

Meeting of the Board 9 December 2021

## Response to Home Office consultation

### Background

1. On 8 November 2021, the Home Office launched a 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: [Amendments to the firefighters' pension schemes in England 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/amendments-to-the-firefighters-pension-schemes-in-england-2022)
2. This includes how the Home Office will ensure that all members of the Firefighters' Pension Schemes who continue in service will be members of the reformed scheme from 1 April 2022. This means closing the legacy schemes to future accrual from 31 March 2022, so that all members are treated equally for future service. This involves moving any remaining legacy scheme members - i.e. those who had received full transitional protections - into the reformed scheme from 1 April 2022.
3. These changes enact the policy announced in February of this year and are consequential to the provisions in the [Public Service Pensions & Judicial Offices Bill](#) (PSPJO) currently before Parliament.
4. The consultation includes a draft set of regulations to ensure that all members build up benefits in the FPS 2015 from 1 April 2022. It also considers two areas where further amendments may be needed:
  - 4.1. Purchase of additional benefits. The policy intent is that existing arrangements for purchasing additional service in the legacy schemes can continue, but no new arrangements can be entered into after 31 March 2022.
  - 4.2. Ill-health retirement (IHR). Provision needs to be made to ensure that a protected member who applies for IHR before 31 March 2022 where the application is determined in their favour after that date is treated no less favourably than if the application had been determined on that date.
  - 4.3. For any ill-health cases that straddle 1 April 2022, the intended policy is the introduction of an "ill-health retirement underpin". This will mean that such members receive an FPS 2015 ill-health pension calculated at the date they actually retire; but that if a legacy scheme ill-health pension calculated as at 31 March 2022 would have been higher, the pension in payment must be increased by the difference between the two.

5. The consultation will run for 8 weeks and will close on Sunday 2 January 2022. There will be an additional consultation in 2022 to address the further changes needed to correct the discrimination, specifically on how the Home Office will implement provisions for the deferred choice underpin
6. The Board is invited to make a response to the consultation.
7. Following the end of the public consultation period, the Home Office will consider the responses to the consultation, publish a response as to how the first phase of the remedy is being enacted in the scheme level changes to the Firefighters' Pension Schemes and lay legislation in Parliament to amend the Public Service (Firefighters') Pensions Regulations.

## Questions for consultation

### Question 1

8. 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?

#### 8.1. Draft regulations:

#### **Citation, commencement and extent**

1.— These Regulations may be cited as the Firefighters' Pension Scheme (England) (Amendment) Regulations 2022.

- (1) These Regulations come into force on 1st April 2022.
- (2) These Regulations extend to England.

#### **Amendment of the Firefighters' Pension Scheme (England) Regulations 2014**

2.— Schedule 2 (transitional provisions) to the Firefighters' Pension Scheme (England) Regulations 2014<sup>1)</sup> is amended as follows.

- (1) In paragraph 1 (interpretation)—
  - (a) in the definition of “closing date”, in paragraph (c), for “member, or” to the end substitute—
    - member,
    - (ii) if the member is a full protection member of the 1992 Scheme or the NFPS, 31st March 2022, or
    - (iii) if the member is not a protected member of one of those schemes, the scheme closing date;
  - (b) in the definition of “transition date”, for “member, and” to the end substitute—
    - member,

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<sup>1)</sup> S.I. 2014/2848. Schedule 2 has been amended but none of the amendments are relevant to this instrument.

- (b) if the member is a full protection member of the 1992 Scheme or the NFPS, 1st April 2022, and
- (c) if the member is not a protected member of the 1992 Scheme or the NFPS, the day after the scheme closing date, or, if later, the day the person ceased to be a protected member of that scheme.

(2) In paragraph 3(3) (meaning of “tapered protection closing date”), at the end insert “which must be before 1st April 2022”.

(3) In paragraph 9(2) (full protection members of the 1992 Scheme or the NFPS), for the words “as the case may be,” to the end substitute—

as the case may be—

- (a) on 31st March 2022; or
- (b) if earlier, when P ceases to be in pensionable service under that scheme and ceases to be eligible to be an active member of the NFPS unless sub-paragraph (3) or (4) applies.

