



Scottish Public
Pensions Agency
Buidheann Peinnseanan
Poblach na h-Alba

**The Firefighters' Pension Scheme
(Scotland) (Amendment) Regulations
2022**

**Scottish Government Consultation
2021**

About This Consultation

Overview

This consultation is seeking views on the draft regulations to amend the Firemen's Pension Scheme Order 1992, The Firefighters' Pension Scheme (Scotland) Order 2007 and the Firefighters' Pension Scheme (Scotland) 2015. The amendments are intended to support delivery of The Public Service Pensions and Judicial Offices Bill that is currently being enacted by the UK government. The Bill and these Regulations are part of a package of measures to address the age discrimination that was identified by the Courts in the transitional protections afforded to some scheme members in public service pension schemes.

While the Scottish Ministers have functions in relation to firefighters' pensions in Scotland, occupational pensions in general are a reserved matter outside the powers of The Scottish Parliament. The Scottish Ministers must therefore implement the policy reflected in the Bill.

Duration of Consultation

This consultation will run for a period of eight weeks commencing on Wednesday 24 November 2021 and ending on Tuesday 18 January 2022.

How to respond

Please use the consultation response form and once completed send to sppapolicy@gov.scot before midnight on the closing date.

Alternatively, responses can be posted to:

Scottish Firefighters' Pension Scheme Consultation
SPPA
Tweedside Park
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Further information

If you are unable to access an electronic version of the document, please write to the above address and a paper copy will be provided.

Data Protection Statement

The Scottish Public Pensions Agency (SPPA) is an executive Agency of the Scottish Government and forms part of the legal entity of the Scottish Ministers (Framework Document).

This framework of statutory powers and responsibilities, as agreed with the Scottish Ministers, enables SPPA to undertake the role of data controller for the processing of personal data which is provided as part of your response to the consultation. Any response you send us will be seen in full by SPPA staff dealing with the issues which this consultation is about or planning future consultations.

The process allows informed decisions to be made about how SPPA exercises its public function.

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If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

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Agency Data Protection Officer
Scottish Public Pensions Agency
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Tweedbank
GALASHIELS
TD1 3TE

Tel: 01896 892 469

Website: <https://pensions.gov.scot/>

The contact details for the Information

Commissioner's Office are:
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF

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0303 123 1113

Website: <https://ico.org.uk>

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1. Background

1.1. The Public Service Pensions Act 2013 (the 2013 Act) introduced reforms to public service pension schemes. The aim of the reforms was to implement the recommendations of the [Independent Public Service Pensions Commission: Final Report](#)¹, to make public service pensions, which due to increased workforce longevity had increasingly been paid for by taxpayers, more affordable and sustainable. New pension schemes were introduced, designed to make public service pensions sustainable through a higher normal pension age (NPA) for all scheme members, calculating benefits on a career average revalued earnings (CARE) basis rather than through final salary, and the introduction of a cost control mechanism.

1.2. The 2013 Act required responsible authorities, including devolved governments, to make regulations establishing the new schemes with effect from 1 April 2015. The final salary pension schemes (referred to as “legacy schemes”) were closed on 31 March 2015 and scheme members could no longer accrue any pension in them unless they fell in to the category of what is known as ‘transitional protection’.

1.3. Transitional protection provided for scheme members who were aged within 10 years of their Normal Pension Age (NPA) on 31 March 2012, to be “fully protected” and allowed to remain in their legacy scheme(s). “Taper protected” members who, on 31 March 2012, were aged between 10 and 14 years of their NPA were allowed to remain in their legacy scheme for a period before transitioning to the reformed CARE scheme before 31 March 2022.

1.4. Following reform, members of the judicial and firefighters pension schemes challenged the transitional protection element of the reforms and in December 2018 the [Court of Appeal found](#) that the transitional protections unlawfully discriminated against younger members, as transitional protection was only offered to older scheme members. The Courts required that this unlawful discrimination be remedied by the government. In a [written ministerial statement](#) the UK government accepted the ruling had implications for all public service schemes that contained similar transitional protection arrangements, including the Firefighters’ Pension Scheme (Scotland), and have since [consulted extensively](#) on the mechanism for the remedy.

