allowance

- (a) in whole or in part, and
- (b) permanently or temporarily.

(6) Where a conviction of the description mentioned in paragraph (4) is quashed on appeal—

- (a) a child’s pension shall be payable from the day after that on which the deceased died, and
- (b) the authority shall, as soon as reasonably practicable after the conviction is quashed, pay the arrears of allowance accrued.

(7) Where—

- (a) a conviction of the description mentioned in paragraph (5) is quashed on appeal, and
- (b) the authority have withheld any part of the child's allowance,

The authority's decision under paragraph (5) shall be treated as revoked and they shall, as soon as reasonably practicable after the conviction is quashed, pay the arrears of allowance accrued from the day after that on which the deceased died.

(8) Nothing in paragraph (6) or (7) shall affect the application of paragraph (4) or (5) if the child whose conviction is quashed is subsequently convicted of the murder or manslaughter of the deceased.

(9) A child's allowance ceases to be payable—

- (a) unless paragraph (2) or (3) applies, on his or her 18th birthday or on the occurrence of the event referred to in paragraph (1)(b) or (c), whichever first occurs;
- (b) where paragraph (2) applies, on his or her 23rd birthday or the day on which his or her full-time education or course ceases, whichever first occurs;
- (c) Where paragraph (3) applies, when the authority are satisfied—
  - (i) that the child is no longer permanently disabled; or
  - (ii) that the child's allowance should not have been awarded.

(10) Unless paragraph (9)(c) applies, an allowance for which a child is eligible as mentioned in paragraph (3) is payable for life.”.

**5. In Part E (awards on death-additional provisions)—**

(a) in rule E1 (lump sum death grant)—

- (i) in paragraph (2), for “gratuity” substitute “lump sum”; and
- (ii) after paragraph (5), add—

“(6) The grant is to be paid before the end of the period of two years beginning with the earlier of the day on which the Scheme administrator knew of the member's death and the day on which the Scheme administrator could first reasonably be expected to have known of it.”;

(b) in rule E3 (dependent relative's gratuity)—

- (i) in paragraph (2)(b), after “Scheme” insert “in respect of the same firefighter”; and
- (ii) in paragraph (3), for—
  - (aa) “gratuity” substitute “defined benefits lump sum”; and
  - (bb) “gratuities” substitute “lump sums”;

(c) in rule E4 (payment of balance of contributions to estate)—

- (i) in paragraph (2)(f), for “Government Actuary” substitute “Scheme Actuary”; and
- (ii) for paragraph (4), substitute—

“(4) The Fire and Rescue Authority shall pay a post retirement death grant to the deceased's personal representatives.

(5) A “post retirement death grant” is an amount representing the difference between the aggregate of the relevant amounts and the deceased's aggregate pension contributions.”;

(d) in rule E5 (lump sum in lieu of surviving spouse's or civil partner's pension)—

- (i) in paragraph (1)—
  - (aa) for “Part 1 of Schedule 29”, substitute “Part 2 of Schedule 29”; and
  - (bb) after “commute”, omit “whole or part of the”;
- (ii) in paragraph (2)(a), for “rule C1” substitute “Part C (awards on death-spouses);
- (iii) in paragraph (5), for “Government Actuary” substitute “Scheme Actuary”; and
- (iv) after paragraph (5), add—

“(6) On the day on which a pension is commuted under this rule, all other entitlements under the Scheme of the person entitled to the pension are extinguished to the extent that they derive from the deceased member.”;

- (e) in rule E6 (lump sum in lieu of child's allowance)—
  - (i) in paragraph (1), after “commute” omit “whole or part of the”; and
  - (ii) after paragraph (4), add—
 

“(5) On the day on which a pension is commuted under this rule, all other entitlements under the Scheme of the person entitled to the pension are extinguished to the extent that they derive from the deceased member.”;
- (f) in rule E7 (limitation on discretion to commute pension or allowance for gratuity)—
  - (i) in paragraph (2), after “commute” omit “whole or part of the”;
  - (ii) in paragraph (2)(b), for “Part 1 of Schedule 29”, substitute “Part 2 of Schedule 29”;
  - and
  - (iii) in paragraph (4), for “Government Actuary” substitute “Scheme Actuary”;
- (g) for rule E8 (increase of pensions and allowances during first 13 weeks), substitute—

**“Bereavement pension: survivors**

**E8.**—(1) Subject to paragraph (2), a person entitled to a pension under rule C1 (spouse's ordinary pension) is also entitled in respect of each of the 13 weeks following death, to a bereavement pension of an amount equal to the difference between the weekly rate at which the survivor's pension is paid and—

- (a) if the deceased was a firefighter member when he or she died, the weekly rate of his or her pensionable pay when he or she died;
- (b) in any other case, the weekly rate of his or her pension or pensions (including any increase under the Pensions (Increase) Act 1971) when he or she died.

(2) No entitlement arises under paragraph (1) where—

- (a) an election not to make pension contributions under rule G3 has effect at the date of the deceased's death or
  - (b) the deceased was entitled to a deferred pension that had not come into payment.”;
- and

- (h) after rule E8, insert—

**“Bereavement pension: children**

**E8A.**—(1) This rule applies to a child's ordinary or accrued allowance under this Scheme where the deceased died—

- (a) while serving as a regular firefighter, or
- (b) while in receipt of a pension and—
  - (i) there is no surviving spouse or civil partner, or
  - (ii) a surviving spouse or civil partner did not become entitled to a pension which was payable for a continuous period of 13 weeks.

(2) Subject to paragraph (3), a person entitled to an allowance is also entitled in respect of each of the 13 weeks following death, to a bereavement pension of an amount equal to the difference between the weekly rate at which the allowance is paid and—

- (a) if the deceased was a firefighter member when he or she died, the weekly rate of his or her pensionable pay when he or she died;
- (b) in any other case, the weekly rate of his or her pension or pensions (including any increase under the Pensions (Increase) Act 1971) when he or she died; and

- (c) where two or more allowances are payable, the amount paid in respect of each bereavement pension shall not be less than the amounts payable under paragraph (2)(a) or (b) divided by the number of allowances.
- (3) No entitlement arises under paragraph (1) where—
  - (a) an election not to make pension contributions under rule G3 has effect at the date of the deceased's death or
  - (b) the deceased was entitled to a deferred pension that had not come into payment.”.