## 8.2. Consolidated regulations

### Interpretation

1. In this Schedule—

“closing date”—

- (a) in relation to an existing scheme, means the date referred to in section 18(4)(a) or (b) of the 2013 Act, as the case may be,
- (b) in relation to an existing public body pension scheme, means the date determined under section 31(2) of the 2013 Act by the public authority responsible for that scheme, and
- (c) in relation to a transition member, means—
  - (i) if the member is a tapered protection member of the 1992 Scheme or the NFPS, the tapered protection closing date for that ~~member, or~~  
~~(ii) if the member is not a protected member of one of those schemes, the scheme closing date;~~  
member,
  - (ii) if the member is a full protection member of the 1992 Scheme or the NFPS, 31st March 2022, or
  - (iii) if the member is not a protected member of one of those schemes, the scheme closing date;

“transition date”, in relation to a transition member, means—

- (a) if the member is a tapered protection member of the 1992 Scheme or the NFPS, the day after the tapered protection closing date for that ~~member, and~~  
~~(b) if the member is not a protected member of the 1992 Scheme or the NFPS, the day after the scheme closing date, or, if later, the day the person ceased to be a protected member of that scheme;~~  
member,
- (b) if the member is a full protection member of the 1992 Scheme or the NFPS, 1st April 2022, and
- (c) if the member is not a protected member of the 1992 Scheme or the NFPS, the day after the scheme closing date, or, if later, the day the person ceased to be a protected member of that scheme.

## Meaning of “tapered protection closing date”

- 3.— (1) The tapered protection closing date for a tapered protection member of the 1992 Scheme is the date found by applying the relevant date in column 3 of the 1992 Scheme table in Part 4 of this Schedule to the birthday referred to in column 1 and column 2.
- (2) Subject to paragraph (3), the tapered protection closing date for a tapered protection member of the NFPS is the date found by applying the relevant date in column 3 of the NFPS table in Part 4 of this Schedule to the birthday referred to in column 1 and column 2.
- (3) The tapered protection closing date for a tapered protection member of the NFPS to whom paragraph 9(5) or 21 applies is a date determined by the scheme manager [which must be before 1st April 2022](#).

## Full protection members of the 1992 Scheme or the NFPS

- 9.— (1) A person (P) to whom any of paragraphs 12 to 14 applies is a full protection member of the 1992 Scheme or the NFPS, as the case may be.
- (2) ~~P ceases to be a full protection member of the 1992 Scheme or the NFPS, as the case may be, when P ceases to be in pensionable service under that scheme and ceases to be eligible to be an active member of the NFPS unless sub-paragraph (3) or (4) applies.~~  
as the case may be—
- (a) on 31st March 2022; or
- (b) if earlier, when P ceases to be in pensionable service under that scheme and ceases to be eligible to be an active member of the NFPS unless sub-paragraph (3) or (4) applies.

8.3. The effect of these changes is as follows:

- 8.4. Full protection members would, from 31 March 2022, **no longer be eligible to be in pensionable service under the NFPS or the 1992 Scheme**. This is because the exception in [paragraph 10 of Schedule 2](#) (exception for full protection member during protection period) would no longer apply to them, it being clear that the ‘protection period’ ends when the person ceases to be a full protection member.
- 8.5. The person would become **eligible to be an active member of the new scheme**. This is because [paragraph 11 of Schedule 2](#) (full protection member not eligible to join this scheme) only prohibits this while a person is a full protection member. In addition, [regulation 7](#) (eligible persons) only prohibits protected members of the 1992 Scheme or the NFPS from being eligible to be active members of the new scheme. ‘Protected member’ is defined in regulation 3 (interpretation) and [paragraph 1 of Schedule 2](#) as a full protection member or tapered protection member. It follows that when a person ceases to be a full protection member, they become eligible to be an active member of the new scheme.
- 8.6. Full protection members would **become active members of the new scheme when they begin pensionable service under it**. That is because [paragraph 8 of Schedule 2](#) (commencement of active membership of this scheme) says that transition members entering pensionable service under the new scheme who have continuity of service become active members of the scheme (i) on the transition date (i.e. 1 April 2022), if they are in pensionable service in a scheme employment on that date, or (ii) if they are not in pensionable service in a scheme employment on that date, on the day after that date that they enter pensionable service in a scheme employment.

- 8.7. Those **full protection members who are opted-out of the 1992 Scheme or the NFPS on 31 March 2022 would not be automatically enrolled in the new scheme on 1 April 2022**. This is because [regulation 11](#) (automatic enrolment) is clear that automatic enrolment does not apply to transition members with continuity of service whose first eligible day of service in a scheme employment is the day after their closing date (i.e. 31 March 2022), if on that date they were in service in the same employment and had opted-out of the 1992 Scheme or NFPS in relation to that service. [Regulation 10](#) (interpretation of Chapter) defines ‘first eligible day of service’ as the day on which a person becomes an eligible person in relation to that service. And, as set out above, it follows from paragraph 11 of Schedule 2 and regulation 7 that when a person ceases to be a full protection member, they become an eligible person.
- 8.8. Full protection members who move to the new scheme would be **covered by the provisions on final salary link** in the same way as other transition members. That is because of the operation of [paragraph 32 of Schedule 2](#) (final salary of certain transition members for any purposes of the NFPS) and [paragraph 33 of Schedule 2](#) (final salary of certain transition members for any purposes of the 1992 Scheme).
- 8.9. No changes are proposed to the FPS 1992 or FPS 2006 regulations as those regulations will continue to function on the back of the changes to the 2014 Regulations outlined above (with full protection members who move to the new scheme being treated the same as other transition members).
- 8.10. No changes are proposed in respect of tapered protection members as the law is already clear that for tapered protection members, the period of protection ends on or before 31 March 2022.
9. The Board is asked to consider whether the draft regulations are sufficient to meet the stated policy aims or if there are any changes or additions required to achieve this.

