

Fire Retrospective Remedy Consultation
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Heywood Pension Technologies response to the consultation on the Firefighters' Pension Scheme retrospective remedy

This document is the official Heywood Pension Technologies response to the Home Office's consultation on the draft Firefighters' Pensions (Remediable Service) regulations required to enact the second phase of remedy as set out in the Public Service Pensions and Judicial Offices Act (PSPJOA) 2022.

Heywood Pension Technologies is the market leader in the provision of pensions administration software for Police and Fire administering authorities in England, Northern Ireland, Scotland, and Wales. Fifty-four Police and Fire schemes across 16 administrators currently use Heywood Pension Technologies' software.

Heywood Pension Technologies welcomes the opportunity to respond to the consultation and for the informal engagement with stakeholders which took place beforehand.

Due to the timing of the consultation, and as we have commented in previous responses, a clear risk remains that the final legislation will not be laid with sufficient lead in time for all required software developments to be delivered before 1 October 2023.

Software will be vital in assisting administrators with processing business-as-usual (deferred choice) cases as well as retrospectively for immediate choice. If automated solutions cannot be delivered in good time due to legislative delays, new manual processes may need to be designed. Any manual process:

- increases the time needed to administer the scheme by increased activity time and typically also by an increased need for manual checking, and
- carries risk of manual error, particularly where, as in this case, the new process introduces the additional complexity of comparing alternative benefit structures for each member.
- both potentially resulting in increased costs.

Concurrent development to remove discrimination across LGPS and Public Service Pension Schemes is required, further adding pressure to deliver the necessary functionality in an appropriate timescale. It is therefore vital that the necessary legislation is in place at the earliest possible time to enable this to take place.

Our answers to the consultation questions follow:

Question 1. In and out of scope: Do the proposed amendments to scheme regulations clearly define which members of the firefighters’ pension schemes meet the criteria to be eligible for the remedy?

Yes.

We note that the eligibility criteria are defined in [Section 1 of the PSPJOA 2022](#) (Meaning of “remediable service”) and not specifically within The Firefighters’ Pensions (Remediable Service) Regulations 2023.

However, regulation 2(1) contains the interpretations used in the draft regulations and includes the following interpretation:

“remediable service as a firefighter” means, in relation to a member, the member’s remediable service in an employment or office that is pensionable service under a firefighters’ pension scheme;

which is then cross-referenced to the relevant section of the Act.

We are aware that eligibility for transitional protection (and by extension remedy) has previously been interpreted differently by administrators for members with multiple employments. It may have been helpful to take this opportunity to clarify in the consultation document that multiple employments are eligible for remedy based on the member rather than each employment, as this has historically led to inconsistency in treatment.



We would further note that the draft regulations do not amend existing legislation; they are a standalone set of regulations. Therefore, questions which refer to the “proposed amendments” are potentially misleading.

Question 2. DCU timing of RSS: Do the policy proposals about the timing of when a scheme member can request an RSS in anticipation of retirement strike the right balance between a suitable period to make a decision, proximity to retirement date and any administrative considerations?

No.

While we do not have a view on the final policy from a software perspective as both immediate and deferred choice will be catered for, and we will ensure that functionality is available to issue remediable service statements (RSS) as and when required, any lack of clarity or potential uncertainty in the regulations could lead to scheme managers making different interpretations, leaving members without appropriate choices or with inconsistent outcomes.

Further to engagement with the sector, our view is that the timescales proposed are too long; it is not realistic to expect a member to submit their intention to retire six to 12 months in advance, particularly as the regulations then require an RSS to be issued as soon as practicable [3(2)(c)(i)] and the member to make an election within 12 weeks of receipt. If the election period expires, or the member revokes their election prior to payment, a new RSS will need to be provided, generating additional administrative work and cost.

A more appropriate timescale would be three to four months, considering normal practice and contractual requirements. This would also be in line with the existing provisions for a lump sum commutation election to be made under [Rule B7\(7\)](#) of the FPS 1992 and [Part 3, paragraph 9 of Schedule 1](#) of the FPS 2006.

