



Firefighters' Pension Scheme - background

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Following consultation on reforms starting in 2004, the Labour Government introduced a New Firefighters' Pension Scheme (NFPS) for new entrants from April 2006. More limited amendments were made to the existing scheme - Firefighters' Pension Scheme 1992 (FPS). Key differences between the two schemes are that:

- FPS has a normal pension age of 55 (50 with 25 or more years' service). The NFPS has a normal pension age of 60.
- The NFPS has a single accrual rate ($1/60^{\text{th}}$) whereas in the FPS benefits accrue at $1/60^{\text{th}}$ for the first 20 years service and $1/30^{\text{th}}$ for up to 10 years thereafter.
- Contribution rates for employees and employers are higher in the FPS than the NFPS.

Ill-health pensions were also reformed, with the aim of reducing the rate (and therefore the cost) of retirement on ill-health grounds. Two-tier ill-health pension arrangements were introduced in both schemes, with a lower tier payable where the member is capable of regular employment other than as a firefighter and a higher tier award where the member is not so capable.

This note focuses on reforms to firefighters' pensions introduced by the Labour Government. A separate note - [SN 6585](#) – covers the current reforms.

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1 Background

The first pension scheme for the fire service as a whole (as opposed to Local Act schemes) dates from 1925. The *Fire Brigade Pensions Act 1925* provided for a compulsory retirement age, an ill-health pension and a death-in-service benefit for widows and children for those firemen who were not already covered by a local scheme. During Second Reading in the House of Lords, Lord Desborough explained:

This is not a Bill to increase pensions but to give pensions to those unfortunate whole-time firemen who have not pensions at the present time whilst their *confrères* have... I understand that the number of these unfortunate whole-time firemen is not more than 700 or 800. They will be pensioned. The rateable deductions are to be five per cent, and I am informed that the amount which local authorities will have to find will not be more than two per cent, over and above the rateable deduction of five per cent... it is

not a big amount and we are only doing justice to a body of men who at present are outside the pension scheme.¹

The *Fire Services Act 1947* subsequently unified the various fire service pension schemes and set it on terms broadly in line with the Police Pension Scheme. This was partly the result of the new nationalised fire service set up in 1941 to enable resources to be better marshalled for the war effort. The Home Secretary paid tribute to the firemen during the debate on the Bill at Second Reading:

During the war, 700 firemen were killed on duty, 7,000 were injured, and in one raid alone on London 90 firemen gave their lives in an attempt to save the City and County of London from the destruction which the enemy sought to inflict. Among the 700 dead were 20 firewomen. I am sure the House would like to pay a tribute to the gallantry of these people who, in comparative obscurity, served the country and their locality to the end.²

The Home Secretary went on to explain the changes to pension provision made in the Bill:

The unification of pensions is dealt with in Clauses 26 to 28. There are now several schemes, varying from London, where a maximum pension of two-thirds of the wages can be earned after 28 years' service to those firemen who are under local government superannuation schemes and have to serve 40 years in order to get a similar pension. The difficulties have been further complicated by the *National Insurance Act*, and Clause 26 enables a scheme to be prepared by the Secretary of State after consultation with the Central Fire Brigades Advisory Council. Again, merely as an indication of what is probable, I would like to say it is contemplated that this scheme will be analogous to the police pension scheme...³

A full review of the scheme was carried out in 1972 and was embodied in the Firefighters Pension Scheme 1992, as provided for under *Firefighters Pension Scheme Order 1992*.⁴ A further review resulted in the introduction of the New Firefighters Pension Scheme 2006 (see section 3.2 below).

2 Current schemes

Overview of the Firefighters' Pension Scheme (FPS)

The FPS was initially made under section 26 of the *Fire Services Act 1947*. This was repealed by the *Fire and Rescue Services Act 2004*, but section 36 of the 2004 Act allowed the FPS to continue in force.⁵ The rules are set out in the *Firefighters Pension Scheme Order 1992* (S 1992/129) as amended. The main provisions are summarised in [A Guide to the Firefighters' Pension Scheme 1992 \(England\)](#) (September 2008):

Membership – was open to all firefighters appointed before appointed before 6 April 2006

[Member contribution rate – tiered according to pensionable pay, from 11 to 15% from April 2013]

Additional contributions – can be paid, by election and subject to eligibility, to 'purchase' additional benefits

¹ HL Deb 29 June 1925, cc863-864

² HC Deb 27 March 1947, c1423

³ HC Deb 27 March 1947, c1436

⁴ Home Office, *Fire Service Pensions Review. A consultation document*, March 1998

⁵ [A Guide to the Firefighters' Pension Scheme 1992 \(England\)](#) (September 2008)

Normal pension age – is 55. However, a firefighter can choose to retire before this with immediate payment of retirement benefits provided he/she is aged 50 or over and has at least 25 years' service.

Basic principles of assessment of pension – $\text{annual pension} = \text{service}^*/60 \times \text{average pensionable pay}$ where:

- each year of service to 20 years = 60th
 - each year of service after 20 years = 2/60ths
- to a maximum of 40/60ths.

If the firefighter has a period of part-time membership, the pension will be adjusted to reflect the part-time service.

Average pensionable pay as used in the above formula is normally the firefighters' pay averaged over the last year of service; average pay for one of the two previous years can be substituted if greater. If the firefighter has a reduction in pay before this, the "two pension" option can be used; the first pension would be based on service before the reduction in pay, the second would be based on service accrued after.

Commutation – allows a firefighter to give up part of his/her annual pension to provide a one-off payment of lump sum

Ill-health award – can be payable from any age if the Scheme member is permanently disabled for performance of the duties of his/her role. It can be a lower tier or higher tier award. A lower tier award would be paid where the member is capable of regular employment (other than as a firefighter); a higher tier award would be paid where the member is not so capable. A lower tier pension is normally assessed on deferred benefit principles; the higher tier award uses the same principles but with an enhancement of service.

Early leaver benefits – apply if a firefighter leaves the fire and rescue service before a pension is payable. The options, dependent upon length of service, are:

- a refund of contributions
- a transfer of pension rights to another fire and rescue authority
- a transfer of pension rights to another pension arrangement
- a deferred pension

Additional Pension Benefit ("APB") is a contributions-based pension benefit. Those who were serving firefighters at the time that the Long Service increment was withdrawn will be entitled to a Long Service Increment Additional Pension Benefit ("LSI APB"). Those who receive Continual Professional Development payments will receive a "CPD APB". The CPD APB is based on standard pension contributions paid by the firefighter and by the fire and rescue authority on the CPD payments. The contributions are converted to a pension by the use of factors provided by the Government Actuary. An APB is also taken into account for dependants' benefits.

Death benefits – are provided in the form of a death grant of twice pensionable pay for a member who dies in service, plus benefits for a surviving spouse or civil partner and children's and dependants' benefits.

Pension credit member's benefits – provided for the former spouse or civil partner of a Scheme member in the event of a court issuing a pension sharing order on divorce.

The benefits are payable from age 60 and comprise a pension and, provided the firefighter had not already commuted part of his/her pension, the option of a lump sum.

Effect of divorce or dissolution of civil partnership – depends upon the decision of the court. If the court issues an "earmarking" order, all or part of the death grant, pension, or lump sum by commutation may be paid to the former spouse or civil partner at the time those benefits would normally be paid to, or in respect of, the Scheme member. If, instead, the court issues a pension sharing order, part of the firefighter's accrued value of pension rights will be deducted from the effective date of the order to provide benefits for the former spouse or civil partner who becomes a "pension credit member" in the Firefighters' Pension Scheme.

Pensions increase helps FPS benefits keep pace with cost-of living increases. Pensions Increase Acts explain how and when it is to be applied and Pensions Increase (Review) Orders – normally issued annually – set out the amount by which benefits should be increased.

Rights of appeal – can be used if dissatisfied with a decision of the fire and rescue authority, or the medical opinion on which certain decisions are based.

State Second Pension – inter-relates with the FPS. The FPS has "contracted out" status and must ensure that benefits payable must meet minimum requirements⁶

Overview of the New Firefighters' Pension Scheme 2006 (NFPS)

The New Firefighters' Pension Scheme 2006 (NFPS) was introduced following a review which started in 2004 (see 3.2 below). The rules for the NFPS are made under section 34 of the *Fire and Rescue Services Act 2004*. The rules are in the *Firefighters' Pension Scheme (England) Order 2006* (SI 2006 No. 3432), as amended. The main provisions are summarised in the Guide to the NFPS 2006. For example:

Membership – is open to all firefighters regardless of duty system or hours of employment.

