

# Home Office consultation - Matthews (2023 options exercise)



# The consultation

Consultation seeks responses on amendments to SI 2006/3432 to provide remedy to retained firefighters employed between 7 April 2000 and 5 April 2006, allowing them to buy pre-July 2000 pensionable service

<https://www.gov.uk/government/consultations/retained-firefighters-pensions> - Consultation document sets out policy positions and draft Statutory Instrument

Consultation closes on 9 June 2023

Special member resources held here <https://www.fpsregs.org/index.php/modified-2006-scheme-resources>

# 2023 options exercise - mechanics

Memorandum of Understanding agreed on 9 March 2022

Home Office had maximum period of 18 months to draft, consult, and introduce the secondary legislation

FRAs to start 2023 options exercise as soon as possible after the legislation comes into force

The exercise will run for a maximum period of 18 months

Backstop date removed

Members not given sufficient opportunity to join in 2014 will now be able to do so

# Indicative timetable

FRA to contact persons in scope within **3 months** – reasonable endeavours

Expression of interest within **6 months (9 months)** if not contacted as above)

FRA provide statement of service and cost within **3 months**

Person to make election within **6 months**

Or, as soon as reasonably practicable with all stages completed within **18 months**

But, elections **WILL** be allowed after that date – in exceptional circumstances

New regulation 5B (Part 11) – purchase of service during extended limited period

# Reasonable endeavours

Recent case law comments on (contractual) reasonable endeavours:

*...it might be said that there are three types of endeavours clauses. The first is simply to use reasonable endeavours, which might mean if one reasonable path is taken then the obligation is discharged. The second is to use all reasonable endeavours. This is normally interpreted as requiring all reasonable paths or actions to be exhausted.*

[Brooke Homes \(Bicester\) Limited v Portfolio Property Partners Limited and Others \[2021\] EWCH 3015 \(Ch\)](#)

# 2023 options exercise – in scope



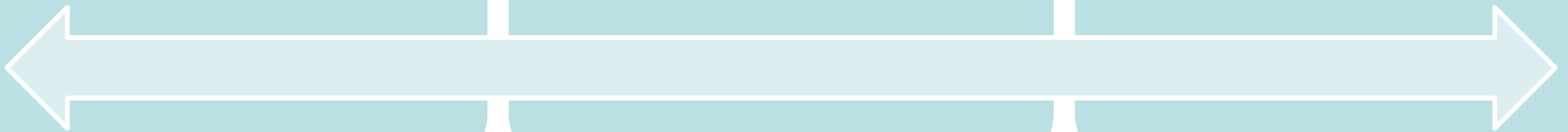
7 April 2000 – 30  
June 2000 only



7 April 2000 – 30  
June 2000  
plus 1 July 2000 –  
5 April 2006



1 July 2000 – 5  
April 2006 only **and**  
not given 2014  
option



# 2023 options exercise – out of scope

Retained firefighters employed between 1 July 2000 and 5 April 2006 who were given opportunity to take part in the 2014 options exercise but did not elect to do so within the statutory time limits

Burden of proof on FRAs to evidence first options exercise complied with:

- Original notification within 2 months (rule 5A(4) of Part 11)
- Statement of service within 4 months (rule 5A(13) of Part 11)
- All individuals sent statement of service if not already received ([2015 amendment for provisional enrolment](#)) (rule 6C(4) of Part 11)
- Elections to pay contributions actioned

Acceptable evidence:

- Copies of letters addressed to individual
- Mail merge data base and template letters

Disputes dealt with through IDRPs with recourse to TPO

# 2023 options exercise – entitlement #1

## Cohort 1. Some or all of...

- Service between 7 April 2000 and 30 June 2000
- Continuous service up to 7 April 2000 (no limit on backdating)

## Cohort 2. Some or all of...

- Service between 7 April 2000 and 5 April 2006
- Continuous service up to 7 April 2000 (no limit on backdating)
- Continuous service from 6 April 2006 to 31 March 2022 (to extent not already purchased)

## Cohort 3. Some or all of...

- Service between 1 July 2000 and 5 April 2006
- Continuous service from 6 April 2006 to 31 March 2022



# Some new definitions...

## Extended limited period

- Full period available for purchase
- Starts on first date of continuous retained employment
- Ends on earliest:
  - Date joined FPS 2006
  - Date joined FPS 2015
  - Date left employment
  - 31 March 2022

## Mandatory special period

- Period person elects to purchase
- Separate definitions for first and second options exercise
- Starts on date person chooses
- Ends on last day of extended limited period

## Second initial date

- Start date of 2023 options exercise
- Determining date for start of indicative timetable
- 1 October 2023

## 2023 options exercise – entitlement #2

Same options to convert or transfer as given in 2014 options exercise:

- Right to request transfer value
- FPS 1992 accrued rights
- Standard to special
- Special to standard
- **2014 conversion options may be revisited**

Aggregation remains under consideration following ET claims:

- Members who were retained but became wholetime without a break in service
- For FPS 1992, could give ability to retire from 50 with 25 years' and access to double accrual in respect of RDS

# Historic pay and service data



Equity is needed between the first options exercise (2014) and the second options exercise (2023)

← New regulation 5C (Part 11) - Purchase of service during the extended limited period – supplemental provision →

# Assumptions - service

The start date must be evidenced in some way by the FRA i.e. payroll or HR records would be needed.



