

Sent by email to Henry Elks, Deputy Director, Pensions Remedy Project, HM Treasury

Published on www.fpsregs.org

25 May 2021

Dear Mr Elks

Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Government Response

The [Firefighters \(England\) Scheme Advisory Board](#) notes the publication of the government response to the consultation confirming the decision to introduce retrospective remedy via the Deferred Choice Underpin route, and the decision to allow for implementation by October 2023, giving more time to bring in the significant processes that will be needed to implement DCU.

This note clarifies the issues that will affect the application of the Firefighters' Pension Scheme (FPS) in the specific policy areas below. Our [response to the consultation](#) dated 9 October gave our fuller views on the wider issues with regard to age discrimination.

1. [How to adjust contribution amendments for members of the FPS 2006](#)
2. [How the policy decision for taper members will be applied to taper members who have passed their 30 year service date.](#)
3. [Contingent decisions](#)

We have outlined the areas of concern in this open letter and would now like to open discussion on these items in a series of tri-lateral meetings with the Home Office, HMT and SAB, in order to determine the policy solution in good time to meet the legislative deadlines.

We suggest an initial meeting to discuss the areas detailed, with further specific meetings on each item. I would be grateful if you would liaise with the LGA to agree a mutually acceptable date for this first meeting, and I would ask for this to happen before the boards' next meeting on 24 June 2021.

If you have any questions, please let me know.

Yours sincerely

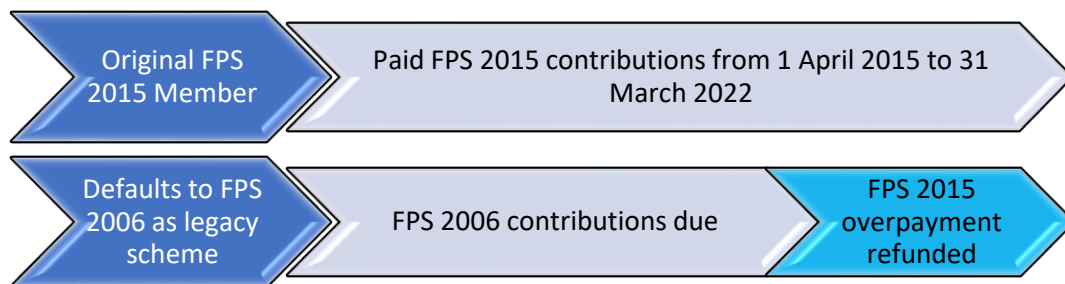
A handwritten signature in black ink, appearing to read 'Joanne Livingstone'.

Joanne Livingstone
Chair of the Firefighters' (England) Pension Scheme Advisory Board

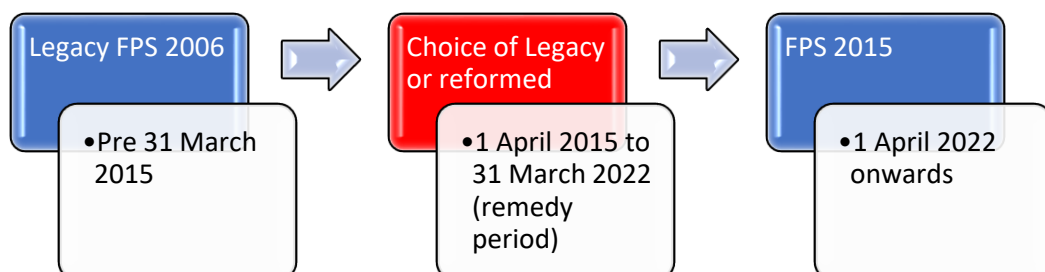
Contribution adjustment issues for FPS 2006 members.

1. All eligible firefighters will be returned to their legacy schemes (the default) for the remedy period, which includes those members formerly in FPS 2006.
2. Unlike most other public service pension schemes, the FPS has different contribution levels¹ for each scheme, for both employee and employer contributions.
3. The consultation suggests that contributions should be adjusted to reflect the contributions that would have been paid during the remedy period under the legacy scheme.
4. For members of the FPS 2006 that would mean that they have paid more contributions during the remedy period in the FPS 2015 than they would have done in the FPS 2006.