[Member contribution rates - tiered from 8.5 to 11.1% of pensionable pay from April 2013]

Additional contributions – can be paid, by election and subject to eligibility, to 'purchase' additional benefits

Previous pension rights – as a member of the NFPS or with another pension arrangement (including the FPS 1992), may be transferred to add to current service as a Scheme member

Normal pension age – Age 60

Basic principles of assessment of pension – give a proportion of final pensionable pay according to pensionable service accrued at the date of calculation:

$1/60 \times \text{pensionable service} \times \text{final pensionable pay}$

In the case of a part-time employee, the service would reflect the part-time hours worked (e.g. half-time for two years would give one year of pensionable service) but the final pensionable pay would be based on the whole-time equivalent rate.

⁶ [A Guide to the Firefighters' Pension Scheme 1992 \(England\)](#) (September 2008), p28-9

Commutation – allows a firefighter to give up part of his/her annual pension to provide a one-off payment of lump sum

Ill-health award – can be payable from any age if the NFPS member is permanently disabled for performance of the duties of his/her role. It can be a lower tier or higher tier award. Lower tier would be paid where the member is capable of regular employment (other than as a firefighter); higher tier would be paid where the member is not so capable. A lower tier pension uses the basic principles of assessment; the higher tier uses the basic principles with an enhancement of service.

Early leaver benefits – apply in the event of leaving the fire and rescue service before normal pension age. The benefits, dependant upon length of service, the nature of the termination of employment, the age of the member and/or the choice of the member are:

- a refund
- a transfer of pension rights to another fire and rescue authority
- a transfer of pension rights to another pension arrangement
- a deferred pension
- an authority-initiated early retirement pension
- a member-initiated early retirement pension

Split pension – is a means of protecting the pension rights of a member whose pay is reduced in a final salary scheme. At the point of reduction the first pension would be “closed” and a new pension started. When the member retires, both pensions would be paid or, if more advantageous, the service on which the two pensions are based could be added together and a single pension paid.

Death benefits – are provided in the form of a death grant of three times pensionable pay for a member who dies in service and a five year guarantee where a pension is in payment, plus dependants’ benefit cover for a surviving spouse, or civil partner, or nominated partner or children.

Effect of divorce or dissolution of civil partnership depends upon the decision of the court. If the court issues an “earmarking” order, all or part of the death grant, pension, or lump sum by commutation may be paid to the former spouse or civil partner at the time those benefits would normally be paid to, or in respect of, the NFPS member. If, instead, the court issues a pension sharing order, part of the firefighter's accrued value of pension rights will be deducted from the effective date of the order to provide benefits for the former spouse or civil partner who becomes a “pension credit member” in the NFPS.

Pension credit member’s benefits – are provided for the former spouse or civil partner of a NFPS Scheme member in the event of a court issuing a pension sharing order on divorce. The benefits are payable from age 65 and comprise a pension and, provided the firefighter had not already commuted part of his/her pension, the option of a lump sum.

Pensions increase – i.e. “cost of living” increase, is applied to members’ and dependants’ pensions, usually on an annual basis

Rights of appeal – can be used if dissatisfied with a decision of the fire and rescue authority, or the medical opinion on which certain decisions are based.⁷

⁷ [‘A Guide to the New Firefighters Pension Scheme 2006 \(England\) \(December 2006\), p22](#)

Further detail can be found in [A Guide to the New Firefighters Pension Scheme 2006 \(England\)](#) (December 2006).

Some of the key differences between the NFPS and FPS are:⁸

- **Eligibility** - The NFPS is for regular, retained and volunteer firefighters who join the Fire and Rescue Service on or after 6 April 2006. This extends membership from that of the FPS, which was for regular firefighters only. Members of the FPS could elect to become members of the new pension scheme and would have the option of transferring the pension accrued in the existing scheme into the new scheme at an advantageous rate.
- **Normal pension age** - The NFPS has a normal pension age of 60. A member of the NFPS may retire at 55, subject to an actuarial reduction in the pension paid, although there is also provision for the fire and rescue authority to permit a firefighter member to retire early from age 55 on an unreduced pension, having regard to the economical, effective and efficient management of their functions, but in that case the authority, rather than the pension fund, would have to meet the cost of that early payment. Deferred pensions are payable at age 65 in the event of someone leaving the service early.

The FPS has a normal pension age of 55 (50 with 25 or more years' service). The deferred pension age is 60, or earlier if the firefighter becomes permanently disabled for firefighting or performing any other duties appropriate to his/her former role.

- **Accrual rate** - The NFPS has a single accrual rate of 1/60th. Members can accrue more than 40 years' pensionable service should they stay in service up to or beyond age 60. - In the FPS, pension accrues at 1/60th for each of the first twenty years of service and 2/60th for each of the final ten years. Pensionable service is restricted to 40/60^{ths} (after 30 years' service).
- Contribution rates are higher in the FPS than the NFPS, reflecting the higher cost of the scheme.
- **Partners' pensions** - The NFPS extends benefits to nominated partners, including those from same sex couples who choose not to enter into a civil partnership. In the FPS, partners' pensions are payable to a surviving spouse or civil partner.

Further information about the existing [Firefighters' Pension Schemes](#) can be found on the archived Department for Communities and Local Government (CLG) website.

2.1 Funding arrangements

Like most of the main public service schemes,⁹ the Firefighters' Pension Schemes operate on a pay-as-you-go (PAYG) basis, meaning that there is no fund of assets which is invested and from which pension benefits are paid. Employer and employee contributions are paid to the sponsoring government department but these contributions are not invested. Instead, the sponsoring government department pays benefits to pensioner members, netting off the contributions received.

⁸ [A Guide to the Firefighters' Pension Scheme 1992 \(England\)](#) (September 2008)

⁹ The main exception being the Local Government Pension Scheme (LGPS)

Prior to April 2006, employee and employer contributions were paid into Fire and Rescue Authority's operating Accounts. However, since April 2006, contributions are paid into a local pension fund. The reason for this was given in a written statement of 29 November 2005:

The firefighters' pension scheme is currently financed on a pay-as-you-go system. This means that employees' contributions are paid into Fire and Rescue Authorities' operating accounts, from which pensions awards are made. At present, as part of formula grant, authorities receive funding from central Government to support pension payments.

The current system for financing firefighters' pensions can cause volatility in pension expenditure as a result of lump-sum retirement payments. It can also be difficult to establish what proportion of budget and council tax increases is the result of rising pension costs as opposed to the cost of running the service. Further, over time the forecast growth in pension costs would see pension expenditure rise as a proportion of authorities' budgets.

The new financial arrangements are based on employer contributions and are similar to those used for other unfunded public service pension schemes such as those for teachers, civil servants, NHS staff and the armed forces.

The new arrangements will mean that employee contributions and a new employer's contribution will be paid into a new local pension account, from which pensions payments will be made. Government will make up the shortfall. At the outset, appropriate adjustments will be made in the level of grant so that neither local nor national taxpayers will be disadvantaged.

The new arrangements are for both the existing and proposed new firefighter pension schemes, but have no impact on the terms and conditions of either scheme.¹⁰

A guide to the FPS explains how the now funding works:

Unlike occupational schemes in the private sector, the FPS does not have trustees. Also, it does not have the usual type of pension fund found in the private sector which uses investments to meet its liabilities. Although each fire and rescue authority is required to maintain a pension fund which:

- receives employee and employer contributions and transfer values from other schemes, and
- pays out benefits and transfer values to other schemes

the authority does not have the power to invest money as would normally be the case with a pension fund. If the fund has insufficient money to meet all of its pension liabilities, the Secretary of State will make up the shortfall; if the fund is in surplus, the Secretary of State will take the excess to cover any shortfall in the funds of other authorities.¹¹

Firefighters pensions are administered by fire authorities, so there is no single set of accounts providing regular data about the schemes. However, summary information is provided by the Department for Communities and Local Government.¹²

¹⁰ HC Deb 29 November 2005, cc 5WS-6WS

¹¹ *A Guide to the Firefighters' Pension Scheme 1992 (England)* (September 2008)

¹² See, for example, [CLG, Firefighters Pension Income and Expenditure, 2010-11 to 2011-12](#)

3 The Labour Government's reforms

3.1 Background

A review of the Firefighters' Pension Scheme was announced by the Conservative Government in October 1993. The review began in 1994 but the report of the review, and recommendations, were not published before the May 1997 General Election. Subsequently, the Labour Government issued a new consultation document in March 1998. The document stressed that:

This consultation document offers the opportunity for the fire service representative organisations to comment on the options now put forward for discussion, based on the extensive work undertaken by the review. Except for certain options to improve the management of ill-health retirement, the consultation document is focused on a possible revised fire service pension scheme applying to new entrants only.

