

Meeting of the Board 24 March 2022

## FPS 1992 Scotland commutation

### Background

1. On 24 December 2021, the Scottish Public Pensions Agency (SPPA), on behalf of the Scottish Government, conducted a public consultation inviting stakeholders to register their views on changes to existing provisions for commutation in the 1992 scheme.
2. Those changes were proposed following discussions at the Police Scheme Advisory Board on two aspects of commutation in the equivalent legacy police scheme. Having reached a position on those aspects with police stakeholders, and given the similarities in the legacy schemes, Scottish Ministers were of the view that similar consideration should be given to the equivalent firefighters' provisions.
3. The first aspect concerned the existing commutation factor underpin, which provides retiring firefighters with access to the commutation factor available to an equivalent firefighter in England, should that provide for a higher lump sum<sup>1</sup>. This underpin is due to expire on 31 March 2022, and Scottish Ministers proposed to extend this indefinitely.
4. Secondly, regulation B7 of the 1992 scheme allows commutation of pension to a tax-free lump sum. Generally this allows a member to commute up to 25 per cent of their pension to a lump sum on an actuarially neutral basis, but where the member is at least age 50, has more than 25 years' but less than 30 years' service and retires before the age of 55, a commutation restriction is applied.
5. In those cases a lump sum of no more than two and a quarter times the member's pension can be paid. The proposed changes remove this cap entirely, allowing all firefighters who are entitled to an ordinary pension to commute up to the maximum 25 per cent of their pension.
6. The consultation noted that the proposal will remove a possible disincentive for members to choose to retire before achieving maximum service, therefore it is expected to have some implications for workforce planning.
7. The consultation closed on 1 February 2022 and the amending regulations were laid on 3 March 2022<sup>2</sup>. The proposals were adopted in full. The changes due to come into force on 1 April 2022 and the changes to the commutation cap will not be retrospective. The consultation summary is appended to this paper.

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<sup>1</sup> [Fire- Circular 5/2015 Firefighters' Pension Scheme 1992 Commutation](#)

<sup>2</sup> <https://www.legislation.gov.uk/ssi/2022/79/contents/made>

## Position in England

8. The LGA has been approached by several stakeholders asking whether there are any immediate implications for English FRAs and, if not, if there is any intention for the regulations for England to be amended in due course. The LGA notes that the change to the Scottish regulations has no direct impact on English FRAs; regulation B7(5) for the Firemen's Pension Scheme Order 1992 (England) remains unchanged and restricted commutation will continue.
9. As removal of this provision would require a policy change and amendment to the regulations, the LGA has approached the Home Office for a view.
10. The Home Office has noted that there are a number of substantive differences between the management and governance of the FPS in England and in Scotland. For example, the Scottish FRS is a single FRA employer with a single administrator, the responsible authority is also the scheme manager, and different funding arrangements apply.
11. The Home Office has confirmed that there are no plans in place to amend the commutation provisions in England.
12. The LGA echoes the concerns raised in the SPPA consultation on workforce planning implications.
13. Since 2013, FRAs in England have had the discretion to pay a lump sum in excess of two and a quarter times the full amount of the pension under regulation B7(5A)<sup>3</sup>. If an FRA chooses to use this discretion, an amount equal to the difference between the restricted and unrestricted lump sum has to be paid by the FRA into the pension account. There could also therefore be a financial implication for FRAs should the restriction be removed entirely.

## For discussion

14. Board members are asked to provide views on the removal of the commutation cap in Scotland and whether, in their opinion, an equivalent amendment should be made in England. Views from both employer and member representatives are strongly encouraged.
15. Consideration should be given to the issues raised on workforce planning and financial implications.

## Board actions

16. Following the outcome of the discussion, the Board to determine whether to write formally to the Home Office to request consideration of a legislative amendment.

Board Secretary  
March 2022

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<sup>3</sup> [Commutation uplift factsheet](#)

# **FIREFIGHTERS PENSION SCHEME**

## **REPORT ON THE CONSULTATION FOR COMMUTATION CHANGES TO THE FIREFIGHTERS' PENSION SCHEME (1992) (SCOTLAND)**

### **1. Purpose**

1.1 The purpose of this paper is to provide stakeholders with a summary of the feedback received to the Scottish Government's consultation on proposals for amending provisions in the Firefighters' Pension Scheme (1992) (Scotland), (the 1992 scheme). The draft statutory instrument sought to extend an existing policy to provide retiring officers with the better of actuarial factors available in Scotland, or England and Wales "the underpin". Secondly the instrument introduces changes to officers retiring under the relevant voluntary retirement age with less than 30 years' service. Currently, these officers would have access to a pension commencement lump sum limited to 2.25 times their ordinary pension.

