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Consultation on firefighters' pensions prospective remedy: Local Government Association response

Thank you for the Home Office consultation on the amendments to the pension scheme regulations to deliver the first set of changes to remove the transitional protections from the FPS 2015, which commenced on 8 November 2021.

I respond on behalf of the Local Government Association (LGA). The LGA is a politically led, cross-party membership organisation which represents more than 330 councils of all types and 44 fire authorities across England. We work on behalf of our members to support, promote and improve local government.

The response has been drafted by the Pensions Team at the LGA. The team provide employer and administrator support to various public service pension schemes, including the Local Government Pension Scheme (LGPS), the Teachers' Pension Scheme (TPS), and the Firefighters' Pension Scheme (FPS).

We are pleased to provide our responses to the consultation questions below.

Yours faithfully,



Jeff Houston

Head of Pensions

Consultation questions

Question 1. As required by the PSPJO, the draft regulations seek to ensure that the legacy schemes are closed to future accrual from 31 March 2022 and that all members are in the 2015 Scheme in respect of any pensionable service from 1 April 2022. Are the draft regulations sufficient to meet this aim? Do you think there are any changes or additions required to the draft regulations to achieve the stated policy aims?

1. The [draft regulations](#) close the legacy schemes to future accrual from 31 March 2022 by ensuring that the legacy schemes have a “closing date” of 31st March 2022 for all “full protection members”, who then transition to the 2015 scheme on 1 April 2022.
2. As all tapered protection already ends on 31 March 2022 (with the exception of paragraph 3(3) of Schedule 2, which is also being amended), the draft regulations would appear to be sufficient to meet the stated aim, and there are no changes or additions required.
3. We are content that the draft regulations provide for all scheme members to be moved into the existing 2015 scheme from 1 April 2022 with benefits calculated based on the existing regulations of each of those schemes and as such, all members will be treated equally from 1 April 2022.
4. We are also content that the aim of closing the legacy schemes to future accrual is met by the changes. However, we note that there is currently no change to the regulations to ensure that new CARE benefits from 1 April 2022 are not linked to continuing revaluation from the existing CARE account from 1 April 2015, in respect of unprotected or taper-protected members.
5. The policy intent set by [clause 2](#) of the PSPJO Bill is to move members back to the legacy scheme for the remedy period, and for the legacy scheme to provide an underpin for CARE benefits should the member choose them at retirement. In our view, this creates a new start date for the reformed CARE schemes for those eligible for remedy from 1 April 2022 (i.e. it is a prospective remedy change) and the index adjustment link to the closing balance as of 31 March 2022 should therefore be disabled.
6. We ask that it be considered that the date for which the “active member's account is established” under [Regulation 35](#) is defined as being 1 April 2022 for those in scope for remedy. We do not believe that it is desirable for members to continue accruing the index adjustment until October 2023, and then have that retrospectively amended.

7. On a separate issue, we would also ask the Home Office to ensure that the closure of the FPS 2006 will not create any unintended consequences for the prospective special member cohort who become eligible to purchase backdated service under the second options exercise, particularly if they have never been a member of any public service scheme.

Question 2. The government is proposing that the regulations will be drafted to make additional provision for ill-health retirements that straddle the transfer date. This provision would ensure that a protected member who applies for ill-health retirement before 31 March 2022, and which is determined in their favour after that date, is treated no less favourably than if the application had been determined on that date. Do you have any views on the proposals regarding ill-health retirement cases that straddle 1 April 2022? In particular, do you have any views on how the “underpin” should work or be provided for in the draft regulations?

8. We welcome the introduction of a provision to protect the position for protected members retiring on the grounds of ill-health, where the process commences prior to 1 April 2022 but a determination is not made until after that date. We agree that members may otherwise be disadvantaged due to the higher qualifying criteria of the FPS 2015.
9. However, we believe that there are a number of challenges, both technically and in terms of process. These are set out below.
 - 9.1. Thought needs to be given as to which cases this protection will be applied to and this should be specifically defined in the regulations. There is no “application” as such for ill-health retirement (IHR) and Fire and Rescue Authorities (FRAs) can have very different ways of dealing with the process, with some engaging an Independent Qualifying Medical Practitioner (IQMP) fairly early in the process, while others are much slower.
 - 9.2. Thought needs to be given as to what stage in the IHR process this protection will be triggered, particularly given that there can be difficulties in finding suitably qualified IQMPs to provide the medical assessment, and this can also slow down the instruction process. FRAs also have a duty to consider reasonable adjustments and redeployment; if this is undertaken before referral to IQMP, would this be deemed to be a trigger point?
 - 9.3. The following could be considered as defined starting points:
 - i. The IHR process is deemed to be pending or in progress if the individual’s last day of performing the normal duties of their role pre-dated 1 April 2022.

ii.If the IQMP decision is that an injury results in the ill-health retirement and this occurred pre-transfer into FPS 2015, then that retirement should be assessed under the legacy scheme criteria for the underpin even if the IQMP process did not start before the transfer.