5. Figure 1: Adjustment of contributions at the date of implementation



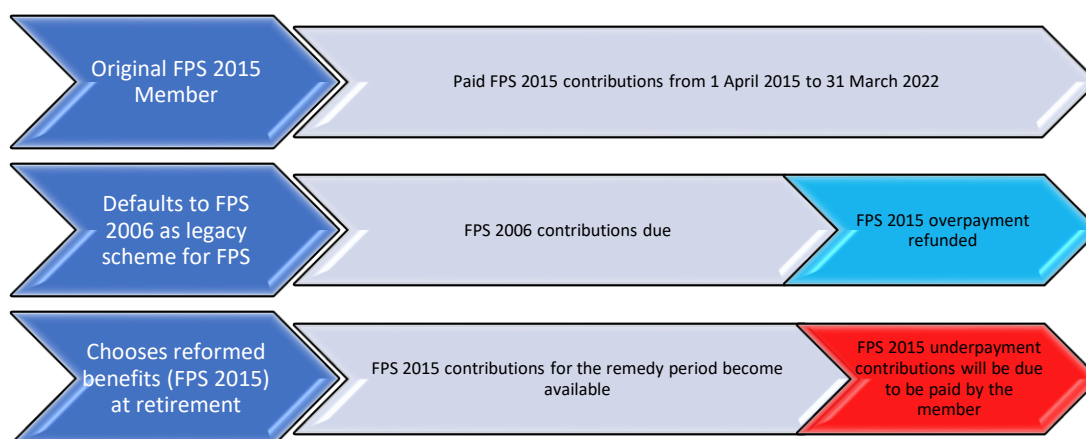
6. At retirement, benefits prior to the remedy period are calculated in line with the legacy schemes, members will be offered a choice between the defaulted legacy schemes or the reformed scheme benefits for the remedy period, and benefits after the remedy period are calculated in line with reformed scheme benefits (FPS 2015).



¹ <http://www.fpsregs.org/images/Legal/Annual-updates/FPS-contribution-rates-2020-21.pdf>

7. FPS 2015 may offer higher benefits for some former FPS 2006 members. Therefore those members may choose to receive reformed benefits rather than the defaulted legacy scheme benefits at retirement, which could be any time after the effective date of the DCU.
8. Choosing different benefits at retirement would again trigger a contributions adjustment to reflect the higher rate FPS 2015 contributions that would become due.

9. Figure 2: Adjustment of contributions at retirement

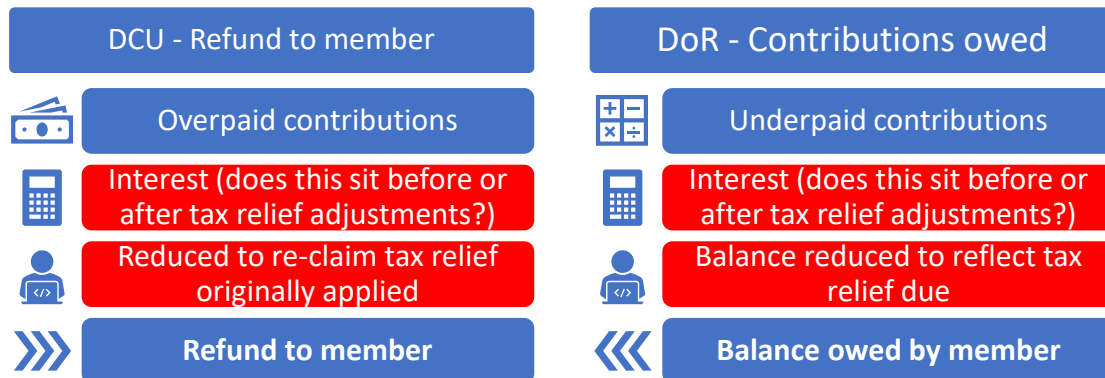


Contribution adjustments

10. Adjusting contributions twice, once at the date of DCU and second at retirement, will be complicated by the consequential issues of applying tax relief and interest.
11. The consultation confirms that tax relief will be re-claimed from refunds of contributions and given on underpaid contributions, however the consultation does not go further into the method of how tax relief will be given and re-claimed and how that tax relief would reflect the tax codes that have applied throughout the years of remedy.
12. Further the consultation then confirms that interest will be given on refunds and applied to the value of contributions due in the case of underpayments. As we understand it, policy decisions have yet to be made on the rate of interest, how it will be applied, and whether the interest payments will qualify for tax relief.

