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19 June 2023

**Consultation on changes proposed in the draft legislation for The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) (No. 2) Regulations 2023**

The [Firefighters Pensions \(England\) Scheme Advisory Board](#) (the Board) submits its response to the HMRC seeking views on the above draft legislation designed to assist with the implementation of the McCloud remedy. Thank you for the opportunity to provide this response and for the very helpful consultation sessions.

This response is submitted on behalf of the Board by the Local Government Association (LGA) who act as secretariat to the Board. Neither the Board nor LGA act in the capacity of [scheme manager](#) or Fire and Rescue Authority (FRA).

The purpose of the Board is to provide advice in response to a request from the Secretary of State on the desirability of making changes to this scheme and any connected scheme and to provide advice to scheme managers and local pension boards in relation to the effective and efficient administration and management of this scheme and any connected scheme.

While not directly relevant to the consultation, we would like to provide some background and context to the administration and management of the scheme, which provide unique challenges to the implementation of remedy.

Under the scheme regulations, each of the 44 Fire and Rescue Authorities (FRAs) are responsible for the management and administration of their scheme for their employees and are defined in law as the scheme manager. This puts the responsibility to comply with overriding pension legislation on each of the political bodies charged with governance of the Fire and Rescue Service (FRS), i.e., Combined Fire Authorities, PFCCs, County Councils, Mayoral functions etc.

Each FRA is required to administer the pension scheme either in-house or through appointing a third-party administrator. There are currently 12 different pension administrators in England, ranging from single client sites to the largest administrator with 23 FRA clients. They are mostly not for profit organisations, with one known exception, and are often linked to LGPS administering authorities. This complex picture means that ensuring consistency between FRAs is difficult and implementing the McCloud remedy is correspondingly challenging, especially as it is being carried out alongside the need to remedy the “Matthews” part time discrimination.

The Board notes that the regulations contain various changes to legislation which are required to allow affected members to reclaim or submit amounts which will, on the implementation of the remedy, be deemed to have been over or underpaid for the tax years from 2019/20 to 2022/23. It also addressed the technical issues which might lead to the remedy otherwise resulting in some payments being unauthorised.

We are pleased to see that these issues are being addressed. The Board hopes that you will receive responses from technical experts on any issues for individuals or pension schemes in operating the changes set out in the draft regulations. Including any areas missing from the draft regulations. The LGA has shared the points in the attachment to this letter and the Board would share their concerns on the matters raised.

This brief covering letter covers some of the wider issues as we consider this in the context of remedy as a whole for the Firefighters Pensions (England) Scheme.

We note that HMRC can only address the in-scope tax years noted above. We recognise that HMRC has given a great deal of consideration to the changes and processes necessary for remedy in these years. We understand that it will be for HMT and scheme managers to ensure that there are processes to address tax issues arising from implementation of the remedy in relation to the years from 2015/2016 to 2018/2019. It is our understanding that underpayments will not require repayment for these tax years, and we trust that this would include any unauthorised payments which might arise due to for example trivial commutation payments failing to extinguish the whole arrangement.


It is apparent from the detailed thought that has gone into the HMRC revisions and proposals that significant work may be required if there are to be simple processes for the member to reclaim overpaid tax for the earlier years. HMT has indicated that the excess tax will be paid via compensation, and we understand that this will then be able to be reclaimed. However, our multiple scheme managers will need assistance in developing the paperwork for such claims and for obtaining recompense. We hope that HMRC will share its expertise in developing the processes for the in-scope years to ensure that the claims process for the out-of-scope tax years can be made as clear as possible.

The Board welcomes the new processes being put in place to ensure that members will not have to amend self-assessment tax returns but will have bespoke forms in this regard. The tax calculations may be difficult for members to understand and hope that HMRC will be able to offer ongoing support to members and administrators who may need further support in this regard. Similarly, we note that the Regulations ensure that the HMRC has power to assess and fine members who do not meet deadlines and preserve documents. The members are facing this increased complexity due to the discrimination, and we trust that HMRC will take a sympathetic approach to its dealings with those struggling to comply.

We note that some of the draft Regulations are needed to remediate a few aspects of S.I. 2023/113. We welcome this approach to amending the regulations where shortcomings are identified and trust that there will be opportunities for the various parties to continue, on an ongoing basis, to report any problems that they are experiencing in using both sets of Regulations once in force.

As noted earlier in this response, the Fire Schemes are also implementing an exercise in connection with Matthews, which will involve reinstating service potentially from the 1960s and 1970s. We are aware that there will be tax consequences in this regard, and we would welcome HMRC's assistance to the Fire Sector in determining how best to extend some of the McCloud type provisions to cover the Matthews situation.