A member can challenge this should they be able to provide robust evidence i.e. pay slip, P60 or contract of employment.



No evidence, either from the perspective of the FRA or member = no entitlement.

# Service rules for first options exercise

## Part 11 Rule 5A(8):

“Where an authority are not able to determine the period of the person’s service during the limited period from their records, the person may provide the authority with documents to assist them to determine the person’s period of service during the limited period and the authority shall determine the period of the person’s service from those documents.”

# Assumptions - pay

FRAs are to use the same data as per the first exercise for pay from 1 July 2000 – 5 April 2006

- This is unless the pay data was completely wrong, in which case, it should be substituted with the correct data.

For cases with service pre-1 July 2000, FRAs are to use the data that they have on record (providing that they are confident that it is reliable – FRAs to justify why it isn't)

In the absence of any data for pre-1 July 2000 membership FRAs can use the central assumptions – 25% WTE

# Pay rules for first options exercise

## Part 11 Rule 5A(9), (10), (11):

“If the FRA does not hold pay records for the limited period, they can take account of documents provided by the person. If these are not available, the FRA can determine pay on the basis of recent pay data for retained firefighters at the same station or stations as that at which the person was based for the relevant period.”

# Assumptions - rank

In the absence of data, FRAs are to assume that the individual was a FF.

The member will not be disadvantaged by this as it is a FS scheme, and any calculation will be based on total service and pay at leaving. However, it could mean that the HO receives less contributions than expected/warranted.



# Retrospective ill-health

Same policy as for 2014 options exercise

Eligible retained FFs medically retired before 6 April 2006 entitled to retrospective higher tier IHR

IQMP certification required:

- Permanent incapacity at date of dismissal
- Permanent disablement continued to date of assessment

Special pensioners already in receipt of retrospective IHR will require recal. if elect to purchase pre-July 2000 service

- Refer to GAD

Rule 2A (Part 3) amended

# Special death grant

Special death grant provision 2.5 x pensionable pay extended to cohort 1 (died between 7 April 2000 – 30 June 2000)

Or those missed in 2014 exercise

Top-up of special DG payable for pre-7 April 2000 service: 0.1 x pen pay for each full year

New regulation 1B (Part 5) - Death grant for extended limited period

Mirrors regulation 1A (Part 5)

# Additional death grant

Cohort 2 members  
who have died  
before  
implementation of  
2023 options  
exercise

Would have been  
eligible to buy  
additional service  
pre-July 2000

Additional DG  
provides 0.1 x pen  
pay for each full  
year of service to  
eligible survivor

New regulation 1C  
(Part 5) –  
Additional death  
grant

# Contributions

Employee contribution rates remain as those applicable for 2014 options exercise

Arrears of contributions can be paid by lump sum (within 6 months of election) or periodical contributions

- Post-30 June 2000 service – over 10 years or to date of retirement
- Pre-1 July 2000 service – over 20 years or to date of retirement

Same provisions apply if default on payments – either election revoked or service pro-rated

Employer contributions recovered through adjustment of rates following future valuation (assuming repayment of deficit over 15 years)

# Interest, tax relief, and GMP

Interest to be calculated as for 2014 options exercise

- Different methods for lump sum/ periodical contributions

Contributions will be reduced by notional tax relief for pensioner/ deferred special members

