



NOTTINGHAMSHIRE
Fire & Rescue Service
Creating Safer Communities

Nottinghamshire and City of Nottingham
Fire and Rescue Authority

FIREFIGHTERS PENSION SCHEMES CHANGES TO EMPLOYERS DISCRETIONS

Report of the Chief Fire Officer

Agenda Item No:

Date: 27 September 2013

Purpose of Report:

To inform Members of the implementation of two Pension Amendment Orders relating to the Firefighters Pension Scheme 1992 and the New Firefighters Pension Scheme 2006. It focuses on the implications relating to changes to discretions under these fire fighters pension schemes and recommends to the Authority what discretions should be applied.

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1. BACKGROUND

- 1.1 There are currently two pension schemes in place for fire fighters, the 1992 scheme (FPS) and the 2006 scheme (NFPS). In 2011 The Department for Communities and Local Government (DCLG) ran a 12 week consultation period running from 3 August – 26 October on proposed changes to both schemes both of which had a potential impact in relation to employer's discretions amongst other changes. The Fire Authority submitted a response to this consultation which was approved at its meeting on 16 September 2011.
- 1.2 The Government published its responses to this consultation in June 2013 (which is attached to this report at Appendix A) and as a consequence on 5 June drafted two Statutory Instruments, Number 1392 and 1393. These Statutory Instruments were laid before Parliament on 7 June 2013 and came into force on 1 July 2013. This paper sets out what some of the changes are relating to FIRE AUTHORITY discretions and seeks the approval of the Fire Authority to an approach to dealing with these discretions. None of these discretions are connected with the issues which are the subject of the dispute with the Fire Brigades Union nationally.

2. REPORT

- 2.1 In summary the two amendment orders make the following amendments.

The Firefighters Pension Scheme (Amendment) (No.2) (England) Order 2013 (No.1392) makes the following amendments to the 1992 scheme:

- Removes rule A14 which provides the means to compulsory retire a member on the grounds of efficiency.
- Provides for additional pension benefits to be uprated in accordance with the Pensions (increase) Act 1971
- Provides discretion for employers to uplift commutation limit
- Amends the definition of pensionable pay to ensure that temporary allowances are not treated as pensionable pay and to introduce new discretionary additional pension benefit arrangements for temporary allowances and emoluments
- Provides a means whereby Independent Qualified Medical Practitioners and the Board of Medical referees can review previous decisions
- Makes provision for appeals on non-medical issues to be dealt with by means of arrangements implemented by them pursuant to the requirements of section 50 of the Pensions Act 1995
- Increases the scope of the FRA discretion to abate a retired members pension on re-employment and to require the employer to reimburse the pension fund in the instance where they do not issue the discretion in full
- Updates the schemes terminology to be consistent with current tax legislation
- Updates the statutory references within the scheme.

The Firefighters Pension Scheme (England) (Amendment) (No.2) Order 2013 (No.1393) makes the following amendments to the 2006 scheme:

- Provides for additional pension benefits to be updated in accordance with the Pensions (Increase) Act 1971
- Introduces new discretionary additional pension benefit arrangements for temporary allowances and emoluments
- Requires the employer to reimburse the pension fund in the instance where they do not exercise the discretion to abate a members pension on re-employment
- Enables employers to fully comply with the “auto-enrolment” requirements as set out in the Pensions Act 2008 and the Occupational Pension Scheme (Automatic Enrolment) regulations 2010.

2.2 The specific discretions that Members are asked to consider arise in three areas which affect both schemes. Those that relate to:

- Commutation – discretion to permit the maximum payment.
- Pensionable pay – changes to the definition.
- Abatement – withdrawal of pension whilst employed by a Fire and Rescue Authority.

2.3 It is proposed that all of the other implications that may require policy amendments or updates are taken to Human Resources Committee in papers which will lay out any specific implications. Detail relating to those areas where member discretion is required as detailed in Paragraph 2.2 above are detailed below.

COMMUTATION – DISCRETION TO PERMIT THE MAXIMUM PAYMENT

2.4 Where a uniformed employee leaves the Service with less than 30 years’ service and is under the age of 55 but still entitled to a pension (they must be over the age of 50 and have completed at least 25 years’ service) their commutation lump sum under the present rules is limited to 2.25 times the value of their annual pension.

2.5 In circumstances of “normal” retirement the lump sum is based on a commuted amount of £22 for every pound of pension foregone up to a maximum of 25% of the total value of their pension fund. This is considerably higher than 2.25 times the value of the annual pension.

2.6 The new rules allow the employer to use discretion to enable staff to take up to 25% of their total pension fund value in all cases. However the difference between the amount that would have been taken under the 2.25 time pension option and the 25% of fund value option must be paid into the pension account by the employer.

- 2.7 If the following figures are used as a broad estimate it can be seen that these costs could be substantial:

Actual Service 26yrs

Pension based on 32 years

Annual Salary £30,000

Annual Pension before commutation $30 \times 32/60 = £16,000$ Old calculation of 2.25 of annual pension for lump sum = £36,000

The new proposal allows for the figure of 22.4 to be applied. In this instance the result is as follows;

New amount available for commutation $16,000 \times 25\% \times 22.4 = £89,600$.

Therefore the amount to be paid to the pensions account if the discretion is exercised in this instance would be £53,600

- 2.8 The reason for this amendment is so as to allow Fire Authorities the flexibility to offer an incentive for staff to depart early who otherwise might not be considering the option. This has been raised as a required flexibility by the LGA, and as Rule A14 is being removed does give Fire Authorities wider discretionary powers similar to those within the local government pension scheme.
- 2.9 In respect of this issue, to date the Fire Authority has managed its workforce numbers effectively and it is not recommended that a definitive decision is made at this time. Despite the fact that there are very few cases which would meet the criteria under which this discretion would apply it is proposed that the Authority should maintain the existing arrangements but reconsider the discretion should there be a requirement to reduce staffing levels at a more expedient rate.

PENSIONABLE PAY

- 2.10 There has been some uncertainty around pensionable pay for some time and current regulations within the 1992 scheme are a little unclear. Government have always been uneasy about temporary increases in pay for temporary promotions or other duties being applied to individuals at the end of their service and thereby increasing their pension entitlements as the FPS is a final salary scheme. This will no longer be possible for any employee not on a temporary uplift before 1 July 2013.
- 2.11 The order introduces new powers for employers to make certain temporary allowances, which satisfy the prescribed requirements, pensionable under additional pension benefit arrangements.
- 2.12 The requirements are as follows:

- payments to reward additional skills and responsibilities outside the requirements of the firefighter member's duties under the contract of employment but which are within the wider functions of the job;
- any additional pay received whilst on temporary promotion or whilst temporarily carrying out the duties of a higher role;
- any non-consolidated performance related payment.
- any payments in respect of a firefighter member's continuing professional development continue to be covered by additional pension benefit.