We would also suggest that a “cancellation deadline” be inserted into the regulations to prevent decisions being revoked at the last minute when an administrator may already have processed the final retirement calculations and made the necessary arrangements for payment; see [draft regulation 16\(8\)](#) of the Welsh Government Firefighters’ Pensions consultation

Additionally, there is no direction on the treatment of ‘transitional’ deferred choice (DC) members who wish to retire in the very short-term following implementation. They will not have scope to comply with the requisite notice period for requesting an RSS and effectively need to be treated as immediate choice (IC) members.



Regulation 12(2)(a) sets out that a member must inform the scheme manager of their intention to retire and claim benefits during the period 12 and 6 months before the benefits are intended to become payable. This is essentially a request for a DC-RSS.

Regulation 12(3)(b) states that a deferred choice election can only be made within the 12-week period after receiving an RSS, or on the day before benefits become payable if earlier.

We are aware that [paragraphs 82 to 84](#) and [draft regulation 20](#) of the Welsh Government Firefighters’ Pensions consultation provide for transitional arrangements which ensure that members can retire immediately after 1 October 2023 on legacy terms with a reformed choice to follow. Although this approach would extend the options exercise and require additional recalculations, the regulations should not prevent a member from receiving the options they are entitled to immediately after retirement.

We are conversely aware that some administrators in England are intending to issue remediable options ahead of secondary legislation being laid to allow members to retire having made an informed choice. This also carries a risk of unexpected changes to the final legislation which would necessitate recalculations in any case.

Question 3. Ill-health Retirement: Do you think the proposed arrangements for members that qualify for ill-health retirement during the remedy period (1 April 2015 – 31 March 2022) may cause any adverse impacts?

Yes.

We do not offer any comments from a software perspective but note that the drafting of the regulations does not clearly reflect the policy positions outlined at informal engagement stage.

Paragraph 5.68 of the [consultation document](#) states “Re-assessment is only needed for IC IHR cases. This means a retrospective ill-health assessment will only be needed for cases where a member (who has remedy period service) has been ill-health retired or dismissed on capability grounds during the remedy period...”

We note that this paragraph includes members who have been dismissed on capability grounds, who will not have received an ill-health retirement (IHR) pension and will only have an entitlement to a deferred pension.

However, [draft regulation 51](#) only provides for re-assessment of a member who has retired from the FPS 1992 on the grounds of ill-health.



The legislation seems therefore to only apply to members who are already in receipt of an IHR pension. It does not appear to apply to those that have been dismissed on capability grounds.

Clarity is also sought on the reassessment position for FPS 2006 special members. These members have not been specifically mentioned in the draft legislation, yet they are assessed under the pension scheme regulations for permanent disablement up to a normal retirement age of 55. Therefore, a special member who was awarded an ill-health pension would need to be reassessed for entitlement under the FPS 2015 which has a normal retirement age of 60.

Further, regulation 51(3)(a) states that the independent qualified medical practitioner (IQMP) “must” examine or interview the member. Previously issued guidance stipulated that some cases could be assessed on existing evidence or by paper exercise. This deviation from policy intent may lead to delay in reassessment and prolong rectification, while also increasing costs, unless amended.

We note that regulation 51(7)(b)(i) seems to imply that there should have been a five-year review after the original ill health decision.

Although Fire & Rescue Authorities do review ill health pensions periodically, a specific five- year review is not a provision of the FPS and so it is unclear what the relevance of this regulation is. If this provision is enacted for members affected by the age discrimination remedy, this would mean that they would be treated differently to those members not affected by remedy.

Question 4. Added pension: Do you think the policy proposals in relation to scheme members with added pension puts all eligible members in the same position?

Yes.

We do not have specific comments on the policy proposals but would question whether it would be more appropriate (or less administratively burdensome) to retain the remediable added pension payments made by an IC member until such point as a section 6 election (including a deemed section 6 election) for legacy benefits is made.

This is the equivalent position for the return of legacy scheme added years payments where a section 6 (or section 10) election for reformed scheme benefits is made, and the approach taken by the Welsh Government at paragraph 135 of its [consultation document](#).