Assumed 20% marginal rate unless member provides evidence

Member must declare that they will not seek tax relief from HMRC

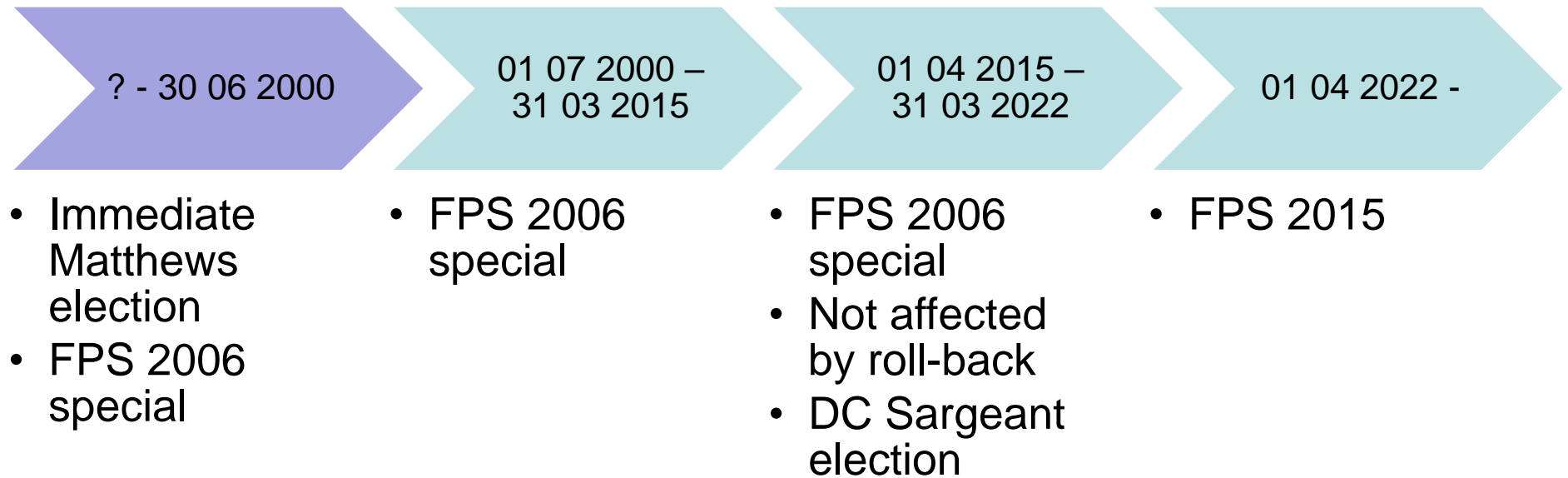
New regulation 6D (Part 11) - Compensation deduction

Contracted-out status of scheme unchanged. GMPs will not be calculated.