1.5. The UK Government introduced primary legislation, [The Public Service Pensions and Judicial Offices Bill \(PSPJO Bill\)](#), to Parliament in July 2021. The provisions in this Bill mean that all scheme members, regardless of transitional protections, who continue in service from 1 April 2022 will do so as members of the Firefighters’ Pension Scheme (Scotland) 2015, hereafter referred to as “the 2015

¹ This is also known as ‘The Hutton Report’

Scheme”. The Firemen's Pension Scheme 1992² and The New Firefighters' Pension Scheme (Scotland)³, known as “the Legacy Schemes”, will be closed to all members for future service from 31 March 2022. The period between 1 April 2015 and 31 March 2022 where scheme members may have built up pension benefits in any one of the above schemes⁴ is known as ‘the remedy period’. Eligible scheme members will have a choice of pension benefits for the remedy period⁵.

1.6. The primary and secondary legislation will remove the transitional protection that the Courts found to be discriminatory as all eligible members, irrespective of age and proximity to NPA, will now have accrued benefits in their legacy schemes for the remedy period. All eligible members will be given a choice of preferred pension benefits for the remedy period under the provision known as deferred choice underpin (DCU) (pensioner members and representatives of deceased members will be given what is referred to as an immediate choice).

1.7. Secondary legislation in support of the Bill will be made in two phases. The first phase addresses the prospective changes and is the subject of this consultation. Phase two will follow in 2022/23 and will establish the DCU/immediate choice and return eligible members to their legacy schemes for the remedy period.

1.8. The first phase of secondary legislation to be consulted on now will allow provisions for the prospective remedy changes to be enabled. That is, the move of all active scheme members to the reformed scheme from 1 April 2022 and the closure of the legacy schemes to future accrual from 31 March 2022. This ensures that from 1 April 2022 all serving officers who are in pensionable service will be accruing future benefits in the same scheme.

1.9. The second phase of draft Regulations will be new provisions that implement the DCU/immediate choice and facilitate the correction of pensions already in payment including addressing the underpayment and overpayment of pensions and pension contributions for pension scheme members and pensioners. The second set of draft Regulations is out of the scope of this consultation and will be consulted on separately at a later date.

² This pension scheme is established in S.I. 1992/129

³ This pension scheme is established in S.S.I. 2007/199

⁴ This is dependent on a scheme member's personal transitional protection status. Between 1 April 2015 and 31 March 2022 protected members will have built up pension in their legacy scheme while unprotected scheme members will have built up pension in the reformed scheme. Taper protected members may have built up a mixture of both legacy and reformed scheme pension during the remedy period.

⁵ The remedy will allow all eligible members to choose whether they wish to receive legacy or reformed scheme benefits in relation to the remedy period. Members can choose either legacy scheme benefits for the full period or reformed scheme benefits, they cannot opt for a mixture of the two.

2. The prospective regulations to be consulted on

2.1. The rules of the Firefighters' Pension Schemes are set out in Regulations, which are a form of secondary legislation. Rules can be amended or replaced by new Regulations drawn up in accordance with the powers under, and requirements of, the Public Service Pensions Act 2013 and, where relevant, the Superannuation Act 1972.

2.2. Two distinct sets of Regulations are required to support the Bill requirements and address the discrimination in the transitional protections. This consultation covers the first set of draft scheme regulations and must be consulted on at the same time as the Bill progresses through Parliament to ensure that necessary scheme amendments can be enacted for 1 April 2022 when the Bill comes into force.

2.3. The draft Regulations under consultation will:

1. Close the Legacy Schemes to future accrual from 1 April 2022
2. Move all active scheme members to the 2015 Scheme⁶
3. Create an underpin that facilitates the continuation of any ill health retirements that are in progress over the period when the Legacy Scheme closes and active scheme members move to the 2015 Scheme

3. The Draft Amendments

3.1. The Scottish Ministers present for consultation the draft **The Firefighters' Pension Scheme (Scotland) (Amendment) Regulations 2022**. This section explains how the draft Regulations amend existing scheme rules and deliver the Bill requirements.

3.2. **Regulation 1**(1) establishes the title of the Regulations and in 1(2) the commencement date is set at 1 April 2022.

