

Meeting of the Board 18 March 2021

Immediate Cases

Background

1. Following the Employment Tribunal (ET) proceeding, the Court of Appeal held that the transitional protections related to the 2015 Firefighters' Pension Scheme (FPS 2015) were age discriminatory.
2. An interim remedy declaration was then made by the ET in December 2019 that the claimants were entitled to be treated as if they remained in the 1992 or 2006 Firefighter's Pension Schemes (the legacy schemes).
3. The SAB responded to both the HMT informal consultation of Scheme Advisory Boards in January 2020 and again to the formal consultation in October 2020.
4. On 4 February 2021 the government published its consultation response on how it intends to remove the discrimination identified by the tribunals and courts in the 2015 pension reforms through changes to primary legislation and Firefighters' Pension Schemes regulations.
5. As laid out by HMT, the changes needed will be to:
 1. Move every scheme member into the FPS 2015 as at 1 April 2022
 2. With effect from October 2023, remedy the discrimination between 1 April 2015 and 31 March 2022 by offering members the choice once they reach retirement age to receive final salary or CARE benefits (ie to remain in the 2015 scheme or be treated as if they remained in their legacy scheme) for any service accrued during this period.
6. While it is expected that transferring remaining members into the FPS 2015 at 1 April 2022 will be relatively straightforward, the conversion of FPS 2015 benefits into final salary will involve complex administrative processes with adjustments of pay, contributions, tax relief, and pensions tax liabilities etc.
7. The consultation response addresses some of these issues, however, final policy decisions are needed in some significant areas. The Home Office will consult separately on changes needed to the Firefighters' Pension Scheme regulations to enact the remedy. This is likely to take some time.
8. Primary and secondary legislation is expected to introduce the changes to the 2013 Public Service Pensions Act and move all members to the FPS 2015 from 1 April 2022, this legislation will need to be laid before 1 April 2022.

9. Further legislation will then be needed to introduce the retrospective changes, this legislation will need to be laid before 1 October 2023.
10. Significant change to the software systems will be needed to support this change, and software providers will need to consider at which stage that can be started with or without draft regulations. Software companies have previously indicated a lead in time of at least 12 months to develop the software.

Immediate Cases

11. Before the legislation has been introduced and software developed, members are retiring from the FPS schemes who should under the interim tribunal order and powers of the FRA be entitled to be treated as a member of the former legacy scheme if they wish to do so.
12. The Home Office issued [informal guidance](#) direct to FRSs in August 2020 regarding the treatment of immediate detriment cases, and the LGA published an [information note](#) supplementing the guidance in October 2020. The guidance does contain some gaps, particularly in the areas of how to deal with the tax implications and pension contribution holidays etc...
13. An update to the informal guidance published in August is expected shortly, after clearance with relevant departments, which will provide some additional clarity but will still require individual decisions as HMT are yet to make final policy decisions in some areas.
14. Previous Government documents including the Immediate Detriment guidance, Home Office FAQs and HMT consultation response have contained a direction that members who have already retired cannot be processed under immediate detriment guidance due to complex issues that have not yet been resolved.
15. Achieving consistency of the application of the guidance is difficult, and as such could introduce risk to the FRAs and member benefits as the current guidance is not backed by legislation and therefore involves FRAs making their own assumptions, interpretations and decisions, which if they subsequently turn out to be incorrect and require amending could result in financial implications to both the Fire Authority and scheme members.
16. It is not clear whether early implementation could result in lost opportunities when the legislation and mechanisms are available in the future, and whether the member would have the opportunity to revise decisions, for example if a window of opportunity is opened in a future year for tax adjustments this may exclude those members who have already had remedy applied.
17. The [purpose of the Board](#) is to
 - a. provide advice in response to a request from the Secretary of State on the desirability of making changes to this scheme and any connected scheme.
 - b. provide advice to scheme managers and local pension boards in relation to the effective and efficient administration and management of this scheme and any connected scheme.