Although the options, taken as a whole, would bring fire service pensions of the future more into line with other public service schemes, they would remain among the most generous, and expensive, in the public sector.¹³

A dispute over pay, pensions and modernisation in the fire service ran from 2002 through to August 2004.¹⁴ In December 2002, *The Times* reported on how the firefighters' pay demands might affect pension costs:

Taxpayers will have to find £120 million a year to subsidise firefighters' retirements if their demands for a 16 per cent pay rise are met... The firefighters' final salary pension scheme, which gives members a retirement income based on the number of years in service, is funded by local authorities through council tax revenue...

Public sector schemes, such as the firefighters', are facing similar cost pressures to private sectors, but just 2 per cent are closed to new members [compared to 30 per cent in the private sector]. John Turton, a director of Bestinvest, the independent financial advisor, said that the generous terms of the firefighters' final salary pension scheme takes their total pay and benefits package to the equivalent of more than £37,000 a year in the private sector, before any pay rises...

Bestinvest calculated that raising the average £24,000 wage by 16 per cent would force local authorities to budget for an extra £2,189 a year for each firefighter just to cover the pension promise. Across the 55,000-strong fire service, the pension bill of 16 per cent increase would reach £120 million.¹⁵

In June 2003 a 16 per cent pay settlement linked to modernisation was agreed (there were subsequent disagreements over the implementation of the settlement). At the same time, the Government published a White Paper on the future of the fire and rescue service. On pensions, it said:

8.17 The current pension scheme is part of the structure which reinforces inflexibility in the service. It discourages diversity and more flexible working patterns by rewarding disproportionately those who come into the scheme and stay in, and by penalising those who join late and leave early. It is also expensive, both for those who work within the service and for their employers. Fire fighters contribute 11% of their pay towards their pension scheme. This high level of contribution discourages fire fighters from

¹³ Home Office, *Fire Service Pensions Review: A Consultation Document*, March 1998, piii

¹⁴ For a full summary of the dispute between 2002 and 2004, see Library Note SN/SC/3148.

¹⁵ "Firefighters' pension rise to cost £120m", *The Times*, 12 December 2004

working beyond 30 years of service, by which time they accrue full pension rights, even if they wish to do so. This helps to explain the high proportion of fire fighters who retire in their late forties and early fifties. Together with the very substantial employers' contribution, the cost of the pension scheme amounts to over 35% of pensionable pay - making it the most expensive scheme in the public sector. Meeting pension liabilities is currently a huge burden for fire authorities. The current level of early ill health retirements - at 43% and believed to be the highest in the public sector - adds to that burden.

8.18 Since the present pension arrangements were developed in 1948, the dangers involved in fire fighting have been mitigated by improved equipment and greater attention to risk management. The work of the fire and rescue service presents obvious risks, and the ill-health and injury benefits need to reflect this. But, as found by the Independent Review of the Fire Service, the job of a fire fighter does not carry any greater risk than many other occupations. At present, those who are no longer fit to carry out the full range of fire-fighting duties are forced to retire. Yet much of the work of the modern fire and rescue service that is critical for reducing the risk of fire does not involve fighting fires. In particular, community fire safety work and other preventative initiatives could easily be carried out by staff who do not fight fires.

3.2 Proposals for a New Firefighters' Pension Scheme

In October 2004, the Office of the Deputy Prime Minister (ODPM) published two documents on the fire service pension scheme. In doing so, it acknowledged the change in the pensions and employment environment since the 1998 review, stating that "a more radical approach is now needed".¹⁶ The Government's proposals included a new firefighters' pension scheme for members joining from 1 April 2006 and further amendments to the scheme for existing members. The consultation period ran until January 2005.¹⁷ The two documents were:

- Office of the Deputy Prime Minister, *Proposals for amendments to the Firefighters' Pension Scheme, October 2004*,¹⁸ and
- Office of the Deputy Prime Minister, *Government Proposals for a New Firefighters' Pension Scheme, October 2004*¹⁹

These had been foreshadowed in the June 2003 White Paper, *Our Fire and Rescue Service*, as necessary to provide a "scheme more suited to the service of the future and reflecting changes in the relevant tax and regulatory framework on which there is already public consultation". One of the main issues on which there was already public consultation was the proposal to increase the pension age to 65 throughout the public service. Another was that, for all pension schemes, the normal minimum pension age should be raised from 50 to 55.²⁰

The Government proposed that a new scheme should be available for new entrants joining at a date to be determined, but no later than 1 April 2006. The objective was to bring firefighters' pensions into line with the pensions of other Fire and Rescue Service and public sector staff, except where differences can be justified by the nature of the work or the needs of the service. The new scheme would be a defined benefit arrangement, which might be linked to final salary, or to final salary combined with earnings in earlier periods.

¹⁶ ODPM, *Government Proposals for a New Firefighters' Pension Scheme*, October 2004, p10

¹⁷ HC Deb 13 October 2004, c25WS

¹⁸ <http://bit.ly/d8UtyN> (UK Govt Web Archive)

¹⁹ <http://bit.ly/cGiNjE> (UK Govt Web Archive)

²⁰ For details of this see Library Standard note SN/BT/2209 on *Public Service Pension Age*.

Although the Government recognised that the job of a firefighter remained dangerous and new risks, including possible threats from terrorism, were emerging, it remained insistent that these dangers should be reflected in pay rather than pension arrangements:

...these dangers should be reflected in pay and not in the pension arrangements beyond an ill-health and injury package which provides fair compensation for anyone, or their dependants, who is injured as a consequence of the work. Whilst the nature of the work will continue to demand high standards of fitness, particularly for firefighters in the early stages of their careers, new opportunities will be created in community fire safety and fire prevention work which should increase the opportunities for firefighters who no longer satisfy the fitness requirements or do not wish to continue in emergency response work: however ... such opportunities may require competencies which can only be acquired by training and the jobs may be paid less so there will be a need for stepping down arrangements within any pension scheme to enable benefits to be preserved at the point of job change.²¹

The Government cited four main objectives for the new scheme:

- Bring firefighters' pensions into line with other members of the Fire and Rescue Service and other public sector employees;
- Improve recruitment and retention;
- Make the scheme more affordable and reduce the current overall costs of the scheme (approximately 37.5% of pensionable pay); and
- Encourage flexibility and diversity, in particular to rid the scheme of "a number of perverse incentives which encourage firefighters to leave at certain points" and to eliminate those provisions which penalise late joiners and those who take career breaks.²²

The Government requested written comments on 16 key issues for the new scheme by 14 January 2005:

Issue 1. The existing Firefighters' Pension Scheme should be closed to new members once the new scheme has been finalised and no later than 1 April 2006 and new entrants to the Fire and Rescue Service should join the new pension scheme from that date. (*paragraphs 1.2 and 4.1 - 2*)

Issue 2. Membership should be limited to firefighters, whatever duty system they work (regular or retained). (*paragraphs 2.1 - 2*)

Issue 3. There should be no compulsory retirement age. (*paragraphs 2.4 - 5*)

Issue 4. The normal pension age: there are arguments for age 65, although we need to be satisfied that the roles which firefighters may be expected to carry out in the future will allow significant numbers of members to continue working to that age. The other possibility is age 60. (*paragraphs 2.6 - 11*). The deferred pension age should be age 65 (*paragraph 2.12*).

