

HM Revenue and Customs

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6 January 2022

**Consultation: The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023**

The [Firefighters Pensions \(England\) Scheme Advisory Board](#) (the Board) submits its response to the HMRC technical consultation seeking views and evidence on the draft Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023 ('the Regulations'). Thank you for the opportunity to provide comments.

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 to scheme managers in relation to the effective and efficient administration and management of the Firefighters' Pension Schemes (FPS).

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 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.

We would highlight that the number of individual parties involved in the administration and management of the scheme means that the introduction of processes to support consistent remedy implementation requires significant time and resource, and this can only commence once the regulations and guidance are finalised.

While the scheme manager remains the legally responsible scheme administrator for the purposes of section 270 of the Finance Act 2004, in practice the FRA or delegated scheme manager relies heavily on the expertise of the appointed pension administrator to comply with the tax regulations and will rely on the appointed pension administrator to undertake the 'rollback' provisions under the Public Service Pensions and Judicial Offices Act (PSPJOA) 2022.

It is the responsibility of each administrator to contract a software supplier that underpins their solution. There are two software suppliers who supply pension administration software for the FPS: Civica and Heywood Pension Technologies.

While we welcome sight of the draft regulations and accompanying guidance, we are disappointed that the lateness of providing these materials and the absence of final tax policy positions in the 'discrete' areas not covered by the consultation have caused a subsequent delay to schemes being able to draft and consult on their secondary legislation.

We have been made aware that the Home Office is not consulting on the FPS regulatory amendments until late February 2023, with the SI to be laid in September 2023 and effective from 1 October 2023. This presents a significant risk to administrative implementation; particularly given the locally administered nature of the scheme.

Also, the timing of the consultation and the length of time given to reply is disappointing. A six-week consultation over the festive period has meant we have been unable to consult meaningfully with stakeholders, which would have allowed us to provide a more considered response.

If you have any questions, please let me know

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

1. In this section we set out our views on the Regulations. Our response concentrates on the application of the Regulations to the FPS but also includes general comments.
2. Regulation 2(1) refers to Her Majesty's Revenue and Customs. This should instead read His Majesty's Revenue and Customs.
3. Regulation 3 provides that section 2(1) PSPJOA is ignored for the purposes of contributions paid into a Chapter 1 new scheme, which ensures that those contributions remain eligible for tax relief. We would have liked further clarity on why the contributions could not also have been rolled back to the legacy scheme and what the implications are of the contributions not being rolled back from the point of view of future actuarial valuations.
4. As the FPS legacy and reformed schemes have different contribution rates, all unprotected and taper protected members will have a contribution adjustment due at rollback – subject to any provision made by the Home Office under Section 18(8) PSPJOA.
5. Where regulation 6 allows for a Pension Saving Statement (PSS) in respect of the 2022-23 tax year to be delayed until 6 October 2024, we are concerned that this presents a risk to the member of not being fully informed of their nominally correct tax position in that year, which could then impact on future, post-remedy years. Although we understand that the statement will need to be revisited following rollback, administrators have expressed discomfort at providing no information at all due to the continuing requirement for members to self-assess.
6. There is a small typo at regulation 9(5) where PSPJOA has been transposed as POPJOA. This is repeated at regulation 33(2)(a).
7. We understand 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. As a Board we are particularly interested in the consistent application of contingent decisions and compensation, both of which may arise in this scenario.

8. Regulation 22 covers arrears of pension payments that arise as a result of the effect of the remedy on the benefits of a member who has died before the payments are made. We would welcome clarity on whether this also includes payment of arrears of pension in respect of a survivor pension when the survivor has died before the arrears are paid.
9. We understand that the Regulations come into force on 6 April 2023 and some provisions will have retrospective effect. It would provide greater clarity to administrators if retrospection was set out in each regulation where it so applied. It would also have been helpful for clarification to be given within the Regulations as to the in- and out-of-scope tax years, as the Annual Allowance Provision Definition Document indicated would be the case.
10. We welcome the provisions which have been made to alleviate some of the administrative burden associated with correcting a member's tax position retrospectively – in particular, the extension of the deadline to provide Pension Savings Statements (PSS) to members in respect of the remedy period (regulation 6); the requirement to include new/ increased AA or LTA charges on a future Accounting for Tax (AFT) return, rather than amending a previous submission (regulations 11 and 32); and removing any requirement to adjust previous Pension Input Amounts (PIAs) for scheme pays debits when recalculating the remedy period Pension Input Periods (PIPs) (regulation 10(6)).
11. These are especially welcomed as the application of double accrual in the earlier FPS legacy scheme (FPS 1992) makes it more likely that unprotected or taper-protected members may exceed the AA limit for the first time, or be subject to an increased AATC, as a result of rollback.
12. For members, we welcome the modifications to section 237B of FA 2004 which ensures that the financial conditions for a Mandatory Scheme Pays (MSP) election to be made in respect of the remedy period and tax year 2022-23 (regulations 8(3) and 9(2)) are treated as being met. We also welcome regulations 34 and 35 which ensure that the public service scheme will remain jointly and severally liable with the member for tax charges arising as a direct consequence of rectification.