Engagement with the sector has raised the question of whether Additional Pension Benefits (APBs) could have been utilised as an alternative to the compensatory amount. This is an existing regulatory framework in the legacy schemes. We understand that there are restrictions on the purchase of Added Years in the legacy schemes, and therefore this could be limited to those members who would have been eligible at the time.

It should be noted that due to anticipated small number of members impacted, it is unlikely that an automated software system solution will be implemented and therefore it would fall on the administrators to perform manual calculations where the adjustment is required.

We would expect that this functionality should be made available through a GAD calculator, given that the scheme manager must consult the scheme actuary to determine the “compensatable amount” [Regulation 26(2)].

Question 5. Transfers: Do you think that the policy proposals that transfers that came into the 2015 reformed pension scheme will be held in the 2015 reformed pension scheme until the point of decision achieves the policy intention of preserving transfer rights?

Yes.

However, retaining the transfer value in the 2015 reformed scheme may cause administrative complexities for producing correct ABS/ RSS values and scheme valuations. A simpler solution may have been to roll the service back where possible, as permitted by [section 21 PSPJOA 2022](#), and do any actuarial conversion required in advance where a transfer to the legacy scheme would not have been permitted or there is excess service. For example, it is well-established that transfers into the FPS 1992 could not have taken place during the remedy period, except on an interbrigade basis.

We would also welcome clarity on the actuarial calculation required to calculate the “equivalent value in the legacy scheme benefits as an adjustment of contributions” detailed in the final bullet point of paragraph 5.44 of the [consultation document](#).

Regulation 30(2)(b)(ii) confirms that a member without relevant reformed service has a right to “compensation equal to the value of rights to reformed scheme benefits” but there is no direction on how the compensation will be achieved, in what form this will be, or at what point and what factors will be used at the calculation decision points.



As this is an area where additional development or a bespoke calculation may be needed, we would appreciate sight of GAD guidance as the earliest opportunity.

There appears to be a cross-referencing error in regulation 42 which refers to [regulation 141\(2\)\(b\)](#) of the 2014 Regulations. Draft regulation 42 provides for a substitution of the words “P’s first day of eligible service” with “1st October 2023”. However, this wording does not appear in regulation 141(2)(b). This has possibly been incorrectly transposed from the Police Pensions Regulations 2015 [[regulation 189\(2\)\(c\)](#)].

We have previously sought, through a letter to the Home Office in September 2022 and via the cross-Whitehall project management group, clarity on how Club transfer arrangements may be amended to account for McCloud remedy options.

We understand that GAD is currently drafting amendments to the [Club memorandum](#) which will allow for McCloud, the change of in-service CARE revaluation date (in some schemes), and other minor amendments. It would be useful to know the expected timescale for provision of the revised memorandum.

Question 6. Bereavement: Do the proposed amendments to scheme regulations achieve the policy intention of ensuring that the resulting ‘member representative’ can make an immediate choice or deferred choice in relation to the remedy period service of a deceased member?

Yes.

Question 7. Contingent decisions: Do you think that the proposals with regards to contingent decisions give members opportunities to revisit pension benefit decisions taken during the remedy period?

No.

There is insufficient definition of what could constitute a contingent decision (in addition to the three specific scenarios outlined) and how applications should be measured and assessed. Guidance to scheme managers is needed given the potential for significant inconsistency across the scheme which could have implications for software solutions needed and subsequent costs, as well as increasing the likelihood of internal disputes and future litigation.

On optants-out, neither the consultation document nor the draft legislation appear to provide any timescales for when a member would be required to pay the contributions to reinstate an opted-out period of membership. Our understanding of draft regulation 5 read with section 5 PSPJOA 2022 is that an election for reinstatement is irrevocable and the service is immediately accrued as

remediable service, therefore contributions become due under sections 15 to 17 of the Act.

It is also not clear how the immediate accrual of service should be dealt with for tax purposes. The [Guidance on the Public Services Pension Schemes \(Rectification of Unlawful Discrimination\) \(Tax\) Regulations 2023](#) confirms at paragraph 1.3.1 that opt-outs are not covered by the guidance and implies that information will be provided later.

