

Meeting of the Board 14 September 2023

2015 Remedy update

Introduction

1. This paper provides an update to the Scheme Advisory Board following the publication of the [Firefighters' Pensions \(Remediable Service\) Regulations 2023](#) and the [Home Office consultation response](#).

Legislation

2. The Home Office consultation on the scheme regulations needed to implement retrospective remedy ran from 28 February 2023 until 23 May 2023.
3. The Scheme Advisory Board submitted its [response to the consultation](#) accordingly.
4. On 19 July 2023 the government published its [formal response to the consultation](#) with the [Firefighters' Pensions \(Remediable Service\) Regulations 2023](#) being laid the following day on 20 July 2023. The regulations take effect from 1 October 2023.

Immediate Choice Members

5. Immediate Choice members are pensioners or dependents who were in receipt of their benefits prior to 1 October 2023 and who are now to be given a choice under the Regulations between legacy scheme benefits and reformed scheme benefits for the remedy period on 1 April 2015 to 31 March 2022. To make a choice, a Remediable Service Statement (RSS) needs to be issued to these members within eighteen months from 1 October 2023. The recipient then has a year to make their decision. Immediate Choice members are covered under [Part 3, Chapter 2 \(Regulations 7 to 10\)](#)
6. In the Scheme Advisory Board response to the consultation, clarity was requested to confirm if Immediate Choice members can change the decision that they made when they originally became entitled to their benefits. Although not included in the regulations, [the consultation response](#) from the Home Office confirms under paragraph 6.133 that "on revisiting commutation decisions, the PSPJOA allows a member to choose alternative benefits to those in payment, so part of that is being able to alter commutation decisions." The Regulations confirm that once a choice is made, it is irrevocable.

Deferred Choice Members

7. In respect of Deferred Choice members, who are members that have not yet taken their benefits on 1 October 2023, the Regulations and consultation

response confirm a change from the draft regulations concerning the timeframe under which a member must give the scheme manager notice of their intention to retire. The Board's view was that the draft provision which required members to give their scheme manager six to twelve months' notice to retire was too long. Under [Regulation 13 \(paragraph 2\)](#) of the final regulations, this requirement has been reduced to three to six months, with the provision that a scheme manager can consider other periods of time.

8. In relation to the revocation of a Deferred Choice member's election, [Regulation 13 \(5\)](#) has been added into the final regulations and confirms that these members can choose to revoke their election if that revocation is made up to ten working days before benefits become payable as follows:

(5) A deferred choice decision made by M may be revoked—

(a) up to 10 working days before benefits become payable in relation to M's remediable service as a firefighter, and

(b) by M communicating to the scheme manager notice of the revocation in a form and manner determined by the scheme manager.

9. In the Board's consultation response, it raised the issue of members retiring soon after the regulations come into force because they would become deferred choice members on that date. There would not be time for them to make a deferred choice election in line with the proposals. These members would have already given notice, so the deadline for making such a choice would have passed. It was the Board's view that a solution for this scenario should be made clear in the regulations.

10. In the final regulations, [Regulation 12 \(8\) \(c\)](#) has been inserted which states that:

(8) No benefits are payable under the legacy scheme in respect of M's pensionable service under that scheme unless—

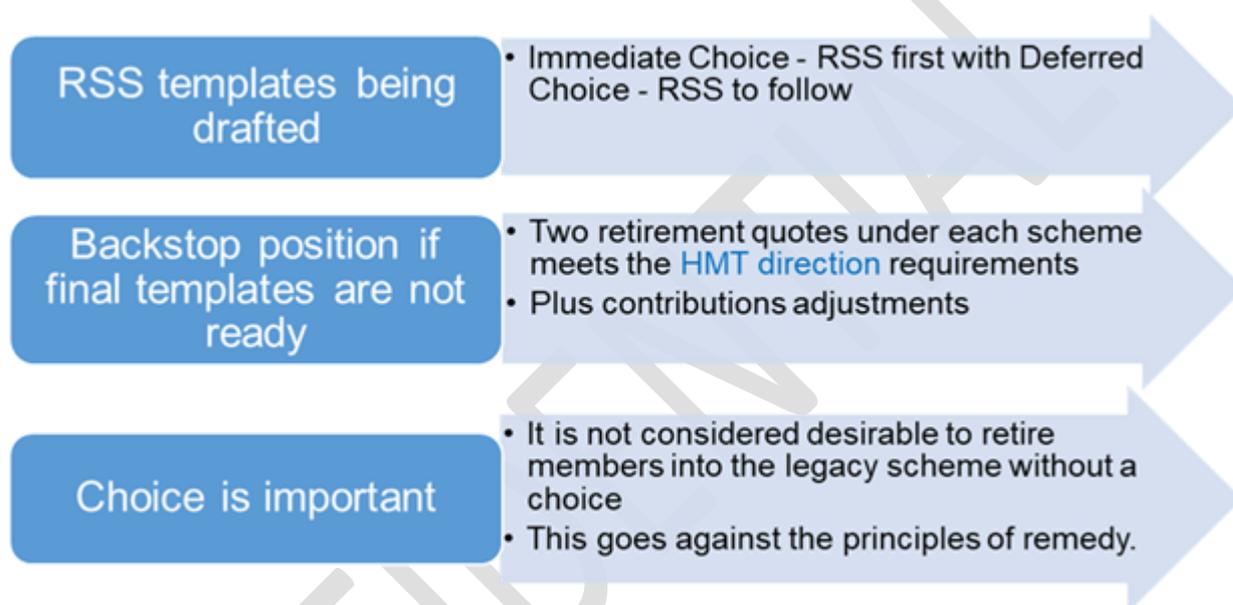
(a) a deferred choice decision is made in relation to M's remediable service as a firefighter,