# Interaction with Sargeant (McCloud)

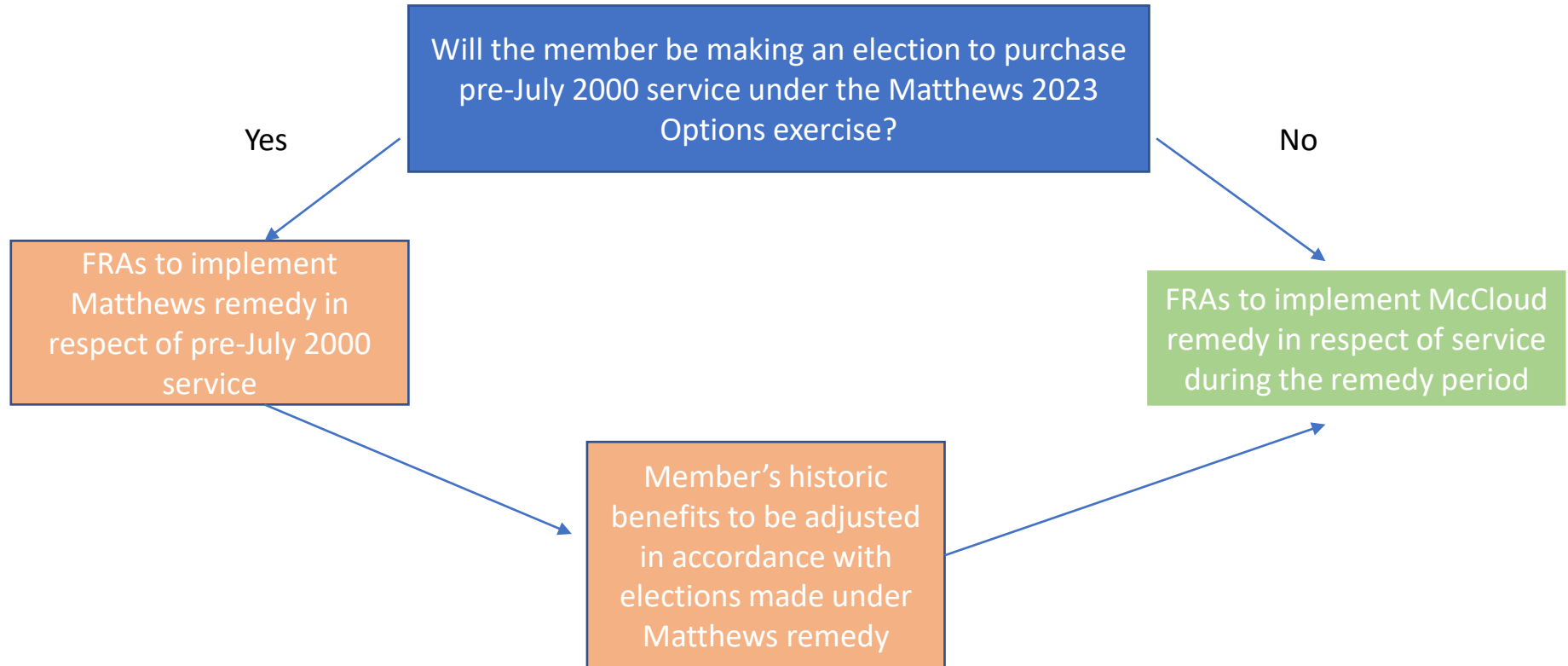


# Protected FPS 2006 special members



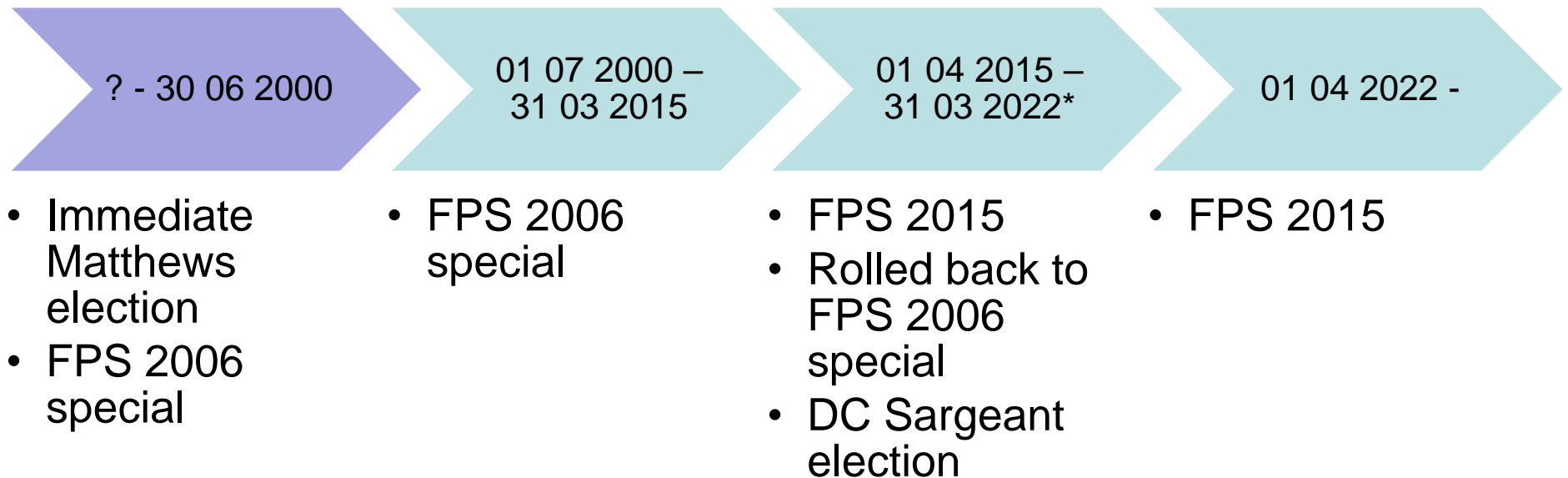
Colour key:  = Immediate choice to make  = No choice needed

Scenario One – Individual joined MPS as part of the 2014 Options exercise and has already purchased their post 31 March 2015 service as active special firefighter members i.e. FRAs would have provisionally enrolled these individuals to the modified scheme on 1 April 2015 under provision Part 11, Rule 6C