- 9.4. We believe that the protection granted to retained firefighters in 2014 could be relied on as setting a precedent for the proposal under 9.3.ii. A retained firefighter employed prior to 6 April 2006, who didn't subsequently become a 'special member' under the terms of the modified FPS 2006 arrangements and who was retrospectively awarded an injury and ill health pension after 1 April 2014, is entitled to an injury and ill health pension under Part 8, rule 2 of the Firefighters' Compensation Scheme under the protected right granted in [SI 2014/447](#) [rule 3, paragraph 2], where it has been determined that the injury is a qualifying injury and was sustained before 1 April 2014.
- 9.5. The consultation document acknowledges that cases will become subject to different qualifying criteria once members have transitioned to the FPS 2015 on 1 April 2022, but there is no acknowledgment of the issues that this could potentially cause as IHR processes can take a considerable time to conclude. While accepting that this was the situation when the FPS 2015 was first introduced, it still has the potential to be an area that causes FRAs significant issues going forward. FRAs are likely to face claims if there is any suggestion that they did not complete the process in a timely manner and the firefighter has lost out on an IHR pension. This could be particularly relevant for mental health conditions, such as PTSD, which are often cumulative and may take some time to materialise.
- 9.6. In terms of technical issues, we believe that there may be complexities for the FPS which do not exist in the other public service schemes due to the more generous actuarial commutation factors in the FPS 1992. The underpin policy states that the member will be automatically awarded an enhancement where the notional benefit is 'higher' under the legacy scheme. However, there is insufficient detail to establish whether this is a pre- or post-commutation comparison, and there could feasibly be scenarios where a member could receive a higher legacy scheme lump sum but would be entitled to a higher reformed scheme pension; one such example being where they qualify for a higher tier ill-health under the FPS 2015 (due to the pension enhancement to age 60). Differences in pensionable pay between the legacy and reformed schemes may also exacerbate the issue.
- 9.7. Additionally, only the lower tier element of an ill-health award can be commuted. We would like to understand how this would be accounted for in the calculation of an underpin amount.

- 9.8. Queries have previously been raised by FRAs concerning members who have exceeded their normal pension age (NPA) at the time of potential assessment for an ill-health award. [Regulation 65](#) of the FPS 2015 provides that a member must be under NPA to be entitled to an award. However, the legacy schemes are not as prescriptive and this can cause administrative issues in the application of the formula for calculating a higher tier award. We would ask that the underpinning calculation is clarified in the regulations for members who are over NPA in their legacy scheme.
- 9.9. We also seek clarity on the process for splitting lower tier benefits back out from the 'one pot' arrangement once the member reaches normal pension age¹ i.e. how will the equivalent amount be determined and whether any consequential adverse impact on survivor benefits has been considered.
- 9.10. Finally, we ask the Home Office to ensure that any consequential amendments needed to the Firefighters' Compensation Scheme to take account of the underpin are considered.

Question 3. The regulations will need to ensure that provisions which allow arrangements for purchasing service in the legacy schemes by periodical contributions, entered into before 1 April 2022, can continue on and after that date and that additional benefit purchasing in the legacy schemes ceases on 31 March 2022. In your view, would existing provisions in the relevant reformed scheme regulations achieve these aims? Alternatively, would additional provisions be needed to achieve this outcome?

10. We are comfortable that provision has been made in the reformed scheme regulations to ensure that the payment of periodical contributions can continue in specified circumstances, by the insertion of Paragraphs 31(2)(a) (pensionable service under the NFPS) and 34(5) (continuous pensionable service under the 1992 Scheme) into Schedule 2 by [SI 2015/589](#).
11. We note that the corresponding provisions of the FPS 1992 [[Rule G7](#) (payment of periodical contributions for increased benefits)] and the FPS 2006 [[Part 11, Chapter 2, paragraph 7](#)] (duration of periodical contributions and premature cessation)] were also amended in 2015.

¹ See Paragraphs 23 and 25 of Part 3A to Schedule 2 of the FPS 2015 regulations – inserted by [SI 2015/589](#).