13. When the member is returned to the legacy scheme a refund of net contributions is triggered, adjusted for tax relief originally given. It is not clear whether interest would be applied to the gross value of refunded contributions, or after the adjustment to claim back the tax relief.
14. At retirement, if the member chose to receive benefits under the reformed scheme, the contributions would again fall due for the underpaid difference between FPS 2006 and FPS 2015, on which interest would be charged.
15. How would the overpaid contributions be claimed, would these be deducted from the lump sum at retirement, or would periodical payments be available to the member. How does the method of payment affect the mechanism for the members claiming tax relief?
16. A number of difficulties with claiming tax relief were brought to light during the FPS 2006 special members exercise and HMRC have since clarified that pensioners and deferred members cannot claim tax relief through self-assessment or PAYE, so any tax relief claim at retirement would need to be settled through a government process.

17. Figure 3: Adjusting contributions at both DCU and retirement³



18. We understand the intent is for employer contributions to be adjusted through the valuation, therefore we would assume that the same adjustments for tax and interest would not apply to the employer contributions.
19. This approach will also have a significant impact on accounting for the notional pension account, with payments made from the notional pension account and re-claimed via the top-up grant which may need to be unwound at retirement.

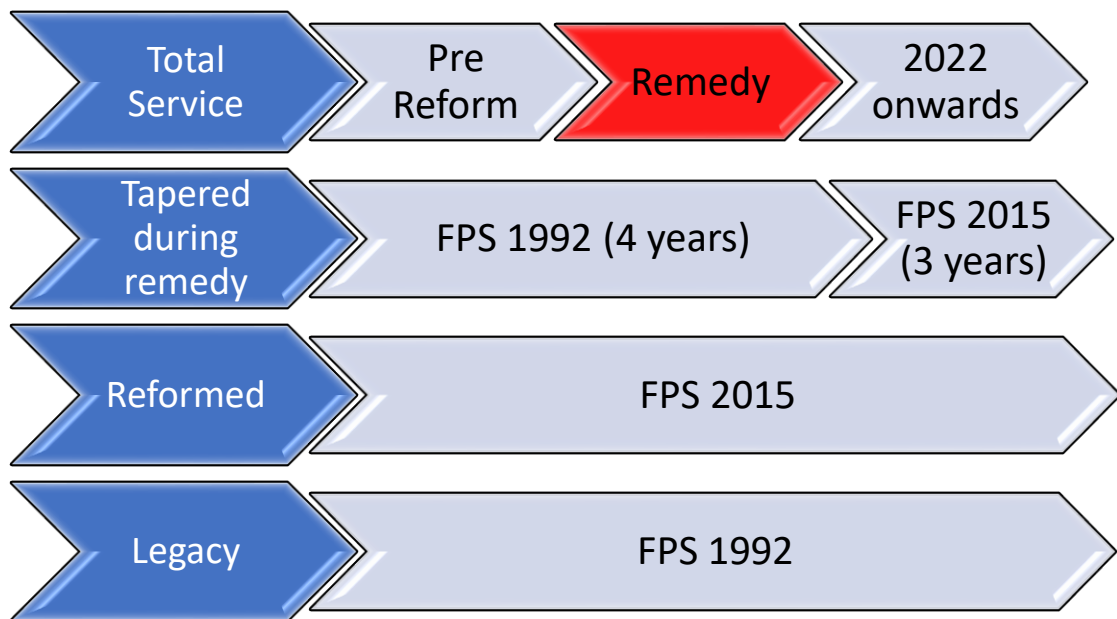
³ Red shading indicates where policy intent is unknown

20. Paragraph 2.56 of the consultation response recognises the impact on some members that could leave them building up a contributions deficit and confirms that the government is considering options for mitigating this impact.
21. The Board would welcome a conversation with HMT on suggested options for mitigation.