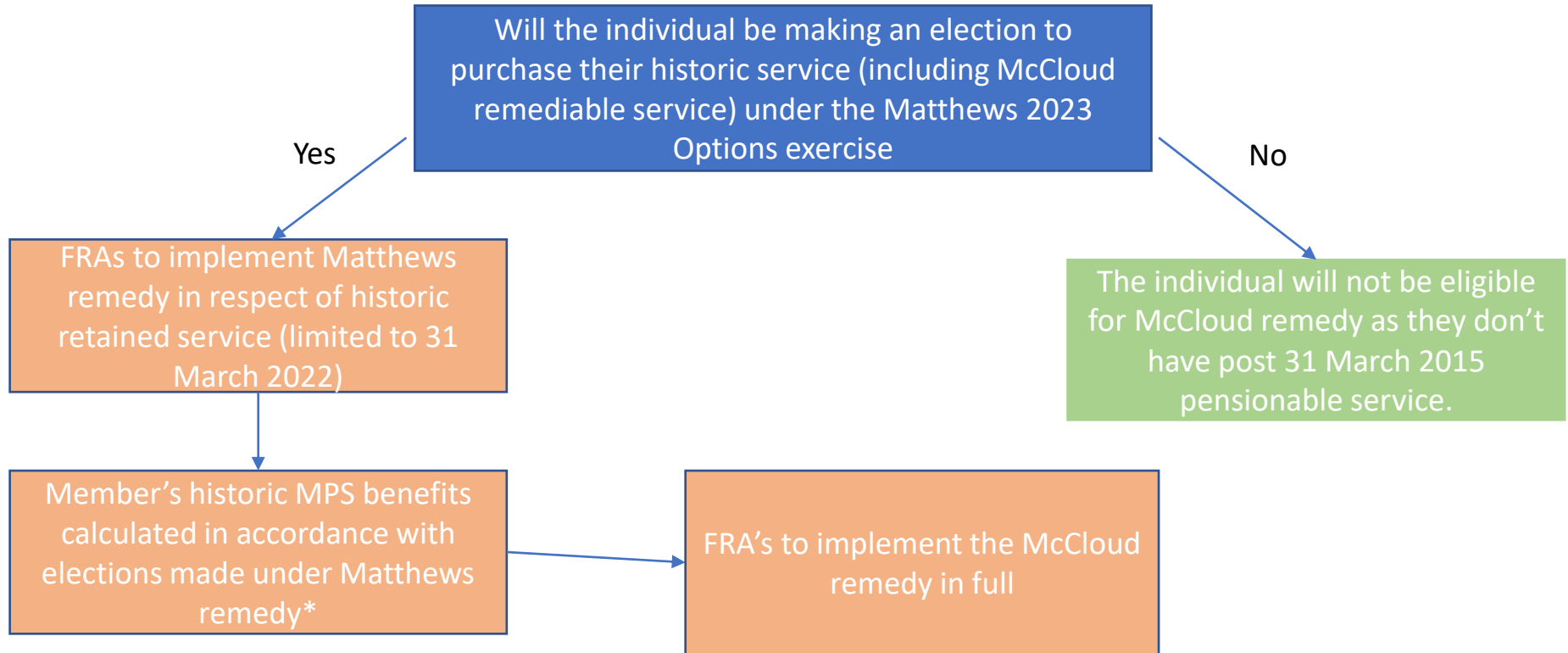


# Transitional FPS 2006 special members – scenario 1



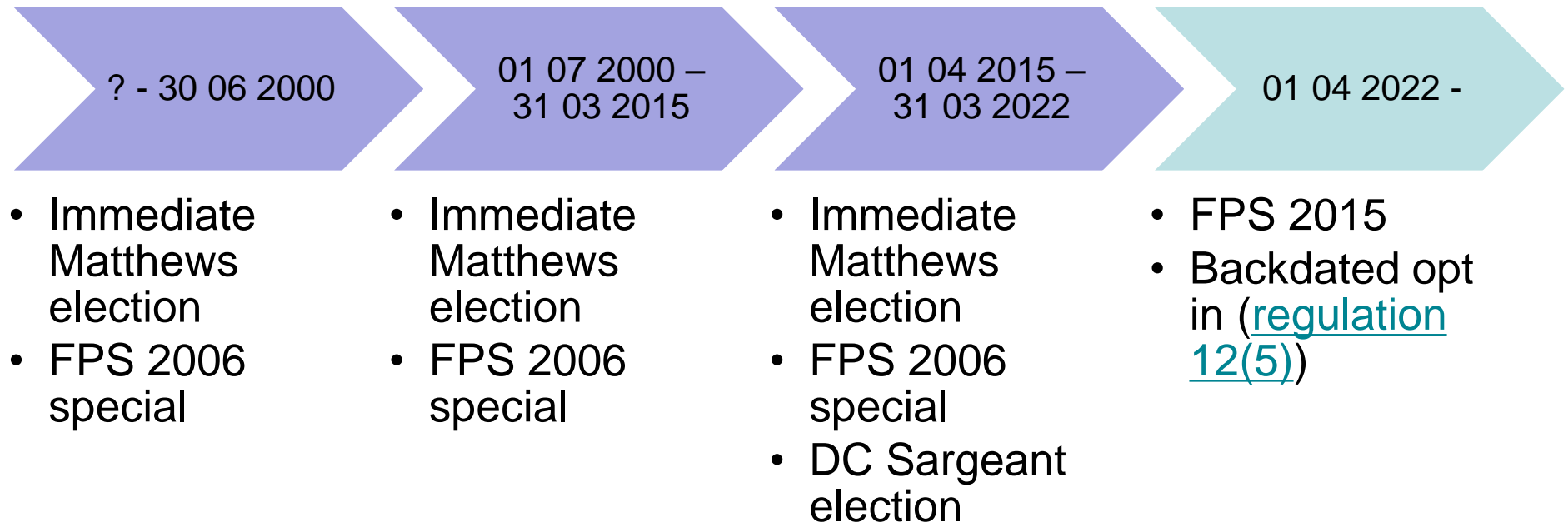
\* Or mixed service

Scenario Two – Individual didn't join as part of the 2014 Options exercise; didn't join the 2006 Scheme (as a standard member) on or after 6 April 2006; and didn't join the 2015 Scheme (for post 31 March 2015 service)



