



By email to [exitpaymentcap@treasury.gov.uk](mailto:exitpaymentcap@treasury.gov.uk)

2 July 2019

To Workforce, Pay & Pensions Team

**Consultation on Exit Payment Cap.**

Thank you for the consultation document inviting comments on the exit cap.

Please find attached to this letter a response from the Firefighters (England) Pension [Scheme Advisory Board](#)

If you have any questions, please let me know.

Yours sincerely

A handwritten signature in black ink, appearing to be "Malcolm Eastwood", written over a horizontal line. The signature is stylized and cursive.

Malcolm Eastwood  
Chairman, Firefighters Pension Scheme (England) Scheme Advisory Board

## **Part 1 – The Scheme Advisory Board**

This response is submitted on behalf of the Firefighters (England) Scheme Advisory Board (the board), by 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.

The purpose of the board is to provide advice to scheme managers in relation to the effective and efficient administration and management of the Firefighters Pension Schemes (FPS).

## **Part 2 - Response to the consultation:**

### **Question 1**

Does draft schedule 1 to the regulations capture the bodies intended? If not, please provide details

### **Response**

It is our understanding that Annex B<sup>1</sup> is a draft version of the Schedule referred to in the Regulations. The draft Regulations<sup>2</sup> refer to Parts 1 and 2 of the Schedule. The current draft Schedule is not separated into parts and a change is required in the Regulations or in the Schedule to correct this inconsistency.

Further changes are needed if the document is intended to specify which government department has responsibilities under these Regulations, Fire and Rescue authorities appear both in the MHCLG and Home Office lists. If the purpose of this schedule is to list who is the responsible authority<sup>3</sup> then this should be clear. Fire Authorities are governed by the Home Office, but have employees in both the Local Government Pension Scheme (LGPS) of which MHCLG is the responsible authority and the FPS of which Home Office is the responsible authority.

### **Question 2**

Do you agree with the current list of bodies in scope, for the first round of implementation? If not, please provide reasons.

### **Response**

Yes

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/791420/95k\\_cap\\_schedule\\_draft.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791420/95k_cap_schedule_draft.pdf)

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/791417/draft\\_SI\\_the\\_restriction\\_of\\_public\\_sector\\_exit\\_payments\\_regulations\\_2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791417/draft_SI_the_restriction_of_public_sector_exit_payments_regulations_2019.pdf)

<sup>3</sup> <http://www.legislation.gov.uk/ukpga/2013/25/section/2>

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### Question 3

Do you agree with the exemptions outlined? If not, please provide evidence.

### Response

The board welcomes the exemptions applied to members of the 1992 Firefighters' Pension Scheme (England) under regulation 7(c)(i) for firefighters aged under 55 and with less than 30 years' service and to those members of the 2006 and 2015 Firefighters' Pension Schemes (England) under regulation 7(c) (ii) and (iv) where the authority agrees to an authority initiated early retirement pension if they are unable, by reason of fitness, to maintain employment in an operational role.

However the board are concerned that the wording of the exemptions applied to members of the Firefighters' Pension Scheme (Wales) under 7 (c) (iii) & (v) provide a wider exemption than for the English Firefighters scheme for all cases of authority initiated early retirement, and may if adopted in Scotland and Northern Ireland form a precedent.

The board also note that Power is given to an FRA to relax the restriction on exit payments by virtue of regulation 11<sup>4</sup>. However in order to exercise that power the FRA would need to seek consent of HM Treasury. The board is concerned that the processes outlined to secure exemptions to the cap are overly bureaucratic and challenge the capacity of democratically elected councillors taking the necessary decisions.

### Question 4

Does the guidance adequately support employers and individuals to apply the draft regulations as they stand? If not, please provide information on how the guidance could be enhanced.

### Response

No, for FRAs who allow an AIER for reasons other than fitness, further guidance will be needed in the following areas:

#### 1. To measure the annual cost to the Fire Authority against the £95k cap

The FPS regulations state that the cost to the FRA to allow early retirement with an unreduced pension is made by an annual payment to the notional pension fund representing the difference between the unreduced and reduced pension that would be paid to the member.

The regulations do not specify how to measure this annual cost of early retirement against the cap of £95k.

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Guidance would be needed from the Home Office on how to measure the annual payment against the cap. An alternative would be for Home Office to allow the early retirement cost to be paid as a capital cost on exit rather than annually.

## **2. Amendment to the pension regulations to allow partial reduction**

If, on measurement, the early retirement cost would exceed the £95k cap, then the regulations would need to be changed to consider:

- How the member's benefits would be reduced to such a level that the exit payment cap is not breached.
- Whether the member would have the option of paying extra to buy-out some or all of the reduction.

The proposed regulation changes do not introduce the option to defer payment of pension benefits in the event of a FPS member who is over age 55 being made redundant or leaving on the grounds of business efficiency. As the regulations currently stand, an FPS member whose exit payment has been capped would be forced to accept a reduced pension.

In order to implement partial reduction in the FPS, guidance from the Government Actuary's Department (GAD) on partial reductions and on the cost of buying out those reductions would be required. Detailed information concerning the method of calculating the partial reduction to benefits, the method and calculation for buying out the reduction – particularly the calculation to work out the applicable reduction where some but not all of the reduction has been bought out – and the deadline that applies to an election to make such a payment, would be required.

It is likely that changes to the FPS regulations and new statutory guidance would be required to effect this change. Therefore the board is particularly concerned about the proposed start date for these Regulations. As stated, the cap and associated provisions will come into force the day after the Regulations are made

We strongly urge government to allow employers a reasonable period for implementation after the Regulations are made AND the necessary consequential changes to FPS regulations and statutory guidance have been introduced. Presuming these changes to the FPS are introduced promptly after these Regulations pass through Parliament, we believe nine months would be an appropriate period.

### **Question 5**

Is the guidance sufficiently clear on how to apply the mandatory and discretionary relaxation of the regulations, especially in the case of whistleblowers?

## **Response**

This response is in relation to the Firefighters Pension Scheme (England) only and we believe there are limited cases in which an exit payment would apply which has already been covered by this response. However the board would endorse the response given by LGA<sup>5</sup> in sections 18 & 19.

## **Question 6**

Is there further information or explanation of how the regulations should be applied which you consider should be included in the guidance? If so, please provide details.

## **Response**

No comments to make in respect of the Firefighters Pension Scheme (England)

## **Question 7**

Are there other impacts not covered above which you would highlight in relation to the proposals in this consultation document?

## **Response**

The proposals do not reference any index linking in relation to the cap. The cap was established in 2015 and has not been increased to reflect increases in pay or pensions.

## **Question 8**

Are you able to provide information and data in relation to the impacts set out above?

## **Response**

No.

## **Part 3 – Final Comments**

A technical note produced by the boards secretariat on the impact of the exit cap on the Firefighters pension scheme be found [here](#).

**Clair Alcock**  
**Bluelight Senior Pension Adviser**  
**Local Government Association**  
**2 July 2019**

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<sup>5</sup> [http://lgpslibrary.org/assets/cons/nonscheme/20190410\\_95k\\_LR.pdf](http://lgpslibrary.org/assets/cons/nonscheme/20190410_95k_LR.pdf)