**6. In Part F (pensionable service and transfer values)—**

- (a) in rule F1 (reckoning of and certificates as to pensionable service)—
  - (i) in paragraphs (1), (6) and (7), for “serviceman” substitute “reservist”;
  - (ii) in paragraph (3), omit “F6”; and
  - (iii) in paragraph (6), in both places where it occurs, for “gratuity” substitute “lump sum”;
- (b) after rule F1, insert—

**“Reckoning of service for purposes of awards**

**F1A.**—(1) Subject to paragraph (3), for the purpose of calculating an award payable to or in respect of an employee of a fire and rescue authority by reference to any period in years (including a period of pensionable or other service) the period shall be reckoned as—

$$A + (B \text{ divided by } 365) \text{ years}$$

where—

- A is the number of completed years in the period, and
- B is the number of completed days in any remaining part of a year,

and accordingly a part of a year which includes 29th February in a leap year and comprises 365 days shall be treated as a whole year.

(2) Where, for the purpose of calculating an award payable to or in respect of a regular firefighter—

- (a) it is necessary to determine his or her pensionable service reckonable by reason of service or employment before or after a particular date (“the material date”), and
- (b) by virtue of the receipt by a fire and rescue authority of a transfer value, he or she is entitled to reckon a period of pensionable service (“the credited period”) by reason of service or employment for a period (“the previous employment period”) which includes that date,

the credited period counts as pensionable service reckonable by reason of service or employment before and after the material date in the same proportion as that between the parts of the previous employment period falling before and after the material date.

(3) Subject to rule B13 and Part 6A of Schedule 2, any period of service as a part-time employee of a fire and rescue authority shall be treated as service as a whole-time employee of a fire and rescue authority when calculating a person's pensionable service.”;

- (c) in rule F2 (current service)—
  - (i) in paragraph (1)—
    - (aa) in sub-paragraphs (a) and (b), for “except a period during which pension contributions were not payable under rule G2, and” substitute “except a period during which an election under rule G3 had effect, and”;
    - (bb) in sub-paragraph (c), for “immediately before that date.” substitute “immediately before that date, and”;
  - (cc) after sub-paragraph (c) add—

- “(d) any period of service during which pension contributions are not payable where rule G3A applies.”;
- (ii) in paragraph (4)(a), omit “(including any such additional or further contributions as are mentioned in rule G4)”;
- (d) in rule F4 (previous service reckonable on payment), omit paragraphs (1), (2), (4) and (5);
- (e) omit rule F6 (war service);
- (f) in rule F6A (previous service reckonable following actionable loss)—
- (i) in each paragraph where it occurs, for “reckonable service” substitute “pensionable service”;
- (ii) in paragraph (1)(b), for “section 62 of the Financial Services Act 1986” substitute “section 150 of the Financial Services and Markets Act 2000(a)”;
- (g) in rule F6B (calculation of amount of restitution payment), in paragraphs (2)(b)(i) and (3), for “Government Actuary” substitute “Scheme Actuary”;
- (h) in rule F8 (transfer payments to Scottish and Welsh fire and rescue authorities), in paragraph (1), in both places where it occurs, for “Scottish or Welsh fire and rescue authority” substitute “Scottish or Welsh fire and rescue authority or the Northern Ireland Fire and Rescue Services Board”; and
- (i) in rule F9 (payment of transfer values)—
- (i) in paragraphs (1)(b), for “an approved scheme” substitute “a registered scheme or a qualifying recognised overseas pension scheme within the meaning of section 169 (recognised transfers) of the 2004 Act” (“an overseas pension scheme”); and
- (ii) in paragraph 7(b), for “an approved scheme” substitute “a registered scheme or an overseas pension scheme”.
7. In part G (pensionable pay and contributions)—
- (a) in rule G1 (pensionable pay and average pensionable pay)—
- (i) in paragraph (1)—
- (aa) for “Subject to paragraph (2)” substitute “Subject to paragraphs (2) and (9)”;
- and
- (bb) for sub-paragraph (b) substitute—
- “(b) the amount (if any) of any pensionable benefits paid to him or her under rule B5C(5)”;
- (ii) in paragraph (2)(b), after “payable,” substitute—
- “the person’s pay shall be taken not to include any excess, in any tax year, over the figure which is the permitted maximum for that year; and
- (c) “the permitted maximum” shall be such amount as may be determined by the Secretary of State.”;
- (iii) for paragraph (4), substitute—
- “(4) The relevant date—
- (a) for the purposes of rule C7 (spouses’ or civil partner’s award where no other award payable), and the Compensation Scheme, the date of the person’s last day of service as a regular firefighter, and
- (b) for all other purposes of this Scheme, the date of the person’s last day of service in a period during which contributions were payable under rule G2.”;
- (iv) in paragraph (7C), omit “: continual professional development”; and
- (v) after paragraph (8), add—

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(a) 2000 c.8; section 150 was amended by S.I. 2005/381 and by the Financial Services Act 2010 (c.28), section 24 and Schedule 2.

“(9) Where before 1st April 2012 any allowance or supplement is in payment to a firefighter which a fire and rescue authority treats as pensionable, but is not—

- (a) pensionable pay within the meaning of paragraph (1)(a);
- (b) additional pension benefit under rule B5B (long service increment); or
- (c) a payment in respect of a firefighter’s continual professional development under rule B5C,

that allowance or supplement shall continue to be treated as pensionable for so long as the firefighter receives it without any break in payment.”.