## Question 2

10. 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?

10.1. Members who move to the reformed schemes and subsequently become subject to ill-health retirement will be assessed, and receive ill-health benefits, in accordance with the 'one pot' ill-health arrangements under the reformed scheme provisions – this means that cases will become subject to different qualifying criteria than under the legacy scheme rules.

10.2. There will be cases that will be in the process of being considered for ill-health retirement on the date that all members will begin to accrue benefits in the reformed scheme - i.e. the ill-health process will begin on or before 31 March 2022 and will not conclude until 1 April 2022 or later.

10.3. For any ill-health cases that straddle 1 April 2022, the intended policy is the introduction of an "ill-health retirement underpin". This will mean that such members receive a 2015 Scheme ill-health pension calculated at the date they actually retire; but that if a legacy scheme ill-health pension calculated as at 31 March 2022 would have been higher, the 2015 Scheme pension must be increased by the difference between the two.

10.4. The "underpin" will effectively guarantee the member an ill-health pension that is at least as much as the they would receive had they been ill-health retired under the terms of their legacy scheme on 31 March 2022.

10.5. The proposed ill-health underpin will work as follows:

- The member moves to the 2015 Scheme on 1 April 2022 and remains in the scheme until the date of ill-health retirement
- The one-pot ill-health pension arrangement applies in the same way as it does to any other member who moves to the 2015 Scheme before their ill-health process starts
- A notional ill-health pension is calculated in accordance with the member's legacy scheme provisions on the basis that they had been ill-health retired on 31 March 2022
- Ill-health pension (calculated under the one pot arrangement) will be paid from the 2015 Scheme
- Where the notional legacy scheme ill-health pension provides a greater ill-health pension entitlement, the difference between both calculations will be paid to the member as a pension enhancement from the 2015 Scheme
- Survivor benefits will be paid in accordance with the 2015 Scheme regulations

11. The Board is asked for views on the proposals regarding ill-health retirement cases that straddle 1 April 2022. In particular, how the "underpin" should work or be provided for in the draft regulations.

## Question 3

12. 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?

12.1. In both firefighters' legacy pension schemes, it is possible for members to purchase additional pensionable service, where they meet certain criteria. They do this by agreement with the scheme manager and pay for it either as a lump sum or by way of periodical contributions over a period of years, until a set age (typically NPA).

12.2. All such existing agreements will remain in force after 31 March 2022. This is because they do not involve continuing to accrue legacy scheme benefits in relation to service after the closing date; rather, the scheme members concerned are paying in instalments for a previously agreed enhancement to their pre-transfer service.

12.3. It should be noted that members will only be permitted to "complete" existing arrangements entered into before 1 April 2022, subject to meeting any other relevant criteria (such as remaining in active service). Members will not be allowed to enter into arrangements to purchase additional service in the legacy schemes on or after 1 April 2022.

12.4. [Paragraph 31\(2\)\(a\) of Schedule 2](#) (pensionable service under the NFPS) was inserted in 2015 to provide that:

(2) The following provisions of Chapter 2 (purchase of additional service) of Part 11 (pensionable pay, pension contributions and purchase of additional service) of the NFPS continue to apply after the transition date as if T continued in pensionable service under that scheme—

(a) the provisions relating to the payment of periodical contributions for the purchase of additional service if T had made an election to purchase additional service under rule 6 (election to purchase additional service) or if T returns to pensionable service as a firefighter after a period of unpaid service or absence and T elects to purchase additional service in respect of the period before the transition date under that rule;

12.5. [Paragraph 34\(5\) of Schedule 2](#) (continuous pensionable service under the 1992 Scheme) was inserted in 2015 to provide that:

(5) Where T had elected to pay periodical contributions for increased benefits under rule G6 (election to purchase increased benefits) of the 1992 Scheme, these continue to be payable as if T continued in pensionable service under the 1992 Scheme until T leaves pensionable service under the 2015 Scheme.

12.6. The corresponding provisions of FPS 1992 [[Rule G7](#) (payment of periodical contributions for increased benefits)] and FPS 2006 [[Part 11, Chapter 2, paragraph 71](#) (duration of periodical contributions and premature cessation)] were also amended in 2015.

12.7. 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.