1.2 Changes are proposed to be implemented on 1<sup>st</sup> April 2022

### **2. Background – commutation**

2.1 At retirement with a full ordinary pension, officers are able to commute up to 25% of their pension to a lump sum on an actuarially neutral basis. However, where an officer is under their voluntary retirement age and has less than 30 years' service a longstanding provision limits this lump sum to 2.25 times the ordinary pension.

2.2 In 2016 The Home Office allowed for discretion to waive the restriction on commutation of pension in the English Firefighters' Pension Scheme 1992 for firefighters who are under 55 and have less than 30 years' service, giving Fire and Rescue Authorities discretion to waive the restriction in the interests of efficiency.

#### **The Underpin**

2.2 The Government Actuary's Department (GAD) provide the actuarially-neutral factors which are used in the calculation of lump sums. Up until 2012, factors for lump sums in the 1992 scheme in Scotland were calculated using data solely from England and Wales, due to a lack of specific data from Scotland being available. However, more detailed and robust data on Scotland was available from 2012.

2.3 Due to increased mortality rates in Scotland amongst normal aged pensioners, Scottish factors were lower, which would consequently lead to

lower lump sums. Considering the impact of pension reform and the principle of protection, Scottish Ministers decided to implement an underpin ensuring that the higher of either the England and Wales or Scottish factors are applied to the lump sum at retirement.

### **3. Consultation**

3.1 The Scottish Public Pensions Agency, on behalf of the Scottish Government, conducted a public consultation inviting stakeholders to register their views on changes to existing provisions for commutation in the 1992 scheme. The consultation ran from 24 December 2021 to 1 February 2022.

3.2 The current provisions in place restrict commutation provisions for officers who are under 55 and have less than 30 years' service. Removal of the cap is actuarially neutral. Proposals here remove the cap entirely allowing officers to access the full commutation provision of 25% of pension. During this consultation views were sought explicitly around the proposed timing of 1<sup>st</sup> April as implementation date for removal of the cap, with Scottish Ministers recognising that changes to the treatment of lump sums could have an impact on retirement patterns and in year costs of lump sum payments.

3.3 The underpin currently in place which allows Scottish officers to access commutation factors using England and Wales data is due to end on 31 March 2022. The proposal here is to extend the underpin indefinitely. Whilst factors are regularly reviewed, the factors applicable to the scheme England and Wales have generally provided a slightly higher lump sums than the Scottish-specific factors.

3.4 This report summarises the 3 responses received to the consultation.

### **4. Consultation process**

4.1 The Scottish Government's consultation document was issued by email to stakeholders on 24<sup>th</sup> December 2021 and the documentation was also posted on the Scottish Public Pensions Agency's website.

### **5. Analysis of responses**

5.1 The consultation invited comments on two proposals for inclusion in the scheme draft regulations. The main comments are summarised in part 6.

Respondents can be broken down as follows:

<b>Respondents</b>	<b>Permission to publish response given</b>
<b>Staff side representatives (2)</b>	Not specified
Fire Brigades Union	
Fire Officers Association	
<b>Individual responses (1)</b>	
<b>Employer side 0</b>	

## 6. Key Messages

### Staff Side responses

Fire Brigade Union

- The Fire Brigades Union (FBU) response was brief, indicating they support this proposal and have no concerns.

Fire Officers Association

- The Fire Officers Association were content with the proposal to extend the existing underpin which provides retiring firefighters with access to the commutation factor available to an equivalent firefighter in England, should that provide for a higher lump sum.
- They were also content with the Scottish Ministers' proposal to remove the 2.25 times ordinary pension restriction on the amount of lump sum available to retiring firefighters who have not accrued maximum pensionable service.

The Scottish Government was grateful for the confirmation of the staff side's position.

### Individual Response

Pensioner Member

- I agree the commencement date is set at 1<sup>st</sup> April 2022 as per the proposal. The SPPA has a duty that the implementation of this amendment does not prevent any Firefighters who use rule B7 (5) to retire due to them awaiting the remedy to the Sargeant Pensions age discrimination case.
- The SPPA also must ensure that the additional costs from allowing a quarter to be commuted does not affect the stability of the pensions scheme to the detriment of its members.

The Scottish Government was grateful for the response from this member. In answer to the issues raised:

- The implementation of the amendment will have no impact on Firefighters who use rule B7 (5) to retire whilst awaiting the outcome of the Remedy consultation as these changes commence from 1<sup>st</sup> April 2022 and will not be retrospective.
- This amendment is actuarially neutral and should not impact the stability of the pension scheme.

## **7. Next Steps**

The Scottish Government has considered the responses to the consultation exercise and with the agreement of stakeholders intends to amend the above noted provisions to commutation from 1<sup>st</sup> April 2022.