Taper members who reached 30 years’ service during the remedy period

22. A taper -protected member is somebody who was not fully protected by virtue of age to stay in the final salary scheme (1992, 2006 or Special Modified 2006 Scheme), but was moved into the FPS 2015 between 24 May 2015 and 31 March 2022, depending on their age, as per the table in the regulations.
23. The position set out in the consultation⁴ for tapered members confirms that taper members will only be able to select reformed or legacy benefits for the full remedy period.

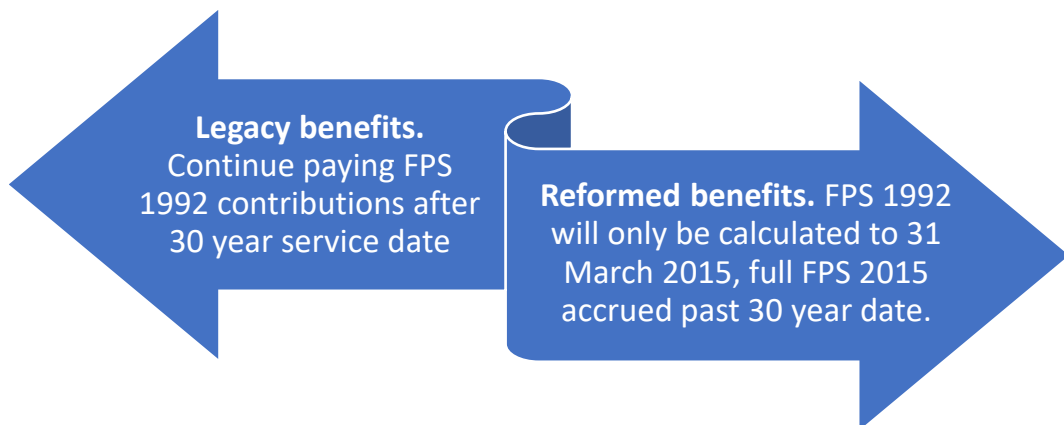
Figure 4: Taper member options for remedy period



24. However, the consultation does not set out the position for a taper member who reaches their 30-year service date during the remedy period, regardless of when they tapered.

⁴ Paragraphs 2.25 to 2.41

25. In the FPS 1992 service is capped at 30 years⁵, but pension contributions need to continue if the member wishes to keep working after reaching 30 years' service, unless they are under age 50 and unable to retire from the scheme (when the contribution holiday would apply). If pension contributions stop, unless it is under the contributions holiday, the member becomes a deferred member and cannot access the pension until the deferred pension age of age 60.
26. Once the member reaches 30 years' service in FPS 1992, they cannot choose to transfer to FPS 2015. However, on 1 April 2022 all remaining members of FPS 1992 will be moved to FPS 2015.
27. The choice of legacy vs reformed benefits to the member is



⁵ Schedule 2, Part 1 - <https://www.legislation.gov.uk/ukSI/1992/129/schedule/2/made>