Yours sincerely,

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

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

## **Comments on the Regulations and Guidance**

1. In responding to this consultation, our response concentrates on the application of the Regulations to the FPS but also includes general comments.
2. The Board welcomes the provisions for dealing with the PIA when a member's added pension is extinguished due to the age discrimination remedy as this makes it administratively easier.
3. The Board also welcomes the provisions under Regulation 5 which make dealing with an adjustment to the PIA in respect of pension debit benefits, simpler to deal with.
4. In terms of Part 3 – Benefits, we are pleased that the correct tax treatment of payments made under Regulations 7-13 has been clarified and that these are now deemed to be authorised.
5. With regards to Regulation 16, it is noted that the scheme can reclaim the overpaid lifetime allowance excess lump sum. There are currently no guidelines as to how this may be done by schemes. The Board would like reassurance that details of the processes which need to be followed will be provided in a timely manner.
6. In relation to Regulation 18, the member can claim a refund for overpaid tax charges relating to an unauthorised payment. It is currently unclear what the process will be for members to do this. We would be grateful for a step-by-step guide as to how this will be done and how this will be communicated clearly to members.
7. Under Regulation 19, scheme administrators will have to make an application to reclaim the overpayment of a scheme sanction charge. We would welcome further details on the process for this and would welcome the involvement of relevant parties in the fire sector in any training sessions which show how this would be done. It would be useful for key administrators and fire authorities to have some input into these processes.
8. We note that once the scheme administrator provides HMRC with information in a form prescribed by HMRC, that HMRC will raise a credit on the pension schemes account and notify the pension scheme that the credit is there. Again, we would like clarity as to how this will work in practice. This may ultimately lead to further steps needing to be created in administrator and FRA processes. FRAs and administrators will need to evaluate the time required for these new processes when planning the allocation of resources.

9. In relation to Regulation 14, the Board seeks clarity as to whether, if the overpaid amount is not repaid in full, for example if the amount is being repaid in instalments instead, whether the payment remains unauthorised.
10. The Board welcomes the provisions in Regulations 27-29 which mean that a member affected by remedy for the years 2019-2020 to 2022-23 does not need to submit, notify or correct a self assessment return under the standard regime in relation to relevant pension tax charges.
11. As indicated in our letter, the Board would however like clarity in respect of the earlier out-of-scope years and how the process will work for those members who need compensating for overpaid tax for those years.
12. The Board would also like clarification in relation to immediate detriment cases whereby fire authorities have paid a member's benefits and an increased tax charge has occurred. We would like clarity confirming whether a member can also benefit from the in-scope years quoted and additionally what the process is for the tax charges for the out-of-scope tax years.
13. The Board would also like clarity explaining what happens when a fire authority has recalculated an annual allowance charge for an out-of-scope year, paid the extra tax over to HMRC and received a late payment interest charge on the tax owed. As this consultation states that the aim is to put the member back into the position that they would have been in had the discrimination not occurred, then the Board would like confirmation that the fire authorities can reclaim this late payment interest charge back from HMRC and we would like confirmation of the process for this.
14. We note that Regulation 29 requires members or a deceased member's representative to keep documents in relation to Regulation 27 for four years after the relevant reporting deadline for the individual. The Board would like details which show the communication methods which HMRC will use to ensure that the relevant individuals will be aware of this requirement so as to avoid a potential £3,000 fine.
15. We note that in the consultation guidance under 8.3.2 that where a member has to pay more 'relevant pension tax charges' that members are only given 30 days from the date of the assessment to pay the tax and that interest will be payable after the 30 days. The Board feels that this time frame is not long enough for members to pay this tax to HMRC and that a longer

timeframe needs to be applied in these cases, due to the specific circumstances involved in this age discrimination remedy.

16. The Board would also like HMRC to ensure that, as the processes are rolled out, simplicity is ensured. This could include considering de minimis amounts when looking at the maximum repayments which will be requested from members and ensuring that where private sector schemes are involved the responsibilities for the parties are clear and deliverable.
17. The Board would like confirmation which says how HMRC are going to guard against duplicate payments in respect of an individual's account, for example if the scheme paid the charge on behalf of the member but the member seeks to claim the money from HMRC. We note that under Regulation 35 HMRC has 4 years from the end of the tax year in which the overpayment happened to assess the amount that should not have been repaid to the member, however we would like reassurances that processes will be in place to prevent a duplication of payments in the first instance.
18. In [our response](#) to the consultation on The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023 we pointed out that Regulation 10 does not allow for a member to reverse a decision they may have made to settle an Annual Allowance Tax Charge (AATC) by lump sum, for example where the charge was under £2,000 but now exceeds that amount. In our view, this does not fully reinstate the individual to their pre-reform position as they may have made a different decision at that time and we would welcome HMRC amending the provisions for this.
19. Finally, our view is that it would have made the Regulations easier to use had they been a set of amending regulations rather than a second set to avoid the need to refer to two sets of documents.