

Meeting of the Board 24 March 2022

Home Office consultation response

Background

1. On 8 November 2021, the Home Office launched a consultation on the amendments to the pension scheme regulations to deliver the first set of changes to remove the transitional protections from the FPS 2015.
2. This included how the Home Office would ensure that all members of the Firefighters' Pension Schemes who continue in service will be members of the reformed scheme from 1 April 2022. This means closing the legacy schemes to future accrual from 31 March 2022, so that all members are treated equally for future service. This involves moving any remaining legacy scheme members - i.e. those who had received full transitional protections - into the reformed scheme from 1 April 2022.
3. The consultation included a draft set of regulations to ensure that all members build up benefits in the FPS 2015 from 1 April 2022. It also considered two areas where further amendments may have been needed:
 - 3.1. Purchase of additional benefits. The policy intent is that existing arrangements for purchasing additional service in the legacy schemes can continue, but no new arrangements can be entered into after 31 March 2022.
 - 3.2. Ill-health retirement (IHR). Provision needs to be made to ensure that a protected member who applies for IHR before 31 March 2022 where the application is determined in their favour after that date is treated no less favourably than if the application had been determined on that date.
 - 3.3. For any ill-health cases that straddle 1 April 2022, the intended policy is the introduction of an "ill-health retirement underpin". This will mean that such members receive an FPS 2015 ill-health pension calculated at the date they actually retire; but that if a legacy scheme ill-health pension calculated as at 31 March 2022 would have been higher, the pension in payment must be increased by the difference between the two.
4. The consultation closed on 2 January 2022 and the [Board's response](#) was submitted on that date.

Consultation response

5. The Home Office published their [response to the consultation](#) on 8 March 2022 and this was circulated to the Board on 9 March 2022 with a letter from Peter Spreadbury, Deputy Director, Police Workforce and Professionalism Unit.

6. The consultation response confirms the amendments to the pension scheme regulations which will deliver the first set of changes and remove the transitional protections from the FPS 2015. In addition, it confirms provisions for an ill health underpin which will ensure that a protected member who applies for ill health retirement before 31 March 2022, and which is determined in their favour after that date, is treated no less favourably than if the application had been determined on that date.
7. The response also makes provisions to allow arrangements for members who are purchasing service in the legacy schemes by way of periodical contributions, entered before 1 April 2022, to continue on after that date.
8. These changes enact the policy announced in February 2021 and are consequential to the provisions in the Public Service Pensions and Judicial Offices Act (PSPJOA) which received Royal Assent on 10 March.
9. The consultation response also provides an updated equality impact assessment of any potential impacts on those with protected characteristics as a result of the proposed amendments.

For discussion

10. The Home Office has stated that it looks forward to hearing the Board's views on the consultation response in due course. An analysis of the response is included below to aid discussion and form the basis of a letter to be drafted by the chair.

Question 1

11. The Board agreed that the draft regulations were sufficient to close the final salary schemes to future accrual from 31 March 2022 and ensure that all members accrue service in the 2015 scheme from 1 April 2022.
12. After considering the responses to the consultation, the government is content that the proposed changes will achieve policy intent. The legislative amendments will come into effect on 1 April 2022.

Question 2

13. Board members supported the proposal that provision should be made to protect the position for ill-health retirement (IHR) cases that straddle 1 April 2022. The Board highlighted that thought should be given as to which cases the protection would apply to, which should be specifically defined in the regulations, and as to what stage in the IHR process the protection would be triggered.
14. The Board also pointed out the difficulty in the identification and assessment of certain ill-health conditions, primarily relating to mental health, and suggested that consideration could be given to amending the scheme rules to allow an uplift of award on review.

15. After considering all consultation responses, the government is content to proceed with making changes to the reformed scheme to ensure that where an ill-health decision is pending on 1 April 2022, the member moving across to the reformed scheme will not be placed in a worse position than they would have been in had a decision been made on 31 March 2022 under the relevant legacy scheme.
16. The Home Office has identified one scenario where a member who transitions on 1 April 2022 with an ill-health decision pending could be placed in a worse position. This would be where a legacy 1992 scheme member moves across to the reformed scheme and does not meet the qualifying criteria for ill-health retirement in the reformed scheme but would have met the corresponding criteria under the legacy 1992 scheme.
17. To avoid any such members being in a worse position than if the decision had concluded prior to 1 April 2022, changes will be made to the reformed scheme rules which means that for members where the ill-health assessment process began on or before 31 March 2022, the member is assessed for ill-health retirement against a Normal Pension Age (NPA) of 55.
18. The matters relating to the additional suggestions made by the Board have not been addressed, as they are stated to relate to the fundamentals of the existing ill-health arrangements and are not directly linked to, or created by, the ill-health retirement changes within the scope of this consultation.
19. While the response clearly defines the category of member who will benefit from the protection, no guidance has been provided on when an ill-health process may be deemed to have begun. It can therefore be assumed that FRAs have discretion in this matter.
20. The Board may want to consider further pursuance of the issues relating to current ill-health arrangements, outside of the consultation, now that the overarching principles of delivering remedy have been established through the PSPJOA. There is currently a pending action on the action summary to convene a working group to consider ill-health regulations and processes [04.10.2018 (5)].