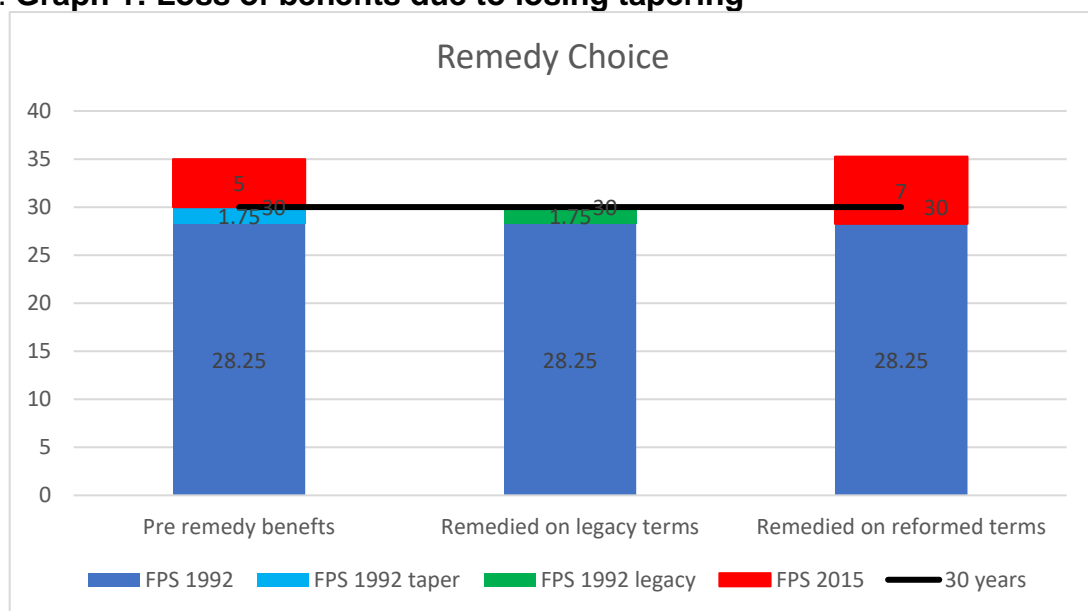
Choice examples

28. Example 1: Completes 30 years before moving to FPS 2015

Example 1:

- A firefighter completes 28.25 years in FPS 1992 by 2015 and tapered after 2 years to FPS 2015
- They will have achieved 30 years' service before they tapered into the FPS 2015 in 2017 and would have been eligible to retire with a full 30-year pension.
- As a member of the FPS 2015 they continued working and accrued benefits in FPS 2015 for a further 5 years to 2022. This was a benefit to both the service due to the retention of skills and knowledge and the member to continue their career
- The choice now available to them for the remedy period would be:
 - Final salary 1.75 years of service to maximum of 30 years, they would then lose all the FPS 2015 pension accrued
- Or
 - FPS 1992 pension based on 28.25 years' service and 7 years pension in FPS 2015
- They may claim that they would have retired in 2017 if they had known the choice that is now available to them.

29. Graph 1: Loss of benefits due to losing tapering



30. Example 2: Completes 30 years before moving to FPS 2015 AND has a contributions holiday

Example 2

- A firefighter has 28 years 2 months of service at 31 March 2015 and qualifies as a tapered firefighter.
- They reach 30 years' service as a taper member in January 2017 and qualify for a contributions holiday under FPS 1992 until the age of 50 (July 2018).
- Continue as a tapered member in FPS 1992 after age 50 and resume FPS 1992 pension contributions.
- Taper in FPS 2015 in November 2019 and start building up FPS 2015 contributions

- They have built FPS 2015 benefits since 2019

- The choice now available to them for the remedy period would be:
 - Final salary 1 year 10 months of service to maximum of 30 years, they would then lose all the FPS 2015 pension accrued
- Or
 - FPS 1992 pension based on 28 years 2 months of service and 7 years pension in FPS 2015

- They may claim that they would have retired in 2017 if they had known the choice that is now available to them.

31. Example 3: Taper member reaches 30 years' service after 1 April 2015 tapers into FPS 2015 retires with 30-year pension then transfers the FPS 2015 pension