12.8. Additionally, a clause has been inserted into the PSPJO Bill to ensure that new arrangements cannot be entered into. Clause 83 states:

### **83 Prohibition of new arrangements to pay voluntary contributions**

(1) No arrangements are to be entered into after 31 March 2022 under which voluntary contributions are payable by a member of a relevant scheme to the scheme.

(2) In subsection (1) "relevant scheme" means—

(a) a Chapter 1 legacy scheme (within the meaning of Chapter 1),

(b) a judicial legacy salaried scheme (within the meaning of Chapter 2),

(c) a local government legacy scheme (within the meaning of Chapter 3),

(d) the Judicial Pensions Regulations 2015 (S.I. 2015/182),

(e) the Judicial Pensions Regulations (Northern Ireland) 2015 (S.R. (N.I.) 2015 No. 76), or

(f) the pension scheme established for certain employees of the Secret Intelligence Service which came into operation on 1 January 1946 and was amended on 1 September 1957 and 1 July 1964.

(3) Subsection (1)—

(a) does not affect the continued operation after 31 March 2022 of any arrangements entered into on or before that date;

(b) does not apply to arrangements entered into by virtue of section 25 or 60 (remedial arrangements to pay voluntary contributions).

13. The Board is asked to consider if the existing provisions in the relevant reformed scheme regulations achieve the stated policy aims or whether additional provisions are needed to achieve this outcome.



## Question 4

14. 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<sup>2</sup>. 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?
15. The Board is asked whether it has any views on the above that were not raised in its response to the government consultation on changes to the transitional arrangements to the 2015 schemes<sup>3</sup>. For reference, these were:
- 15.1. The challenge of maintaining fitness until age 60 may raise 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.
- 15.2. The legacy Firefighters' Schemes are complex, with caps on pensionable service and double accrual within FPS1992. This could mean that members of similar age and total service might receive very different benefits outcomes, for example from the way in which tapering is applied or the cut off dates for members to be eligible for remedy.
- 15.3. The Board recommended that a full, scheme-specific Equality Impact Assessment (EIA) should therefore be undertaken of the eventual proposed solution for remedy to minimise the risks of future challenges.
16. A draft Equality Impact Assessment (EIA) is attached to the consultation at Annex A.

## Question 5

17. 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?
18. The Board is asked if there are any additional areas which should be addressed to remove future discrimination from the scheme. The Board may wish to consider the policy issue set out below in relation to the Police Pension Schemes.

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<sup>2</sup> [Public Service Pensions and Judicial Offices Bill: Equality Impact Assessment](#)

<sup>3</sup> [SAB response to the HMT consultation on changes to the transitional arrangements of the 2015 Public Service Pension Schemes](#) [Paragraphs 73 – 74]

## Police Pension Schemes: Interaction of retirement ages between schemes

19. A separate policy issue has been included in the Home Office consultation on amendments to the Police Pension Scheme (PPS) regulations, concerning the interaction of retirement ages between the schemes.
20. As in the FPS, the legacy and 2015 police pension schemes allow a member to draw their pension at different ages. The 1987 scheme allows members to draw their 1987 scheme pension before age 55.
21. However, if they retire before age 55, the rules of the 2015 scheme mean that, in relation to any pension accrued in the 2015 scheme only, they either have to wait until State Pension Age (rather than age 60) to take an unreduced 2015 pension or wait until the age of 55 and take an actuarially reduced 2015 pension (the reduction being based on State Pension Age).
22. Such reduction is to reflect that the pension is coming into payment early and will be paid for longer. Higher early retirement factors apply for retiring from deferred status than from active status<sup>4</sup>, as the period of time between normal payment dates is longer.
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. This concern is exacerbated for the PPS as members originally received transitional protection based on both age and service, so there could be members who are under age 55 on 1 April 2022 and will be unable to access any 2015 scheme benefits they have built up at least until that age. In contrast, all fully protected FPS members will be age 55 or over, as members were protected based on age only.
25. The Home Office states that it will give due regard to the interaction of retirement ages between schemes and consider whether any changes are needed to ensure any cohort of police pension scheme members are not unduly disadvantaged, especially having regard to the needs of members from protected groups where these are different from the needs of other members.
26. The Board is asked whether it wishes to comment on this in its response.

### Board actions

27. The Board is asked to consider whether it wishes to respond to the consultation. If so:

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<sup>4</sup> [The Firefighters' Pension Scheme 2015 \(England\) Early payment reductions Factors and guidance](#)

27.1. The Board is asked to provide comments on the consultation questions raised either at the meeting or in writing by 15 December 2021.

27.2. The secretariat will draft a response to be circulated to the Board for comment on 21 December 2021 in order to meet the 2 January 2022 submission deadline.

Board Secretary  
December 2021