

Sent by email to Pensions Remedy Project Team

18 March 2021

Public service pension schemes: changes to the transitional arrangements to the 2015 schemes. Government Response

The [Firefighters \(England\) Scheme Advisory Board](#) welcome the publication of the government response to the consultation, and the government decision to introduce retrospective remedy via the Deferred Choice Underpin route, and the decision to allow for implementation by October 2023, giving more time to bring in the significant processes that will be needed to implement DCU.

Nevertheless the board note that there are still areas of policy to be determined, that will affect the application of the Firefighters Pension Scheme, in particular how to adjust contribution amendments for members of the FPS 2006 and how the policy decision for taper members will be applied to taper members who have passed the 30 year service date.

We have outlined the areas of concern in this public letter and would welcome engagement with HMT on determining a way forward.

If you have any questions, please let me know.

Yours sincerely



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Chair of the Firefighters' (England) Pension Scheme Advisory Board

Contribution adjustment issues for FPS 2006 members.

1. Under the DCU option we understand that all eligible firefighters will be returned to their legacy schemes, with FPS 2015 benefits kept as an underpin to enable a choice between the benefits at normal retirement age.
2. As we previously outlined, former FPS 2006 members may well be better off under the FPS 2015 so they will choose to receive reformed benefits at retirement.
3. Unlike most other public service pension schemes, the FPS has different contribution levels¹ for each scheme, for both employee and employer contributions.
4. The contributions paid by a FPS 2006 firefighter are less than the contributions the member pays under the FPS 2015.
5. The processes for adjusting contributions then becomes complicated. On return to the legacy scheme the member could be eligible for a refund, on which interest would be paid and tax relief deducted.
6. However at retirement, which could be any time after the effective date of the DCU choice, the member may choose to receive reformed benefits, and then be required to pay back the underpaid contributions with interest, and would then claim tax relief again.
7. It is not clear if the intention is that the employer would also have a refund at the DCU point and would also be required to re-pay contributions at the date of choice.
8. This approach will also have a significant impact on accounting for the notional pension account, with payments made from the notional pension account and re-claimed via the top-up grant which may need to be unwound at retirement.
9. The consultation proposes that if contributions were to be refunded in 2022, they would be taxed as income, reclaiming any tax relief the member claimed at the time of making the contributions.
10. At retirement, if the member chose to receive benefits under the reformed scheme, the contributions would again fall due, at which point the member could claim tax relief.
11. However, there are a number of difficulties with claiming tax relief that were brought to light during the FPS 2006 special members exercise, and HMRC have since clarified that pensioners or deferred members cannot

¹ <http://www.fpsregs.org/images/Legal/Annual-updates/FPS-contribution-rates-2020-21.pdf>

claim tax relief through self-assessment or PAYE, so any tax relief claim at retirement would need to be settled through a government process.

12. The consultation response confirms that interest will be applied to both contributions due and contributions owed. These members would then have interest paid on the refund but would owe interest on contributions at the point they are required to make them at retirement.
13. The board would welcome a conversation with HMT on the position of offering these members a choice between receiving a refund at the effective date of the return to the legacy scheme or making these contribution adjustments only once at retirement?

Taper members.

14. The position set out in the consultation for tapered members to provide a choice only of reformed or legacy benefits for the remedy period is made complex by the 30-year service cap and double accrual in the FPS 1992.
15. In the FPS 1992 members may by virtue of their age have not been protected, but still have achieved 30 years' service before being tapered into the FPS 2015. These members may have therefore accrued both a full FPS 1992 pension and currently be building up benefits in FPS 2015.
16. It is recognised that they had the right to retire at 30 years' service. However, it may be that due to their experience and skills it was beneficial to both the employee and employer to remain employed.
17. Under the proposals those taper members who have moved into the FPS 2015 and are still employed may now decide to retire leaving a skills and resource gap.
18. Pension contributions need to continue if the member wishes to keep working after reaching 30 years' service. If pension contributions stop the member becomes a deferred member and cannot access the pension until the deferred pension age of age 60.
19. A contributions holiday is only available if the member reaches 30 years' service before the age of 50, because the minimum retirement age is 50 and benefits would not be payable before then.
20. If the member wished to continue working, as we understand it the choice would be to either:
 - 20.1. Choose legacy scheme benefits and continue paying FPS 1992 contributions even though full service may have been accrued.Or