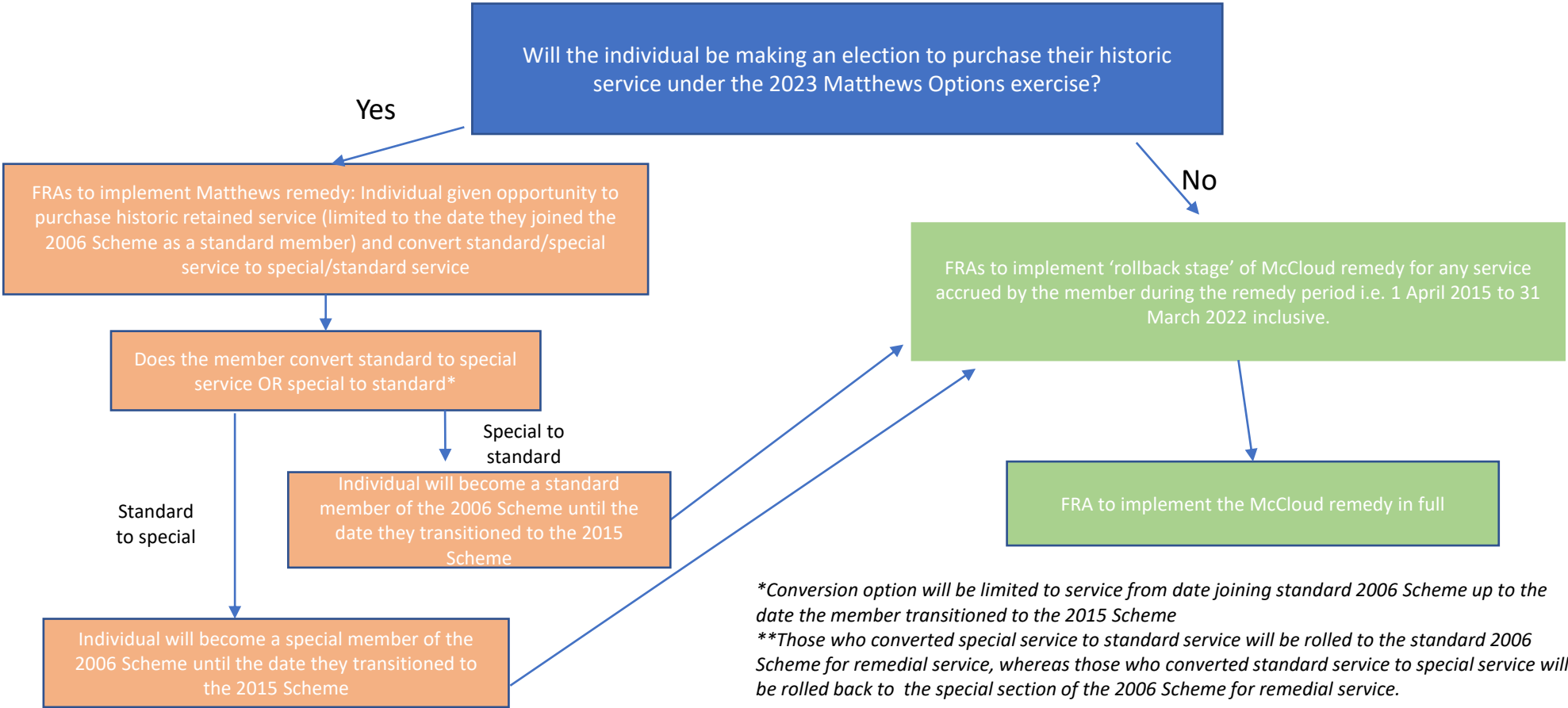
\* Rollback stage of McCloud remedy will not be necessary

# Non-members – scenario 2\*



\* No Matthews election = no eligibility to Sargeant

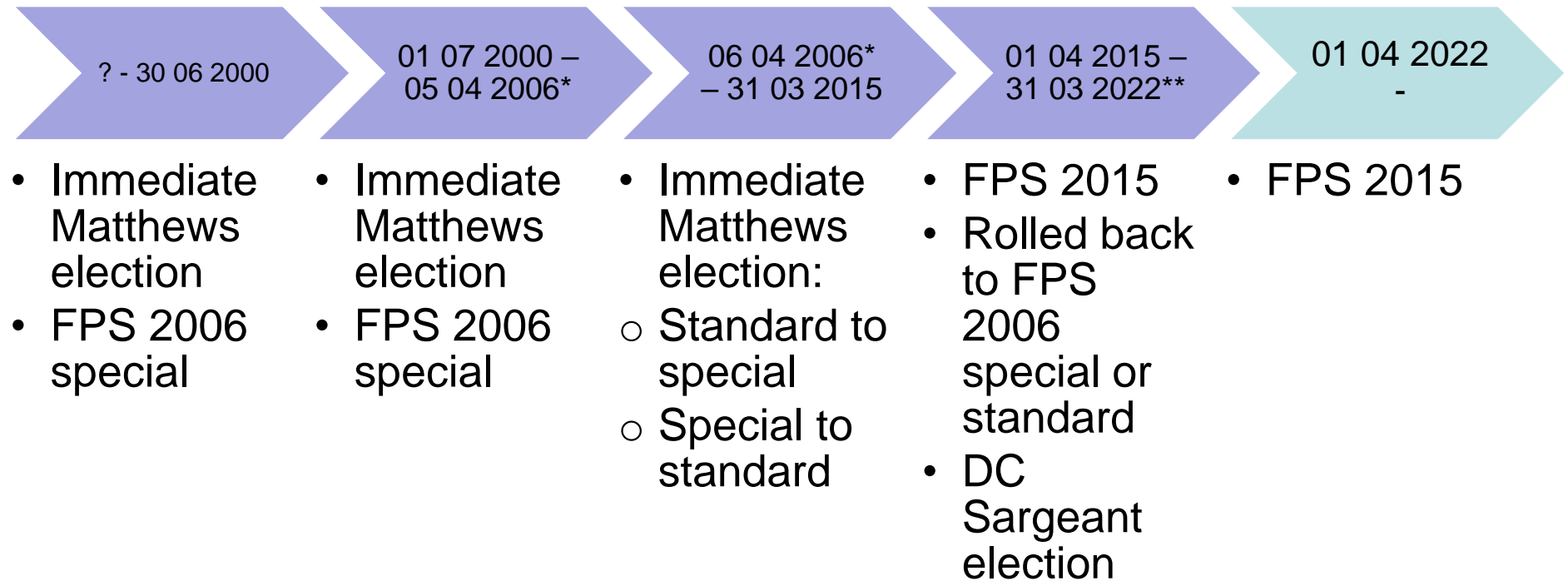
Scenario three – Individual didn't join as part of the 2014 Options exercise; joined the 2006 Scheme (as a standard member) on or after 6 April 2006 and transitioned into the 2015 Scheme between 1 April 2015 and 31 March 2022 in accordance with the 2015 Scheme's transitional protections.