We also question the powers available to scheme managers to allow the buy-back of opted-out service which relates to the pre-remedy period. Paragraph 5.72 of the consultation document states that “...schemes will need to use provisions in the existing scheme rules to opt in in respect of any pre or post remedy period service.” However, there is no provision within the FPS 1992 which allows a G3 election not to pay pension contributions to be revoked or cancelled, and the FPS 2006 does not appear to allow cancellation of a contributions election with retrospective effect [[Part 2, paragraph 6\(4\)](#)(as amended)].

Finally, the footnote to draft regulation 4(1) incorrectly references the 1987 Police legacy scheme, rather than the 1992 Firefighters’ scheme.

Question 8. Are there any other areas which you think should be addressed in these regulations in order to ensure that all eligible members receive a choice of pension benefits at their point of retirement, for the period for which the discrimination existed (1 April 2015 - 31 March 2022) on 1 October 2023?

Please see our response to question 2 in relation to DC members who wish to retire in the immediate term following implementation, and the timing of their choice.

Question 9. Are there any additional points not covered in this consultation paper that need to be considered as part of the proposed amendments to scheme regulations?

Yes.

We note that there are several questions raised in the equivalent consultation on the draft Police Pensions (Remediable Service) regulations which have not been addressed in this consultation. We wish to comment on those areas, and others, as below.

- Remediable service statements (RSS)



Regulation 3(2)(b)(ii) states that a deferred member must be issued with an RSS within three months of a written request being made. This contradicts [regulation 183](#) of the Firefighters' Pension Scheme (England) Regulations 2014 which provides that all non-pensioner members should be furnished with an annual benefit statement.

We propose that, for consistency, the requirements for a deferred member to receive an ABS-RSS should be in line with those for an active member, particularly as direction 20(2) of the [Public Service Pensions \(Exercise of Powers, Compensation and Information\) Directions 2022](#) (PSP Directions 2022) confirms that RSS should be combined with ABS, except for the first time of issue.

From a software perspective, it would also be more straightforward to follow existing process without the requirement for significant additional development.

- Contributions

We noted in our letter to the Home Office in September 2022 that the contributions requirement was a significant area of concern, due to the lack of detail available. And further, that any decision could have a fundamental impact, resulting in a substantial increase in development and re-work and/or revised manual processes. The approach to contributions has the potential to affect all benefit calculations for every eligible member.

It is disappointing to note that the policy proposals in the consultation document do not fully clarify the options available to scheme managers/ members, nor do the regulations clearly define that the amount must be settled in full at a point in time with no option for periodic contributions. This is an area which will be complex to administer as it has always been managed at employer level and therefore clear directions are needed.

The effect of the regulations is to rely solely on the powers of the PSPJOA 2022 to adjust contributions, which say only that the contributions must be adjusted, not how and when. For a locally administered scheme, where each individual scheme manager will need to consider how they adjust contributions, this is not a satisfactory position. The potential for the 44 Fire & Rescue Authorities in England to choose to adjust contributions differently would not only be administratively onerous and more complex for the pensions administration system to support; more importantly it could lead to different financial outcomes for members.



We note that the draft regulation dealing with payment of amounts owed to the scheme manager is identical for Fire England and Fire Scotland¹ [63 and 62 respectively], yet the Scottish Public Pensions Agency (SPPA) has proposed in its [consultation document](#) that payment can be made in instalments.

[Paragraphs 54](#) and [draft regulation 66\(5\)](#) of the Welsh Government Firefighters' Pensions consultation go further than this and legislatively provide for payments by instalments where the net liability is over £100.

This could have unintended consequences for members transferring cross-border and require additional software development.

Whatever the agreed mechanism for repayment of the contributions, we agree that there is a need for a contribution adjustment record to be created and held within the system, so that the information can be populated within the RSS. However, the legislation itself does not create the contribution adjustment record.

As many contribution adjustment records will be in place for several years to come, it will be necessary for the detailed information about how the contribution adjustment has been calculated to be available, both for audit purposes and to provide evidence should any future claims or appeals be made about the calculations. We would like to see legislation or at least the policy intent of how this is achieved and what framework will be in place to ensure that the correct information is stored and used.

We would also reiterate our comment that the position on repayment of contributions to reinstate opted out service under [section 5 PSPJOA 2022](#) is unclear.

