



Government
Actuary's
Department

The Firefighters' Pension Scheme (England)

Pension Sharing on Divorce for McCloud members:
Transfer day before 1 October 2023
“Retrospective full guidance”

Introductory note

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Government Actuary's Department

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1. Introduction

- 1.1 This guidance is addressed to the Ministry of Housing, Communities and Local Government (MHCLG) as the responsible authority for the Firefighters’ Pension Schemes (England) (The Schemes). The Schemes include the Firefighters’ Pension Scheme 1992 in England, the new Firefighters’ Pension Scheme 2006 (England) (the legacy schemes) and the Firefighters’ Pension Scheme 2015 (England) (the reformed scheme).
- 1.2 The guidance has been prepared in accordance with the Public Service Pensions and Judicial Offices Act 2022 (PSPJOA) and Part 4 Chapter 1 Section 2 of the Firefighters’ Pensions (Remediable Service) Regulations 2023 (SI 2023/843) (referred to in this note as the “Remediable Service Regulations”).
- 1.3 Nothing in this guidance should be read as overriding the regulations which govern the Schemes.
- 1.4 In this guidance note, “remediable service” is defined by section 1 of PSPJOA. Remediable service always falls in the period 1 April 2015 to 31 March 2022 for the Schemes. Some members with a disqualifying break in service may have service during the period 1 April 2015 to 31 March 2022 which is not remediable service (see PSPJOA section 1(6)). This guidance only applies in relation to remediable service.
- 1.5 The guidance assumes that rollback as part of McCloud remedy has taken place which means all remediable service of in-scope members has been placed back into their relevant legacy scheme¹.
- 1.6 The guidance applies to a McCloud pension debit member (PDM), the corresponding pension credit member (PCM) with an in-scope PSO where:
- The PSO **transfer day** is before 1 October 2023, **and**
 - The PSO covers remediable service (which as noted above always falls into the remedy period 1 April 2015 to 31 March 2022).
- 1.7 MHCLG have confirmed this guidance applies where **transfer day** is before 1 October 2023, regardless of whether **valuation day** (the date the PSO was implemented) is before, on or after 1 October 2023.
- 1.8 The guidance is split into an introductory note plus three separate retrospective guidance notes:
- **Retrospective guidance L** – shared remediable service all accrued in the legacy scheme
 - **Retrospective guidance R** – shared remediable service all accrued in the reformed scheme
 - **Retrospective guidance M** – shared remediable service accrued in both the legacy and reformed schemes (**‘Mixed’**)

¹ This includes in-scope McCloud pensioners, even though their benefits in payment may remain unchanged until their immediate choice election is made.

- 1.9 Section 2 explains which of the three retrospective notes above should be used. This introductory note should be read in conjunction with the retrospective notes for all three categories.
- 1.10 Depending on the McCloud member’s pensionable service covered by their PSO, one or more of the following tranches may be shareable in divorce:
- Tranche 1: Shareable non-remediable pension benefits in respect of legacy scheme service prior to 1 April 2015
 - Tranche 2: Shareable remediable pension benefits in respect of remediable service (which as noted above always falls into the remedy period 1 April 2015 to 31 March 2022)²
 - Tranche 3: Shareable non-remediable pension benefits in respect of reformed scheme service (post 31 March 2022)³
- 1.11 If the member has elected to purchase benefits under a “Matthews” options exercise, administrators should have regard to the “Special members” section of the GAD guidance note, “The New Firefighters’ Pension Scheme 2006 (England), The New Firefighters’ Pension Scheme 2007 (Wales), The New Firefighters’ Pension Scheme 2007 (Northern Ireland): Individual Cash Equivalent Transfers: Guidance & Factors for CETVs: CETV factors effective 29 October 2018 to 28 March 2023”, dated 9 August 2024.
- 1.12 If the member has transfer in benefits received by the scheme during remediable service, the administrators should establish the member’s remediable service benefits under the legacy scheme option and the reformed scheme option by first considering the ‘Guidance for applying McCloud remedy to incoming non-Club transfers’ and ‘The Public Sector Transfer Club Memorandum’.
- 1.13 The guidance covers pensioner members where the McCloud choice would result in pension adjustments for past overpayments or underpayments (i.e. adjustment under PSPJOA section 14 for immediate choice members, or equivalent adjustment for deferred choice pensioners⁴).
- 1.14 The guidance covers cases where the McCloud choice would result in contribution adjustments under PSPJOA section 15 (Immediate choice members), section 16 (Deferred choice members, immediate correction) and section 17 (Deferred choice members, deferred correction). This includes both contribution overpayments (where the scheme manager is required to pay an amount of compensation to the member in respect