3.3. **Regulation 2** of this draft Scottish Statutory Instrument (SSI) ensures that Firefighters' Pension Scheme (Scotland) Regulations 2015⁷ follow the requirements of the 2013 Act (section 18) as amended by clause 76 of the PSPJO Bill restricting the further accrual of pensionable service in the Legacy Schemes from 1 April 2022. This is achieved by:

⁶ This will effectively move those who are not already members of the 2015 Scheme. In all cases these will be members who held full transitional protection and were classed as protected scheme members. Those previously classed as Unprotected and Taper Protected will already be accruing pension as members of the 2015 Scheme.

⁷ S.S.I. 2015/19

- defining the meaning of “closing date” as 31 March 2022 for full protection members,
- setting the transition date for protected members as 1 April 2022,
- Defining the date full protection members cease to be in pensionable service in the Legacy Scheme as 1 April 2022,

3.4. **Regulation 2(2)** sets the Legacy Scheme closing date at 31 March 2022 and the transition date for protected members to the 2015 Scheme at 1 April 2022. This is achieved by inserting further detail to the definition of closing date in paragraph 1 of Schedule 2 of **The Firefighters’ Pension Scheme (Scotland) Regulations 2015**. The addition to the Regulations is set out below (in bold):

“closing date” —

(a) in relation to an existing scheme, means the date referred to in section 18(4)(a) or (b) of the 2013 Act, as the case may be;

(b) in relation to an existing public body pension scheme, means the date determined under section 31(2) of the 2013 Act by the public authority responsible for that scheme; and

(c) in relation to a transition member, means—

*(i) if the member is a tapered protection member of the 1992 Scheme or the NFPS, the tapered protection closing date for that **member**,*

(ii) if the member is a full protection member of the 1992 Scheme or the NFPS, 31 March 2022, or

(iii) if the member is not a protected member of one of those schemes, the scheme closing date.

The transition date is set at 1 April 2022. The amended regulation is set out below:

“transition date”, in relation to a transition member, means—

*(a) if the member is a tapered protection member of the 1992 Scheme or the NFPS, the day after the tapered protection closing date for that **member**,*

(b) if the member is a full protection member of the 1992 Scheme or the NFPS, 1 April 2022, and

(c) if the member is not a protected member of the 1992 Scheme or the NFPS, the day after the scheme closing date, or, if later, the day the person ceased to be a protected member of that scheme.

3.5. **Regulation 2(3)** amends the closing date for taper protected members of the NFPS. This sets the last possible day for protection as 31 March 2022. The intended amendment to paragraph 3 (meaning of “tapered protection closing date”) of Schedule 2 is set out below:

3 Meaning of “tapered protection closing date”

(1) Subject to sub-paragraphs (2) to (4), the tapered protection closing date for a tapered protection member of the 1992 Scheme is the date found by applying the relevant date in column 3 of table 1 in Part 4 of this Schedule to the birthday referred to in column 1 and column 2.

(2) For a tapered protection member of the 1992 Scheme falling within paragraph 18(3), the tapered protection closing date is the date found by applying the relevant date in column 3 of table 3 in Part 4 of this Schedule to the birthday referred to in column 1 and column 2.

(3) For a tapered protection member of the 1992 Scheme falling within paragraph 18(4), the tapered protection closing date is the date found by applying the relevant date in column 2 of table 4 in Part 4 of this Schedule to the period of pensionable service under that scheme completed by the member at 1st April 2012 (referred to in column 1).

(4) For a tapered protection member of the 1992 Scheme falling within paragraph 18(5), the tapered protection closing date is the date found by applying the relevant date in column 2 of table 5 in Part 4 of this Schedule to the period shown in column 1 which represents the sum of—

(a) the member's completed pensionable service under the 1992 Scheme at 1st April 2012 (in complete years and months); and

(b) the member's age at 1st April 2012 (in complete years and months).

(5) Subject to sub-paragraphs (6) and (7), the tapered protection closing date for a tapered protection member of the NFPS is the date found by applying the relevant date in column 3 of table 2 in Part 4 of this Schedule to the birthday referred to in column 1 and column 2.

(6) The tapered protection closing date for a tapered protection member of the NFPS to whom paragraph 9(5) or 21 applies is—

(a) 31 March 2022; or

(b) an earlier date determined by the scheme manager.

(7) In the case of a tapered protection member of the NFPS who is a special member of the NFPS, the tapered protection closing date is the date found by applying the relevant date in column 3 of the table 1 in Part 4 of this Schedule to the birthday referred to in column 1 and column 2.