2.13 The order provides protection for those members of the 1992 that are in receipt of temporary emoluments and allowances which are being treated as pensionable pay under the 1992 scheme (i.e. being paid as at 1.7.13) to continue to be treated as pensionable pay for as long as they continue to receive it without any break in payment. The protection above does not apply to members of the 2006 scheme as pensionable pay already excludes temporary allowances and emoluments.

2.14 So what does this mean in layman's terms?

Firstly the authority can determine whether such temporary allowances are to be pensionable. If they do, then the rules make further changes to how these can be used. Essentially, the first real change relates to old Fire scheme members who may have temporary promotions in the future. It will mean that if the extra payments are deemed pensionable then the contributions will be paid on the "increase" and this will form another strand of additional pension benefits.

2.15 So the benefit will be that they will always receive some benefit for these periods, the downside for the future would be those members who receive a temporary promotion later in their career and who could have previously used the higher pay to be applied to all of their service. This won't apply, they will just receive the benefit for the period they received the higher pay.

2.16 It should be pointed out that protection applies to the latter where members as at 1 July 2013 are receiving such temporary payments they will continue to be included in pensionable pay until the payments cease. If they subsequently take another temporary promotion though, the new rules will apply.

2.17 For 2006 members this introduces the ability to count as pensionable the temporary pay in the same way as additional pension benefits, but there is no protection for applying the temporary pay in a final pay calculation, as this did not apply to these members anyway.

2.18 There are also issues for staff in terms of taxation which can arise from temporary promotions which seem to be an unintended consequence of changes to tax rules. These presently have the potential to deter individuals from taking promotion particularly if annual allowance thresholds are to be breached by any temporary arrangement that does not have an ultimate pension benefit.

- 2.19 Additionally, as pensions contributions are now linked to annual salary and rates are determined on an annual basis, someone in a temporary role could end up paying higher contribution rates for a 12 month period regardless of whether the temporary promotion is confirmed or not. Administering this process would also be burdensome, with individuals potentially asking for temporary promotions to be changed or delayed, as well as the impact on the current pension administrator who would require continuous updates on staff status.
- 2.20 On balance, with neither a significant impact on the individual in either case it is recommended that the Fire Authority opt to make all temporary allowances, including temporary promotions, non-pensionable. This gives a small benefit to the employee in terms of take-home salary and removes a significant administrative burden from the employer.

ABATEMENT

- 2.21 This amendment to the 1992 scheme widens the employer's discretion to abate a pension paid to a member who is re-employed by a fire and rescue authority. It will also require the employer to pay into the pension fund the amount of paid pension that could have been subject to abatement. It also allows for reimbursements under the provisions of the 2006 scheme.
- 2.22 The Fire Authority already operates an abatement process where uniform staffs are re-employed into uniform roles when they retire. This was part of the re-engagement policy which was approved by the Fire Authority in principle on 8th December 2006 and reinforced by a policy agreed by the Human Resources Committee on 5 January 2007. This policy does not apply to instances where an individual retires as a uniform employee but subsequently is reemployed through a selection process into a non-uniform role.
- 2.23 Arguably this is the most controversial issue to be decided by Members and it is whether or not to abate pensions of retired staff who then come back to work for the Authority in different roles.
- 2.24 Under present rules if a member of the FPS retires and then returns to work in a uniformed role their pension will be abated such that the combination of their new salary and their pension cannot exceed the value of their salary prior to retirement. If this happens then their pension is "abated" or reduced.
- 2.25 In straightforward terms if a fire fighter was earning £30,000 p.a. before retirement and after retirement has an annual pension of £15,000 p.a. he or she would not be able to return to work in a uniformed role paying more than £15,000 (i.e. 30-15) without their pension being reduced.
- 2.26 The latest change in the rules extends this discretion to include all roles in the Fire and Rescue Service and not just uniformed roles.
- 2.27 The new regulations encourage employers to abate pensions by ensuring that if they do not do so then any abatement that would have applied has to be

paid into the pensions account by the employer. The financial impact of not applying abatement can again be substantial. In the above example if the employee returned to work for the Authority in a non-uniformed role earning a salary of £24,000 the cost of not abating the pension would be £9,000 per annum thus raising the cost of employment for the role to £31,000 p.a. which is clearly unsustainable.

2.28 There is the option for the Fire Authority to backdate these rules of abatement to 25 September 2009. However, there is no financial penalty in terms of contributions to the scheme for anyone who had commenced employment before 1 July 2013. Therefore it is not recommended that the Fire Authority backdate this far as this would be seen as a punitive measure.

2.29 It is recommended that the Fire Authority agree the abatement principle across all roles from 1 July 2013. There will be some human resources implications and these will need to be dealt with by human resources staff.

3. FINANCIAL IMPLICATIONS

3.1 There are always financial implications of pension discretions and this case is no exception. The proposals if accepted will keep financial implications to a minimum and will, if anything, reduce liabilities as a result of having non pensionable temporary payments.

3.2 Should the proposals not be accepted and Members choose to exercise a different approach to discretions then some budget provision will need to be made.

4. HUMAN RESOURCES AND LEARNING AND DEVELOPMENT IMPLICATIONS

The HR Implications are set out fully within the body of the report.

5. EQUALITIES IMPLICATIONS

An equality impact assessment has been undertaken and this shows that there are no adverse impacts in applying the policy.

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

It is recommended that Members support the proposals in the report such that:

- 9.1 The discretion to allow full commutation for staff under 55 or with less than 30 years' service is not implemented and the exiting arrangements are retained for the present. The Fire Authority agree to revisit this decision should the need arise where urgent workforce reductions are required.
- 9.2 All temporary allowances and emoluments will be treated as being non-pensionable.
- 9.3 All employees who return to work for Nottinghamshire Fire and Rescue Service under local government conditions of service and who were previously members of the FRS and NFPS will be subject to abatement rules. This abatement will not be backdated to September 2009 but will apply in all future cases from the commencement of the statutory instrument.

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

None.