12. No fully protected members of the legacy schemes would now be able to enter into a new arrangement before they transition into the FPS 2015 as by virtue of their protected status they must now be less than two years away from the normal retirement age of the respective legacy schemes. An election to pay periodical contributions to purchase additional service must be made at least two years before a person's normal retirement age.
13. We also note the addition of new [clause 83](#) to the PSPJO Bill which states that new arrangements cannot be entered into after 31 March 2022.
14. However, it would be preferable to include additional provisions in the proposed scheme amendments so there is absolute clarity on exactly which arrangements can continue. For example, where a member's periodical contributions cease if they enter a period of nil pay sickness absence, or the FRA allows them to cease due to financial hardship, could these contracts then be reinstated at a later date?
15. We acknowledge that former unprotected or taper members defaulting to their legacy scheme may have been retrospectively eligible to purchase added years within the remedy period. We expect that the retrospective regulations should make clear whether this option will be available to members under a contingent decision claim.

Question 4. We are interested in understanding whether the scheme regulation amendments will have an impact on people with protected characteristics, beyond those equality considerations undertaken and set out in the EIA undertaken alongside the consultation and PSPJO. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation. Do you think that the draft regulations and policy intent as set out above will have any positive or negative impacts on people with protected characteristics, beyond those already considered? If so, which and why/why not?

16. We are pleased to note that a draft Equality Impact Assessment (EIA) is attached to the consultation at Annex A as the LGA response to the government consultation on changes to the transitional arrangements to the 2015 schemes² recommended that a full, scheme-specific EIA should be undertaken of the eventual proposed solution for remedy to minimise the risks of future challenges.

² [LGA response to the HMT consultation on changes to the transitional arrangements of the 2015 Public Service Pension Schemes](#) [Questions 1 and 2]

17. Concerns have been raised as to whether the challenge of maintaining fitness until age 60 may result in age and gender discrimination issues. For example, early retirement factors will impact if firefighters cannot maintain fitness levels to age 60 and leave at age 55. This may be a particular concern in respect of female firefighter members, although it is acknowledged that there is not yet a sufficient evidence base to determine whether ageing effects such as reducing upper body strength or menopausal effects are affecting female firefighters' ability to perform the duties of the role beyond age 55.

18. While this is not a direct consequence of the current scheme amendments, we include the issue in our response as fully protected members transferring to the FPS 2015 will be aged 55 or older and taper-protected members will be approaching that age. As a consequence, the scheme's average age profile will increase. While this may bring forward the ability to assess the impact of ageing on early or ill-health retirement, there may be consequences for scheme design or scope for legal challenge if it can be shown that a group with a particular protected characteristic suffers a more material detriment than others.

19. We have no further specific comments.

Question 5. Are there any other areas which you think should be addressed in these regulations to ensure all members are moved to the relevant reformed scheme from 1 April 2022, and that the differential treatment, as identified by the Court of Appeal, is ended?

20. The LGA notes the policy issue set out in the Home Office consultation on amendments to the Police Pension Scheme (PPS) regulations, concerning the interaction of retirement ages between the schemes.

21. As in the 1987 police scheme, the FPS 1992 allows a member to draw their legacy scheme pension before age 55. However, if they choose to retire before age 55, the rules of the reformed schemes mean that they either have to wait until State Pension age to take an unreduced FPS 2015 pension or take an actuarially reduced 2015 pension once they have reached the age of 55 (the reduction being based on State Pension age).

22. Reductions reflect that the pension is coming into payment early and will be in payment for longer. However, more penal early retirement factors apply when a member retires from deferred status than from active status³, as the period of time between normal payment dates is longer.

³ [The Firefighters' Pension Scheme 2015 \(England\) Early payment reductions Factors and guidance](#)

23. While this issue is a consequence of the changes to the public sector pension schemes introduced in 2015 and has therefore existed since that time, it has been raised as a specific concern now as the remaining protected members are due to transition into the reformed schemes for the first time on 1 April 2022.
24. We include this within our response, as there is a corresponding discrepancy between the early retirement factors in the FPS 2006 legacy scheme and FPS 2015 scheme. While there was presumably sound policy intent behind the provision within the FPS 2006 which means that members cannot retire early from active status (and therefore the early retirement factors are significantly higher than they would otherwise be, being based on a normal benefit age of 65), this now seems anomalous with the FPS 2015 position and can reportedly cause administrative issues if a member wishes to retire before age 60 with transitional benefits.
25. We acknowledge that this not a direct function of the age discrimination remedy but rather the FPS 2006 and FPS 2015 scheme designs, so would welcome the opportunity to engage with the Home Office separately from this consultation.
26. We note the commitment of the Home Office to give due regard to the interaction of retirement ages between schemes, and to consider whether any changes are needed to ensure any cohort of police pension scheme members are not unduly disadvantaged. The Home Office's commitment states that it will have regard to the needs of members from protected groups where these are different from the needs of other members. We ask that similar regard is given in respect of Firefighters' Pension Scheme members.