*\*Conversion option will be limited to service from date joining standard 2006 Scheme up to the date the member transitioned to the 2015 Scheme*

*\*\*Those who converted special service to standard service will be rolled to the standard 2006 Scheme for remedial service, whereas those who converted standard service to special service will be rolled back to the special section of the 2006 Scheme for remedial service.*

# Transitional FPS 2006 standard members – scenario 3



\* Or date joined FPS 2006 as standard member \*\* Or mixed service

Scenario four – Individual didn't join as part of the 2014 Options exercise; didn't join the 2006 Scheme (as a standard member) on or after 6 April 2006; and joined the 2015 Scheme on or after 1 April 2015.

Will the individual be making an election to purchase their historic service under the 2023 Matthews Options exercise

Yes

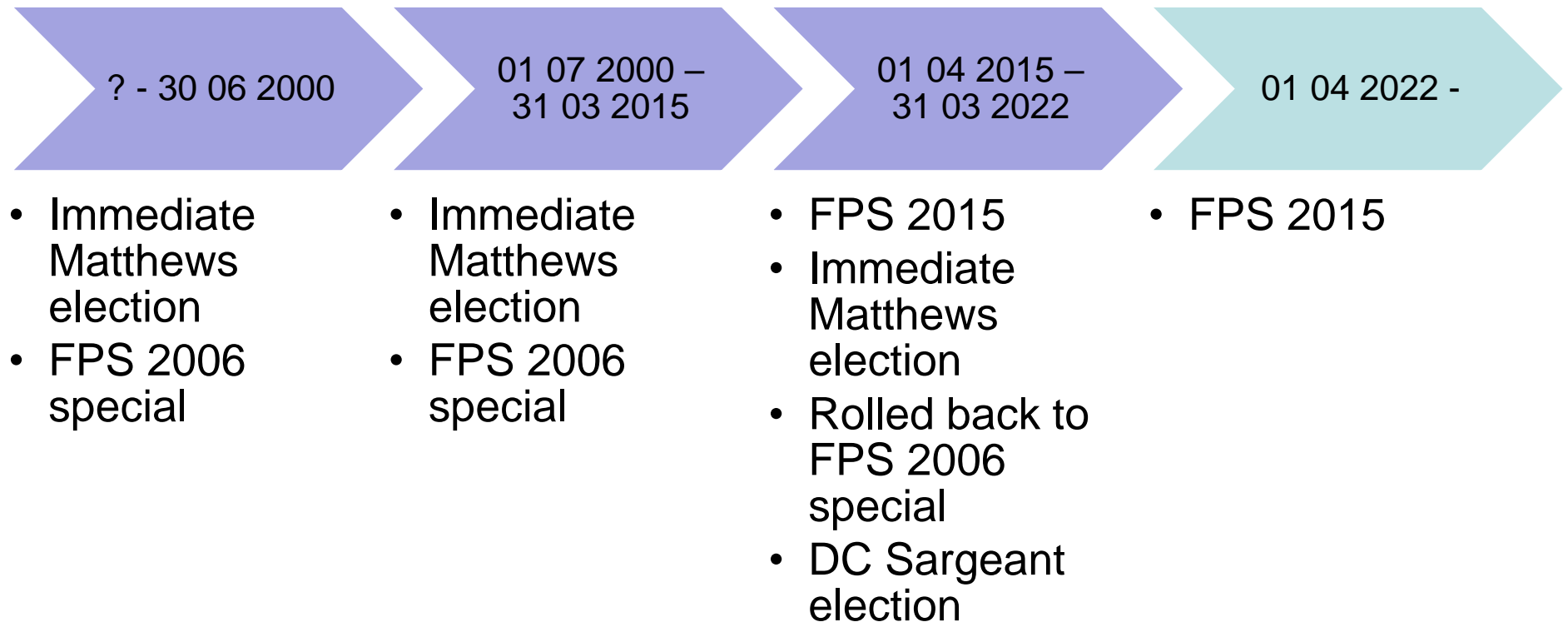
No

FRAs to implement Matthews remedy: Individual given opportunity to purchase historic retained service (limited to the date they joined the 2015 Scheme)