² Please note that if transfer day is on or before the day remediable service ends, the PDM has some McCloud remediable service between 1 April 2015 and 31 March 2022 that is not shareable. McCloud remedy still applies to this non-shareable service, but it is not relevant to the retrospective guidance notes as only shareable remediable service is considered for divorce.

³ For most members, Tranche 3 is pension benefits in respect of service post 31 March 2022. However, for a member with a disqualifying break, pensionable service in relation to Tranche 3 may start before 1 April 2022 (see PSPJOA section 1(6)).

⁴ Generally, a deferred choice member will make their choice before retirement, but exceptionally they may retire and start receiving legacy scheme payments before making their DCU election. These members may have been protected, taper protected or unprotected before rollback.

of the overpaid contributions) and contribution underpayments (where additional contributions are owed to the scheme manager).

- 1.15 Where the member has made a remediable added years payment⁵ (or payments) or a remediable added pension payment⁶ (or payments) during the period of shared remediable service, the CEV originally calculated on transfer day (before rollback) will have included allowance for the added years and / or added pension benefits associated with these payments.
- 1.16 Where the member has made a remediable added years payment (or payments) during the period of shared remediable service, then in applying this guidance to calculation of alternative CEVs:
- If the alternative scheme is a legacy scheme, the alternative CEV should include allowance for the legacy benefits provided by these added years.
 - If the alternative scheme is the reformed scheme, the alternative CEV should include allowance for the compensation payment under regulation 28(4)(a) of the Remediable Service Regulations of the aggregate of all of the member’s remediable added years payments during the period of shared remediable service, net of tax relief payable, plus interest applied up to transfer day.
 - If the member has received pension benefits associated with remediable added years payments during the period of shared remediable service, paid before transfer day, those benefits should be allowed for in the calculation of the alternative underpayment adjustment (referred to as “Alt_UpayAdj” in retrospective guidance L, R and M).
- 1.17 Where the member has made a remediable added pension payment (or payments) during the period of shared remediable service, then in applying this guidance to the calculation of alternative CEVs, the alternative CEV should take account of:
- The compensation payment under regulation 27(4) of the Remediable Service Regulations of the aggregate of all of the member’s remediable added pension payments during the period of shared remediable service, net of tax relief payable, plus interest applied up to transfer day.
 - Any amount owed by the member to the scheme under regulation 27(6) of the Remediable Service Regulations, in respect of pension benefits associated with remediable added pension payments during the period of shared remediable service, paid before transfer day, plus interest applied up to transfer day. Note that such payments should not be allowed for in the calculation of the alternative underpayment adjustment (referred to as “Alt_UpayAdj” in retrospective guidance L, R and M).
- 1.18 A debit should be applied to each of the following:
- If the member makes a legacy scheme election, the added years benefits associated with a remediable added years payment (or payments) during the period of shared

⁵ As defined in regulation 28(5) of the Remediable Service Regulations. Note remediable added years payments made under regulation 29 of the Remediable Service Regulations (Remedial arrangements to pay voluntary contributions to secure legacy scheme added years) are not considered to be made during the period of shared remediable service and so are excluded from these calculations.