- (b) in rule G2 (pension contributions)—

- (i) for paragraph (1) substitute—

“**G2.**—(1) A regular firefighter shall except—

- (a) while an election under rule G3 has effect; or
- (b) where rule G3A applies,

pay pension contributions to the fire and rescue authority at the rate specified in paragraph (1A).”; and

- (ii) after paragraph (4), insert—

“(4A) The Secretary of State shall consult with the Scheme Actuary before making a notification under paragraph (4).”;

- (c) in rule G2A (optional pension contributions during maternity and adoption leave), after paragraph (2), insert—

“(2A) But in calculating the pay on which the contributions are made, any amount the firefighter receives on account of a day’s work carried out under regulation 12A of the Maternity and Parental Leave etc. Regulations 1991<sup>(a)</sup> or regulation 21A of the Paternity and Adoption Leave Regulations 2002<sup>(b)</sup> that exceeds any maternity, paternity or parental leave pay due for that day, shall be disregarded.”;

- (d) after rule G2A insert—

**“Aggregate pension contributions for the purposes of awards**

**G2B.**—(1) A regular firefighter’s aggregate pension contributions comprise—

- (a) all payments made by him or her to a fire and rescue authority that fall within paragraph (2),
- (b) all payments made by him or her in accordance with a notice under rule F2 (current service),
- (c) all payments made by him or her in accordance with an election under rule G2A,
- (d) all payments made by him or her in accordance with an election under rule G6, and
- (e) if paragraph (3) applies, the amount of the notional award described in paragraph (4).

(2) The payments that fall within this paragraph are payments under this Scheme or a previous Scheme that relates to a period of service which the regular firefighter is, or was immediately before electing under rule G3 not to pay pension contributions, entitled to reckon as pensionable service and have not been refunded to him, including payments made—

- (a) by way of rateable deductions from pay,

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(a) S.I. 1999/3312; regulation 12A was inserted by S.I. 2006/2014.

(b) S.I. 2002/2788; regulation 21A was inserted by S.I. 2006/2014.



(b) by way of such additional and further payments as were mentioned in articles 57 to 59 of the 1973 Scheme, or

(c) in accordance with such an undertaking as is mentioned in Part 1 of Schedule 6.

(3) This paragraph applies where the regular firefighter is, or was immediately before electing under rule G3 not to pay pension contributions, entitled to reckon pensionable service by reason of a period of service or employment otherwise than as a regular firefighter (“the previous employment period”).

(4) The notional award mentioned in paragraph (1)(e) is the award by way of return of contributions or analogous payment that would have been paid to him or her if, at the end of the previous employment period, he or she had voluntarily retired in circumstances entitling him or her to such an award under the applicable superannuation arrangements.”;

(e) in rule G3 (election not to pay pension contributions)—

(i) in paragraph (1), for “Subject to paragraphs (1A) and (8) substitute “Subject to paragraph (1A)”;

(ii) in paragraph (1A), omit “continual professional development”;

(iii) in paragraph (2), for “Subject to paragraphs (3) and (3A), an election” substitute “An election”; and

(iv) omit paragraphs (3) to (8);

(f) after rule G3, insert—

**“Exemption from payment of pension contributions – 30 years pensionable service before age 50**

**G3A.**—(1) This rule applies to a regular firefighter who—

(a) has reckoned 30 years pensionable service; and

(b) is aged 48 or over.

(2) Rule G2 ceases to apply to such a person until such time as he or she reaches the age of 50.”;

(g) omit rule G4 (continued payment of additional and further contributions); and

(h) in rule G6 (election to purchase increased benefits), for paragraph (4) substitute—

“(4) An election to pay periodical contributions must be made at least 2 years before the person’s normal pension age, but no such election may be made if the fire and rescue authority so resolve, unless the person has at their own expense undergone a medical examination and satisfied the authority as to his or her good health.”.

**8. In Part H (determination of questions and appeals)—**

(a) after rule H1 (determination by fire authority) insert—

**“Review of medical opinion**

**H1A.**—(1) Where—

(a) new evidence on an issue wholly or partly of a medical nature is presented to the authority by a person in respect of whom a decision has been made under rule H1,

(b) the authority receive that evidence—

(i) where a copy of an opinion was supplied in accordance with paragraph (2) of rule H1 within 28 days of the receipt by that person of that copy, and

(ii) in any other case, within 28 days of the receipt by that person of notice of the authority’s decision, and

(c) the authority and the person concerned agree that the IQMP should be given the opportunity of reviewing his or her opinion in the light of the new evidence,



the authority shall send a copy of the new evidence to the IQMP and invite him or her to reconsider his or her opinion.

(2) An IQMP's response to an invitation under paragraph (1) shall be in writing.

(3) An IQMP's rule H1A response shall be binding on the authority unless it is superseded by the outcome of an appeal under rule H2.

(4) As soon as reasonably practicable after receiving a rule H1A response, the authority shall reconsider their decision.

(5) Within 14 days of that reconsideration, the authority shall—

- (a) give written notice to the person concerned that they have confirmed their decision or revised their decision (as the case may be), and
- (b) if they have revised their decision, supply the person concerned with written notice of the revised decision, and

supply the person concerned with a copy of the rule H1A response.”;

(b) for rule H2 (appeal to medical referee), substitute—

“**H2.**—(1) A person who wishes to appeal against an authority’s decision on an issue of a medical nature may appeal to a board of medical referees in accordance with paragraph (1) of Part 1 of Schedule 9 (appeal to board of medical referees).

(2) Subject to paragraph (3), where a decision—

- (a) is made with regard to an opinion obtained under rule H1(2) or medical evidence relied on as mentioned in rule H1(3), or
- (b) is reconsidered under rule H1A(4) with regard to a rule H1A response,

the authority shall within 14 days of making, confirming or revising the decision (as the case may be), send to the person concerned the documents mentioned in paragraph (4).

(3) Nothing in paragraph (2) requires the supply of documents that have already been supplied under rule H1A(5).

(4) The documents are—

- (a) a copy of the opinion, response or evidence (as the case may be);
- (b) an explanation of the procedure for appeals under this rule, and
- (c) a statement that, if the person wishes to appeal against an authority’s decision on an issues of a medical nature, the person must give written notice to the authority, stating his or her name and address and the grounds of his or her appeal, not later than 28 days after the person receives the last of the documents required to be supplied to him or her under this paragraph, or within such longer period as the authority may allow.

(5) A fire and rescue authority shall be bound by any decision duly given on an appeal under this rule.

