



Scottish Public
Pensions Agency

Buidheann Peinnseanan
Poblach na h-Alba

Firefighters' Pension Scheme

Consultation on implementing the 2015 Remedy

About This Consultation

Overview

This consultation is seeking views on the draft regulations to implement the retrospective phase of the 2015 remedy. The regulations are intended to support delivery of The Public Service Pensions and Judicial Offices Act 2022 (PSPJOA 2022). The Act 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 executively devolved 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 PSPJOA 2022.

Duration of Consultation

This consultation will run from 16 May 2023 ending on 23 July 2023

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



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Further information

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

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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 reformed schemes. The CARE schemes in Scotland were all introduced 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 into the category of what is known as ‘transitional protection’. All other members joined the Firefighters’ Pension Scheme (Scotland) 2015 (the 2015 scheme).

1.3. Transitional protection was provided for scheme members who were closest to retirement. Those aged within 10 years of their NPA on 31 March 2012, were “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 This is also known as ‘The Hutton Report’

1.4. Following reform, members of the judicial and firefighters' pension schemes challenged the transitional protection element of the reforms. In this case, known as McCloud/Sargeant the [Court of Appeal found](#) in December 2018 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. Following consultation, the UK Government introduced primary legislation, and the Public Service Pensions and Judicial Offices Act 2022 (PSPJOA 2022) was given Royal Assent on 10 March 2022. The provisions in this Act mean that all scheme members, regardless of transitional protections, who continued in service from 1 April 2022 did so as members of the Firefighters' Pension Scheme (Scotland) 2015, hereafter referred to as "the 2015 Scheme". The Fire Pension Scheme (Scotland) (incorporating the Firefighters Pension Scheme (Scotland) Order 2007 and the Firemen's Pension Scheme Order 1992), known as "the Legacy Scheme," 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 schemes² is known as 'the remedy period'. Eligible scheme members will have a choice of pension benefits for the remedy period³.

² 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.

³ 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.

1.6. The primary (and secondary) legislation removes the discrimination as all eligible members, irrespective of age and proximity to NPA, will be treated as having accrued rights in their legacy schemes for the remedy period. All eligible active and deferred members will be given a choice of preferred pension benefits for the remedy period under the provision known as deferred choice (DC). Pensioner members and representatives of deceased members will be given what is referred to as an immediate choice (IC).

1.7. Secondary legislation in support of the Act will be made in two phases. The first phase of secondary legislation delivered “prospective remedy.” That is, all active scheme members moved to the reformed scheme from 1 April 2022 and the legacy schemes were closed to future accrual from 31 March 2022⁴. This ensures that from 1 April 2022 all serving firefighters who are in pensionable service will be accruing future benefits in the same scheme. Regulations delivering the first phase were consulted on between November 2021 and February 2022 and came into force on 1 April 2022⁵.

1.8. The second phase of secondary legislation is the subject of this consultation and addresses the retrospective changes needed to deliver remedy in full. These regulations will:

- implement the DCU and IC,
- facilitate the return of members’ remediable service to the legacy scheme,
- establish how remedy information must be provided to recipients,
- facilitate the correction of pensions already in payment, including the underpayment and overpayment of pensions and pension contributions for pension scheme members, pensioners and dependants.

⁴ This moved 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.

⁵ SSI 2022/103 - The Firefighters Pension Scheme (Scotland) Amendment Regulations 2022

2. The consultation and who we want to hear from

2.1. The provisions of the Firefighters' Pension Schemes are set out in Orders and Regulations, which are a form of secondary legislation. Provisions can be amended or replaced by new Regulations drawn up in accordance with the powers under, and requirements of, the PSPJOA 2022, the 2013 Act, Fire and Rescue Services Act 2004, Fire Services Act 1959 and the Fire Services Act 1947.

2.2. This consultation focuses on the proposed second set of regulations known as "the retrospective regulations." These regulations will enact the various complex elements of pension remedy that will address the retrospective elements of the 2015 remedy as set out in the PSPJOA 2022.

2.3. This consultation welcomes views from all interested parties on the draft regulations and policy intent contained in this document. We are particularly interested in feedback from fire officers and their representative bodies, the Fire Brigades Union, Scottish Fire and Rescue Service, The Fire Officers' Association and National Association of Retired Firefighters', and others who have an interest in firefighters' pensions and wider public service pensions.

3. The remedy period and remediable service

3.1. The remedy period is defined as the period between 1 April 2015 and 31 March 2022. This is the period in which the age discrimination occurred. The discriminatory rules ended when the differential treatment based on age ended on 31 March 2022, with the transfer of all remaining members in the legacy schemes to the reformed Firefighters' pension scheme 2015. The choice of scheme benefits, which is the core of the remedy, is only offered in relation to pensionable service which took place in this remedy period.

3.2. Remediable service is defined in section 1 of the PSPJOA 2022, and eligibility is subject to four conditions:

1. The pensionable service took place in the period between 1 April 2015 to 31 March 2022 (the remedy period)
2. The pensionable service is either from the legacy scheme or was accrued while the member was considered as being in the reformed scheme (i.e. was considered unprotected for some or all of the service)
3. The member was a member of a legacy scheme on or before 31 March 2012⁶
4. The member does not have a disqualifying break of service⁷

3.3. Remediable service includes legacy and reformed scheme service in the remedy period. This is set out in Part 1 of the draft Regulations as “remediable service as a firefighter”.