Frank Swann
CHIEF FIRE OFFICER



Department for
Communities and
Local Government

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

Summary of Responses to the consultation

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Introduction

Public service reforms

1. Public service pensions are currently undergoing reforms to make them more sustainable and affordable in the long term, and fair to both the employer and taxpayer. People are living much longer and the average 60 year old is living ten years longer now than they did in the 1970s. This means that the cost of public service pensions, which includes the firefighters' pension scheme, have increased by around a third in real terms over the last ten years to £32 billion a year. Despite recent reforms, most of these increased costs are being met by taxpayers.
2. On 24 May 2012, the Department published a Proposed Final Agreement on the scheme design for the Firefighters' Pension Scheme in England to be introduced from April 2015. This can be accessed at:
<https://www.gov.uk/government/publications/firefighters-pension-scheme-proposed-final-agreement>.
3. The Proposed Final Agreement builds on the proposals brought forward by Lord Hutton in his independent report and aims to strike a balanced deal between public service workers and the taxpayer. The Government has already increased employee contribution rates in respect of both firefighter pension schemes over the last two years. The Government will continue to review the impact of contribution increases, including on the number of members opting out or choosing not to join the scheme, before taking final decisions on how future increases will be delivered.
4. Even after the reforms, public service pensions will remain among the very best available - a guaranteed level and inflation proofed. Only 1 in 10 private sector workers have access to such schemes.
5. Alongside the reforms process, the Department is also making amendments to both the 1992 and 2006 firefighter pension schemes as part of an ongoing programme of modernisation of the firefighter pension schemes.

Why the Department consulted

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

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

Consultation Process

7. The consultation was open from 3 August 2011 until 26 October 2011. The consultation document was available on the Department's website and responses could be returned to the Department for Communities and Local Government by email or by post.
8. On publication, the Department drew the consultation paper to the attention of members of the Firefighters' Pension Committee, which includes trade unions, the Local Government Association and other key representative bodies. The Department also issued an 'Immediate Bulletin' setting out the consultation proposals. This was sent to the chairmen of all fire and rescue authorities, the chief executives of the county councils, the clerks to all fire and rescue authorities, the London Commissioner, and the chief fire officers of all fire and rescue authorities. The proposals have also been discussed at meetings of the Firefighters' Pension Committee, before, during and after the consultation period.
9. In total, 63 written responses were received. These came from individuals, Fire and Rescue Authorities and representative organisations from the fire and rescue sector including Trades Unions, employer representatives and firefighter professional bodies. However, the Department reasonably believes that in two cases, the respondent submitted more than one response, making the number of unique respondents 61.

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

10. Whilst the majority of responses came from individuals and Fire and Rescue Authorities and Services, responses were also received from the principal representative organisations, including the Local Government Association, the Chief Fire Officers' Association, the Fire Brigades Union, the Fire Officers' Association, the Retained Firefighters' Union and the Association of Principal Fire Officers.
11. The Department has considered the comments and evidence provided in each consultation response and, in the next section, offers a summary of the responses to

the particular proposal and the Department's final position. The publication of this response had been delayed whilst the Department re-considered its approach to a number of the proposals following consultation responses.

Summary of Responses

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

Removal of Rule A14 to compulsory retirement on grounds of efficiency

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

Government response

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

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

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

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

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

Government response

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

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

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

Rule B7: Commutation general provision

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

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

Government response

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

Amendments to the definition of pensionable pay

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

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

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

Government response

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

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

Exemptions from payment of pension contributions

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

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

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

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

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

Government response

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

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

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

Review of Medical Opinion

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

Government response

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

Appeals on other issues (non-medical issues)

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

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

Government response

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

Abatement

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

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

Government response

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

Pension tax and other amendments

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

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

Government response

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

Additional amendments

82. Two additional proposed changes were commented on.

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

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

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

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

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

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

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

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

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

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

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

Other proposed changes

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

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

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

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

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

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

2013 No. 1392

FIRE AND RESCUE SERVICES, ENGLAND
PENSIONS, ENGLAND

The Firefighters' Pension Scheme (Amendment) (No.2)
(England) Order 2013

<i>Made</i> - - - -	<i>5th June 2013</i>
<i>Laid before Parliament</i>	<i>7th June 2013</i>
<i>Coming into force</i> - -	<i>1st July 2013</i>

The Secretary of State, in exercise of the powers conferred by section 26(1) to (5) 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) (No.2) (England) Order 2013.

(2) This Order shall come into force on 1st July 2013, but the amendment made by article 2 and—

- (a) paragraph 12(c) of the Schedule (which relates to rule K4 - withdrawal of pension whilst employed by a fire and rescue authority)

shall have effect from 25th September 2009;

- (b) sub-paragraphs (ii), (iii) and (iv) of paragraph 2(f) of the Schedule (which relates to rule B5B - additional pension benefit: long service increment); and

- (c) paragraph 2(g) of the Schedule (which substitutes for rule B5C (additional pension benefit: continual professional development) rule B5C(additional pension benefit)) so far as it relates to the increase of the additional pension benefit under paragraph (3) and the

(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.

definitions of “beginning date” and “following relevant tax year” in paragraph (6) of rule B5C,
shall have effect from 11th April 2011.

Amendment of the Firemen’s Pension Scheme Order 1992

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

Transitional provisions

3.—(1) The amendments made by paragraph 14(a)(iv) of the Schedule so far as they relate to the insertion of paragraph (9) to rule LA2 (special payments and transfers into Firefighters’ Pension Fund) shall not have effect in relation to a person who is entitled to the payment of a pension under the Firefighters’ Pension Scheme 1992 and is employed by any fire and rescue authority in employment which he took up at a date earlier than the date on which this Order comes into force.

(2) In a case to which paragraph (1) applies, rule LA2 of the Firefighters’ Pension Scheme 1992, in the form in which it existed immediately before the coming into force of this Order, shall continue to have effect in relation to such a person.

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

Brandon Lewis
Parliamentary Under Secretary of State
Department for Communities and Local Government

5th June 2013

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 took up employment with a fire and rescue authority on or before 5th April 2006 and who remains in continuous pensionable service.”;
and

(b) omit rules A4 to A8, A12, A14 and A15.

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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, 2008/214, 2012/953 and 2013/703. 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.

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 1st July 2013.”;
 - (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”; and
 - (ii) in paragraph (2)(a), for “Part II of Schedule 2;” substitute “Part 2 of Schedule 2;”;
 - (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(a)”; and
 - (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) (“the higher tier ill-health award”).”;
 - (iii) in paragraph (5)(a), omit “or 3 (as the case may be)”; and
 - (iv) in paragraph (7), for “the issue of his capacity for employment arises” substitute “the question of his disablement arises for decision”;
 - (d) in rule B5 (deferred pension)—
 - (i) after paragraph (1)(d)(i)(bb), insert—
 - “(cc) any period of absence from duty without pay, not reckonable as pensionable service under rule F2(3), and”;
 - (ii) 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 paragraph (4B).
 - (4B) For the purpose of the calculation in paragraph (4A)—
 - (a) the amount of the first pension is that found by applying the formula—

$$\left(\frac{A}{B}\right) \times \left(\frac{B}{C}\right) \times G$$

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

(b) the amount of the second pension is that found by applying the formula—

$$\left(\frac{F}{C}\right) \times G$$

(c) in sub-paragraphs (a) and (b) A, B, and C have the same meaning as in paragraph (3), E and F have the same meaning as in paragraph (4) and G is the amount of the single pension that the firefighter would otherwise have been awarded.”;