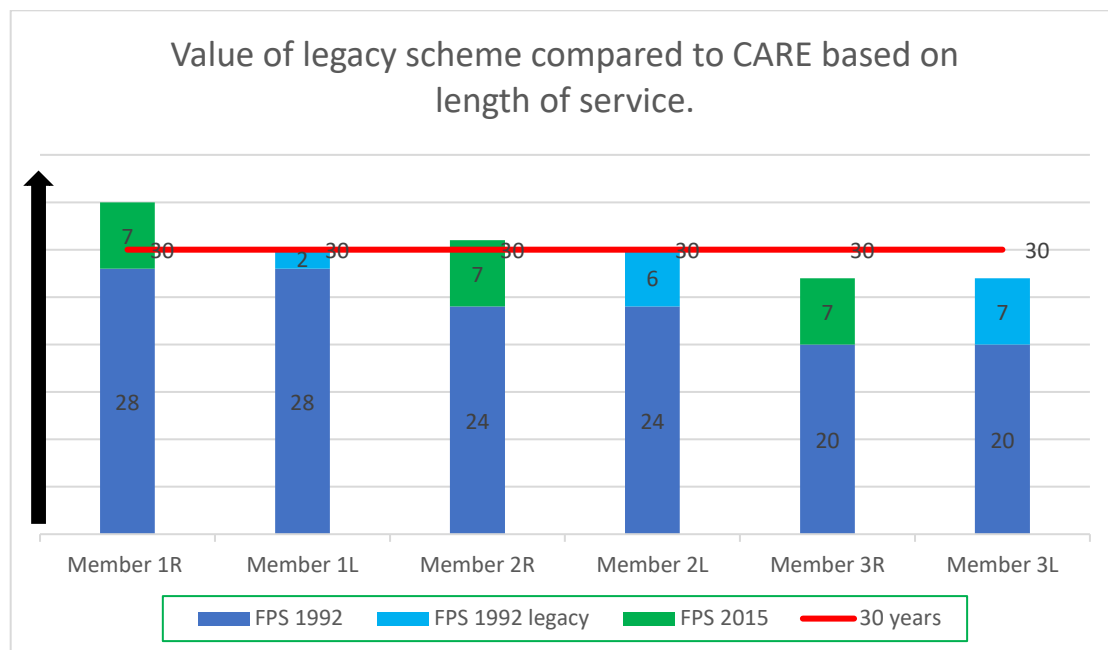
Example 3:

- A firefighter has 29 years of service at 31 March 2015 and qualifies as a tapered firefighter.
- They reach 30 years' service as a taper member in March 2016.
- They taper in FPS 2015 in July 2016 and start building up FPS 2015 contributions
- They retire from service with a full 30-year pension in FPS 1992 in November 2018.
- They opt to transfer the FPS 2015 built between July 2016 and November 2018 into a civil service pension.

Choosing reformed benefits for the remedy period

32. If a taper member chooses reformed benefits for the remedy period they would lose any FPS 1992 service built up during the remedy period, so the value of their FPS 1992 pension would be less. The impact of that would be dependent on how much service they had built up to 31 March 2015 and the value to them of continuing in the FPS 2015 past their 30 year service date.
33. For example, some taper members may have achieved 30 years' service before 1 April 2015 and been tapered into FPS 2015 shortly afterwards. These members may have therefore accrued both a full FPS 1992 pension and currently be building up benefits in FPS 2015.
34. A member with less service in FPS 1992 before 31 March 2015 will benefit more from being treated as a legacy scheme member during the remedy period than a member with most of the service in FPS 1992.
35. In the graph below, member 1 who has more final salary service pre 2015, and therefore would have gained less final salary service by tapering than member 3, may choose reformed benefits over member 3 who has less final salary service pre 2015 and would be more likely to choose legacy benefits.
36. For member 1 who has a significant amount of pre 2015 FPS 1992 service, the value of building CARE benefits on top of a 28 year final salary pension might be more valuable to them, and the loss of final salary benefits awarded to tapering less significant.
37. However member 2 who has less pre 2015 FPS 1992 service and would have benefited more from tapering by being kept in the final salary scheme, might be more likely to choose legacy scheme benefits, as the benefits of the legacy scheme might be more valuable to them than reformed benefits, even though they would be able to continue in the CARE scheme.

38. Graph 2: Value of legacy scheme benefits compared to CARE for taper members in accordance with length of pre 2015 service⁶



Key:

Blues are final salary benefits

Green are CARE benefits

R reflects a choice of reformed benefits

L reflects a choice of legacy benefits

Choosing legacy scheme benefits for the remedy period

39. The legacy scheme service is capped at 30 years, so continuing to work after 30 years requires someone to continue making pension contributions, as they cannot transfer to FPS 2015 and continue making pension contributions in return for building more pension.

