

Firefighters' Consultees

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Your ref:
Our ref:

27 November 2014

Dear Colleagues

Proposals for transitional and consequential changes to finance and wider pensions legislation in relation to the Firefighters Pension Scheme (Scotland) 2015

The purpose of this document is to seek views on the Firefighters Pensions (Transitional and Consequential Provisions) (Scotland) Regulations which cover a number of technical changes to over-riding pension legislation.

HM Treasury have identified that additional provisions need to be added to the Public Service Pensions Act to enable the effective operation of the new public service pension schemes. The provisions are relevant to the firefighters pension scheme in the following areas in particular:

- i. Transitional provisions to stop members acquiring "early leaver" rights under the existing scheme, or ceasing to be in contracted-out employment, on 1st April 2015.
- ii. Consequential modifications to the tax regime in respect of ill health benefits which will prevent the same benefits from being assessed against tax twice.
- iii. Consequential modifications to the protections on short service benefits to enable the split pension age in the uniformed services schemes (where normal pension age

is age 60 and deferred pension age is equivalent to state pension age).

The changes need to be made by a Scottish statutory instrument under the affirmative process. They must also be made and in force by 1st April 2015. Although regulations will be made on a scheme by scheme basis it is anticipated that they will be debated together in the Scottish parliament.

The following documents are attached:

Annex A: Background and Explanation of the draft regulations

Annex B: Draft Regulations

Annex C: Responses to the Consultation

You can respond to this consultation online via the following link:

http://www.sppa.gov.uk/index.php?option=com_wrapper&view=wrapper&Itemid=1495

Alternatively you may complete the Consultation Response Form attached at Annex C which can be submitted electronically to firepensionsreform@scotland.gsi.gov.uk or by post to the following address:

Firefighters' Consultation (Transitional and Consequential Changes)
SPPA Policy
7 Tweedside Park
Tweedbank
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TD1 3TE

The consultation will close on 4 January **2015** and we ask that anyone wishing to respond does so by then.

We intend to publish a summary of consultation responses in due course and would like to be able to include any response you make in that summary. However, if you ask us not to publish your response to this consultation, we will regard it as confidential, and we will treat it accordingly.

Respondents should also be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act

2002 and will have to respond appropriately to any relevant request made to the SPPA under that Act for information concerning this consultation exercise.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Chad Dawtry', with a large, stylized flourish at the end.

Chad Dawtry
Director of Policy

ANNEX A

Background

Revisions to the existing contracting out provisions and the early leaver provisions of the Pensions Act 1993 are required to enable there to be a single period of service in both the existing and new firefighters' pension schemes to maintain the salary link for transition members for:

- the purposes of Guaranteed Minimum Pensions
- transfers (so that when a member transfers pension out of one scheme it is transferred out of both schemes, and that service in the new scheme counts as service for the old scheme), and
- revaluation.

Modifications are needed to ensure that the early leaver provisions are not triggered when a transition member leaves the old scheme and remains active in the new scheme (i.e. so that they do not become deferred in the old scheme). The structure of the payment of ill-health pension for a transition member may result in the payment of a tax charge which would not otherwise be levied. Modifications are needed to prevent this.

Further modifications are needed to the Pensions Schemes Act 1993 to deliver the policy in section 10 of the Public Service Pensions Act 2013 that a deferred member of the new scheme has a different pension age to an active member.

The modifications listed in paragraphs 1 and 2 are common to nearly all public service pension schemes. The amendment in paragraph 3 is common to the uniformed services.

Explanation of the draft regulations

Part 1- Introductory

1. Citation and commencement and interpretation

Part 2 – modification of contracting-out provisions

2. HMRC will issue a certificate to new schemes in response to an election to contract-out the new scheme. The election to contract-out the new scheme will need to contain some information as specified in regulation 4(3) but it will not be required to contain all the currently prescribed information. Nor will some of the other requirements apply (e.g. requirement to notify earners or consult unions about the contracting out). The new scheme will still need to satisfy the 'reference scheme test', which is the statutory standard in section 12A of the Pension Schemes Act 1993.
3. The amendments will simplify the administrative procedures when contracting out (which will apply to the new scheme for one year). The full procedures required by the legislation would otherwise apply.

Part 3 –modification of early leaver and other provisions

4. The amendments in Part 3 only apply when a transition member has their final salary in the old scheme determined by their final salary in the 2015 scheme as they meet the requirements in paragraphs 1 or 2 of Schedule 7 to the 2013 Act (final salary link).
5. Regulation 6 (certification) modifies section 15A (reduction of guaranteed minimum in consequence of pension debit) of the Pensions Schemes Act 1993 so that a person will be treated as having a single period of pensionable service in both the old and new schemes. This enables the reduction of the guaranteed minimum in the old scheme to take effect whether the member has moved to the new scheme and not transferred the GMP from the old scheme.
6. Regulation 7 (preservation of benefit) applies to modify the protection given to early leavers for the calculation of short service benefit. The modification means that the protections are not triggered when a transition member leaves the old scheme as termination of pensionable service is to be treated for that member as termination of pensionable service in the new scheme.
7. Regulation 8 (revaluation of preserved benefit) modifies section 83 of the Pensions Schemes Act 1993 concerning the revaluation of benefits so that the revaluation takes effect after the member leaves

pensionable service in the new scheme. Whilst the individual is an active member of the 2015 scheme the transition member will not be treated as a deferred member of the old scheme. The transition member will also benefit from the final salary link so that revaluation before pensionable service ends in the new scheme is not intended.