(6) Further provisions as to appeals under this rule are contained in Part 1 of Schedule 9.” ; and

(c) for rule H3 (appeal to Crown Court or Sheriff), substitute—

“**Appeals on other issues**

**H3.** Where —

- (a) a person disagrees with an authority’s determination under rule H1, and
- (b) the person’s disagreement does not involve an issue of a medical nature,

he or she may, by written notice given to the authority within 28 days of receipt of the determination, require the authority to deal with the disagreement by means of the arrangements implemented by them pursuant to the requirements of section 50 of the

Pensions Act 1995<sup>(a)</sup> (requirement for dispute resolution arrangements) and the Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008<sup>(b)</sup>.”.

**9. In Part I (servicemen)—**

- (a) in this Part, in each place where it occurs, for “serviceman” or “servicemen” substitute “reservist” or “reservists” as the case may be;
- (b) in rule I1 (preliminary), in paragraph 1, for “the armed forces” substitute “the reserve forces”;
- (c) for rule I2 (awards to servicemen), substitute—

**“Awards on permanent disablement**

**I2.** A reservist who, at the end of his or her forces period, is permanently disabled for performing the duties of a firefighter by reason of an infirmity that—

- (a) is unrelated to any injury received during his or her forces period; and
- (b) is not a qualifying injury,

is entitled to an award under rule B3 (ill health awards).”;

- (d) in rule I3 (awards on death of servicemen), omit paragraph (3);
- (e) in rule I5 (servicemen who do not resume service in their former brigade), omit paragraph (3); and
- (f) in rule I7 (pension contributions), for paragraph (2) substitute—
 

“(2) A reservist shall for those purposes be treated as having received no pensionable pay (and accordingly is not liable to pay contributions) in respect of any period during which his or her service pay is less than the pensionable pay described in paragraph (1)”;
- (g) after rule I7, add—

**“Interpretation of Part**

**I8. In this Part—**

“the 1996 Act” means the Reserve Forces Act 1996<sup>(c)</sup>;

“qualifying injury” means an injury, received by a person in the performance of his or her duties as a firefighter, which is not wholly or mainly due to his or her own culpable negligence or misconduct;

“relevant service in the reserve forces” means service in the forces specified in section 1(2) of the 1996 Act—

- (a) in pursuance of a training obligation under Part 3 of that Act, or
- (b) by virtue of a call out for permanent service or a recall under Part 2 of the Reserve Forces Act 1980<sup>(d)</sup> or Part 7 of the 1996 Act; and

“reservist” means a person who, immediately before a forces period, was a firefighter.”.

**10. In Part IA (pension credit members)—**

- (a) in rule IA1 (pension credit member’s entitlement to pension), in paragraph (1), for “Government Actuary” substitute “Scheme Actuary”;
- (b) in rule IA2 (commutation of the pension credit benefits)—

(a) 1995 c.26; section 50 was substituted by section 273 of the Pensions Act 2004 (c.35) and amended by the Pensions Act 2007 (c.22).

(b) S.I. 2008/649.

(c) 1996 c.14.

(d) 1980 c.9; prospectively repealed by the 1996 Act as from a date to be appointed.

- (i) in paragraph (4), for “Government Actuary” substitute “Scheme Actuary”;
- (ii) for paragraph (7), substitute—

“(7) Notice of commutation takes effect on the day on which the pension under rule IA1 becomes payable and no later than 3 months after the date on which the person becomes entitled.”;

- (iii) for paragraph (8), substitute—

“(8) When a person’s notice of commutation takes effect, the relevant fire and rescue authority shall reduce the pension, as from the effective date, by the commuted portion”;

- (c) in rule IA3 (death grants where pension credit member dies before pension credit benefits payable), for “Government Actuary” substitute “Scheme Actuary”.

**11.** In Part J (special cases), in rule J1 (guaranteed minimum pensions), for paragraph (2)(d) substitute—

“(d) in the case of a person who dies at any time after 4th December 2005 and leaves a civil partner, the civil partner is entitled to a pension at a weekly rate equal to half of that part of the deceased’s guaranteed minimum which is attributable to earnings factors for the tax year 1988-89 and subsequent tax years up to and including the tax year 1996-97.”.

**12.** In Part K (revision and withdrawal of awards)—

- (a) in rule K1 (review of ill-health and certain deferred pensions), in paragraph (3)(a) for “rule B5” substitute “rule B5(4)(b)”;

- (b) in rule K1A (consequences of review), after paragraph (4) add—

“(5) If, on such consideration as is mentioned in rule K1(3), it is found that a person whose deferred pension is being paid early has become capable of undertaking regular employment, his entitlement to early payment of the deferred pension shall cease with immediate effect.”;

- (c) for rule K4 (withdrawal of pension during service as a regular firefighter) substitute—

**“Withdrawal of pension whilst employed by a fire and rescue authority**

**K4.** The fire and rescue authority by whom a pension is payable may, in their discretion, withdraw the whole or any part of the pension, except a pension under Part C (awards on death—spouses and civil partners), for any period during which the person entitled to it is again employed by any authority in whatever capacity.”; and

- (d) after rule K5 (withdrawal of pension on conviction of certain offences), add—

**“Forfeiture of award**

**K6.** A person who has been convicted of an offence under subsection (6) of section 34 of the Fire and Rescue Services Act 2004(a) (acts or omissions for purposes of obtaining awards or other sums), forfeits the whole or part of an award or sum obtained by the person under this Scheme, as the authority think fit.”.

**13.** In Part L (payment of awards and financial provisions)—

- (a) in rule L3 (payment of awards)—

- (i) in paragraph (1)(b), omit “in advance”; and

- (ii) in paragraphs (7) and (8), in each place where it occurs, for “gratuity” substitute “lump sum”; and

- (b) in rule L4 (prevention of duplication)—

- (i) in paragraph (1), for “or the Compensation Scheme” substitute “and the Compensation Scheme”; and
- (ii) in paragraph (3), omit “and rule L4B”.