40. The exception to that is if the member is still working after 1 April 2022 when all members are moved to FPS 2015. However, if a member retires before 31 March 2022, they can only benefit from a maximum of 30 years' service in FPS 1992.

41. Taper members may have achieved 30 years' service after 1 April 2015 but before being tapered into the FPS 2015. These members may have therefore accrued both a full FPS 1992 pension and currently be building up benefits in FPS 2015.

⁶ This does not account for higher benefits that may have arisen through tapering, see Graph 1 loss of tapering.

Retrospective retirement of a taper member

42. A taper member with over 30 years' service and returned to the legacy scheme as if they had always been in FPS 1992 might argue that instead of continuing employment as a FPS 2015 member they would have retired at their 30 year service date, which could have been at any point during the remedy period .
43. This position crosses over with contingent decisions below, however if the member makes an argument that they would have taken a different decision about retirement if they had known that continued membership of their legacy scheme was an option, how would / should that case be dealt with?
44. It is unclear as to whether there would be an entitlement to retrospective retirement, and if so whether there would be an expectation for interest to be paid on the pension from the retrospective retirement date.
45. It is also not clear how the continued employment would be treated for the purposes of:
- 45.1. [Protected Pension Age](#) - this is where someone retires before the age of 55 with a protected pension age and is then re-employed. If the re-employment does not meet the conditions set in the Finance Act 2004⁷ the pension is unauthorised. Would continued employment after the 30-year service date be treated as having met the re-employment conditions?
- 45.2. [Abatement](#) - this is because of government policy to protect the public purse from a member receiving pension and pay for the same job. Would the pension need to be abated to reflect the continued employment after the 30-year service date?
46. If there was an entitlement to retirement at the 30-year service date, we understand that it would not trigger a timing of payment condition as the benefits have not yet been crystallised, and therefore be dealt with as an authorised payment. However, it would be useful to understand how HMT plan to deal with unauthorised payments that become due because of the mechanisms of remedy.
47. The member may claim under contingent decisions that they would not have chosen to continue in employment after retiring due to the adverse effects of protected pension age and abatement.

⁷ 7F - <https://www.legislation.gov.uk/ukpga/2004/12/schedule/36/paragraph/22>

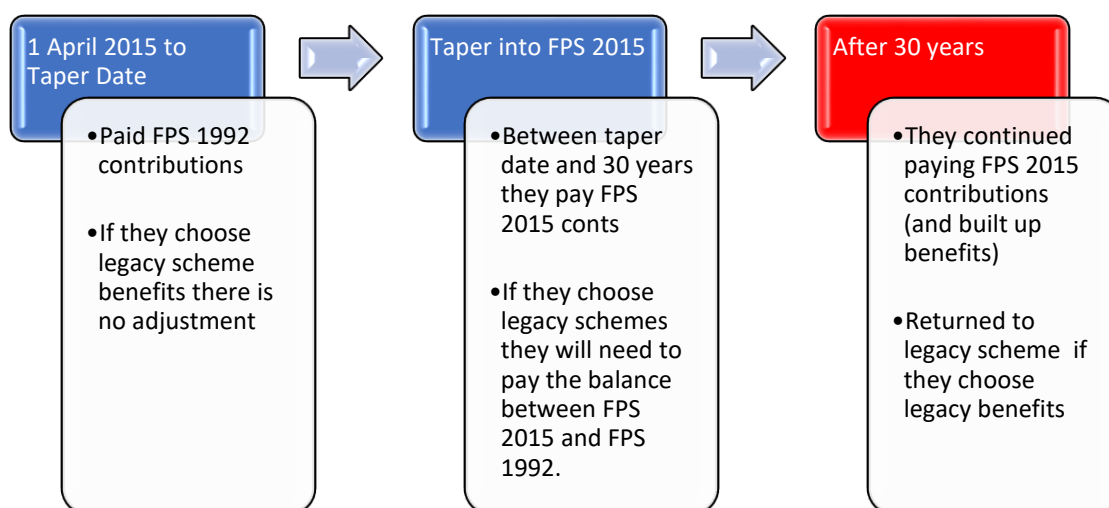
Continued employment

48. Members may have chosen to stay employed after 30 years' service as members of the FPS 2015, which ordinarily might have not been an option. It may be that due to their experience and skills it was beneficial to both the employee and employer to remain employed.

