

Sent by email to: Scheme Managers and Local Pension Board Chairs

11 May 2026

Dear Colleague,

Progressing opt-out cases following the Written Ministerial Statement of 26 March 2026

Following the [Written Ministerial Statement \(WMS\)](#) issued on 26 March 2026 in relation to contingent decisions and reinstating opted-out service, the Scheme Advisory Board (SAB) has taken legal advice on the risks associated with Fire and Rescue Authorities (FRAs) progressing cases ahead of the relevant amending regulations coming into force.

The SAB is acutely aware that the current position is preventing some individuals from being able to retire and is causing unnecessary uncertainty and distress for affected members. Minimising that impact, where possible, is an important consideration for the SAB.

Legal risk of progressing cases ahead of legislation

Our legal advisers have considered the nature and scale of the legal, governance and operational risks to FRAs of proceeding now, particularly in light of the WMS and the existing statutory framework.

In summary, the advice is that **the level of risk is low**, for the following key reasons:

- The Ministerial Statement is clear and unambiguous in confirming the Government's intention to use the special-case power in the Public Service Pensions and Judicial Offices Act 2022 to amend scheme regulations so that affected optants-out can be returned to their last-accrued legacy scheme (the 1992 Scheme, where applicable).
- While a ministerial statement is not, in itself, law, it represents the official position of Government and carries significant weight. It provides a clear indication of the "direction of travel" and substantially reduces the risk associated with FRAs acting consistently with that position before the regulations are enacted.
- The number of cases potentially requiring action ahead of legislation is small, further limiting the scale of risk exposure.

- In the unlikely event that there were any delay or change to the proposed regulations, FRAs would still be able to rely on the overriding non-discrimination provisions of the Equality Act 2010. Given the Government's acceptance that the current statutory remedy does not fully address the discrimination for this cohort, the legal advice is that the risk of challenge arising from reliance on the Equality Act is minimal.
- The advice confirms that there is **no material difference in the level of risk** between members who opted out before 1 April 2015 and those who opted out after that date, notwithstanding the different factual circumstances that apply to those groups.

Taken together, the SAB is reassured that FRAs who choose to progress affected cases now, in a way that is consistent with the WMS, are operating within a **low-risk legal environment**.

SAB position and next steps

The SAB considers that, where FRAs are able to do so, progressing cases ahead of the legislation is a reasonable and proportionate approach, particularly where members are at or near retirement and would otherwise suffer ongoing detriment.

The SAB will continue to work closely with MHCLG, supporting officials to ensure that the forthcoming regulations are appropriately drafted and deliver the intended outcome for affected members.

We encourage FRAs to consider this information carefully, taking their own legal advice where appropriate, and to keep affected members informed as matters progress.

The SAB remains committed to supporting the sector through the next phase of remedy implementation and has instructed the LGA to work proactively with FRAs and administrators to ensure consistent application.

Yours sincerely,



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