Issue 5. There should be single accrual. There is a range of options, the main ones being a pension based on 60ths with optional commutation or a pension based on 80ths with a fixed lump sum of 3 or 4 x pension. (*paragraphs 2.13 - 18*)

²¹ ODPM, [Government Proposals for a New Firefighters' Pension Scheme](#), October 2004, p11

²² [Ibid](#), para 1.11

Issue 6. For those who accrue maximum service (40 years) before normal pension age the excess service should accrue for pension purposes and for those who work beyond normal pension age the additional service should be allowed to accrue for pension purposes. (*paragraphs 2.13 - 18*)

Issue 7. Pensionable pay should be defined by reference to core pay and possibly other permanent emoluments. (*Paragraphs 2.19 - 22*)

Issue 8. The scheme should incorporate measures to mitigate adverse effects on the pension benefits built up by a member who moves from operational to non-operational duties or who steps down from a more senior role. Should firefighters' pensions be based on career average earnings? (*paragraph 2.23*)

Issue 9. There should be an option for payment of pensions from age 55 at the discretion of the employer. (*paragraphs 2.24 - 28*)

Issue 10. Firefighters retired for ill-health reasons who can take alternative regular employment should have an immediate unenhanced pension. Those permanently disabled from taking regular full-time employment should have enhanced pensions. Enhancements should be limited by reference to normal pension age, or 40 years' service, whichever is the lower. (*paragraphs 2.29 - 32*)

Issue 11. Survivor pensions should be extended to unmarried partners. (*paragraphs 2.34-37*)

Issue 12. Maximum spouse/partner's pension should be 25% of the member's pensionable pay, payable for life; and the children's pension too should be a percentage. (*paragraph 2.38*)

Issue 13. Death benefit should be 3 x pensionable pay. (*paragraphs 2.39 - 41*)

Issue 14. Scheme members should pay a contribution of about one third of the costs. On the basis of a normal pension age of 65, costs will range from 19% to 24% of pay depending on the benefits paid, giving a contribution of 6.5% to 8%. (*paragraphs 3.1 - 3*)

Issue 15. Options for members of the Firefighters' Pension Scheme to transfer to the new scheme will be considered. Rights under the Firefighters' Pension Scheme will be fully protected. (*paragraphs 4.3 - 4*)

Issue 16. Should membership by retained firefighters be automatic or voluntary; or could it depend on whether the person was an existing member of the Service or a new entrant? Should membership be on the same basis as regular firefighters, whether whole or part-time. (*paragraphs 4.5 - 7*)²³

Proposed amendments to the existing scheme

Whilst the new pension scheme would be available to members of the existing pension scheme who elected to transfer because they wish to take advantage of benefits available under the scheme or the reduced cost of contributions, the Government decided that, subject to some changes, the *Firefighters' Pension Scheme 1992 (FPS)* should continue to operate for current members, although closed to new members once the proposed new scheme comes into operation. Transfer arrangements would be considered as details of the new scheme design were developed but the Government envisaged that members of the original FPS should be able either to transfer into the new scheme or to freeze their pension rights in

²³ *Ibid*, pp23-25

the FPS and join the new scheme for future service only: in the latter case, accrued rights under the FPS would be protected.²⁴

The changes proposed in the consultation document to the FPS reflected some of the changes in the tax and regulatory framework for pensions generally.²⁵ These proposals are outlined below.

1. In line with the Government's proposals to raise the public service pension age from 60 to 65 and the minimum pension age from 50 to 55; it was proposed that the minimum pension age in the FPS should rise to 55 with effect from 2006 (those who would retire before April 2013 aged 50 or older with 25 or more years of service would be exempt from this change) and the deferred pension age for firefighters in the FPS should be raised to 65 from April 2006 in respect of future service.²⁶ The Government did not think an increase in the retirement age should be imposed on those already preparing for retirement, and proposed to increase the minimum retirement age from 2013.²⁷
2. The ODPM was already consulting with the Pensions Committee on changes to reflect the move from ranks to roles in the fire service and to repeal the provision relating to compulsory retirement age, but these would not impact on the main benefits available under the FPS. The intention was to make these changes once they have been discussed with the Pensions Committee.²⁸
3. As for the NFPS, the Government proposed to provide for a two-tier ill-health pension system.²⁹

Government response to consultation - September 2005

On 8 September 2005, the ODPM published the Government response to the previous year's consultation on the new proposed scheme for firefighters and the changes to the present scheme. Circular FPS 2/2005 gave details of the outcome of the consultation exercises; the proposed framework for the new scheme and highlighted potential issues of concern. Alongside the circular, the ODPM published substantive copies of the Government response to the consultation documents on the proposals for a new scheme, the framework for the new scheme, and the amendments to the current scheme.³⁰ The Firefighters' Pensions Committee (FPC) -which provides a forum for discussion of pension issues- met to discuss in detail how the new scheme will be drafted.³¹

Proposed framework for NFPS

The following framework was proposed for the New Firefighters' Pension Scheme (NFPS):

- Final salary scheme, contracted-out of S2P;
- Cost of scheme benefits to be between 19% and 24% of pensionable pay;

²⁴ ODPM, [Proposals for amendments to the Firefighters' Pension Scheme](#), October 2004

²⁵ *Ibid*

²⁶ *Ibid*, para 2.4

²⁷ *Ibid*, para 2.3-2.5

²⁸ *Ibid*, para 3.1

²⁹ *Ibid*, para 3.5

³⁰ All available at:

<http://webarchive.nationalarchives.gov.uk/http://www.communities.gov.uk/fire/working/firefighterpensions/> (retrieved 19 September 2008)

³¹ HC Deb, 25 October 2004, c1077-8W; Minutes of meetings, and papers, can be found on the [Communities and Local Government website](#)

- Employee contributions of between 6.5% and 8% of pensionable pay;
- Linked to the RPI;
- Purchase of additional service available up to an overall limit of 40 years by NPA;
- Accrual rate of 1/60th of pensionable pay for each year of service;
- Lump sum available of up to 25% of pension, via commutation;
- Normal pension age of 60;
- Minimum pension age of 55 with actuarially reduced benefits;
- In-service death grant of three times pensionable pay;
- Widow(er)s' and partners pensions to be available to spouses, civil partners and unmarried partners with a registered joint declaration of partnership; and
- Children's pensions.³²

It was hoped that the new scheme would come into operation in April 2006.

Proposed amendments to the FPS

The Government's response to the consultation on amendments to the existing scheme (FPS 1992) indicated that a number of changes would be made:³³

- The minimum pension age would be raised from 50 to 55 and the deferred pension age from 60 to 65;
- Rules on tax relief on all pension contributions, currently limited to 15% of earnings, will be relaxed;
- A lifetime allowance for tax-privileged pension savings would be introduced (£1.5 million in tax year 2006/07, rising to £1.8 million in 2010/11); and
- Pensions for civil partners would be introduced.³⁴

Many of the concerns raised during consultation were about the rise in the minimum pension age. It was decided to retain the proposal put forward in the consultation document that existing members who can retire before April 2013 either with a full pension after 30 years' service or with 25 or more years' service from age 50 would not be affected by any change in the minimum retirement age for the scheme. However, one issue not resolved was how the changes will affect those who, after 2013, would have worked for more than 30 years and yet would have to continue to make pension contributions with no additional benefits (the same applies to those who had transferred service in from other pension schemes with the aim of retiring before age 55).³⁵

(A Department for Communities and Local Government (CLG) circular of June 2010 proposed allowing a refund of contributions to certain members of the Firefighters' Pension Scheme (FPS) 1992 who had made in excess of 30 years' contributions after 1 December

³² ODPM, *Framework for New Firefighters' Pension Scheme: Government Response to the Consultation*, 8 September 2005. More information was made available in *Government Proposals for a New Firefighters' Pension Scheme: Government Response to the Consultation*, 8 September 2005:

³³ Largely in response to legislation which has already been passed and is about to come into force: most notably the new tax regime for pensions contained in the *Finance Act 2004*, due to come into force in April 2006 and the *Civil Partnerships Act 2004* which will allow same sex couples to register as civil partners and obtain pension rights similar to those for married couples from December 2005.