(f) in rule B5B (additional pension benefit: long service increment)—

(i) in paragraph (2), for the words 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 and subsequent continuous pensionable service in the employment of another fire and rescue authority in England 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 and subsequent continuous pensionable service in the employment of another fire and rescue authority in England up to and including 30th June 2007, exceeds 20 but does not exceed 30.”;

(ii) in paragraph (3), for “Where” substitute “Until 11th April 2011, where”;

(iii) after paragraph (3), insert—

“(3A) On and after the 11th April 2011, the amount of additional pension benefit (as calculated in accordance with paragraph (2) and paragraph (3) and, if applicable, paragraph (3B) and this paragraph) shall be increased on the first Monday of the following relevant tax year by the same amount as any increase which would have applied if that additional pension benefit were a pension to which the Pensions (Increase) Act 1971(a) applied and the beginning date for that pension were the 1st July of the tax year immediately before the relevant tax year.

(3B) For the avoidance of doubt, the increase of additional pension benefit in the tax year 2010/2011 shall be increased by the same percentage as the percentage increase in the Consumer Prices Index in September 2010 with effect from Monday 11th April 2011.”; and

(iv) in paragraph (5) for “(3)” substitute “(3) and (3A)” and —

(aa) before the expression “relevant tax year” insert—

““the beginning date” means the date on which the pension is treated as beginning for the purposes of section 8(2) of the Pensions (Increase) Act 1971;

“following relevant tax year” means the tax year after the relevant tax year, in relation to which the member is not in receipt of a pension under this Scheme or entitled to a deferred pension under rule B5.”;

(bb) in sub-paragraph (b) of the definition of “relevant tax year”, for “rule B3” substitute “rule B5”;

(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 (1) are pensionable, and in any additional pension benefit year pays any such

(a) 1971 c.56.

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 on 1st July immediately following the year in question in accordance with guidance and tables provided by the Scheme Actuary.

(3) The amount of additional pension benefit determined in accordance with paragraph (2) shall be increased on the first Monday of the following relevant tax year by the same amount as any increase which would have applied if that additional pension benefit were a pension to which the Pensions (Increase) Act 1971 applied and the beginning date for that pension were the 1st July of the tax year immediately before the relevant tax year.

(4) For the avoidance of doubt, the increase of additional pension benefit in the tax year 2010/2011 shall be increased by the same percentage as the percentage increase in the Consumer Prices Index in September 2010 with effect from Monday 11th April 2011.

(5) The benefits referred to in paragraph (1) are —

- (a) any allowance or supplement to reward additional skills and responsibilities that are applied and maintained outside the requirements of the firefighter's duties under the contract of employment 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 is temporarily required to undertake the duties of a higher role;
- (d) any performance related payment which is not consolidated into his standard pay.

(6) In this rule—

“additional pension benefit year” means the period of 12 months beginning with 1st July in which a firefighter is in receipt of any of the benefits listed in paragraph (5).

“the beginning date” means the date on which the pension is treated as beginning for the purposes of section 8(2) of the Pensions (Increase) Act 1971;

“following relevant tax year” means the tax year after the relevant tax year, in relation to which the member is not a pensioner member or entitled to a deferred pension under rule B5;”

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

- (a) the amount of a firefighter's pension benefits determined under this rule for the purposes of this Scheme is taken into account for tax purposes, and
- (b) the firefighter is not in receipt of a pension under this Scheme or entitled to a deferred pension under rule B5; and

“tax year” means the period of 12 months beginning with 6th April.”;

(h) in rule B5D (additional pension benefits: supplementary provisions)—

- (i) in paragraph (2) for “paragraphs (4) and (5)” substitute “paragraph (4)”; and
- (ii) in paragraph (3) omit “(rule A15)”; and

(i) in rule B7 (commutation-general provision)—

- (i) in paragraph (3), for “Government Actuary” substitute “Scheme Actuary”;
- (ii) in paragraph (5), for “In the case of” substitute “Subject to paragraph (5A), in the case of”;

(iii) after paragraph (5), insert—

“(5A) Subject to paragraph (4) a fire and rescue authority may, having regard to—

- (a) the economical, effective and efficient management of their functions, and
- (b) the costs likely to be incurred in the particular case,

pay a lump sum in excess of two and a quarter times the full amount of the pension.”; and
(iv) in paragraph (11), for “serviceman” substitute “reservist”.

- (j) in rule B8 (commutation-small pensions)—
 - (i) in paragraph (2), for “Government Actuary” substitute “Scheme Actuary”; and
 - (ii) 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.”;
- (k) 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”;
 - (ii) in paragraph (13), for “Government Actuary” substitute “Scheme Actuary”;
 - (iii) in paragraph (16), for “serviceman” substitute “reservist”; and
- (l) 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 C10 (pension debit members) 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 —

- (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 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 is dependent on the deceased by reason of permanent disablement.

(4) A child is not eligible if he 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 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 23rd birthday or the day on which his 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 “or gratuity” substitute “gratuity or 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), in paragraph (2)(b), after “Scheme” insert “in respect of the same firefighter”;

(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) In this rule, 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 (lump sum rule)”, substitute “Part 2 of Schedule 29 (lump sum death benefit rule)”; and

(bb) 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 the whole of 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), omit “whole or any part of the”;
 - (ii) in paragraph (3) for “commutation of the whole or part of an allowance” substitute “commutation of the allowance”; and
 - (iii) 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 any part of a”;
 - (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 died, the weekly rate of his pensionable pay when he died;
 - (b) in any other case, the weekly rate of his pension or pensions (including any increase under the Pensions (Increase) Act 1971) when he 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 paragraphs (3) and (4), 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 died, the weekly rate of his pensionable pay when he died;

(b) in any other case, the weekly rate of his pension or pensions (including any increase under the Pensions (Increase) Act 1971) when he died.

(3) Where there is more than one eligible child, 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 the allowances.

(4) 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), and (7), for “serviceman” substitute “reservist”;

(ii) in paragraph (3), omit “F6”;

(iii) in paragraph (6), in both places where it occurs, for “or gratuity” substitute “lump sum, or gratuity”;

(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—

$$A + \frac{B}{365} \text{ years}$$

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 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 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 the material 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) 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 “Welsh fire and rescue authority, the Scottish Fire and Rescue Service 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)”;
 - (bb) in paragraph (a) for “part-time employee” substitute “part-time employee other than those amounts payable to him in respect of the benefits within rule B5C(4); and”;
 - (cc) for sub-paragraph (b) substitute—
 - “(b) the amount (if any) of any benefits which are pensionable under rule B5C(1).”;
 - (ii) for paragraph (4), substitute—
 - “(4) The relevant date—
 - (a) for the purposes of rule C7 (spouse’s or civil partner’s award where no other award payable), and the Compensation Scheme, is the date of the person’s last day of service as a regular firefighter, and
 - (b) for all other purposes of this Scheme, is the date of the person’s last day of service in a period during which contributions were payable under rule G2.”;
 - (iii) in paragraph (7C), omit “: continual professional development”; and
 - (iv) after paragraph (8), add—
 - “(9) Where before 1st July 2013 and after that date, any allowance or supplement is being paid 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) after paragraph (4), insert—

(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.