**14. In Part LA (Firefighters' Pension Fund)—**

- (a) in rule LA2 (special payments and transfers into Firefighters' Pension Fund)—
  - (i) in paragraph (1), for “paragraphs (2) to (8)” substitute “paragraphs (2) to (10)”;
  - (ii) in paragraph (4)—
    - (aa) in sub-paragraph (b) for “ill-health award,” substitute “ill-health award; or”; and
    - (bb) after sub-paragraph (b), insert—
      - “(c) with an entitlement to payment of a deferred pension under rule B5(4)(b),”.
    - (iii) in paragraph (6)—
      - (aa) in sub-paragraph (a), omit “or”;
      - (bb) in sub-paragraph (b), for “comes into force.” substitute “comes into force; or”; and
      - (cc) after sub-paragraph (b), add—
        - “(c) on the date on which a deferred pension under rule B5(4)(b) comes into payment.”;
        - and
      - (iv) after paragraph (8), add—
        - “(9) Where an authority exercises its discretion not to withdraw the payment in whole or in part of any pension under rule K4 (withdrawal of pension whilst employed by a fire and rescue authority), the authority shall in the financial year in which payment is not withdrawn, transfer into the FPF an amount equal to the amount of pension paid during that financial year to that person.
        - (10) Where an authority pays an increased lump sum under rule B7(5A) (commutation—general provision), in respect of a firefighter, the authority shall in the financial year in which payment is made transfer into the FPF an amount equal to the difference between the actual commuted portion of the pension and the commuted lump sum of two and a quarter times the full amount of the pension paid during that financial year to that firefighter.”; and
  - (b) in rule LA3 (transfer from firefighters' pension fund), for paragraph (5)(a) substitute—
    - “(a) a higher tier ill-health pension or a lower tier ill-health pension, or a deferred pension under rule B5(4)(b) is wholly and permanently withdrawn under rule K5 (withdrawal of pension on conviction of certain offences); and”.

**15. In Schedule 1 (interpretation), in Part 1 (glossary of expressions)—**

- (a) after the expression “The 1999 Act”, insert—
 

““The 2004 Act”	The Finance Act 2004(a).”;
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- (b) in the meaning of the expression “Aggregate pension contributions”, for “rule A8” substitute “rule G2B (aggregate pension contributions for the purposes of awards)”;
- (c) omit the expression “Approved scheme”;
- (d) for the meaning of the expression “Brigade”, substitute “A fire brigade established under the Fire Services Act 1947.”;
- (e) for the meaning of the expressions “Cash equivalent”, “part cash equivalent”, substitute “The first expression means a cash equivalent mentioned in section 94(1)(a) of the 1993 Act; the second expression means a variation of rights mentioned in section 98(1) of the 1993 Act.”;

- (f) for the meaning of the expression “Club scheme”, substitute “A scheme providing reciprocal arrangements for the payment and receipt of transfer values between the Scheme and other occupational pension schemes”;
- (g) after the expression “Compensation Scheme”, insert—
- |  |  |
|--|--|
| ““Defined benefits lump sum death benefit” | Construe in accordance with section 168 and paragraph 13 of Part 2 of Schedule 29 to the 2004 Act.”; |
|--|--|
- 
- (h) after the expression “Injury”, insert—
- |                              |   |
|------------------------------|---|
| ““Linked qualifying service” | Construe in accordance with section 179 of the 1993 Act(a).”; |
|------------------------------|---|
- 
- (i) after the expression “Pension”, insert—
- |                                  |   |
|----------------------------------|---|
| ““Pension commencement lump sum” | Construe in accordance with section 166 and paragraph 1 of Part 1 of Schedule 29 to the 2004 Act.”; |
|----------------------------------|---|
- 
- (j) after the expression “Principal Act”, insert—
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|----------------------|--|
| ““Registered scheme” | Construe in accordance with Part 1 of Schedule 36 to the 2004 Act.”; |
|----------------------|--|
- 
- (k) omit the expression “Relevant service in the armed forces”;
- (l) after the expression “Retire”, insert—
- |              |                                 |
|--------------|---------------------------------|
| ““Reservist” | The meaning given in rule I8.”; |
|--------------|---------------------------------|
- 
- (m) after the expression “Reservist”, insert—
- |                   |  |
|-------------------|--|
| ““Scheme Actuary” | The actuary appointed by the Secretary of State to provide a consulting service on actuarial matters relevant to the Scheme.”; |
|-------------------|--|
- 
- (n) after the expression “Service pension”, insert—
- |                                  |   |
|----------------------------------|---|
| ““Short service refund lump sum” | Construe in accordance with section 166 and paragraph 5 of Part 1 of Schedule 29 to the 2004 Act.”; |
|----------------------------------|---|
- 
- (o) after the expression “Tax year”, insert—
- |                                 |   |
|---------------------------------|---|
| ““Trivial commutation lump sum” | Construe in accordance with section 166 and paragraph 7 of Part 1 of Schedule 29 to the 2004 Act.”; and |
|---------------------------------|---|
- 
- (p) omit the expression “War service”.

**16.** In Schedule 2 (personal awards), in Part 6A (calculation of awards for part-time service), in paragraph (2)(1), for the meaning of A substitute—

“A is the amount of that award calculated under the relevant Part that the person would have received had he or she been a whole time employee of a fire and rescue authority”.

**17.** In Schedule 3 (awards on death-spouses)—

- (a) in Part 1 (spouse’s ordinary pension), in paragraph 1(2)(a), in both places where it occurs, for “pension” substitute “award”; and
- (b) in Part 3 (spouse’s accrued pension), omit paragraph 1(1)(f) and (2)(e).

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(a) Section 179 was amended by the Pensions Act 2004 (c.35).

**18.** In Schedule 4 (awards on death-children)—

- (a) in Part 1 (child's ordinary allowance), in paragraph 1(1)(4)(a), for "higher tier health pension" substitute "higher tier health award"; and
- (b) omit Part 4 (reduction in child's allowance during full-time remunerated training).

**19.** In Schedule 5 (awards on death-additional provisions), in Part 3 (gratuity in lieu of child's allowance), in paragraph 2, for "Government Actuary" substitute "Scheme Actuary".

**20.** In Schedule 6 (pensionable service and transfer values), in Part 2 (service reckonable on receipt of transfer value), in Part 3 (transfer payments between fire authorities) and in Part 4 (amount of transfer value), in each place where it occurs, for "Government Actuary" substitute "Scheme Actuary".