³⁴ ODPM, *Proposals for Amendments to the Firefighters' Pension Scheme: Government Response to the Consultation*, 8 September 2005

³⁵ *Ibid*, pp3-4

2006.³⁶ In August 2011, CLG launched a consultation on proposed amendments to the FPS. This included a draft order, which would make provision to:

allow members under the age of 50 who have accrued 30 years' service to take a contributions holiday from the time they attain 30 years' reckonable service until they reach age 50. At this point, the member would then be able to choose between retirement with pension or continued employment and payment of contributions, or continued employment without paying contributions and electing to defer their pension.³⁷

CLG estimated that the cost of refunding excess contributions would be £2.7 million.³⁸ The Government has not yet responded to this consultation.

Fire Brigades Union response

The Fire Brigades Union (FBU) was opposed to many of the changes the Government intends to implement, particularly those involving an increase in the pension age and the introduction of a two-tier ill health pension. It said:

- The FBU does not accept the figures given for the cost of funding the FPS. The actuarial assumptions are extreme.
- The Firefighters Pension scheme ("FPS") has, historically, been very similar to the Police Pension scheme. The FBU believes that the current proposals to move away from this position are ill-conceived.
- The FBU does not believe that a new pension scheme is necessary or desirable for new entrants to the service. To have two firefighters doing the same job with different pension benefits is divisive and unfair.
- The FBU welcomes the admission of retained firefighters to the FPS. They are strongly of the view that control room workers should be admitted as well.
- The FBU rejects the proposal to increase the minimum pension age for firefighters to age 55. To do so will create an aging Fire and Rescue Service.
- The Government has still not produced proposals for revisions to the injury benefits arrangements for firefighters. The FBU cannot see why they could not be produced at the same time as pension proposals and cannot see how they can be implemented with effect from April 2006 as the Government proposes, if adequate consultation is to be allowed.
- The FBU strongly rejects the proposal that full ill-health pensions will be payable only where the applicant is unfit to perform work of any nature at all. An ill-health pension should be paid if a firefighter is unfit to perform the duties of his or her own job.

³⁶ CLG, [Firefighters' Pension Scheme Circular 03/10](#); See also CLG, [Firefighters' Pension Scheme Circular, 08/2010](#)

³⁷ CLG, [Amendments to the Firefighters' Pension Scheme \(1992\) and the New Firefighters' Pension Scheme \(2006\) - Consultation](#), August 2011

³⁸ *Ibid*

- The FBU welcomes the proposal to provide survivors' benefits to unmarried partners in the future but believes that it is unjust and archaic not to do so for the unmarried partners of current firefighters as well.³⁹

A press notice issued on 8 September 2005, the day the Government published its decisions following the consultation, was more forthright. National officer Paul Woolstenholmes said:

"We are fundamentally opposed to the Government's proposed pension scheme for new entrants to the fire service. It would create a workforce with a two-tier benefits with a worse pension for new entrants.

We reject Government claims that firefighter's pensions are over-generous. Firefighters contribute the very high rate of 11% of gross pay and pension benefits reflect those high contributions.

Claims of "inflexibility" are meaningless and trite clichés are taken out and dusted down by ministers to justify cuts – this is wholly unacceptable. Ministers never have been interested in greater flexibility if it costs anything. [...]"⁴⁰

Despite continuing discussions in the Fire Pensions Committee, the union remained very dissatisfied with the proposed changes and called a special meeting of the union's conference in Southport on 16 February 2006. There the executive was to recommend a ballot for strike action:

FBU General Secretary Matt Wrack said: "Fire crews feel they have been kicked in the teeth. Politicians are quick to publicly praise our skills and dedication while at the same time trying to pick-pocket our pensions. Police and ambulance have been granted protection for current members of their pension schemes. We don't understand why we are being singled out for worse treatment and the public will not understand it either. [...] We are planning a recall of our conference and asking it to back calls for strike action. We want to co-ordinate our campaign with over a million other public service workers who want to protect their pensions."⁴¹

Revised Government proposals, February 2006

Following a series of meetings between the FBU and the ODPM, the then Minister, Jim Fitzpatrick, wrote to the General Secretary of the FBU, outlining the government's response to FBU representations. The FBU set out the proposed changes as follows:⁴²

- Proposal to increase the minimum pension age to 55 has been withdrawn. Retirement at 60 in the new scheme for new entrants remains and the FBU will continue to campaign for change.
- Firefighters working the retained duty system will be able to join the new pension scheme, gaining a pension for the first time. The union is awaiting the decision of the House of Lords in a bid to get RDS firefighters access to the existing FPS.

³⁹ FBU, *Proposed revisions to the firefighters pension scheme and proposals for a new firefighters pension scheme: summary of the FBU technical response*

⁴⁰ FBU press notice, *FBU reaction to Government proposals for a new pension scheme for new entrant*", 8 September 2005

⁴¹ FBU press notice, 13 January 2006, *Fire crews move towards industrial action ballot over cuts to pension scheme*,

⁴² <http://web.archive.org/web/20100730231433/http://fbu.org.uk/campaigns/pensions/> (viewed 19 September 2008)

- The threat that serving RDS firefighters who joined the new scheme would lose the existing link to wholetime earnings for ill-health and injury purposes has been withdrawn.
- The proposals for a new injury scheme has not been published and any changes will follow consultation. Until then, the current scheme will remain in place.
- The Government would not budge on changes which will make it more difficult to secure an ill-health pension.
- Talks will start within a month on allowing emergency fire control staff access to the new FPS. The government is not opposed in principle to the move, but has concerns about possible extra costs.
- All allowances such as Flexi Duty allowance and London Weighting which are currently pensionable will continue to be pensionable under both the existing FPS and the new FPS.

The FBU proposed a further special conference in mid-March, one it had been able to consult its members on the proposals. Its Executive Council's recommendation for a strike ballot was withdrawn. *Professional Pensions* reported that:

Firefighters have decided not to strike over government reforms to its pension scheme. Members of the Fire Brigades Union voted against a strike ballot but vowed to continue campaigning for improvements in its pension scheme. In February a nationwide strike was narrowly avoided when the government withdrew a controversial proposal to increase the retirement age of existing staff from 50 to 55. However, further proposed adaptations to the scheme, which threaten cuts to benefits, prompted the FBU to hold a recall conference, calling for industrial action. Members are opposed to proposals to set the retirement age of new entrants to 60 and cuts to ill health benefits.⁴³

Introduction of changes

Regulations introducing the New Firefighters Pension Scheme 2006 (NFPS) and amending the Firefighters Pension Scheme 1992 (FPS) were laid before Parliament on 4 January 2007, with parts of the regulations taking effect from 6 April 2006. New recruits from April 2006 had been placed in the existing scheme temporarily until the Order for the new scheme was made.⁴⁴

Impact of the reforms

In 2006, the new arrangements in the NFPS were estimated to cost 22.7 per cent of pensionable pay compared with 37.5 per cent from the FPS.⁴⁵ The savings were said to result from the increase in the pension age and the change in accrual rates:

8.2 The impact on the public sector of the new scheme is that it will result in cost savings for firefighters who join the new scheme and for the council tax payer as well as providing some improved benefits for firefighters and their beneficiaries. Members of the scheme will pay a contribution rate of 8.5% compared to 11% for the 1992 scheme. The employers' contribution rate will decrease to 14.2% down from 26.5% for the existing scheme. The savings are found in the main by the change in the normal pension/retirement age (that is from 55 under the 1992 scheme to 60 in the new

⁴³ Professional Pensions, *Firefighters call off strikes over reforms*, 6 April 2006

⁴⁴ [Firefighters' Pension Scheme \(England\) Order 2006 \(SI 2006/3432\)](#) introduced the NFPS; [Firefighters' Pension Scheme \(Amendment\) \(No.2\) \(England\) Order 2006 \(SI 2006/3433\)](#) amended the FPS. Office of the Deputy Prime Minister, *Firefighters' Pension Scheme Circular*, FPS 07/2006. 30 March 2006 [Firefighters' pension scheme circulars 2006 - Fire and resilience - Communities and Local Government](#) (UK Govt Web Archive);

⁴⁵ HC Deb, 7 November 2006, c1005W

scheme) and the removal of double accrual of pensionable service after the first 20 years which is a feature of the 1992 scheme. Under the new scheme, pension will accrue at 1/60th per year for the whole of service. The government believes that the new scheme provides firefighters with a good pension scheme tailored to the special needs of the Fire and Rescue Service and is a good deal for the taxpayer.⁴⁶

In its 2007 valuation, GAD estimated that the ongoing cost of providing benefits to members of NFPS to be 23.7% of payroll, compared to 37.7% for members of FPS.⁴⁷

Retained Firefighters

At the beginning of March 2006, the House of Lords gave its decision in *Matthews and others v Kent and Medway Towns Fire Authority and others*,⁴⁸ regarding the employment rights of “retained firefighters”. IDS Pension Service explained the judgement as follows:

At the beginning of March 2006, the House of Lords gave its opinion in the *Matthews* case, regarding whether retained firefighters should receive the same employment benefits as permanent firefighters. After four court actions over a five-year period, retained firefighters have won the right to have their case reconsidered by the Employment Tribunal. In 2000, the Fire Brigades Union (FBU) brought claims to the Employment Tribunal on behalf of their 14,000 plus retained members under the *Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000*. The FBU argued that retained firefighters are employed under the same type of contract as their permanent colleagues and that they are ‘engaged in the same or broadly similar work’.....Firefighters on the retained duty system do not have regular shift patterns, and are often on call over 24-hour periods. They do not share in the holiday or sick pay arrangements available to their permanent colleagues. Further, they do not have access to the firefighters’ final salary pension scheme which is open to permanent firefighters (both full and part-time).