“(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^(a) or regulation 21A of the Paternity and Adoption Leave Regulations 2002^(b) 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 to a fire and rescue authority that fall within paragraph (2),
- (b) all payments made by him in accordance with a notice under rule F2 (current service),
- (c) all payments made by him in accordance with an election under rule G2A,
- (d) all payments made by him 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 relate 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,
- (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 if, at the end of the previous employment period, he had voluntarily retired in circumstances entitling him 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) omit rule G4 (continued payment of additional and further contributions); and

(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.

(g) 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 (P) 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 H2 within 28 days of the receipt by P of that copy, and
 - (ii) in any other case, within 28 days of the receipt by P 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 opinion in the light of the new evidence,

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

(2) An IQMP’s response to an invitation under paragraph (1) shall be in writing (“rule H1A response”).

(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 pursuant to 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 issue of a medical nature, the person must give written notice to the authority, stating his name and address and the grounds of his appeal, not later than 28 days after the person receives the last of the documents required to be supplied to him 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.”

;

(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 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^(a) (requirement for dispute resolution arrangements) and the Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008^(b).”.

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 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), in paragraph (2) for “paragraphs (3) and” substitute “paragraph” and omit paragraph (3);
- (e) in rule I5 (servicemen who do not resume service in their former brigade), in paragraph (1) omit “Subject to paragraph (3),” and 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 service pay is less than the pensionable pay described in paragraph (1).”;

(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.

(g) after rule I7, add—

“Interpretation of Part

18. In this Part—

“the 1996 Act” means the Reserve Forces Act 1996(a);

“qualifying injury” means an injury, received by a person in the performance of his duties as a firefighter, which is not wholly or mainly due to his 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(b) or Part 6 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) in paragraph (4), for “Government Actuary” substitute “Scheme Actuary”;

(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 employed by any fire and rescue authority in whatever capacity.”.

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

(a) 1996 c.14.

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

- (a) in rule L3 (payment of awards)—
 - (i) in paragraph (1)(b), omit “in advance”;
 - (ii) in paragraphs (7) and (8), in each place where it occurs, for “gratuity” substitute “gratuity or lump sum”;
- (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), insert—

“(c) on the date on which a deferred pension under rule B5(4)(b) comes into payment.”;

and
 - (iv) after paragraph (8), insert—

“(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 which could have been abated or withdrawn.

(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”;

(a) 2004 c.12.

- (d) 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.”;
- (e) 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 under the public sector transfer arrangements.”;
- (f) after the expression “Principal Act”, insert—

““Registered scheme”	Construe in accordance with Part 1 of Schedule 36 to the 2004 Act.”;
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- (g) omit the expression “Relevant service in the armed forces”;
- (h) after the expression “Relevant fire and rescue authority” insert—

““Reservist”	The meaning given in rule I8.”;
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- (i) after the expression “Reservist”, insert—

““Scheme Actuary”	The actuary appointed by the Secretary of State.”;
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- (j) 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 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), for “pension” substitute “award” and for “a pension” substitute “an award”; and
- (b) in Part 3 (spouse’s accrued pension), omit paragraph 1(1)(f) and (2)(e).

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

- (a) in Part 1 (child’s ordinary allowance), in paragraph 1(4)(a), for “pension” substitute “award” and for “a pension” substitute “an 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), omit “subject to sub-paragraph (2)(c),” and 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), omit “subject to sub-paragraph (2)(c),” and 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 so as to provide the board with sufficient information 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 an appeal 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

(h) 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);

(c) in Part 5 (application to persons affected by local government reorganisation or combination scheme) in each place where it occurs, for “brigade” substitute “fire and rescue authority”; —

(i) in paragraph 2(2), omit “and” and sub-paragraph (b);

(ii) omit paragraph 4.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Firefighters' Pension Scheme 1992 (set out in Schedule 2 to the Firemen's Pension Scheme Order 1992) as it has effect in England (“the Scheme”). Some of the amendments introduce new provisions. Other amendments make corrections.

Except as mentioned below the Order has effect from 1st July 2013. Power to give the Order retrospective effect is conferred by section 12 of the Superannuation Act 1972, as applied by section 16(3) of that Act.

Paragraph 1 of the Schedule omits rule A14 (compulsory retirement on grounds of efficiency) and rule A15 (compulsory retirement on grounds of disablement). Rules A4 to A8 and A12 are also omitted.

Paragraph 2(a) of the Schedule amends rule B1 so that a chief fire officer, who is appointed after the date on which the order comes into force, is no longer required to obtain the permission of the fire and rescue authority before retiring. Paragraph 2(e) amends the formula for the calculation of pension where a person is entitled to an ill-health award or deferred pension and benefits from the entitlement to two pensions.

The amendment made by sub-paragraph f(i) of paragraph 2 is to make minor corrections so that it is clear which pensionable service can count for the long service increment additional pension benefit. The amendment only include services with an English Fire and Rescue Authority.

Paragraph 2(g) of the Schedule inserts a new rule B5C which extends additional pension benefit so that it covers—

– payments to reward additional skills and responsibilities outside the requirements of the firefighter member's duties under the contract of employment but which are within the wider functions of the job;

–any additional pay received whilst on temporary promotion or whilst temporarily carrying out the duties of a higher role;

–any non-consolidated performance related payment.

Any payments in respect of a firefighter member’s continuing professional development continue to be covered by additional pension benefit.

The amendments made by sub-paragraphs (ii), (iii) and (iv) of paragraphs 2(f) and 2(g) in relation to paragraph (3) and (4) of the new rule B5C amend the method of uprating additional pension benefit for the long service increment (rule B5B) and continuing professional development (rule B5C) from a specific index, retail price index, to an index in accordance with the Pensions (Increase) Act 1971. There is a specific provision to provide that the consumer price index is used for the tax year 2010/2011. These amendments have effect from 11th April 2011.

The amendments made by paragraph 2(i) to rule B7 (commutation general provision) confer a discretion on a fire and rescue authority to permit the commutation of a pension for a lump sum in excess of two and quarter times the full amount of the pension in all cases where they have had regard to the economical, effective and efficient management of their functions and the costs likely to be incurred in the particular case. Where the authority exercises this discretion an amendment by paragraph 14(iv) to rule LA2 inserting new paragraph (10) requires the authority to make a transfer into the Firefighters’ Pension Fund of an amount equal to the increase in the commuted lump sum.