**21.** Omit Schedule 7 (war service).**22.—(1)** In Schedule 8 (purchase of increased benefits), in Part 1 (payments)—

- (a) in paragraph 1(1), for "normal pension age" substitute "role";
- (b) in paragraph 1(2)(b), for "represents; and" substitute "represents.";
- (c) omit paragraph 1(2)(c);
- (d) in paragraph 3(1), for "normal pension age" substitute "role";
- (e) in paragraph 3(2)(b), for "disentitlement; and" substitute "disentitlement.";
- (f) omit paragraph 3(2)(c); and
- (g) in paragraphs 2 and 4, for "Government Actuary" substitute "Scheme Actuary".

(2) In Part 2 (calculation of appropriate amount), in paragraph 3, for "Government Actuary" substitute "Scheme Actuary".

**23.—(1)** In Schedule 9 (appeals), in Part 1 (appeal to board of medical referees)—

- (a) for paragraph 1(1) substitute—

"**1.—(1)** Subject to sub-paragraph (2), written notice of appeal against a decision on an issue of a medical nature stating—

- (a) the appellant's name and address, and
- (b) the grounds of the appeal,

must be given to the authority within 28 days of the date on which the appellant receives the documents referred to in rule H2(4); and where the appellant receives those documents on different dates, they shall be treated for this purpose as received on the later or latest of those dates.";

- (b) for paragraph 2 substitute—

"**2.—(1)** On receiving a notice of appeal, the authority shall supply the Secretary of State with three copies of—

- (a) the notice of appeal,
- (b) the notice of the relevant decision,
- (c) the opinion, response or evidence (as the case may be) supplied to the appellant, and
- (d) every other document in their possession or under their control which appears to them to be relevant to the issue that is the subject of the appeal.

(2) The Secretary of State shall refer an appeal to a board of medical referees ("the board").";

- (c) after paragraph 2A insert—

**“2B.—**(1) As soon as reasonably practicable after referring an appeal to the board, the Secretary of State shall supply the board's administrator with three copies of every document supplied under paragraph 2(1).

(2) The board shall arrange for one of their number to review those documents (“the reviewing member”).

(3) As soon as reasonably practicable after concluding the review, the reviewing member shall give written notice to the Secretary of State—

- (a) of any other information which the reviewing member considers would be desirable for the purpose of enabling the board to determine the appeal, and
- (b) if it be the case, that it is his opinion that the board may regard the appeal as frivolous, vexatious or manifestly ill-founded.

(4) On receipt of the reviewing member's notice the Secretary of State shall—

- (a) where the reviewing member has notified the Secretary of State of the desirability of obtaining other information, require the authority to use their best endeavours to obtain that information, and
- (b) where the notice contains an opinion of the description mentioned in sub-paragraph (3)(b), send a copy of it to the authority.

(5) An authority which receives a copy of a reviewing member's opinion shall, as soon as reasonably practicable—

- (a) send a copy of it to the appellant, and
- (b) by written notice to the appellant—
  - (i) advise him that, if his appeal is unsuccessful, he may be required to pay the authority's costs, and
  - (ii) require him to notify them, within 14 days of the date of their notice, whether he intends to pursue or withdraw the appeal.

(6) An authority which notifies an appellant under sub-paragraph (5)(b) shall inform the Secretary of State of the appellant's response to their request under sub-paragraph (b)(ii); and the Secretary of State shall notify the board accordingly.”;

- (d) in paragraph 3, for “The board shall secure”, substitute “Where an appeal is to be pursued, the board shall secure”;
- (e) in paragraph 4, in sub-paragraph (2)(b) for “not less than 21 days’ notice of”, substitute “not less than two months’ notice of”;
- (f) after paragraph 6, insert—

**“6A.—**(1) Where the appellant and the fire and rescue authority have received a copy of the report supplied under paragraph 6 and—

- (a) the appellant and the authority (“the parties”) agree that the board has made an error of fact which materially affects the board’s decision;
- (b) the authority shall within 28 days of receipt of the report, supply the Secretary of State with two copies of a statement agreed between the parties setting out—
  - (i) the error of fact;
  - (ii) the correct fact, and
 invite the board to reconsider its decision.

(2) The Secretary of State shall within 14 days of receipt of the statement supply a copy of it to the board.

(3) As soon as reasonably practicable after receiving the statement, the board shall reconsider its decision.

(4) Within 14 days of that reconsideration the board shall—



- (a) give written notice to the Secretary of State that it has confirmed its decision, or revised its decision (as the case may be), and
- (b) if it has revised its decision, supply the Secretary of State with a written report of its revised decision.

(5) The Secretary of State shall supply to the appellant and the authority a copy of the written notice confirming the board's decision, or a copy of the written report of the board's revised decision (as the case may be).";

(g) in paragraph 8—

(i) for sub-paragraph (2) substitute—

“(2) Where the board—

- (a) decides in favour of the fire and rescue authority, and
- (b) reports that in its opinion the appeal was frivolous, vexatious or manifestly ill-founded,

the fire and rescue authority may require the appellant to pay them such sum, not exceeding the total amount of the fees and allowances payable to the board under paragraph 7(1), as the authority think fit.”; and

(ii) for sub-paragraph (2A) substitute—

“(2A) Where—

(a) the appellant gives notice to the board —

- (i) withdrawing the appeal;
- (ii) requesting cancellation of, postponement of, or adjournment of the date appointed for an interview or medical examination under paragraph 4(2), and

the notice is given less than 22 working days before the date appointed under paragraph 4(2); or

- (b) the appellant's acts or omissions cause the board to cancel, postpone or otherwise adjourn the date appointed under paragraph 4(2) less than 22 working days before the date so appointed,

the authority may require the appellant to pay them such sum, not exceeding the total amount of the fees and allowances payable to the board under paragraph 7(1), as the authority think fit.”; and

(2) Omit Part 2 (appeal tribunals).

**24.—**(1) In Schedule 11 (special cases)—

- (a) omit Part 3 (calculation of pensionable service where person ceased to serve before 1st May 1975); and
- (b) omit Part 4 (modification for persons serving on 10th July 1956).