The claims for parity of treatment were rejected by the Employment Tribunal, the Employed Appeal Tribunal and the Court of Appeal. However, the FBU decided to take the fight to the House of Lords. Three out of the five Lords of Appeal allowed the appeal and remitted the case to the Employment Tribunal ‘for reconsideration of the *same or broadly similar work* issue and any further issues which arise as a result of their conclusion on that.’

Assuming that the Employment Tribunal reaches the same conclusion, the Lords judgment has far reaching implications, particularly for pension schemes, as many other retained employees may now be able to claim access to the same benefits as their permanent colleagues.⁴⁹

The Fire Brigades Union General Secretary, Matt Wrack said:

This case was about securing fairness and justice for thousands of Retained Firefighters across the UK. They are first class Firefighters and they should not be given, nor should they accept, second class employment rights. This momentous decision paves the way to ending 60 years of discrimination against Firefighters working the Retained Duty System. Retained Firefighters have worked on the front line

⁴⁶ [Explanatory Memorandum to The Firefighters’ Pension Scheme \(England\) Order 2006 \(SI 2006 No. 3432\); The Firefighters’ Compensation Scheme \(England\) \(Amendment\) \(Order\) \(SI 2006 No. 3434\) and The Firefighters’ Pension Scheme Amendment \(No. 2\) \(England\) Order 2006 \(SI 2006, 3433\)](#); See also: HC Deb, 4 December 2006, c175W

⁴⁷ GAD, *Firefighters’ Pension Schemes in England. Actuarial valuation as at 31 March 2007*, 23 October 2009, para 8.1

⁴⁹ IDS Pension Service Bulletin 194, *Tribunal must reconsider firefighters claims*, April 2006

at almost every major incident. Huge areas of the United Kingdom rely completely on Retained Firefighters and when the public are being rescued they don't stop to ask your employment status.⁵⁰

As stated above, the Labour Government had already announced its intention to open the New Firefighters Pension Scheme (NFPS) – introduced in 2006 - to Retained Duty System firefighters. Following negotiations, it was agreed that retained firefighters with service between 1 July 2000 and 5 April 2006, should be able to opt for membership of a “modified” NPFS, which would provide benefits equivalent to those of the FPS.⁵¹ On 15 August 2011, the FBU wrote to members regarding what it described as an “unacceptable delay” in implementing this.⁵² Consultation on legislation to implement the change was expected to take place towards the end of summer 2011, resulting in a change in legislation probably sometime in early 2013. Fire and rescue authorities were concerned about the potential costs.⁵³

On 23 July 2013, the Government launched a consultation on the proposed terms of access to a modified pension scheme for retained firefighters in England between 1 July 2000 and 5 April 2006. It said the proposed terms provided them with comparable pension rights to those enjoyed by regular firefighters during the same period.⁵⁴ It said:

The benefits offered will be the same as those provided under the now closed Firefighters' Pension Scheme.

Every part of the public sector needs to play its part in reducing the deficit and steps to reform the pension scheme for all firefighters are contributing to this. The decision to open up the pension scheme to retained firefighters is about introducing a fair system that provides a level playing field for all firefighters.

Today's consultation is about taking steps to address a long standing anomaly that discriminated against retained firefighters who perform such an important role for their communities and who are the mainstay of many fire and rescue authorities. Subject to the consultation, legislation will be laid in Parliament to give effect to the new pension arrangements.

Retained firefighters who are employees, just like full-time fighters, provide cost effective, reliable and vital on-call cover from home or their place of work. However, historically they were not permitted to be members of the Firefighters' Pension Scheme.

The pensions will be available to any retained firefighter who was employed during the period 1 July 2000 and 5 April 2006 and the terms will be comparable with those offered to a regular firefighter employed at the same time.⁵⁵

3.3 Changes to ill-health retirement

One of the aims of reforms introduced in 2004 and 2006 was to reduce the rate (and therefore the cost) of retirement on ill-health grounds. In 1995, the Audit Commission

⁵⁰ FireFighter, [Retained Pensions Special](#) April 2006. (Internet Archive Wayback Machine)

⁵¹ [FBU circular: 2010HOC0317MW. Retained firefighters: pension settlement update](#). 7 May 2010

⁵² [FBU circular 2011HOC0369SS, Access to modified pension scheme for firefighters working the retained duty system](#), 15 August 2011

⁵³ Nottinghamshire and City of Nottingham Fire and Rescue Authority, [Retained Firefighter Pensions – Report of the Chief Fire Officer](#), 25 May 2012

⁵⁴ [CLG, Retained firefighters' pension settlement – a consultation to provide access to a modified pension scheme](#), July 2013

⁵⁵ [CLG press release, Retained firefighters to be given access to fire service pension scheme](#), 23 July 2013

published a report expressing concerns about the large numbers of firefighters taking early retirement on grounds of ill-health:

There is a particular problem in respect of early retirement due to injury on duty or other ill-health causes. According to Home Office statistics and the national survey, between 1985 and 1992 only 29% of firefighters retired ordinarily, whereas 71% retired early – 22% retired due to injury on duty and 49% on other ill-health grounds... Within some individual brigades, the problem was even worse. For example, in four brigades more than 90% of all retirements in the period were taken early due to injury or ill-health.

A particularly worrying aspect of the number of early retirements is the number of occasions on which early retirements on medical or injury grounds appear to coincide with the times when, under the terms of the pension scheme, early retirement is particularly beneficial. After 15 years' service the provisions of the scheme allow for an increase in the pension payable for injuries, and firefighters receive a pay enhancement, thus qualifying for increased benefits, and 26.5 years' service is the earliest point at which the full pension benefit is payable...

Early retirement not only results in a premature loss of highly skilled staff, but also imposes large costs on authorities. It is an issue which requires serious attention individual brigades.⁵⁶

Indeed, Lord Williams of Mostyn highlighted the Government's concerns about this issue in a Written Answer in March 1998:

The level of early retirements on medical grounds in the... fire service is unacceptably high and in many cases cannot be justified. Wide variations across the country between... brigades support this argument. Good management of ill-health retirement is crucial.⁵⁷

At that stage, no firm proposals for change were made, despite press stories highlighting a 'crisis' in fire service pensions.⁵⁸

A broader definition of 'firefighter'

In 2003, the Labour Government proposed two main changes to reduce the level of ill-health retirements:

8.19 The high cost of the pension scheme has to be addressed. We will tackle the high level of ill-health retirement and ensure that the system is not open to abuse. We have already issued guidance on measures to improve the management of ill-health, including the use of independent medical assessment before early retirement on ill-health grounds is approved. In addition we will:

- broaden the definition of the term 'fire fighter' to allow a wider range of those employed in the service to remain in the pension scheme;
- place an obligation on fire and rescue authorities to use independent medical assessment before approving applications for early retirements on ill-health grounds. [...]⁵⁹

⁵⁶ Audit Commission, *In the line of fire*, 1995, pp 30-32

⁵⁷ HL Deb, 31 March 1998, c 20WA

⁵⁸ Pensions Red Alert Sounded", *Pensions Week*, 25 March 2002; "Pension pressure sparks fire service overspend", *Pensions Week*, 11 November 2002