8. Regulation 9 (protection of increases in guaranteed minimum pensions) concerns the protection of increases in guaranteed minimum pensions which contracted out schemes had to provide until 1997. For this purpose regulation 9 provides that the cessation date when a person ceases to be in contracted-out employment under the old scheme (and from which GMPs may need to be increased) is treated as the date when the person leaves their new scheme, and not the date when they transfer from the old scheme to the new scheme.
9. Regulation 10 (protection of increases in guaranteed minimum pensions after abolition of contracting-out) this regulation is required as section 87 is to be amended from April 2016 to implement the abolition of contracting-out for defined benefit schemes. Regulation 10 will come into force at the same time whilst regulation 9 will cease to have effect (see regulation 1(3) for commencement).
10. Regulation 11 (transfer values) modifies chapter 4 of Part 4 which concerns cash equivalent transfers for early leavers. This regulation provides that a person will not acquire the right to a cash equivalent under the old scheme until pensionable service terminates in the new scheme, rather than when the person leaves the old scheme on transferring to the new scheme. However, where calculations of benefit are made based on length of service in the old or the new scheme, the two schemes are then treated separately.
11. Regulation 12 (transfer values regulations) modifies the Occupational Pension Schemes (Transfer Values) Regulations 1996 to enable scheme managers to delay transfers of preserved benefits until after the transition member has left new scheme employment.
12. Regulation 13 (cash transfers and contribution refunds) Chapter 5 of Part 4 concerns cash transfer sums or contribution refunds for those who leave a scheme after 3 months but within 2 years or before their benefits have vested. The Regulations provide that a person will not acquire rights under Chapter 5 until pensionable service terminates in the new scheme, rather than when the person transfers

into the new scheme. The statutory time periods are also measured as though the person had one continuous period of service.

Part 4 – modification of tax regime

13. When a transition member whose old scheme service will have the final salary determined by their final salary in the FPS 2015 is awarded an ill-health pension, the 2015 ill-health pension may contain 3 elements:

- An element in respect of the lower tier ill-health pension entitlement in respect of service in the old scheme;
- A lower tier ill-health pension from pensionable service in the new scheme; and
- If a higher tier ill-health pension is awarded in the FPS 2015, a higher tier ill-health pension.

14. When the transition member reaches their NPA in the old scheme, the element in respect of the lower tier ill-health pension will cease to be paid from the new scheme and is then paid from the old scheme. Under the current tax legislation as unmodified, this would result in an increase in the value of the pension input period. If this increase meant that the amount of the annual allowance for the pension input period was exceeded a tax charge would arise. Regulation 15 prevents this.

15. Under the current tax legislation, the initial value of the 3 elements of the ill-health pension would be measured against the lifetime allowance. Further the cessation of payment of the lower tier ill-health pension from the new scheme would not be deducted yet the lower tier ill-health pension coming into payment from the old scheme would be measured against the member's lifetime allowance. There would then be the possibility of a tax charge. Regulation 14 modifies the application of the current legislation to ensure that the payment of the element in respect of the lower tier ill-health pension entitlement paid from the old scheme will not count against the lifetime allowance.

Part 5- modification of short service benefit provisions

16. Regulation 16 modifies chapter 1 of Part 4 of the Pension Schemes Act 1993 to allow the calculations required by section 10 of the Public Service Pensions Act 2013 where a deferred member of the new scheme has a different pension age (set at state pension age) to that of an active member (set at 60).

ANNEX B

The Firefighters' Pension Scheme (Transitional and Consequential Provisions) (Scotland) Regulations 2015

http://www.sppa.gov.uk/Documents/Firefighters/Firefighters%20Useful%20Resources/Consultations/2014/Firefighters_draft%20consequential%20regulations.pdf

ANNEX C

CONSULTATION RESPONSE FORM - CONSULTATION ON DRAFT REGULATIONS –The Firefighters’ Pension Scheme (Transitional and Consequential Provisions) (Scotland) Regulations 2015

1. Name/Organisation

Organisation Name

Title

Surname

Forename

2. Postal Address

Postcode

Phone

Email

3. Permissions - I am responding as... (please complete either sections (a), (b) and (d) **or** sections (c) and (d):

Individual

or

Group/Organisation

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please state yes or no: _____

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please state yes to one of the following:

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please state yes or no:

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please state yes or no:

ABOUT YOU

I am responding ...

- as a member of the 1992 scheme (old scheme)
- as a member of the 2006 scheme (new scheme)
- on behalf of an Employer Organisation
- on behalf of a Trade Union/Staff Association
- other (please specify)

What is your gender?

- I am female
- I am male

I am employed as...

- a firefighter
- a retained firefighter
- a volunteer firefighter
- a crew manager
- a watch manager
- a station manager
- a group manager
- an area manager
- I'm retired
- other (please specify)

What is your working pattern?

I work part-time

I work full- time

Not applicable

Comments: please use this space to provide any comments.

Comments:

Please e-mail your response to firepensionsreform@scotland.gsi.gov.uk

or

Please post your response to:

Firefighters' Pension reform (2015) Consultation
Policy Branch
SPPA
7 Tweedside Park
Tweedbank
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The closing date for this consultation is 4 January 2015.