Paragraph 4 of the Schedule substitutes a new rule D5 (child’s allowance: limitations and duration). Paragraph 5 of the Schedule makes various amendments to Part E (awards on death-additional provisions).

Paragraph 6 of the Schedule amends Part F (pensionable service and transfer values) and in particular inserts new rule F1A (reckoning of service for purposes of awards) which repeats most of the provisions of the omitted rule A7.

Paragraph 7(a) of the Schedule amends the definition of pensionable pay in rule G1(1) to include payments which are pensionable under additional pension benefit (new rule B5C(1)) and provide that average pensionable pay is calculated without including any additional pension benefit payable under rule B5C. Rule G1 is also amended by the insertion of a new paragraph (9) to provide that payments which are not within the definition of pensionable pay in rule G1(1)(a) as amended, other than additional pension benefits payable for long service or in respect of a firefighter’s continual professional development, should remain pensionable only whilst the firefighter continues to receive them.

Paragraph 7(d) inserts rule G2B (aggregate pension contributions for the purposes of awards) which repeats most of omitted rule A8 (aggregate pension contributions for purposes of awards) with some amendments.

Paragraph 8 inserts a new rule and substitutes 2 new rules in Part H (determination of questions and appeals). These enable—

- the review of medical opinion where there is new evidence (rule H1A: review of medical opinion);
- improve the procedure of an appeal new rule H2 (appeal to medical referee);
- remove the right of appeal to the Crown Court or Sheriff and replace it with arrangements implemented for dispute resolution by the fire and rescue authority under section 50 of the Pensions Act 1995 (rule H3: appeals on other issues).

Paragraph 9 amends the provisions in Part I (servicemen) to reflect changes in the relevant legislation.

Paragraph 12(b) amends rule K1A to remove a deferred member’s entitlement to the early payment of a deferred pension where he has become capable of undertaking regular employment. Paragraph 12(c) of the Schedule substitutes a new rule K4 which extends the fire and rescue authority’s power to abate pension so this applies when a pensioner takes up employment in any role with an authority. This amendment has effect from 25th September 2009.

Paragraph 14(a)(iv) of the Schedule inserts a new paragraph (9) in rule LA2 (special payments and transfers into Firefighters' Pension Fund). This requires a fire and rescue authority to transfer into the Firefighters' Pension Fund an amount equal to the amount of pension paid to a person in respect of whom the authority choose not to exercise its discretion to withdraw or abate the permitted amount of the individual's pension under rule K4 (withdrawal of pension whilst employed by a fire and rescue authority). This amendment does not have effect in relation to a pensioner who took up employment before the date on which this order comes into force.

Paragraph 23 amends Part 1 (appeal to board of medical referees) of Schedule 9 (appeals) by the substitution of new paragraphs for paragraphs (1)(1), paragraph 2, 8(2), 8(2A) and the insertion of a new paragraph 2B and 6A. These amendments to procedures of the board enable the board to review its decision where there has been a material error of fact, to appoint a reviewing member to ensure it has all documents required before a hearing and also to increase the grounds on which the authority can require the appellant to pay some or all of the board's costs. Paragraph 23(2) omits Part 2 (appeal tribunals) which is consequential on the amendment of rule H3 (Appeals on other issues).

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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STATUTORY INSTRUMENTS

2013 No. 1392

FIRE AND RESCUE SERVICES, ENGLAND

PENSIONS, ENGLAND

The Firefighters' Pension Scheme (Amendment) (No.2)
(England) Order 2013

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EXPLANATORY MEMORANDUM TO
THE FIREFIGHTERS' PENSION SCHEME (AMENDMENT) (No.2) (ENGLAND)
ORDER 2013

2013 No. 1392

AND

THE FIREFIGHTERS' PENSION SCHEME (ENGLAND) (AMENDMENT) (No.2)
ORDER 2013

2013 No. 1393

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The Firefighters' Pension Scheme (Amendment) (No.2) (England) Order 2013 (No. 1392) amends the Firefighters' Pension Scheme 1992, "*the 1992 Scheme*" (set out in Schedule 2 to the Firemen's Pension Scheme Order 1992 (No. 129)) to:
 - remove Rule A14 that provides the means to compulsory retire a member on grounds of efficiency;
 - provide for additional pension benefits to be uprated in accordance with the Pensions (Increase) Act 1971;
 - provide discretion for employers to uplift commutation limit;
 - amend the definition of pensionable pay to ensure that temporary allowances are not treated as pensionable pay and to introduce new discretionary additional pension benefit arrangements for temporary allowances and emoluments;
 - provide a means whereby Independent Qualified Medical Practitioners and the Board of Medical Referees can review previous decisions;
 - make provision for appeals on non-medical issues to be dealt with by means of arrangements implemented by them pursuant to the requirements of section 50 of the Pensions Act 1995;
 - increase in the scope of the Fire and Rescue Authority discretion to abate a retired member's pension on re-employment and to require the employer to reimburse the pension fund in the instance where they do not exercise the discretion in full;
 - update the scheme's terminology to be consistent with current tax legislation;

- update the statutory references within the scheme.

2.2 The Firefighters’ Pension Scheme (England) (Amendment) (No.2) Order 2013 (No. 1393) amends the New Firefighters’ Pension Scheme (England), “*the 2006 Scheme*” (set out in Schedule 1 to the Firefighters’ Pension Scheme (England) Order 2006 (No. 3432)) to:

- provide for additional pension benefits to be updated in accordance with the Pensions (Increase) Act 1971;
- introduce new discretionary additional pension benefit arrangements for temporary allowances and emoluments;
- to require the employer to reimburse the pension fund in the instance where they do not exercise the discretion to abate a member’s pension on re-employment;
- enable employers to fully comply with the “auto-enrolment” requirements as set out in the Pensions Act 2008 and the Occupational and Personal Pension Scheme (Automatic Enrolment) regulations 2010.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Firefighters’ Pension Scheme (Amendment)(No.2) (England) Order 2013 is made under section 26(1) to (5) of the Fire Services Act 1947 and under section 12 of the Superannuation Act 1972 as applied by section 16(3) of that Act. Section 26 enables the Secretary of State by order to bring into operation the Firefighters’ Pension Scheme enabling fire authorities to pay pensions, allowances and gratuities to persons employed as members of fire brigades. The section also enables the Scheme to be varied by a subsequent order made by the Secretary of State. The Firefighters’ Pension Scheme 1992 was made under that power. Section 12 enables retrospective provision to be made. The Fire Services Act 1947 has been repealed with savings to enable amendments to be made to a scheme established under section 26. This instrument amends the provisions in that Scheme.