3.6. **Regulation 2(4)** re-definines the meaning of full protection member in paragraph 9 (full protection members of the 1992 Scheme or the NFPS) of Schedule 2. This effectively sets the last possible day for full protection in both the 1992 Scheme and NFPS as 31 March 2022. The intended amendment to the Regulation is set out below:

9 Full protection members of the 1992 Scheme or the NFPS

(1) A person (P) to whom any of paragraphs 12 to 14 applies is a full protection member of the 1992 Scheme or the NFPS, as the case may be.

(2) P ceases to be a full protection member of the 1992 Scheme or the NFPS, as the case may be—

(a) on 31 March 2022; or

(b) if earlier, when P ceases to be in pensionable service under that scheme and ceases to be eligible to be an active member of the NFPS, unless sub-paragraph (3) or (4) applies.

(2A) Where P was a full protection member of the 1992 Scheme and after retiring from pensionable service in this scheme became entitled to a continuous service pension under rule B1A, an ordinary pension under rule B1 or a short service award under rule B2 of that scheme or a continued pension under rule B2A, P ceases to be eligible to be a full protection member of the NFPS.

(3) This sub-paragraph applies if—

(a) P returns to service which is pensionable under the NFPS from service which is pensionable under an existing scheme (other than the 1992 Scheme) or an existing public body pension scheme; and

(b) P would have been a fully protected member of that existing scheme or existing public body pension scheme had P re-entered service which is pensionable under that scheme on the date P returns to service which is pensionable under the NFPS.

(4) This sub-paragraph applies if—

(a) P returns to service which is pensionable under the NFPS otherwise than from service which is pensionable under an existing scheme or an existing public body pension scheme; and

(b) P returns to service which is pensionable under the NFPS after a gap in service not exceeding five years.

(5) If P returns to service which is pensionable under the NFPS in circumstances where sub-paragraph (6) applies, P is a tapered protection member of the NFPS when P returns to that service.

(6) This sub-paragraph applies if—

(a) P returns to service which is pensionable under the NFPS from service which is pensionable under an existing scheme or an existing public body pension scheme; and

(b) P would have been a protected member of the existing scheme or existing public body pension scheme by virtue of an exception to which section 18(7)(a) and (b) of the 2013 Act (or that section as applied by section 31(4)) applies had P re-entered service which is pensionable under that scheme on the date P returns to service which is pensionable under the NFPS.

(7) For the purpose of paragraph (4)(b), after the scheme closing date P is not on a gap in service while P is in pensionable public service.

4. Interaction of retirement ages in the Firefighters' pension schemes

4.1 The legacy 1992 Scheme and the 2015 Scheme allow members to draw their pension at different ages. The 1992 scheme allows members to retire on an ordinary pension from age 50 with 25 years' service. The 2015 Scheme has a pension age of 60 set by the 2013 Act, or a deferred pension age set at each member's state pension age. In addition, the Normal Minimum Pension Age (NMPA) set by the Finance Act 2004 does not permit retirement from the reformed scheme before age 55, other than retirement on grounds of medical unfitness. This means that 1992 scheme transitional members who move to the 2015 Scheme may be in a position where they will be able to retire from the 1992 Legacy scheme (having reached 25 years' overall pensionable service and age 50) but are not be able to access any pension built up in the 2015 Scheme until their state pension age, or from age 55 at an actuarially reduced rate.

4.2 Whilst 2015 Remedy does not explicitly introduce any new aspect to this issue we will continue to give due consideration throughout the consultation period to understand the full implications of this.

5. Ill Health Underpin

5.1. There will be cases that will be in the process of being considered for ill health retirement during the transition to the reformed scheme i.e. the ill health process will begin on or before 31 March 2022 and will not conclude until 1 April 2022 or later. This area is still under development so our draft regulations do not contain any provision on ill health retirements.

5.2. Once the policy is finalised the intention is to make Regulations protecting the position of ill health retirees whose cases are underway but still pending on 31 March next year, and in particular to ensure they are no worse off as a result of a retirement decision being made after that date. This will be achieved through an “underpin” ensuring that members who will receive a 2015 Scheme ill health pension calculated at the date they actually retire will not receive less than they would have achieved if the pensioner had received a legacy scheme pension calculated at 31 March 2022. If it is shown that the legacy terms would have been greater, the 2015 Scheme pension must be increased by the difference between the two.