FRAs to apply 'rollback stage' of McCloud remedy for any service accrued by the member during the remedy period i.e. 1 April 2015 to 31 March 2022 inclusive.

FRA to implement the McCloud remedy in full

# FPS 2015 only members – scenario 4



# List of consultation questions (1 - 4)

1. Are the categories of individuals that have been identified as being eligible to join the modified scheme as part of the 2023 Options exercise appropriate?
2. Do the categories of individuals that have been identified as being eligible to join the modified scheme as part of the 2023 Options exercise include everyone who ought to be included?
3. Do the proposed amendments to the Firefighters' Pension Scheme (England) Order 2006 achieve the policy intention of ensuring all individuals in Cohort 1 can purchase any of their uninterrupted retained service in the modified scheme and place these members in the position they would have been had they been entitled to purchase their service at the time?
4. Do the proposed amendments to the Firefighters' Pension Scheme (England) Order 2006 achieve the policy intention of ensuring all individuals in Cohort 2 can purchase any of their uninterrupted retained service in the modified scheme and place these members in the position they would have been had they been entitled to purchase their service at the time?



# List of consultation questions (5 - 8)

5. Do the proposed amendments to the Firefighters' Pension Scheme (England) Order 2006 achieve the policy intention of ensuring all individuals in Cohort 3 can purchase any of their uninterrupted retained service in the modified scheme and place these members in the position they would have been had they been entitled to purchase their service at the time?
6. Are there any changes to the proposals required for those individuals who are entitled to both the Matthews remedy and McCloud/Sargeant remedy simultaneously?
7. Do the proposed changes to the special death grant and additional death grant sufficiently address the scenario where the deceased member had pre-2000 service?
8. Are there any additional points not covered in this consultation paper that need to be considered as part of the proposed changes to the Firefighters' Pension Scheme (England) Order 2006?

## List of consultation questions (9 - 11)

9. The scheme will also provide an additional top up to the special death grant in respect of an individual's pre-7 April 2000 service. The Special death grant will provide eligible survivors with a single lump sum payment equal to 0.1 times the deceased member's pensionable pay for each full qualifying year of service that the deceased member had prior to 7 April 2000. Do you agree with this policy?
10. Members who joined the modified scheme as part of the 2014 Options exercise and who have pre-July 2000 service but have subsequently died will receive an additional death grant in relation to such members' pre-July 2000 service. The additional death grant will provide eligible survivors with a single lump sum payment equal to 0.1 times the deceased member's pensionable pay for each full qualifying year of service that the deceased member had prior to 1 July 2000. Do you agree with this policy?
11. It is proposed that where there is an absence of pay data for pre-July 2000 membership, FRAs can assume that the retained firefighter earns 25% of the pay of a WT firefighter, and that they will be employed at the rank of a firefighter. Do you agree with this policy?

# Any other business



# HMT discount rate consultation

Discount rate = key directed assumption

Consulted on ...

- Approach to setting SCAPE discount rate – either GDP or Social Time Preference Rate (STPR)
- Aligning review of SCAPE rate with scheme valuations

Response published 30 March 2023

New SCAPE rate based on long-term GDP = CPI + 1.7%

Changes to employer rates effective 1 April 2024

Funding provided for deficit due to SCAPE only

# Valuation 2020

Government aiming to implement all three proposals on cost control

- Reformed scheme only (past and future service)
- Widened breach corridor from +/-2% to +/-3% of pensionable pay
- Economic check

Breach corridor = [The Public Service Pensions \(Employer Cost Cap and Specified Restricted Scheme\) Regulations 2022](#)

FRA data collected and analysed – noted improvement in data quality

Early GAD engagement with SAB on scheme-set assumptions

FBU (and others) Judicial Review on cost control mechanism heard in Jan 2023 – judge ruled in favour of HMT, unions to appeal?

# Factor review

New FPS 1992 commutation factors effective 3 April 2023

- <https://www.fpsregs.org/index.php/gad-guidance/commutation>

The following factor sets have been suspended:

- Cash Equivalent Transfer Values (CETVs)
- Pensioner Cash Equivalents
- Non-Club Transfers-in

HMT's cash equivalent transfer value (CETV) guidance note was withdrawn such that **no calculations on 30th March 2023 or since are valid**

# Booking now live!

LGA/ NPCCC data conference 17 May 2023

18 Smith Square, London



# Any questions





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