⁶ As defined in regulation 27(7) of the Remediable Service Regulations.

remediable service (including any such payments made before transfer day, as a result of their inclusion in the alternative underpayment adjustment).

- If the member makes a reformed scheme election, any compensation payment under regulation 28(4)(a) of the Remediable Service Regulations in respect of remediable added years payments during the period of shared remediable service, and the associated interest.
- Any compensation payment under regulation 27(4) of the Remediable Service Regulations in respect of remediable added pension payments during the period of shared remediable service, and the associated interest.
- Any amount owed by the member to the scheme under regulation 27(6) of the Remediable Service Regulations, in respect of pension benefits associated with remediable added pension payments during the period of shared remediable service, paid before transfer day, and the associated interest.

Note that added pension purchased by a remediable added pension payment (or payments) is extinguished regardless of the McCloud choice. Any pension debit associated with such added pension benefits, as calculated at the original transfer day (before rollback), should similarly be extinguished.

- 1.19 If, under the rules of the scheme, a member can make separate McCloud elections in relation to remediable service in two or more employments, then the remedy should be implemented separately for each employment.
- 1.20 In many cases, it is easy to disaggregate the McCloud member’s shareable benefits into Tranches 1, 2 and 3. For any ambiguous cases:
- Tranche 3 shareable benefits are the shareable benefits payable from the reformed scheme which, because of rollback, reflect service on and after 1 April 2022 for most McCloud members (see paragraph 1.10 above).
 - The benefits payable from the legacy scheme are Tranche 1 and 2 shareable benefits (where Tranche 2 shareable benefits would have been rolled back if they were not originally paid from the legacy scheme).
 - Tranche 1 (shareable) benefits are calculated as the pre-2015 legacy scheme benefits the member would be entitled to if they make a reformed scheme election.
 - Tranche 2 shareable benefits (the shareable remediable service benefits) are calculated as the remaining shareable benefits payable from the legacy scheme following rollback.
 - As Tranche 1 and Tranche 2 are payable from the legacy scheme,
 - Tranche 2 legacy scheme style of shareable benefits can be calculated as total shareable legacy style benefits payable from the legacy scheme if the member makes a legacy scheme election minus Tranche 1 shareable legacy scheme benefits (as calculated above).
 - Tranche 2 reformed scheme style of shareable benefits can be calculated as total shareable reformed style benefits payable from the legacy scheme if the member makes a reformed scheme election. This is equivalent to the total shareable reformed benefits paid from legacy and reformed schemes if the member makes a reformed scheme election minus the Tranche 3 shareable benefits.
- 1.21 In particular, pension benefits in the Firefighters’ Pension Scheme 1992 should be determined as if the relevant accrual rate applied uniformly across their service within this scheme.

2. Which retrospective guidance note to use

2.1 There are three retrospective guidance notes which follow on from this introductory note:

- **Retrospective guidance L** – shared remediable service all accrued in the legacy scheme. This includes all protected members, plus taper-protected members with a Pension Sharing Order (PSO) which only relates to the legacy scheme.
- **Retrospective guidance R** – shared remediable service all accrued in the reformed scheme. This includes all unprotected members, plus taper-protected members with a Pension Sharing Order (PSO) which only relates to the reformed scheme.
- **Retrospective guidance M** – shared remediable service accrued in both the legacy and reformed schemes. This covers taper-protected members with a Pension Sharing Order (PSO) which relates to both the legacy scheme and reformed scheme.

Only one note will apply to any given in-scope PSO, based on which scheme(s) the shared remediable service was accrued in. This section explains which retrospective note to use.

2.2 As can be seen in the table in paragraph 2.3, the membership is divided into groups by a combination of the following factors:

- Which scheme the remediable service was accrued in pre-1 October 2023 (legacy, reformed, or mixed i.e. both legacy and reformed).
- The schemes the PSO applies to (✓ means PSO applies to that scheme, × means PSO does not apply).