Question 3

21. The Board was satisfied that provision had been made in the reformed scheme regulations to ensure that the payment of periodical contributions can continue in specified circumstances.
22. The Board noted that, once returned to their legacy scheme former unprotected or taper members may have been retrospectively eligible to purchase added years within the remedy period. The Board expected that the retrospective regulations should make clear whether this option will be available to members under a contingent decision claim.

23. After considering the consultation responses, the government is content to proceed with the intended policy to prohibit new member elections to purchase additional service under their legacy scheme after 31 March 2022.

24. On the contingent decision point, the response states that the option for non-protected or taper protected members to purchase service when they are returned to their legacy schemes for the remedy period will be considered as part of retrospective remedy changes which are expected to come into force in October 2023.

25. Clause 25(1) to (3) of the PSPJOA confirms:

25 Remedial arrangements to pay voluntary contributions to legacy schemes

(1) Scheme regulations for a Chapter 1 legacy scheme may make provision so as to secure that a relevant member may enter into remedial voluntary contributions arrangements.

(2) In subsection (1)—

“relevant member”, in relation to a Chapter 1 legacy scheme, means a member (other than a deceased member) who has remediable service in an employment or office which, after the coming into force of section 2(1), is pensionable service under the scheme (whether or not by virtue of that provision);

“remedial voluntary contributions arrangements” means arrangements—

(a) which are entered into by a member after the coming into force of section 2(1), and

(b) under which the member pays voluntary contributions to the scheme.

(3) Provision by virtue of subsection (1) may permit a member (“M”) to enter into arrangements only if the scheme manager is satisfied that it is more likely than not that, but for a relevant breach of a non-discrimination rule, M would, during the period of M’s remediable service in the employment or office, have entered into the same or similar arrangements.

Question 4

26. In response to the question on whether the scheme regulation amendments will have an impact on people with protected characteristics, beyond those equality considerations undertaken and set out in the EIA undertaken alongside the consultation, the Board reiterated the points raised in its response to the government consultation on changes to the transitional arrangements to the 2015 schemes.

27. For example, the challenge of maintaining fitness until age 60 may raise age and gender discrimination issues, such as early retirement factors which will impact if firefighters cannot maintain fitness levels to age 60 and leave at age 55.

28. After considering the consultation responses, the government is satisfied that there are no additional equality impacts created by implementing the proposed changes as set out in the consultation document.
29. The response stated that those who remain in employment after 31 March 2022 will accrue further pension benefits in the reformed scheme going forward and will have to continue to maintain fitness standards in the same way as they would have had they remained in their legacy scheme for the post 31 March 2022 period.
30. The response also noted that the Fire and Rescue National Framework requires all FRAs to have a process of fitness assessment and development to ensure that no individual automatically faces dismissal if they fall below fitness standards and cannot be deployed operationally.
31. Should a firefighter fail a fitness assessment through no fault of their own, their employing FRA will consider whether there are any reasonable adjustments that can be made or find suitable alternative employment, and if that is not possible, and the employee is at least aged 55, consider an authority-initiated retirement.
32. This will ensure that no firefighter should face a situation where they are forced to retire without access to a fair pension where they lose fitness through no fault of their own.

Question 5

33. The Board was asked if there were any additional areas which should be addressed to remove future discrimination from the scheme. The Board noted with interest the policy issue set out in the Home Office consultation on amendments to the Police Pension Scheme (PPS) regulations, concerning the interaction of retirement ages between the schemes and the impact of the more penal early retirement factors which apply to deferred benefits.
34. The Board has previously raised the issue of the discrepancy between the early retirement factors in the 2006 legacy scheme and 2015 scheme; noting the anomaly within the 2006 scheme which means that members cannot retire early from active status, and therefore the early retirement factors are significantly higher than they would otherwise be (being based on a normal benefit age of 65).
35. The Board acknowledged that this not a direct function of the age discrimination remedy but rather the 2006 and 2015 scheme designs, so welcomed the opportunity to engage with the Home Office separately from the consultation on the prospective regulations.
36. After considering the consultation responses, the government is content that there are no further areas to be addressed to achieve the policy intention. The other points raised in respect of the interaction of the different scheme retirement ages do not fall within the scope of this consultation. These will be considered under the retrospective aspects of remedy.

37. Neither the response nor the accompanying letter acknowledged the request for future engagement on early retirement factors. The Board is asked to consider whether it wishes to pursue this further.

Board actions

38. The Board is asked to provide views on points for further consideration to include in a letter of acknowledgement to the Home Office.

39. An action will be taken by the chair to draft a letter which will also be shared with stakeholders via the Board's website.

Board Secretary
March 2022