(b) a section 10 election is deemed to have been made under [regulation 16](#) in relation to that service,

(c) M has notified the scheme manager that they intend to claim benefits under a firefighters' pension scheme in respect of their remediable service as a firefighter and it was not reasonably practicable for the scheme manager to provide a remediable service statement in respect of M in accordance with regulation 4(2)(c)(i) before the date on which such benefits become payable, or

(d) M is deceased.

11. This regulation implies that if the Deferred Choice Remediable Service Statement is not available when the FRA comes to calculate the pension benefits that these benefits can be paid from the legacy scheme, without a Remediable Service Statement having been issued. The member therefore would not have made an informed choice. The Home Office has confirmed that this regulation does allow for that to happen. The LGA's view is that the member should have a choice, and that Regulation 8 should only be relied upon in exceptional circumstances.
12. In [FPS Bulletin 72-August 2023](#), the LGA set out its position and proposed approach as follows:



13. The LGA created a template covering letter explaining the purpose of the Deferred Choice Remediable Service Statement, to be used with two retirement quotes, one for the legacy scheme and one for the reformed remedy scheme, along with the contribution adjustment information. This template covering letter has been published on the [Age Discrimination Remedy – retrospective remedy webpages](#) to help FRAs offer a choice to members.
14. In respect of the timing of the Deferred Choice election under [Regulation 13 \(3\)](#), in the Board's consultation response to the Home Office, it questioned whether twelve weeks was enough time for a member to make a choice particularly where financial advice is required. In the final regulations, the twelve-week period remains however there is discretion available to the scheme manager to choose "the end of such other day as the scheme manager considers reasonable in all the circumstances."

Remediable Service Statements

15. [Part 2, regulation 4 of The Firefighters' Pensions \(Remediable Service\) Regulations 2023](#) sets out the requirements for a scheme manager to provide a Remediable Service Statement (RSS) to a remedy member in accordance with

[section 29 of the Public Service Pensions and Judicial Offices Act 2022](#) and [section 20 of The HMT Treasury directions](#).

16. The LGA has been working with the National Police Chiefs' Council (NPCC) and key administrators to determine the content which is required for the Remediable Service Statements. NPCC have awarded Clay10 with the contract to design the Police RSS. That RSS will then be made available to the LGA free of charge for use for the Fire schemes.
17. To make the RSS fire specific, it will be necessary to adjust the branding and other details on the statement accordingly. As Clay 10 are a member of the National Framework and have been working with the NPCC to design their RSS, it is our intention to continue to work with them to assist the LGA in designing our graphics in line with what they have already been working on for the Police pension statements.
18. This can be done through a Direct Award through the National Framework, and as the RSS needs to be available by 1 October 2023, it makes sense not to have to establish a new relationship with another provider. At point of publication we were still waiting for full details of Clay 10's proposal, a verbal update will be given on this matter if available.
19. Approval of this proposal is dependent on the Board's views.

Contributions

Deferred Choice Members

20. In respect of contributions, [Regulation 66](#) confirms that the amount of contributions owed by a member, in respect of Deferred Choice members, must be paid by lump sum within 3 months of receiving an RSS (either the first one or annually) or at retirement.
21. The regulation goes on to say that if the member has not paid by retirement, "the scheme manager may deduct such sums from benefits payable to P under a firefighters' pension scheme as seem reasonable to the scheme manager for the purpose of discharging P's liability."
22. It is not clear from the Regulations how these sums may be deducted from benefits and whether this includes the choice of periodical contributions. The Chair of the Board has written to the Home Office for clarity on this point and awaits a reply.
23. In respect of employer contributions, the Home Office consultation response confirms that these would be achieved through future valuations. Outstanding employer contributions will create a notional deficit and will be reflected in future employer contribution rates.

24. The Regulations confirm that the adjustment of member contributions for Immediate Choice members will be done at the point of election and must be paid within six months of notification.