2.3 For completeness, this introductory note considers the following 9 groups of McCloud PDMs, i.e. PDMs with remediable service, and their corresponding PCMs.

In which scheme was shared remediable service accrued?	PDM's protection status	PSO annex received		Comments ⁷	Guidance to use
		Legacy	Reformed		
Legacy scheme only	Protected	✓	×	In scope	Guidance L
		×	✓	Out of scope	
		✓	✓	In scope	
	Tapered	✓	×	In scope	
Reformed scheme only	Unprotected	✓	×	Out of scope	Guidance R
		×	✓	In scope	
		✓	✓	In scope	
	Tapered	×	✓	In scope	
Both legacy and reformed	Tapered	✓	✓	In scope	Guidance M

2.4 After reading this introductory note, administrators should then refer to the relevant retrospective guidance note (L, R or M) for detailed administrative guidance.

⁷ Please see Exclusions in Section 3 with more information for the groups out of scope.

3. General considerations

Exclusions

- 3.1 Although a PDM is affected by the McCloud remedy if they have remediable service, the McCloud remedy for divorce does not apply to them if they do not have an in-scope PSO as per paragraph 1.6.
- 3.2 Some Protected members with a PSO only relating to a legacy scheme and some taper-protected members with a PSO only relating to a legacy scheme would not have an in-scope PSO. Reasons include:
- PSO **transfer day** being before 1 April 2015; and
 - PSO **transfer day** is on or after 1 April 2015 but the last day of PDM’s pensionable service is before 1 April 2015.
- 3.3 Protected members with a PSO which only relates to the reformed scheme and Unprotected members with a PSO which only relates to a legacy scheme are not affected by the McCloud remedy for divorce. This is because their PSO does not cover benefits accrued during the member’s remediable service.
- 3.4 Where the McCloud remedy for divorce does not apply to a PDM, the corresponding PCM is also unaffected by the McCloud remedy for divorce.
- 3.5 If a PDM (and their corresponding PCM) does not have an in-scope PSO, there is no need to revisit their calculations. The remainder of this guidance does not apply to them.
- 3.6 Additional care should be taken for a PDM or a PCM with more than one in-scope PSO, each relating to a different divorce. This guidance does not cover these circumstances; please refer such cases to MHCLG.
- 3.7 Other than cases mentioned in paragraphs 1.14 to **Error! Reference source not found.**, any case where compensation differs depending on McCloud choice (e.g. in relation to annual allowance tax charges, in particular in out of scope years), should be referred to MHCLG in the first instance, for onward referral to GAD.

Implementation

- 3.8 This guidance should be used on or after 1 October 2023 to implement the McCloud remedy for divorce for members described in paragraph 1.6.
- 3.9 The guidance has been written for pension administrators and assumes knowledge of general pension terminology, and familiarity with retirement calculations for the Schemes. Any questions concerning the application of the guidance should, in the first instance, be referred to MHCLG.
- 3.10 In line with best practice and in order to ensure that factors are being used as intended and the instructions are fit for purpose, GAD plan to follow up with example calculations for this guidance note. The scheme manager may also consider whether some example calculations are sent to GAD for review.
- 3.11 The guidance should be read in conjunction with the divorce guidance notes in force at the PSO **valuation day**, for legacy schemes and reformed schemes. All calculations should

use factors in force at the **valuation day**, using the **transfer day** as the calculation date.
Guidance notes applicable over the remediable service period include:

GAD guidance	Issued on⁸
Firefighters’ Pension Scheme Adjustment factors for pension debits Firefighters’ Pension Scheme 1992 Firefighters’ Pension Scheme (Northern Ireland) 2007	4 Jul 2011
Firefighters’ Pension Scheme Adjustment factors for pension debits Firefighters’ Pension Scheme (England) 2006 New Firefighters’ Pension Scheme (Northern Ireland) 2007 Firefighters’ Pension Scheme (Scotland) 2007 Firefighters’ Pension Scheme (Wales) 2007	4 Jul 2011
Firefighters’ Pension Scheme 1992 (“1992 scheme”) New Firefighters’ Pension Scheme (England) 2006 (“2006 scheme”) Purchase of Increased Benefits Early Retirement Factors Adjustment factors for pension benefits Trivial Commutation and Capitalisation for Death Gratuities	2 Dec 2014
New Firefighters’ Pension Scheme 2006 New Firefighters’ Pension Scheme (Northern Ireland) 2007 Firefighters’ Pension Scheme (Scotland) 2007 Firefighters’ Pension Scheme (Wales) 2007 Calculation of Pension Credits on Divorce	8 Mar 2012
Addendum to GAD guidance note “New Firefighters’ Pension Scheme 2006: Calculation of Pension Credits on Divorce” dated 8 March 2012	13 May 2016
Firefighters’ Pension Scheme 1992 Firefighters’ Pension Scheme (Northern Ireland) 2007 Calculation of Pension Credits on Divorce	27 Jul 2012
Addendum to GAD guidance note “Firefighters’ Pension Scheme 1992 / Firefighters’ Pension Scheme (Northern Ireland) 2007: Calculation of Pension Credits on Divorce” dated 27 July 2012	13 May 2016
The Firefighters’ Pension Scheme 2015 (England) Pension Sharing on Divorce	2 Jun 2015

⁸ The factors shown in each guidance note may have been updated since the note was first issued. There may be factor tables that have been provided separately which are not contained within any of the guidance notes listed above. All calculations should use factors in force as at the **valuation day**, using the **transfer day** as the calculation date.

Addendum to GAD guidance note "The Firefighters' Pension Scheme 2015 (England): Pension Sharing on Divorce" dated 2 June 2015	13 May 2016
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The Firefighters’ Pension Scheme (England) 1992 The Firefighters’ Pension Scheme (Wales) 1992 The Firefighters’ Pension Scheme (Northern Ireland) 2007 Pensioner cash equivalents on divorce, pension credits and pension debits Factors and guidance	6 Mar 2020
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The New Firefighters’ Pension Scheme (England) 2006 The New Firefighters’ Pension Scheme (Wales) 2007 The New Firefighters’ Pension Scheme (Northern Ireland) 2007 Pensioner cash equivalents on divorce, pension credits and pension debits Factors and guidance	6 Mar 2020
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The Firefighters’ Pension Scheme 2015 (England) Pension Sharing on Divorce Factors and guidance	30 Jan 2020
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Compliance and limitations

- 3.12 This guidance has been prepared in line with GAD’s understanding of MHCLG’s policy intent, as set out in our note McCloud Remedy: Pension Sharing on Divorce Scenarios dated 6 September 2023. MHCLG have confirmed that this note is in line with their policy intent, and that their legal advisors have confirmed the regulations are in line with this policy intent.
- 3.13 Other than MHCLG and the scheme administrators, no person or third party is entitled to place any reliance on the contents of this guidance, except to any extent explicitly stated herein. GAD has no liability to any person or third party for any action taken or for any failure to act, either in whole or in part, on the basis of this guidance, whether or not GAD has agreed to the disclosure of its advice to the third party.
- 3.14 The guidance may be published on MHCLG, LGA and the scheme administrators’ websites but must not otherwise be reproduced, distributed or communicated in whole or in part to any other person without GAD’s prior written permission.
- 3.15 If any cases arise which do not fall under the standard approach set out in the guidance, they should be referred to MHCLG in the first instance.
- 3.16 This guidance has been carried out in accordance with the applicable Technical Actuarial Standard: TAS 100 issued by the Financial Reporting Council (FRC). The FRC sets technical standards for actuarial work in the UK.