We note that no reference has been made to contribution holidays in respect of FPS 1992 members achieving 30 years' pensionable service before reaching age 50. It is possible that some members may become retrospectively entitled to a contribution holiday at roll-back and therefore we seek clarity as to how those excess contributions should be factored into the adjustment.

We appreciate that the provision was retrospective at the time of implementation in 2016; however, [SI 2016/878](#) provided a specific rate of interest which must apply to the lump sum due to a firefighter who paid excess contributions between 1 December 2006 and 30 September 2016 (i.e., retrospectively).

As there is an overlap with service in the remedy period, we would ask for clarification of which regulatory position applies for such retrospective

¹ [The Draft Firefighters' Pensions \(Remediable Service\) \(Scotland\) Regulations 2023](#)



adjustments for contribution holidays – the Firefighters’ Pension Scheme (Amendment and Transitional Provisions) (England) Order 2016 or the remedying legislation.

We understand that a GAD calculator is in development; however, there has been no engagement to date with Heywood Pension Technologies (or other suppliers) on the outputs of that calculator. As the contribution adjustments will need to be held within the administration system, and due to the volume of adjustments expected, it is essential that these outputs can be interfaced in bulk into the software. Timely delivery of this calculator is critical to successful implementation of remedy; as noted above, the approach to contributions has the potential to affect all benefit calculations for every eligible member.

As commented in our response to the HMT consultation on removing transitional protections, Heywood Pension Technologies feels, as a software supplier, that it is important to operate the same rectification solution across all schemes and regions where possible. Differences will add further complications to the already challenging timescales for implementing the complex changes required.

- Commutation election

The consultation does not comment on whether the original commutation election made by an IC member is to be automatically applied when the IC-RSS is provided or whether the member can make a new election on any arrears of benefits due.

As this is likely to affect most FPS 1992 legacy scheme members making an immediate choice and will impact on liability to pay additional Unauthorised Payment Charge tax, clarity should be provided in guidance, if not legislation, at the earliest opportunity.

- Pensions tax

As expected, the consultation does not refer to the required adjustments for pensions tax. However, we would take this opportunity to comment on the lack of progress on the proposed HMRC calculator that will allow schemes to build processes to accommodate the adjustments that will be required.

Like the contribution calculator, we remain unsighted on the expected inputs into the HMRC calculator or the outputs, which means we cannot plan the correct development of software to support administrators in the delivery of smooth



member outcomes. Due to the double accrual element of the FPS 1992, we believe there will be a higher proportion of members with pensions tax implications than may occur in other legacy schemes at rollback.

The regulations do not adequately set any framework for making compensation payments, they simply refer to wider powers in the PSPJOA 2022 and the PSP Directions 2022. From a software perspective, we are keen to understand how such payments will need to be recorded and reported, as this may introduce the requirement for additional fields within the administration system.

- Reporting

Although out of scope of this consultation, we would like to use this opportunity to ask when we can expect further clarity on any additional reporting requirements which may arise because of remedy or roll-back; for example, where dual calculations may need to be recorded. This was also reflected in appendix B of our letter to the Home Office in September 2022.

In particular, we are keen to understand any new valuation reporting requirements. We understand that GAD is engaging with stakeholders in June 2023 and strongly request to be included in this engagement.

At present, we are operating on a best assumption basis, which could result in the recording and retention of excessive or unnecessary data with potential GDPR implications.

Question 10. Equalities: Do any of the proposed amendments unlawfully discriminate against a particular protected characteristic, fail to advance equality of opportunity between those who share a protected characteristic and those who do not, or fail to foster good relations between people who share a protected characteristic and those who do not?

We would question whether the proposal to allow repayment of contributions only by lump sum favours those closer to retirement, as they would be able to repay those arrears from benefits sooner, therefore accruing less interest. However, we do recognise that interest on sums due from a member to the scheme manager is applied at the NS&I Equivalent Savings Rate which is considerably lower than prevailing rates.



We are also concerned that different policy approaches, for example on repayment of contributions, between the devolved schemes could lead to different outcomes for members and may cause particular challenges if an individual transfers cross-border.

Yours sincerely

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