Opt out contingent decision cases

25. Under the Regulations, it is possible for firefighters to place a contingent decision claim in certain circumstances if they opted out because of the 2015 pension reform.
26. Those people who opted out up to six months prior to the start of the remedy period would be automatically accepted upon receipt of their claim. Optant outs before the 6-month period need to provide evidence that their decision was due to reform. Specific forms of evidence have not been included in the Regulations however examples of acceptable evidence were listed in the consultation document when the consultation is launched.
27. Claims can be made by the “eligible decision-maker” determined in accordance with the [Schedule](#) for those people who are now deceased.
28. Once a claim has been accepted, an election must be made within twelve months of the RSS being provided. To make it more reasonable for successful applicants to repay the contributions for the seven year period, [Regulation 66](#) gives these members fourteen years to repay the owed contributions. This provision was not in the draft regulations.

Contribution holiday cases

29. In the response to the Home Office consultation, the Board highlighted that there was no indication as to how a member who chose 1992 scheme benefits and was eligible for a contribution holiday should be treated where age discrimination remedy is concerned. In the consultation response, under 6.128, the Home Office confirmed that employee contributions paid under the reformed scheme which wouldn't have been paid had the member been in the legacy scheme are subject to correction under sections 15 to 17 of the PSPJO Act, this also covers the period where an individual becomes retrospectively entitled to a contributions holiday after being rolled back into their legacy 1992 Scheme.

GAD contribution calculator

30. GAD are currently finalising a contributions calculator which will provide FRAs with the output required so that they can inform a firefighter of the amount of contributions that they will owe or be owed depending on the choice they make upon receipt of their RSS. The calculator will make the necessary adjustments for interest and tax relief and will be able to cope with opt out contingent decision cases. The [inputs and outputs](#) are available for FRAs to use and final testing is currently in progress before the calculator can be used by the sector.

Ill health cases

31. In the Scheme Advisory Board consultation response to the Home Office, concern was raised that ill health cases where members had been dismissed on capability grounds were not covered under the draft regulations.
32. [Regulation 51](#) of the final regulations makes it clear that dismissal on capability grounds has now been included in the provisions.
33. The Board also asked for clarification on whether special members of the FPS 2006 needed reassessment. These members were not mentioned in the draft legislation however these members, under the pension scheme regulations, are assessed for ill health up to their normal pension age of 55. Therefore, a special 2006 member who was awarded an ill health pension would need to be reassessed for entitlement under the FPS 2015 which has a normal pension age of 60.
34. This question has not been answered in the consultation response and the Regulations have not been amended to reflect any changes in that respect. The Chair of the Board has therefore requested clarification in her letter to the Home Office accordingly.

Added Pension

35. In the Board's response to the Home Office consultation, clarity was sought and suggestion made that a full refund of added pension contributions plus interest was not necessarily the best option for some members, especially those who end up choosing 2015 scheme pension benefits for the remedy period.
36. The final regulations have not changed that position in respect of added pension however the Home Office consultation response indicates that "on the point about an eligible member who had bought added pension in the 2015 scheme automatically qualifying as having sufficient evidence for a contingent decision that they would have bought added service, that seems reasonable. However, this should be considered part of the administration process and the obligation to do this will not be provided by scheme regulations." This indicates that the Home Office supports an automatic approach to these scenarios. The Board are asked to consider this point.

Scheme Manager Discretions

37. In the Board's response to the Home Office consultation, it pointed out that successful remedy will depend on the creation of consistent policies and communications and consistent treatment of members in terms of decisions and communications.
38. The Board listed some of the areas where processes are required and asked for clarity on those processes. The areas noted were:
 - Abatement

- Dealing with members who have not made elections.
- Dealing with timescales for deciding on reasonable timeframes for deferred choice election.
- Contingent decisions- considerations under 5.79 of the consultation guidance and [Regulations 6](#). Also under draft [Regulation 29](#).
- Waiving of overpayments- processes for making decisions to waive liabilities. Similarly for waiving amounts owed by the member ([Regulation 63](#)).
- Dealing with payments already made under immediate detriment – principles to be followed given lack of guidance in [Regulation 56](#).
- Processes for dealing with interest and indirect compensation where directions are not sufficient.

39. The Home Office has drafted an initial [compensation guidance note](#) designed to be adapted for scheme managers. This note will need to be developed in more detail to ensure that consistent policies are being followed.

40. The LGA has approached the Scottish SAB to ask if collaboration is possible on contingent decisions to ensure a consistent approach and they have agreed that this is possible. A working group will be set up in due course.

Actions for the Board

41. For the Board to consider and approve the proposal to direct award Clay10 with instructions to complete the RSS for the fire schemes, noting that the only costs are to make the RSS scheme specific.

42. For the Board to consider the scenario described under paragraph 36 and to consider whether it agrees with this approach.

43. For the Board to consider the processes which remain in paragraph 38 which are necessary for a consistent implementation of retrospective remedy.

Board Secretary
September 2023