- 20.2. Choose reformed scheme benefits for the full remedy period and accept a decrease in their FPS 1992 pension value which would be calculated to 31 March 2015 only rather than the original taper date.
21. For example, consider a firefighter who had completed 28.25 years in FPS 1992 by 2015 and tapered after 2 years to FPS 2015.
22. They will have achieved 30 years' service and would have been able to retire in 2017, however, due to their skills and knowledge they continued working and accruing benefits in FPS 2015 for a further 5 years to 2022.
23. The choice under the consultation proposals now available to them for remedy period is:
- 23.1. Final salary 1.75 years of service to maximum of 30 years
Or
23.2. 7 years pension in FPS 2015
24. Both are less than they would have been expecting and conveyed to them by annual benefit statements and would appear to reduce the pension already accrued. They may claim that they would have retired in 2017 if they had known the choice that is now available to them.
25. It is not clear whether the pension should be paid from 2017 with interest applied and a refund of FPS 2015 contributions, or whether they can keep the FPS 2015 accrual accrued after achieving 30 years' service.
26. Other anomalies may occur relative to members who have already taken benefits. For example, we are aware of an example where a retired taper member, in receipt of a full 30-year FPS 1992 pension has transferred their FPS 2015 pension into the civil service scheme and it is not clear what the policy intent of the consultation would have on member benefits in this case.
27. This issue continues to deepen in complexity because the transferring of individuals from their legacy scheme to FPS 2015 has continued since the tribunal interim order and continues placing more scheme members in this position daily.

Contingent Decisions

28. The consultation confirms that decisions on whether to unwind a case, based on an argument that the member may have taken a different decision if they had known that continued membership of their legacy scheme was an option, should be taken on a case by case basis by the scheme.

29. It is not clear what is meant by the scheme in this case, whether it would that be on a case by case basis per FRA, or a decision of the responsible authority.
30. Such a process would be difficult to manage at the discretion of each of the 45 FRAs. Consistency on the decision would be difficult to achieve.
31. It is unclear where the financial burden would fall from different FRAs making different decisions, if the burden falls on the national scheme rather than individual FRAs it would appear to offer no use for those decisions to be made locally.
32. The board would welcome a conversation on how consistency in decision making could be achieved, for example whether a national review body could be set up for the purpose of making contingent decisions?
33. The Board would support a broad policy decision on who would be entitled to re-visit their decision, rather than on a case by case basis. However, the expectation is that it would be limited to opt-outs no further back than an appropriate point when the opt-out could be solely linked to the introduction of the reformed schemes. The Board would also expect a time limit on when cases could be presented, a period of twelve months would seem reasonable. Further scheme discussions may be necessary to agree the limitation date and time limit to present cases.
34. Naturally there are some technical complexities to be considered which the consultation does not mention. Scheme guidance will be needed on how these should be treated. This might include the following:
 - 34.1. How would re-instatement of pension work for an opt-out? Currently members of the FPS 1992 who opt out are not allowed to re-join the FPS 1992, albeit the final salary link is re-instated.
 - 34.2. Could taper members with 30 years' service but who stayed in the FPS 2015, argue, under the contingent decisions argument, that they would have retired at 30 years and should receive arrears of pension to the retrospective retirement date, with interest payable.
35. It is accepted that employee contributions would be due for the period of non-membership and that the sums involved will be significant. It would therefore be appropriate to allow for arrears to be paid over a period.

Abatement

36. Abatement is common across the FPS² with a need to retain skills and knowledge, particularly during the current pandemic. Firefighters are often re-employed in skilled areas and pensions subjected to abatement.
37. Most retirements that commonly occur across the FPS will be for currently protected firefighters, therefore abatement when it applies, applies in full.
38. Reviews of abatement are common, either at a material change or annually. Reviews are often more frequent for retained firefighters whose pay is subject to fluctuation. The common procedure upon review is to adjust abatement going forward if necessary but not retrospectively.
39. Typically, members who have retired and been re-employed during the remedy period and have not been treated as FPS 1992 members will be taper members. This proposal may see a different treatment of abatement between protected and taper members.
40. Application of the scheme rules on abatement is already complex particularly when a person has concurrent employments such as whole time and retained, retires from both but is re-employed in one.
41. We believe abatement policy needs to be clarified as to how it applies to the whole scheme before it can be determined how it applies to remedy.
42. We would welcome a discussion with HMT with regards to abatement policy and how it applies.

² [Factsheet on Abatement for FPS](#)