## Comments on the guidance

13. While not specifically requested, we have taken the opportunity to review the guidance which is to be published alongside the Regulations. We make the following comments:
14. It may be helpful to clarify for the purposes of the guidance and the Regulations that in most cases the 'new scheme administrator' and the 'legacy scheme administrator' will be the same entity. This use of terminology is potentially confusing.
15. In paragraph 1.3.1, the fourth bullet point confirms that the tax position for optant-outs is not dealt with by the core tax regulations. However, the sentence as currently worded suggests that remedy may automatically opt a member back in. Certainly for the FPS, a member will have to make a Section 5 PSPJOA contingent decision to opt back in, which may or may not be accepted. We would suggest changing the wording to "...the remedy may retrospectively allow them to opt back in,...".
16. Paragraph 2.2.1 states that scheme administrators must implement the rollback **by** 1 October 2023. It is our understanding that rollback cannot commence until Section 2(1) PSPJOA comes into force. For the FPS, this will be on 1 October 2023 which is a Sunday, therefore it is potentially not administratively feasible for rollback to occur for all affected members on this date, particularly as the scheme regulations are not expected to be laid until one month prior. Our view is that it would be more appropriate to state "...**from** 1 October 2023."
17. It is disappointing to note that the regulations are not fully retrospective to the introduction of FA 2022 on 6 April 2022 and that the regulations cannot apply to members obtaining an immediate detriment remedy, by virtue of the scheme regulations not coming into force until 1 October 2023. FRAs are under significant pressure to apply immediate detriment to affected members and risk incurring substantial unauthorised payment charges on their behalf due to the PCLS timing of payment condition, when this will not be the final legislative position (regulation 17).
18. At paragraph 3.4.2, the bullet points would be more logically ordered if they were reversed, as rollback will occur before a Section 6 or 10 election being made.

19. From a scheme manager perspective, it would be useful to understand the implications of waiving tax relief liabilities using Section 18 PSPJOA. In particular, whether the encouragement for tax liabilities to be waived in respect of unrecoverable tax relief on contributions transfers the liability to repay this from HMT to the scheme and thus ultimately employers (paragraph 3.4.4).
20. Additionally, the SAB notes that there are a number of areas where the scheme will be paying compensation, including in respect of overpaid tax received by HMRC and not recoverable (including overpaid scheme pays for out-of-scope tax years according to the PDD). The SAB is concerned to make sure that the financing requirements for these extra cash flows are fully considered and understood.
21. Under section 4 of the guidance (Annual Allowance), it would be helpful to differentiate between tax treatment of in- and out-of-scope years. If adjustments to PIAs are needed for the three tax years preceding the remedy period (i.e. 2012-13, 2013-14, and 2014-15) to ensure the correct carry-forward position, this should be included at section 4.6.
22. There appears to be a word missing in the second line of the first bullet at paragraph 4.6.3 after "...benefit election..." as the sentence does not read correctly.
23. We would suggest adding the equivalent wording for protected and taper protected members to the end of the first bullet point at paragraph 4.6.4: "Scheme administrators will be aware of the change to the member's benefit entitlement from the date that the 'new scheme benefits election' is given to them".
24. We ask whether the position outlined at paragraph 4.6.5 could change based on the relevant scheme's policy on voluntary contributions? The paragraph states that these will remain as the only PIAs in the new scheme, however, would this remain the case if the only option at rollback is a return of contributions via compensation.
25. In the header above paragraph 4.6.6, the Regulation is quoted as 10(46). The number in brackets should be (6) only.

26. In respect of paragraph 4.10.4, we reiterate that administrators are concerned that not providing any PSS in respect of tax year 2022-23 until 6 October 2024 may have unintended consequences for members.
27. Paragraph 4.11.5 could be amended to reflect [The Public Service Pensions \(Exercise of Powers, Compensation and Information\) Directions 2022](#) coming into force on 19 December 2022.
28. In paragraph 5.5.10, we believe the pension amount in the example should be £48,000.
29. As a point of clarity, at paragraph 5.5.23, would the BCE 6 remain unchanged at £144,000 if Tom repays the overpayment of £18,000 (under regulation 29)?
30. There are a number of typos at in the first bullet point of paragraph 5.8.6.
31. There is a sentence within paragraph 5.11.3 (starting with the hyperlink to PTM063210) which appears to be in the wrong place, as the section does not read correctly. PCLS is also incorrectly transposed as PCL.
32. The earliest FPS legacy scheme (FPS 1992) uses actuarial commutation factors, which currently exceed 20 until an individual attains age 58 years and 9 months. Experience shows that the majority of members choose to access the maximum lump sum available and incur an unauthorised payment charge (UPC) on any excess above the [permitted maximum](#). There is an established mandating procedure in place to facilitate this.
33. In the potential scenario that a member's permitted maximum increases as a result of rollback, but they choose not to receive arrears of lump sum to secure a higher continuing pension amount/ pension arrears, neither the Regulations nor the guidance appear to clarify the exact treatment of any previously unauthorised elements of commutation payments which are no longer deemed excessive.
34. We believe that this could be addressed under the guidance on regulation 17 (paragraphs 5.11.3 and 5.11.4).
35. There is a small typo at the end of paragraph 5.16.4 where PCLS has been transposed as PCSL.



36. Regulation 36 provides that an election for new scheme benefits is treated as having taken effect on 5 April 2016 for the purposes of Individual Protection 2016 (IP 2016). However, the Regulations do not comment on the effect of rollback on a member's IP 2016 status. For FPS 1992 members retrospectively benefitting from double accrual, rollback is more likely to lead to a loss of LTA protection (than an election for new scheme benefits).
37. We understand that this is covered in The Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022 at paragraph 9(6)(d). It would be useful to clarify this in the guidance in section 7.1 for completeness.
38. The glossary refers to taper-protected members as those who were within 10 years and 13.5 years of their normal pension age at 1 April 2012. For the FPS, members were protected on a tapered basis if they were within 10 and 14 years of NPA<sup>1</sup> on the relevant date.

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<sup>1</sup> <https://www.legislation.gov.uk/uksi/2014/2848/schedule/2/paragraph/18/made>