Rectifying FPS 2015 benefits after 30 years

49. How should membership in the FPS 2015 beyond 30 years' service be rectified where a taper member chooses legacy scheme benefits for the remedy period?

50. Figure 5: Rectifying membership after 30 years



51. Under the terms of FPS 1992, anyone who accumulates 30 years' service before reaching age 50 is entitled to a contributions holiday between the date on which they reached 30 years' service and their 50th birthday.

52. The legislation giving effect to the employee contributions holiday came into force on 30 September 2016 and was applied retrospectively to 1 December 2006.

53. Where contributions had already been made, the firefighter was entitled to a lump sum payable by the Fire and Rescue Authority (FRA) equal to the value of the contributions they had paid with interest applied. HMRC confirmed that refunding the contributions in this way constituted unauthorised payments and as such generated unauthorised payment charges.

54. In this scenario contributions have not been made under the FPS 1992, they have been made as FPS 2015, albeit the effect of the consultation is to recognise them as legacy scheme members.

55. Are the FPS 2015 benefits built up after 30 years' service extinguished if the member does not choose reformed benefits for the remedy period?
56. Would refunding FPS 2015 pension contributions be treated as unauthorised payments in the same way the refunding FPS 1992 contributions for the pension holiday would be?
57. This issue continues to deepen in complexity because the transferring of individuals from their legacy scheme to FPS 2015 has continued since the tribunal interim order and continues to place more scheme members in this position at each scheduled taper date.
58. The Board would welcome a conversation with HMT with regards to the proposals for taper members and how benefits would be rectified.

Contingent decisions

59. The consultation confirms that decisions on whether to unwind a case, based on an argument that the member may have taken a different decision if they had known that continued membership of their legacy scheme was an option, should be taken on a case by case basis by the scheme.
60. It is not clear what is meant by the scheme in this case, whether it would that be on a case by case basis per FRA, or a decision of the responsible authority.
61. Such a process would be difficult to manage at the discretion of each of the 44 FRAs. Consistency on the decision would be difficult to achieve.
62. It is unclear where the financial burden would fall because of the contingent decision. If the burden falls on the national scheme rather than individual FRAs it would appear to offer no value for those decisions to be made locally.
63. The Board would welcome a conversation on how consistency in decision making could be achieved, for example whether a national review body could be set up for the purpose of making contingent decisions.
64. The Board would support a broad policy decision on who would be entitled to re-visit their decision, rather than on a case by case basis. However, the Board would expect some broad principles to be set centrally, such as:
 - 64.1. A time limit on when cases could be presented, a period of 12 months would seem reasonable.

64.2. In the case of opt-outs, a back-stop date set an at appropriate point when the opt-out could be solely linked to the introduction of the reformed schemes.

64.3. Repayment terms of member contributions. Employee contributions would be due for the period of non-membership, it would therefore be appropriate to allow for arrears to be paid over an agreed period.

65. There are further technical complexities which the consultation does not mention. Scheme guidance will be needed on how these should be treated. This might include the following:

65.1. How would re-instatement of pension work for an opt-out? Currently members of the FPS 1992 who opt out are not allowed to re-join the FPS 1992, albeit the final salary link is re-instated.

65.2. Could taper members with 30 years' service but who stayed in the FPS 2015, argue under contingent decisions, that they would have retired at 30 years and should receive arrears of pension to the retrospective retirement date, with interest payable.

65.3. As discussed for taper members, how would continued employment past a retrospective retirement be treated, for the purposes of abatement⁸ and protected pension age.

⁸ Abatement is common across the FPS with a need to retain skills and knowledge, particularly during the current pandemic. Firefighters are often re-employed in skilled areas and pensions subjected to abatement.