5.3. The proposed ill health underpin will work as follows:

- A member makes an application for retirement on grounds of Ill health on or before 31 March 2022
- The member then automatically moves to the 2015 Scheme on 1 April 2022 and remains in the scheme until the ill health retirement has completed
- The 2015 Scheme pension arrangement applies in the same way as it does to any other member who moves to the 2015 Scheme before their ill health process starts
- A notional ill health pension is calculated in accordance with the member’s legacy scheme provisions on the basis that they had been ill health retired on 31 March 2022
- A comparison of the two pensions is made and where the legacy arrangements would have resulted in a higher pension the 2015 Scheme pension is uplifted by the amount of the difference between the two arrangements
- The final ill health pension and uplift (if applicable) will be paid from the 2015 Scheme

5.4. Where the notional legacy scheme ill health pension provides a greater ill health pension entitlement, the difference between both calculations will be paid to the member as a pension enhancement from the 2015 Scheme. Survivor benefits will be paid in accordance with the 2015 Scheme regulations.

6. Legacy Scheme Additional Benefits Arrangements

6.1. Provisions which allow arrangements for purchasing additional pensionable service in the Legacy Schemes through periodical contributions agreements will continue after 31 March 2022.

6.2. It is possible for members of the Legacy Schemes to purchase additional pensionable service, depending on individual circumstances and by agreement with the scheme manager. This can be paid for either in a lump sum or by paying additional contributions in instalments over a number of years. All existing agreements that are already underway will continue after the transfer to the 2015 Scheme. This is because they do not involve continuing to accrue legacy scheme pensions, rather, the scheme members concerned are paying in instalments for a previously agreed enhancement to their pension or pensionable service. These arrangements are therefore unaffected by the Bill or by these draft regulations.

6.3. The policy intention is to ensure that only valid, existing arrangements entered into before 1 April 2022 will be permitted to continue and that scheme members will not be able to enter into any new arrangements to purchase additional pension in the Legacy Scheme after 31 March 2022.

6.4. We are considering the impact of the Bill on the existing arrangements and may need to make additional amendments to these regulations to ensure the policy intention can be fulfilled. Any further amendment that is required will be included in the final Regulations.

7. Other Transitional Provisions

7.1. All other transitional provisions that exist in the 2015 Scheme are not affected by The Bill or these draft Regulations. In particular:

7.2. **Final salary link** – The 2013 Act⁸ already provides a final salary link, meaning that legacy scheme benefits are calculated with reference to the member's pensionable earnings at the point of retirement, even though that may be as a member of the 2015 scheme. This provision is maintained beyond 2022.

7.3. **Calculation of weighted accrual** – Transitional members of the 1992 Legacy Scheme may benefit from weighted accrual that continues after the transition to the 2015 Scheme. This provision is already established in Part 2A (Continuous Service Pension) of Schedule 2 of The Firemen's Pension Scheme Order 1992 (S). No further amendment is required.

⁸ [Schedule 7 of The Public Service Pensions Act 2013](#)

8. Consultation Questions

8.1 Question 1 - Do you think the draft Regulations adequately ensure that the legacy pension schemes are closed to future accrual from 31 March 2022 and that all active pension scheme members are moved to the 2015 pension scheme from 1 April 2022? Do you think there are any errors or omissions in the draft in achieving this aim?

8.2 Question 2 - Do you have any views on the proposed treatment of pension scheme members who have applied for ill health retirement before 31 March 2022 but who don't retire until on or after 1 April 2022? In particular, does this proposal in your view, ensure that these members are treated no less favourably than if the application was determined on 31 March?

8.3 Question 3 - Do you have any views on the proposed treatment of additional contributions arrangements? In particular, do you agree that existing provisions in the regulations allow for arrangements on added pension and added service entered into under the existing schemes to continue after 31st March 2022?

8.4 Question 4 - Do the prospective Regulations in this consultation have an impact on people with protected characteristics, beyond those equality considerations undertaken and set out in the equalities impact analysis undertaken alongside this consultation and in support of the PSPJO Bill. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation. Specifically, do you think that the draft regulation amendments and policy intent described above will have any positive or negative impacts on people with protected characteristics, beyond those already considered? If so, which and why/why not?

8.5 Question 5 - Are there any other areas that you think should be addressed in these regulations to ensure all members are moved to the 2015 scheme and the differential treatment as identified by the Court of Appeal is ended?