(2) In Part 5 (application to persons affected by local government reorganisation or combination scheme)—

(a) in paragraph 2(2)—

- (i) in sub-paragraph (a), for “the first brigade, and” substitute “the first brigade.”; and
- (ii) omit sub-paragraph (b).

(b) in each place where it occurs, for “brigade” substitute “fire and rescue authority”;

(c) in each place where it occurs, for “rank” substitute “role”.

#### **EXPLANATORY NOTE**

*(This note is not part of the Order)*



## Annex B: Finance Act 2004: Amendments in terminology to the Firefighters' Pension Scheme (1992)

Amendments to the Firefighters' Pension Scheme required to ensure regulations are in accordance with the Finance Act. (Tax simplification)		
1992 scheme rule	Rule title	Amending paragraph in draft Order
B2	Short service award.	2(b)
B8	Commutation – small pensions	2(k)
C6	Spouse's or civil partner's requisite benefit and temporary pension	3(c)
C7	Award to spouse or civil partner where no other award payable	3(d)
C8	Limitation where spouses living apart	3(e)
C9	Effect of remarriage	3(f)
D5	Child's allowance or special gratuity-limitations	4
E1	Lump sum death grant	5(a)
E3	Dependent relative's gratuity	5(b)
E4	Payment of balance of contributions to estate	5(c)
E5	Lump sum in lieu of surviving spouse's or civil partner's pension	5(d)
E6	Lump sum in lieu of child's allowance	5(e)
E7	Limitation on discretion to commute pension or allowance for gratuity	5(f)
E8	Increase of pensions and allowances during first 13 weeks	5(g)
F1	Reckoning of and certificates as to pensionable service	6(a)
F9	Payment of transfer values	6(i)
IA2	Commutation of the pension credit benefits	10(b)
L3	Payment of awards	13(a)

## Annex C: General tidying amendments to the Firefighters' Pension Scheme (1992)

General tidying amendments to the Firefighters' Pension Scheme			
1992 Rule	Paragraph in Order	Rule Title	Reason for amendment
A3	1(a)	Exclusive application to regular firefighters	As the Scheme was closed on 5 April 2006 A3 should now refer to the fact that it applies only in relation to regular firefighters employed on or before that date References to legislation require updating.
A4	1(b)	Application to temporary employment connected with fire services	Rule deleted. Provision is no longer required as instructors or trainers would be employed on secondment.
A5	1(b)	Application to permanent employment as instructor	Rule deleted. No longer relevant (see A3 and 4 above).
A6	1(b)	No application to auxiliary firefighters	Rule deleted. The Auxiliary Fire Service was part of the UK's Civil Defence capacity and no longer exists.
A7	1(b)	Reckoning of service for purposes of awards	The provision sets out how to determine the length of a period of service when calculating benefits. As such, it would be more appropriately placed in the Part F of the scheme (Pensionable service and transfer values).
A8	1(b)	Aggregate pension contributions for purposes of awards	The provision explains how aggregate pension contributions should be interpreted when an award is calculated and as such would be more appropriately placed in Part G of the scheme (Pensionable pay and contributions).

<b>General tidying amendments to the Firefighters' Pension Scheme (continued)</b>			
<b>1992 Rule</b>	<b>Paragraph in Order</b>	<b>Rule Title</b>	<b>Reason for amendment</b>
A12	1(b)	Relevant service in the armed forces	Rule deleted. National Service has been abolished. Some provision required for service as a reservist but this is covered elsewhere in the scheme.
A14	1(b)	Compulsory retirement on grounds of efficiency	Rule deleted. A pension would be payable regardless of the reason for retirement. Reason for leaving is an employment issue.
A15	1(b)	Compulsory retirement on grounds of disablement	Rule deleted. An ill health pension would be payable if the permanent disablement criteria under the ill-health rule are met.
B1	2(a)	Ordinary pension	The rule currently includes a requirement for a chief fire officer to have permission of fire and rescue authority to retire before age 55. This is a matter for the contract of employment and not appropriate to a pension scheme and the rule should cease to apply for new appointments.
B3	2(c)	Ill-health awards	A higher tier ill-health award is only payable where the firefighter has not less than five years' service. This need to be more explicit in the rule Amendment also required to set out the options for a firefighter who is not entitled to a pension.
B5	2(d)	Deferred pension	Amendment required to clarify that a deferred pension would an alternative option to s short service award. Other amendments required to terminology to ensure alignment with primary pensions legislation.
B5A	2(e)	Entitlement to two pensions	To clarify how service enhancements for ill-health and deferred are apportioned between the two pensions payable under this rule.

<b>General tidying amendments to the Firefighters' Pension Scheme (continued)</b>			
<b>1992 Rule</b>	<b>Paragraph in Order</b>	<b>Rule Title</b>	<b>Reason for amendment</b>
B5B	2(f)	Additional pension benefit: long service increment	To clarify that the pensionable service counted for calculation of the benefit should be actual service with the Fire and Rescue Service.
B5D	2(h)	Additional pension benefits: supplementary provisions	To remove reference to A15, to reflect the removal of A15 by this Order.
B6	2(i)	Repayment of aggregate pension contributions	Rule deleted. Replaced by other benefit options.
B9	2(l)	Allocation	To substitute "date on which he intends to retire" with "day before the pension becomes payable" otherwise a person who leaves with a deferred pension would be required to give notice before he leaves rather than before he becomes eligible to receive the pension. Other amendments required to terminology to ensure alignment with primary legislation.
B12	2(m)	Pension debit members	Amendment required to terminology to ensure alignment with primary legislation.
C1	3(a)	Spouse's ordinary pension	To remove unnecessary reference to pre 1973 cases.
C4	3(b)	Spouse's accrued pension	To remove a redundant provision contained within the rule.
C10	3(g)	Pension debit members	Remove redundant references to associated rules.
E8A	5(h)	Bereavement pension: children	Addition of new rule following changes to rule E8 (increase of pensions and allowances during the first 13 weeks). E8 terminology amended in line with the Finance Act 2004 to ensure that awards are treated correctly for tax purposes.