18. This paper asks the Board to consider what advice it should offer to scheme managers to improve the consistency and understanding, so that they can effectively and efficiently operate the scheme without legislation and software.

Areas to consider

19. Picture 1



Employee contributions: Tax Relief, Interest and Contribution Holiday



Policy Decisions and Regulations: CETVS, Added Pension, Debits, Taper Members, Final Salary entitlements



Tax: Pension Growth, Annual Allowance Tax Charges, Unauthorised Payment Charges, Income Tax



Processes: Data, System capacity, Administrator capacity, Data Storage



Member Choice: Opportunity to revise decisions, Beneficiary decisions, Who underwrites the effect of errors

Employee Contributions

20. HMRC processes such as self-assessment and PAYE don't apply to pensioners; it may be 2023 until the HMT compensation scheme is in place to provide tax relief on making pension contributions.

21. HMT have signalled in the consultation response that interest will be due on contributions, both those owed by members and those to be refunded, but the rate has not yet been determined or details of what repayment options would be offered to members in the future to collect the interest owed. This means it isn't currently known how much or how FRAs will need to collect from members, and whether FRAs or the notional pension fund will have to underwrite any interest not repaid.

22. It is unclear how the application of tax and interest would affect the calculation of a contribution holiday and what the position should be if it places the member in a surplus situation with a refund of contributions due.

Policy decisions and regulations

23. There are a number of technical issues that the current regulations do not address due to policy not yet being determined, there is currently no mechanism to convert CETVS and added years to FPS 1992 benefits, and no guidance on how to convert debits such as pension and scheme pays.
24. The consultation confirms that taper members will only receive a choice of legacy or reformed benefits for the remedy period, so it is unclear how to rectify any period in the 2015 scheme after the member reaches 30 years.
25. It is not yet established what should happen to taper members who have continued to pay FPS 2015 contributions after reaching 30 years' service, they may be due a refund, if so the consultation points to an HMT mechanism to be devised that calculates the refund and deducts the tax relief that would have been due on the contributions originally paid.

Tax

26. To determine whether there is a tax charge, the pension needs to be re-calculated to determine pension growth during the remedy period tax years. If tax is due once the pension growth has been re-assessed against the annual allowance, the member has two choices to pay tax either themselves or through scheme pays.
27. There are two types of scheme pays and Mandatory Scheme Pays (MSP) for which the scheme processes are mostly based is only available for the last tax year.
28. [Voluntary scheme pays](#) (VSP) would however be available to pay the scheme tax charge, and schemes can follow existing guidance for the operation of VSP.
29. Payment of a second lump sum more than 12 months after retirement breaches the timing of payment condition¹ and is considered an [unauthorised payment](#). Unauthorised payments are subject to a tax charge to the member of 40% and potentially a scheme sanction charge payment payable by the scheme of 15%.
30. Pension like any income is taxable as income, any adjustments to pension will also be subject to adjustments to the tax payable on that income. HMRC processes allow for adjustment of income tax but only within the statutory four-year period. How income tax should be adjusted for the remedy period outside of the four years is unknown.

Processes

31. Without software systems being updated, the calculations will all have to be performed manually which brings risk of error. Automated systems for calculations have become commonplace and administrators are not resourced to calculate complex and lengthy manual calculations.

¹ [Paragraph 1\(1c\) of Schedule 29 of the Finance Act 2004](#)

32. Additionally, without systems, questions arise as to how will processes be put in place to record the calculations and payments made and store the 'underpinned' reformed benefits.

33. This brings risk of additional error and breach of law that scheme managers will need to consider whether they should report to TPR.

Member choice

34. It is not known how irrevocable the choice the member makes would be, and whether they or their beneficiary would be able to make a different decision later.

35. It will be important the member receives consistent information to understand all the options available to them and their family.

Board action

36. For the Board to consider and discuss

Board Secretary
March 2021