4.2 The Firefighters’ Pension Scheme (England) (Amendment)(No.2) Order 2013 is made under sections 34 and 60 of the Fire and Rescue Services Act 2004. Section 34 enables the Secretary of State to make an order bringing into operation a scheme making provision for the payment of pensions, allowances and gratuities in respect of persons who are employed by a fire and rescue authority or who have died while so employed. The section also enables the Scheme to be varied by a subsequent order made by the Secretary of State and for retrospective provision to be made. The New Firefighters’ Pension Scheme (England) was made under section 34 and 60 of the Fire and Rescue Services Act 2004. This instrument amends the provisions made in that Scheme.

5. Territorial Extent and Application

5.1 These instruments apply to England.

6. European Convention on Human Rights

6.1 As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 These amending instruments make amendments to both the 1992 and 2006 firefighter pension schemes and are part of an ongoing programme of modernisation of the firefighter pension schemes.

7.2 Prior to publishing the consultation, the Department formally engaged key stakeholders including Employer and Union representatives through the Firefighters' Pension Committee, where the key proposed changes were discussed. The amendments also take account of an earlier 2009 consultation undertaken by the Department on proposed changes to the definition of pensionable pay.

The removal of rule A14, compulsory retirement on the grounds of efficiency

7.3 The Order removes Rule A14 from the 1992 Scheme which currently enables an employer to retire a scheme member on the grounds of efficiency. This ensures that in the future any decision by an employer to compulsorily remove a firefighter from employment is undertaken in accordance with employment and equalities law rather than the terms of the pension scheme. This does not affect the 2006 Scheme as it does not have a corresponding provision. This amendment will apply from the date the enabling legislation comes into force.

Changes to the indexation of additional pension benefits

7.4 The Orders amend Rules B5B(3) of the 1992 Scheme and Rule 7A(3) of Part 3 of the 2006 Scheme so as to change the method of indexation used for uprating Long Service Increment additional pension benefit (LSI APB) from the Retail Price Index to the amount which would have applied under the Pensions (Increase) Act 1971 if the LSAPB had been a pension to which that Act applied. As consulted on, this will be applied retrospectively to April 2011, to reflect the change in Government policy to switch the basis of uprating public service pensions took effect as announced in the 2010 Emergency Budget.

7.5 The Orders replace paragraph (3) in rule B5C of the 1992 Scheme and rule 7B of Part 3 of the 2006 Scheme to change the method of indexation used for uprating additional pension benefits during the accrual phase from the Retail Price Index to the amount of the increase which would have applied under the Pensions (Increase) Act 1971 if the additional pension benefit had been a pension to which that Act applied. Again, this will be applied retrospectively to April 2011, to reflect the change in Government policy to switch the basis of uprating public service pensions took effect as announced in the 2010 Emergency Budget.

Changes to the maximum commutation payment

- 7.6 The Order inserts a new paragraph (5A) in Rule B7 of the 1992 Scheme to confer a new discretion enabling employers to raise the commutation limit for those members who are aged under 55 with less than 30 years' pensionable service so that they can commute up to the maximum of a quarter of their annual pension. This followed representations made by Fire and Rescue Authorities asking for a discretion to disregard the current limit. The 2006 Scheme already permits a member to commute a quarter of their pension.
- 7.7 The Order amends Rule LA2 of the 1992 Scheme to require the employer to pay the increased lump sum costs into the pension fund when they exercise the discretion to raise the commutation limit. No equivalent amendment is needed for the 2006 Scheme.
- 7.8 These amendments will take effect from the date that the enabling legislation comes into force.

Changes to the definition of pensionable pay

- 7.9 The Orders replace Rule B5C of the 1992 Scheme and Rule 7B of Part 3 of the 2006 Scheme to introduce new powers for employers to make certain temporary allowances and emoluments, which satisfy the prescribed requirements, pensionable under additional pension benefit arrangements. This was in response to concerns about the pension costs associated with employers introducing new temporary allowances under final salary arrangements.
- 7.10 The Order amends Rule G1 in the 1992 Scheme to provide protection for those members of the 1992 Scheme that are in receipt of temporary emoluments and allowances which are being treated as pensionable pay under the 1992 Scheme on the day before the enabling legislation is made so these will continue to be treated as pensionable pay. This particular protection is not required for the members of the 2006 Scheme as the definition of pensionable pay excludes emoluments and allowances that are temporary.
- 7.11 These amendments will take effect from the date that the enabling legislation comes into force.

Amendments to the medical appeals processes

- 7.12 The Order introduces new Rule H1A of the 1992 Scheme to provide new arrangements where, with the agreement of both the employer and the appellant, an Independent Qualified Medical Practitioner can review a previous decision where new medical evidence is presented. This will help reduce instances and costs where a medical appeal is unnecessary. This is not required for the 2006 Scheme which already contains equivalent provisions.
- 7.13 The Order introduces a new paragraph 2B of Schedule 9 of the 1992 Scheme to provide a mechanism whereby a reviewing member of the Board of Medical Referees can make an initial decision as to whether there is sufficient information to enable the Board to undertake an appeal hearing.
- 7.14 The Order introduces a new paragraph 6A, Schedule 9 of the 1992 Scheme and paragraph 8A, Annex 2 of the 2006 Scheme to provide a new arrangement so that where the appellant

and authority agree that an error of fact has occurred which has a material significance to the decision, the case can be referred back to the Board of Medical Referees for reconsideration.

- 7.15 These amendments will take effect from the date that the enabling legislation comes into force.

Amendments to the non-medical appeals' processes

- 7.16 The Order amends Rule H3 of the 1992 Scheme to replace the current arrangement whereby an appeal in respect of a non-medical matter is made to the Crown Court with amendments to enable internal dispute resolution procedures to be set up pursuant to requirements under the Pensions Act 1995. This amendment will ensure that the most appropriate mechanism for appeal is used; ultimately reducing reliance on the Courts and making the appeals process easier to undertake for both scheme member and employer. The 2006 Scheme already makes equivalent provision.

- 7.17 This will take effect from the date that the enabling legislation comes into force.

Abatement of pensions

- 7.18 The Order amends Rule K4 of the 1992 Scheme to increase the scope of the employer's discretion to abate a member's pension where they are re-employed following retirement. The new provision will enable the employer to abate the whole or part of a member's pension where they are re-employed in any capacity by any fire and rescue authority. This change will help implement longstanding Government policy that pension payments should be abated where a member is re-employed in the public sector and receives a pension and salary exceeding earnings before retirement. This will not apply to the 2006 Scheme as it already includes an equivalent provision. This amendment will apply retrospectively to cases where a retired member is employed on or after 25 September 2009.
- 7.19 The Orders amend Rule LA2 of the 1992 Scheme and Rule 2 of Part 13 of the 2006 Scheme to introduce a new requirement for employers to reimburse the pension fund in the instance where they do not exercise the discretion to abate a member's pension on re-employment. This requirement to pay the additional pension costs will apply to new cases where a retired member becomes re-employed on or after the date the enabling legislation comes into force.