<b>General tidying amendments to the Firefighters' Pension Scheme (continued)</b>			
<b>1992 Rule</b>	<b>Paragraph in Order</b>	<b>Rule Title</b>	<b>Reason for amendment</b>
F1A	6(b)	Reckoning of service for purposes of awards	Re-location of former rule A7.
F2	6(c)	Current service	To reflect the addition of rule G3A.
F4	6(d)	Previous service reckonable on payment	Removal of redundant provisions following scheme closure in 2006.
F6	6(e)	War service	Rule deleted. No longer required.
F6A	6(f)	Previous service reckonable following actionable loss	To change terminology and update to reflect the fact that s.62 of the Financial Services Act 1986 has been replaced by s. 150 of the Financial Services and Markets Act 2000.
F6B	6(g)	Calculation of amount of restitution payment	To generally update terminology.
F8	6(h)	Transfer payments to Scottish and Welsh fire and rescue authorities	The Scheme makes provision for transfer value payments to be made between fire and rescue authorities where a firefighter transfers from an English fire and rescue authority to either a Welsh or Scottish fire and rescue authority. The Northern Ireland fire and rescue authority should be included in the rule.
G2	7(b)	Pension contributions	To reflect the addition of rule G3A.
G2A	7(c)	Optional pension contributions during maternity and adoption leave	To add a disregard of pay received for keeping in touch (KIT) days when assessing the optional contributions necessary for the period to count as pensionable service.
G2B	7(d)	Aggregate pension contributions for the purposes of awards	Re-location of former rule A8.

<b>General tidying amendments to the Firefighters' Pension Scheme (continued)</b>			
<b>1992 Rule</b>	<b>Paragraph in Order</b>	<b>Rule Title</b>	<b>Reason for amendment</b>
G3	7(e)	Election not to pay contributions	General tidying amendments to reflect the fact that the Firefighters' Pension Scheme is now closed to new joiners.
G4	7(g)	Continued payment of additional and further contributions	Rule deleted. No longer required.
G6	7(h)	Election to purchase increased benefits	To reflect the removal of rule A14.
H2	8(b)	Appeal to medical referee	To reflect the addition of rule H1A
Part I	9 (a), 9(b)	Servicemen	Amending references to "Servicemen" to "Reservists" throughout.
I2	9(c)	Awards on permanent disablement	To clarify the benefits available to reservists.
I3	9(d)	Awards on death of servicemen	To remove redundant provisions.
I5	9(e)	Servicemen who do not resume service in their former brigade	To remove redundant provisions.
I7	9(f)	Pension contributions	To generally update terminology.
I8	9(g)	Interpretation of Part I	To reflect the change from "servicemen" to provisions for "reservists" and update references to relevant Armed Forces Act.
IA1	10(a)	Pension credit member's entitlement to pension	To generally update terminology.

<b>General tidying amendments to the Firefighters' Pension Scheme (continued)</b>			
<b>1992 Rule</b>	<b>Paragraph in Order</b>	<b>Rule Title</b>	<b>Reason for amendment</b>
IA3	10(c)	Death grants where pension credit member dies before pension credit benefits payable	To generally update terminology.
J1	11	Guaranteed minimum pensions	The pension for a civil partner should duplicate that for a widower.
K1	12(a)	Review of ill-health and certain deferred pensions	Correction of reference to a scheme rule.
K1A	12(b)	Consequences of review	To add reference to the consequences of the review of a deferred pension (paid in circumstances where a person had previously been awarded early payment of a deferred award due to permanent disablement).
K4	12(c)	Withdrawal of pension during service as regular firefighter	Provision should follow Treasury guidance on abatement.
K6	12(d)	Forfeiture of award	New rule to provide for forfeiture where a person has been convicted of an offence under sub-section (6) of section 34 of the Fire and Rescue Services Act.
L4	13(b)	Prevention of duplication	Provision should refer to "two or more pensions or allowances under this scheme and the Compensation Scheme".

<b>General tidying amendments to the Firefighters' Pension Scheme (continued)</b>			
<b>1992 Rule</b>	<b>Paragraph in Order</b>	<b>Rule Title</b>	<b>Reason for amendment</b>
LA2	14(a)	Special payments and transfers into Firefighters' Pension Fund	To provide for additional payments into the pension fund by a fire and rescue authority in circumstances where i) a deferred pension is paid early on grounds of permanent disablement ii) a fire and rescue authority decides not to exercise its discretion to abate a pension under rule K4 iii) a fire and rescue authority decides to pay an unlimited commuted lump sum under revisions to rule B7.
LA3	14(b)	Transfer from Firefighters' Pension Fund	To include mention of a deferred pension paid early on grounds of permanent disablement.
Schedule 1	15 (all parts)	Part 1 Glossary of expressions	General updating in line with scheme amendments.
Schedule 2	16	Personal awards	General updating in line with scheme amendments.
Schedule 3	17 (all parts)	Awards on death – spouses	To make clear that the spouse's pension would be based on a higher tier award which is the aggregate of the lower and the higher tier ill-health pensions.
Schedule 4	18 (all parts)	Awards on death – children	To make clear that the child's pension would be based on a higher tier award which is the aggregate of the lower and the higher tier ill-health pensions.
Schedule 5	19	Awards on death – additional provisions	To generally update terminology.
Schedule 6	20	Pensionable service and transfer values	To generally update terminology.
Schedule 7	21	War service	Schedule no longer required.
Schedule 8	22 (all parts)	Purchase of increased benefits	To correct minor typographic errors and generally update terminology.



<b>General tidying amendments to the Firefighters' Pension Scheme (<i>continued</i>)</b>			
<b>1992 Rule</b>	<b>Paragraph in Order</b>	<b>Rule Title</b>	<b>Reason for amendment</b>
Schedule 9	23 (all parts)	Appeals	Paragraph 23 makes necessary technical changes to the medical appeals process resulting from the addition of rule H1A. Paragraph 23(f) gives effect to the changes to the medical appeals process as outlined in this consultation document by adding the new rule 6A.
Schedule 11	24 (all parts)	Special cases	To remove outdated provisions and generally update terminology.

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