The result of the consultation was the *Firemen's Pension Scheme (Amendment) Order 2004* (SI 2004/1912) which came into force on 13 September 2004. The Explanatory Memorandum explained that, the intention was to broaden the definition of firefighter to "allow a firefighter, who is no longer fit enough to engage in operational duties, to remain in the FPS rather than be retired with an ill-health pension." The firefighter could be deployed on a range of other duties, including community safety.⁶⁰ Guidance to Fire and Rescue Authorities (FRA) said that if person could not be offered alternative employment they could be retired with an ill-health award:

Eligibility for full membership of the FPS is limited to regular firefighters only. The definition of "regular firefighter" includes a requirement to engage in firefighting. This remains a term of eligibility for joining the FPS. However, the definition has been amended to allow a firefighter who subsequently becomes permanently disabled for firefighting while remaining fit for other related duties to continue as a member of the FPS. This is on condition that there has been no break in service. Consequently if a FRA are of the view that the retention of a firefighter would be of value to the service, redeployment to other duties, as appropriate to the role of a firefighter, should be considered and would be allowable under FPS rules. **If the FRA cannot offer other employment, fitness to perform other duties would not be relevant and the person may be retired with an ill-health award.**⁶¹ [emphasis added]

In September 2006, the Department for Communities and Local Government (CLG) revised the guidance, removing the final sentence, highlighted above.⁶²

In September 2007, Matt Wrack, General Secretary of the Fire Brigades Union wrote to the Minister to express concerns about this guidance which, he said, had led to the withdrawal of ill-health pensions from three former members. He said the effect of the new guidance would be to "end ill-health retirement" in the firefighters pension schemes:

The aim of the original change was to allow greater flexibility into the scheme by allowing re-deployment to non-operational duties if this was not appropriate. However, under the new guidance a pension will not be paid even if no such job exists. The effect of these changes will be to place firefighters in limbo. They will not be able to continue in their profession due to ill-health. They will not be entitled to a pension. They will also not be guaranteed any employment since there are few, if any, such (non-operational) jobs in existence within the Fire and Rescue Service.⁶³

In October 2007, the FBU Executive Council asked its branches to consider calling for political and industrial action if the guidance was not changed.⁶⁴

In response to an adjournment debate on this issue in January 2008, the Minister said it had never been the Government's intention that "a firefighter who is injured should not receive an appropriate award or be left with no job or recompense." He announced the establishment of

⁵⁹ ODPM, *Our Fire and Rescue Service (Cm 5808)*, June 2003, pp53-54; ODPM, *Amendments to the Firemen's Pension Scheme Order 1992 (FPS): Consultation Paper*, 18 July 2003, p2

⁶⁰ Explanatory Memorandum to SI 2004/1912

⁶¹ *Firefighters Pension Scheme Circular 30/2004* (1 September 2004)

⁶² *Firefighters Pension Scheme Circular 11/2006* (4 September 2006)

⁶³ Letter from Matt Wrack, General Secretary of the Fire Brigades Union, to Parmjit Dhanda MP, Parliamentary Under Secretary of State at the Department for Communities and Local Government

⁶⁴ *FBU circular: 2007HOC0565MW 11 October 2007*

a working group to look at the issue.⁶⁵ The working group met on four occasions and in October 2008, new guidance was issued. This said:

1.9 The onus is on a fire and rescue authority to make every effort, through reasonable adjustments, including reasonable re-designing of jobs within an authority - to enable and encourage firefighters to stay in work within the role if they can, rather than be retired early. In the case of retained duty system firefighters any redesign and readjustment should be consistent with the duty system. But of course it will not always be possible for firefighters to stay in work. In considering the case for ill-health retirement the fire and rescue authority will need to consider the application of the criteria in the regulations in the light of the facts and circumstances of individual cases. These facts and circumstances include the realistic prospect of suitable employment. This is not a simple matter: before reaching a final determination as to the absence of any suitable employment within the role, the fire and rescue authority must consider whether they can create a suitable post through adjusting posts within their structure, rather than simply look at matching the employee to existing opportunities. The absence of a realistic prospect of suitable employment within the role at the end of this process is material to the decision on whether the criteria apply, and whether an award is made.

1.10 Before considering ill health retirement, fire and rescue authorities should consider the possibility of redeployment within the role, or the reasonable prospect of redeployment within the role, to such posts as are available for firefighters to take up either at that time or within a reasonable period. CLG consider that - whilst it is not possible to lay down a rigid time frame - it would be reasonable to give three months as an indicative time within which to see if a job is available, subject to the circumstances of the case. Accordingly, if there is a realistic prospect that a job within the role is likely to be available in that timescale, the fire and rescue authority should defer reference to the IQMP in order to redeploy. When reference is made to the IQMP, the fire and rescue authority should set out in its report to the IQMP all the steps it has taken in its management of the case.

1.11 In addition, fire and rescue authorities when considering redeployment within the role should explore other possibilities on a voluntary basis with the individual.⁶⁶

Two-tier ill-health pensions

In 2004, in its proposals reform, the Labour Government explained that under the system then in place a firefighter permanently disabled from performing the duties of a firefighter was entitled to an ill-health pension, enhanced by an amount dependent on length of service. It proposed introducing a second tier, which would provide an immediate unenhanced pension to those who could take alternative regular employment:

2.29. A firefighter who is permanently disabled from performing the duties of a firefighter is currently entitled to an ill-health pension which is enhanced by an amount dependent on length of service. Enhancements are limited to the extent that a person's pension cannot exceed 40/60ths of average pensionable pay. Because the enhancements do not accrue smoothly, the present arrangements act as a perverse incentive to retire at certain points of service, e.g. after 26 years' service.

2.30. The level of ill-health retirements in the Fire and Rescue Service, at over 60%, remains higher than in any other area of public service. The majority of the early

⁶⁵ HC Deb, 22 January 2008, c1475-6 [Parmjit Dhanda]

⁶⁶ CLG, *FPSC 08/2008*; *FPSC 08/2009* and *Guidance for Independent Qualified Medical Practitioners (IQMPs) providing an opinion on permanent disability, fitness for regular work, qualifying injury and degree of disablement*, January 2011

retirements are not directly related to work causes. Although there have been reductions in recent years and further changes to the Firefighters' Pension Scheme, which became effective recently, should reduce the level still further, numbers are expected to remain unacceptably high. It not only results in the loss of skilled and experienced staff but is also a drain on resources, which is wasteful and limits the money available for core activities.

2.31. The approach we would propose is to provide for two tiers. The first providing an immediate unenhanced pension and payable to those who can take alternative regular employment. Such persons may not be able to earn at the same level as in the Fire and Rescue Service and the pension would serve as a cushion between what was earned as a firefighter and the potentially lower paid job outside the Service.

2.32. For those permanently disabled from taking regular employment there would be a system of enhancements to compensate for the loss of earnings capacity. Enhancement could be in line with that currently provided for in the Firefighters' Pension Scheme, and also the present Local Government Pension Scheme, i.e. by reference to length of membership. Such enhancement would be limited by what could be accrued by the member had he/she not retired on health grounds by the normal pension age, and limited to 40 years' maximum. However, as noted by the Review of Ill Health Retirement in the Public Sector (July 2000), such a scale provides perverse incentives to go at certain points. A smooth scale of enhancements could avoid this. If pensionable service was enhanced by half the prospective service to normal pension age this could assist those who fall ill early in their careers but it would also make it financially advantageous for fire and rescue authorities to rehabilitate firefighters so that they remain in service.⁶⁷

Two-tier ill-health pension arrangements are now in place in both schemes.⁶⁸

Trends in recent years

The valuation of the scheme as at 31 March 2007 showed a fall in the proportion of firefighters retiring on ill-health grounds, possibly due to tighter controls for determining whether a particular case met the eligibility criteria:

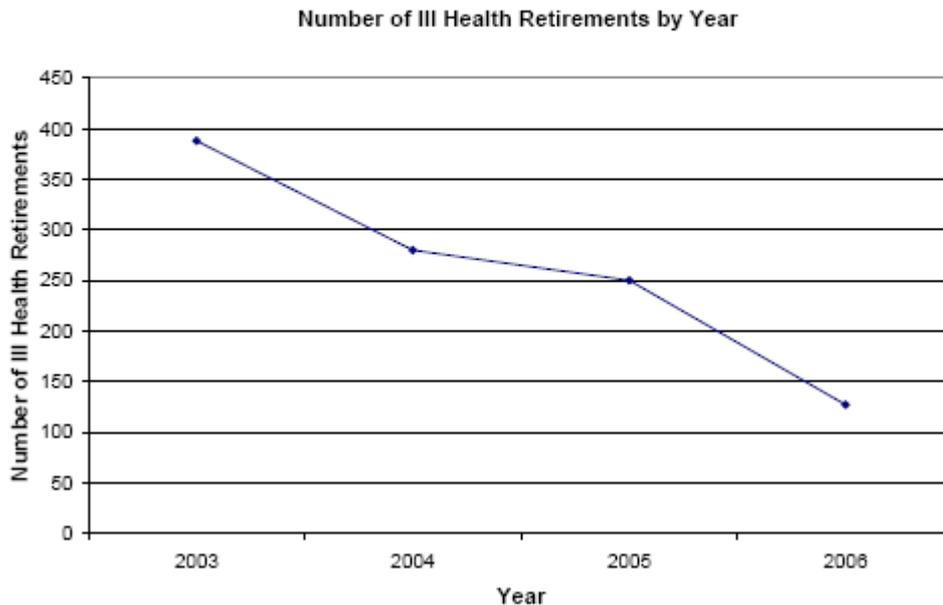
5.4 A Firefighter receives an ill health retirement pension if they satisfy the eligibility criteria. There were 1,045 ill health retirements between 2003 and 2007, which represents 26% of the total retirements which occurred during the period and is consistent with a figure of 8.7 ill health retirements per thousand employees reported by DCLG. This is a significant reduction in the proportion of retirements due to ill health compared with the period 2002/03, during which 42% retirements were due to ill health. This reduction might be explained by tighter controls in the process of determining whether a particular case meets the eligibility criteria. [...]

5.5 Figure 4 shows the number of ill-health retirements during each of the 4 years preceding the current valuation date, As can be seen, the downward trend in the number of ill health retirements has continued over the period for which data was made available.

⁶⁷ ODPM, *Government Proposals for a New Firefighters' Pension Scheme, October 2004*, p11; ODPM, *Proposals for amendments to the Firefighters' Pension Scheme, October 2004*, para 3.2

⁶⁸ *A Guide to the Firefighters' Pension Scheme 1992 (England)* (September 2008); *A Guide to the New Firefighters Pension Scheme 2006 (England)* (December 2006)

Figure 4



Although it was too early to know whether the downward trend in ill health retirements would continue, CLG had “reported that ill health retirements were less than three per thousand employees during 2007/08, indicating a continuation of the observed trend.”⁶⁹ The FBU says there has been a continued reduction in ill-health retirements and that no decisions on structural changes to the schemes should be considered until a further valuation has been done.⁷⁰ There were some 73 ill-health retirements across both schemes in 2011-12.⁷¹

3.4 Cap and share

Reforms introduced in 2007-08 to the schemes for the NHS, Teachers, civil service and local government included “cap and share” arrangements to limit the liability of the taxpayer for future increases in cost. The report of the Independent Public Service Pensions Commission explained the intention behind these arrangements as follows:

Under cap and share, increases or reductions in cost pressures identified at a pension scheme actuarial valuation are shared between employees and employers, up to the value of a cap. Above that cap the increases or reductions are borne by employees, either by changing employee contributions or the cost of employee benefits (by measures such as changing pension ages), or by doing both. Below that cap, increases or reductions are shared between employers and employees.⁷²

⁶⁹ Government Actuary’s Department, *Firefighters’ Pension Schemes in England. Actuarial valuation as at 31 March 2007*, 23 October 2009, p13-14

⁷⁰ FBU, *Pension Schemes in the Fire Service and the Independent Public Service Pensions Commission – A Critical Analysis by Tony Cutler and Barbara Waine*, October 2011

⁷¹ Department for Communities and Local Government, *Statistical Release, 29 November 2012, Firefighters’ Pension Schemes Membership Data England 2011-12*

⁷² Independent Public Service Pensions Commission: *Interim Report*, 7 October 2010, Box 2.C

A note to the Firefighters' Pensions Committee in 2010 explained that a cap and share mechanism would be implemented in the Firefighters' Pension Scheme when the valuation showing the position of the scheme as at 31st March 2011 was completed.⁷³

3.5 Lump sum payments

Pension tax rules allow pension schemes to offer a "pension commencement lump sum" - tax-free lump sum when pension entitlement first arises, which must generally not exceed 25% of the capital value of the pension payable.⁷⁴ This pension tax rules set the framework within which schemes operate, the amount actually payable in a particular case will depend on scheme rules. Schemes such as the Firefighter's Pension Scheme and the Police Pension Scheme - have a particular way of calculating the amount of lump sum that can be received when a person commutes part of their pension. The amount is calculated on the basis of commutation factors, produced by the Government Actuary:

Rule B7 of the *Firefighters' Pension Scheme Order 1992* (SI 1992/129) and article 18 of the *Firefighters' Pension Scheme Order (Northern Ireland) 2007* (SR 2007/144) state that a member entitled to an ordinary, short service, ill health or deferred pension may commute a portion of their pension for a lump sum. The lump sum is the actuarial equivalent of the commuted portion at the date of retirement, calculated from tables prepared by the Government Actuary.⁷⁵

In 2008, new commutation factors were introduced in the FPS 1992 which had the effect of increasing the amount of lump sum that could be obtained for in return for commuting part of the pension.⁷⁶ CLG guidance (issued on 21 May 2008) explained that the new factors would take effect for members of the Fire Fighter Pension Scheme 1992 (FPS) on 1 October 2007.⁷⁷ The Fire Brigades Union (FBU) welcomed the change.⁷⁸ However, it was concerned that the new factors were only being implemented with effect from 1 October 2007. Its Executive Council decided to support a challenge to the implementation date via the Pensions Ombudsman:

The union believes these "commutation factors" should have been reviewed in 2001. Not doing it at that time means these changes could have significantly reduced the overall value of the pension of those who took retirement before 1st October 2007. FBU members who retired after 2001 and before 1st October 2007 may feel that they wish to submit a grievance using these model letters. The union's Executive Council has decided to support a challenge to the 1st October 2007 implementation date via the Pension Ombudsman.⁷⁹

⁷³ [Firefighters' Pension Committee Paper FPC 10/4](#)

⁷⁴ For more information, see SNBT 2181, *Pension Lump Sums*

⁷⁵ GAD, *Firefighters Pension Scheme 1992. Firefighters Pension Scheme (Northern Ireland) 2007. Commutation on Retirement*, 19 April 2011

⁷⁶ [Department for Communities and Local Government – Firefighters' Pension Scheme 1992 – Commutation Factors \(FPSC 5/2008\)](#); [Government Actuary's Department, Fire Fighters Pension Scheme 1992. Commutation on Retirement](#), 16 May 2008

⁷⁷ *Ibid*

⁷⁸ [FBU circular 2008, HOC0346SS, 30 May 2008](#),

⁷⁹ <http://www.fbu.org.uk/workplace/pensions/index.php> (viewed 19 September 2008)

On 15 August 2011, the FBU said the Pensions Ombudsman had confirmed that a full investigation would proceed.⁸⁰ However, the Government Actuary's Department is appealing the Pensions Ombudsman's jurisdiction. The FBU told its members in March 2013:

You will be aware that the FBU's challenge is currently being dealt with by the Pension Ombudsman. The latest position is that the Government Actuary's Department (GAD) has obtained permission to appeal the High Court's decision regarding the Pensions Ombudsman's jurisdiction to the Court of Appeal. The application was made at an oral hearing, having failed to secure permission from the High Court and from the Court of Appeal on a written application for permission. The appeal will be heard on 10 or 11 July 2013 and further updates will be given when more information is available.⁸¹

A similar question arose in connection with the Police Pension Scheme - see section 6.1 of Library Standard Note [SN 700](#).

⁸⁰ FBU circular 2011, HOC0368SS, Fairer Commutation Campaign – Pensions Ombudsman's Response to GAD questions

⁸¹ FBU, Fairer commutation campaign, March 2013