Technical amendments and alignments with tax legislation and general updating amendments

- 7.20 The Order also makes a number of amendments throughout the body of the 1992 Scheme so as to align the scheme's terminology with current tax legislation and to generally update the scheme's statutory references. Full details are set out in the Government response.
- 7.21 Equivalent amendments do not need to be made to the 2006 Scheme.

Auto-enrolment

- 7.22 The Order amends Rule 1(2A) of Part 2 of the 2006 Scheme to make additional provision to enable employers to comply fully with the “auto-enrolment” requirements. There is no corresponding amendment to the 1992 Scheme required as it closed to new memberships from 6 April 2006.

Consolidation

- 7.24 There are no current plans to consolidate the legislation governing either the 1992 Scheme or the 2006 Scheme.

8. Consultation outcome

- 8.1 On the 3 August 2011, the Department published the consultation paper *Amendments to the Firefighters’ Pension Scheme (1992) and the New Firefighters’ Pension Scheme (2006) – consultation*. The formal consultation ran for 12 weeks from 3 August to the 26 October 2011.
- 8.2 The consultation paper set out a number of policy proposals in respect of suggested changes to both the 1992 and 2006 Schemes.
- 8.3 On publication, the Department drew the consultation paper to the attention of members of the Firefighters’ Pension Committee, which includes Trade Unions, the Local Government Association and other key representative bodies. The Department also announced the consultation in the ‘Fire and Rescue Monthly Bulletin’, which was sent on 5 September 2011 to the Chairs and Chief Fire Officers of, and Clerks to, all Fire and Rescue Authorities, the Chief Executive of the County Council and the London Commissioner.
- 8.4 Sixty one responses were received. A summary of the responses which prompted a change in the proposals consulted on are set out below. More detailed information on the responses can be viewed in the Government’s response to the consultation which can be accessed at: <https://www.gov.uk/government/consultations/firefighters-pension-scheme>
- 8.5 *Changes to the definition of pensionable pay* – 32 responses in total were received in respect of this proposal. 24 of the 32 responses highlighted concerns that flexible duty allowance (FDA) was not a temporary allowance and, as such, should continue to be treated as pensionable pay for both current and prospective recipients. The Department considered the responses and is content that the flexible duty allowance should continue to be treated as pensionable under final salary arrangements.
- 8.6 After the end of the consultation period a judgment was handed down in the case *Norman v Cheshire Fire and Rescue Service*, which further supported the position taken by the Department in that Flexible Duty Allowance should remain pensionable pay within the terms of the existing rule G1. Consequently no further amendment is required to implement the revised policy position that flexible duty allowance should be treated as pensionable pay for the purposes of the 1992 scheme. No further amendment is required to the 2006 Scheme in respect of this.
- 8.7 One response raised concerns about the retrospective application of the proposed amendment to Rule G1(2b) of the 1992 Scheme which would effectively replace the redundant

pensionable ‘earnings cap’. As such, the Department has withdrawn this particular amendment for further consideration.

- 8.8 Amendments to the medical appeals processes – 27 of the 30 responses received supported this proposal with the majority of respondents recognising that the amendments would lead to a more efficient arrangement for dealing with medical appeals. One response, from a member of the Board of Medical Referees, suggested a slight change in drafting of the amendment that would enable a reviewing member to determine whether there was “sufficient” information that would enable an appeal to be undertaken. The Department accepted this suggestion and made the relevant change to the amendment.
- 8.9 Amendments to provide exemptions of pension contributions – 34 responses in total were received in respect of this proposal. 15 of the 34 responses supported the principle of the policy. 9 of those responses questioned the requirement for employers to continue paying the pension contributions during any member contributions holiday. A number of responses suggested that the contributions holiday should be extended to age 55 for those Chief Fire Officers who did not have a Protected Pension Age and, as such, would not be able to retire prior to this age without incurring a substantial tax charge. Two respondents disagreed with the proposal outright and argued that the requirement to pay contributions was a requirement of scheme when these members joined. They also argued that the potential age discrimination only arises following a change to equalities law in 2006 and, as such, would not have been in place when any of the current members joined the 1992 Scheme. In the light of these consultation responses, the Department has reconsidered the legal position and now takes the view that the scheme is unlikely to discriminate on grounds of age. However, in order to obtain legal certainty on the situation, the Department is now seeking a declaration from the Courts. The Department has, therefore, withdrawn the proposed amendment pending a decision by the Courts.
- 8.10 Abatement of pensions – 49 responses in total were received in respect of this proposal. 37 of the responses opposed the proposal. 16 of those respondents opposing the proposal argued that the requirement for employers to pay the additional costs would be unfair on those retired members that had already retired and who had secured re-employment without abatement being applied to their pensions. The Department has further considered the implementation of the proposal following consultation and has amended the original proposal so that the requirement for employers to pay the associated costs will only apply to new cases where a retired member becomes re-employment following the making of the amendment order. The Department has also decided to apply the wider power for an employer to abate a member’s pension retrospectively to 25 September 2009. This was the date that employers were initially informed by the Department of the policy intention. However, there is no employer sanction if the pension was not abated.
- 8.11 Technical amendments and alignments with tax legislation and general updating amendments – 38 responses in total were received in response to these proposals. The main concerns related to assurances that the proposed changes would not have an adverse impact on members’ pension entitlement. Following these concerns, the Department reviewed the proposals and has withdrawn a number of the amendments due to uncertainty of how these would impact on members’ pension entitlement. The Department has also modified a number of the proposed amendments to ensure the amendments fully achieve the policy intention, as consulted on. More information on these changes can be found on the table at paragraph 88 of the Government’s formal response to the consultation.

8.12 Other concerns were raised as part of the consultation process which did not prompt a change in the proposals. More detailed information about these concerns can be found in the Government's formal response to the consultation.

9. Guidance

9.1 The Department does not intend to issue any guidance on complying with these statutory instruments.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 There is no impact on the public sector as a whole.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department will monitor any impact of these instruments as part of their ongoing management of both the 1992 and 2006 Schemes. To help inform this process, the Department will engage with fire and rescue authorities who manage the schemes to ensure that if any problems arise they are brought to the attention of the Department.

13. Contact

13.1 Anthony Mooney at the Department for Communities and Local Government Tel: 030344 42181 or email: anthony.mooney@communities.gsi.gov.uk can answer any queries regarding the instrument.