4. Rollback to the legacy scheme(s)

4.1. Service built up by eligible members of the reformed scheme will be placed back into the legacy scheme retrospectively for the remedy period. This is known as ‘rollback’ because from 1 October 2023, remediable service in the reformed scheme is treated as never having been pensionable in that scheme and is instead treated as always having been pensionable service under the legacy scheme. This means the remediable service is effectively rolled back to the legacy scheme the eligible member was a member of immediately before moving to the reformed scheme. Section 2(1) of the PSPJOA 2022 establishes the rollback of remediable service to the legacy scheme.

⁶ Firefighters’ who were not active in a legacy pension scheme but had entitlement to join the legacy 2006 Firefighters’ Pension Scheme also meet this condition

⁷ a disqualifying break is defined as a break of more than five years between membership of a public service pension scheme

5. Deferred choice to receive new scheme benefits

5.1. Deferred choice (DC) is set out in Section 10 of the PSPJOA 2022 and Part 3 of the draft Regulations. DC applies to eligible members who are not yet in receipt of their pension benefits. This includes active and deferred members of the pension scheme. At retirement, eligible members will make a choice between legacy or reformed scheme benefits for the remedy period. The result of the choice will be reflected in the value of the benefits put into payment for the remedy period. As a result of rollback, benefits accrued in the remedy period are paid from the legacy scheme but will be calculated according to the scheme that was chosen.

5.2. The scheme manager must specify an election period⁸ during which time the member must make their choice. This must not be earlier than one year before the date it is reasonably expected that, if a deferred choice is made, reformed scheme benefits would become payable in relation to the member's remedy period service. The choice is deemed to take effect immediately before the member becomes a pensioner, or where a member dies in service, the choice is deemed to have taken effect immediately before the member died.

5.3. If a member does not offer a choice within the election period, the scheme manager may use powers in Section 12 of the PSPJOA 2022 to determine which scheme benefits to pay (see “deemed election” in section 7 below).

5.4. To allow the member to make an informed choice, a forecast of DC benefits will be issued to the eligible member on request (through an application for retirement benefits) and it is proposed that this request should be made between six and 12 months from the intended retirement date. This will be sent to the member in the form of a remediable service statement (RSS) (see section 8 on RSS in this consultation) with the proposed election period in which the member must

⁸ Section 11(1) – PSPJOA 2022

make their choice between legacy and reformed scheme benefits, set at 12 weeks from the date of the RSS being issued. A DC may be revoked at any point up until the point of retirement.

5.5. In circumstances where an eligible member has died before making a choice, the regulations provide for a person to make an election in respect of the deceased member's benefits. The regulations describe such a person as an "eligible decision maker." The election period for an eligible decision maker is also proposed to be set at 12 weeks from the RSS being issued. Schedule 1 of these draft regulations set out who can make a DC for a deceased member on or after 1 October 2023.

6. Immediate choice

6.1. Immediate Choice (IC) is set out in Section 6 of the PSPJOA 2022 and in Part 3 of the draft Regulations and applies to eligible members who are already in receipt of pension benefits before 1 October 2023. This includes pensioner members and representatives of deceased pensioner members. Under IC, members will make a choice as soon as is practicable on or after 1 October 2023. An election period of one year from receipt of an RSS is set in the PSPJOA 2022 and eligible members must make their IC choice within that timeframe⁹.

6.2. It is the intention of the SPPA to prioritise the provision of remediable service statements to IC members who are anticipated to be in a position of detriment, that is they may be in receipt of a rate of pension that is lower than the rate they would have claimed had they not been subject to the discrimination. In particular, that category could include pensioner members who have retired on grounds of ill-

⁹ This is established in Section 6 of the PSPJOA 2022. There is a time limit of 18 months from 1 October 2023 for scheme administrators to complete the distribution of RSS however the scheme manager retains discretion to set a later time where it is considered reasonable to do so.

health, and those who retired with mixed service¹⁰ who may wish to receive benefits solely from their legacy scheme.

6.3. An IC decision is irrevocable and is deemed to take effect immediately when the member first became a pensioner, or if the member died before becoming a pensioner, then immediately before the member's death. Underpaid or overpaid pension benefits that arise from an IC decision will be settled with the eligible pensioner (or for deceased pensioners the eligible decision-maker). See section 15 on liabilities and payments.

7. Deemed election

7.1. If an eligible member or eligible decision-maker fails to make a choice of benefits before the end of the 12-month election period, the Act provides that the scheme manager may deem an election to have taken place. The default position that SPPA expects to adopt in these cases is to deem that legacy scheme benefits have been chosen. The scheme manager will not ordinarily deem that the failure to make a choice is treated as an election for reformed scheme benefits.

7.2. However, there may be some exceptional cases where it is appropriate for the scheme manager to exercise discretion as a decision-maker and take a different approach. In these cases, an assessment of the total value of the pension benefits (pension and lump sum) will be undertaken. Where it appears that reformed scheme benefits may be more beneficial to the recipient following consideration of the total value of the pension benefits, the scheme manager will consult with the scheme actuary.

¹⁰ These are members who were termed as holding tapered transitional protection so were members of the legacy scheme after 1 April 2015 but transitioned to the reformed scheme before 1 April 2022

7.3. If it is established that the overall pension value is greater when based on remediable service in the reformed scheme rather than legacy scheme then an election for those benefits will be deemed to be made on behalf of the member (or other decision-maker).

8. Remediable service statements

8.1. The PSPJOA 2022 requires scheme managers to provide all eligible members with a remediable service statement (RSS) by 1 April 2025 or such later date as the scheme manager considers reasonable after considering the circumstances of a particular member or class of members. The RSS is intended to ensure that these members, pensioners, or the beneficiaries of deceased members have sufficient information to make an informed choice of which benefits they wish to receive for their remediable service. The information provided in each RSS must comply with the requirements of the PSPJOA 2022 and the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022 (PSP Directions 2022). The provisions for RSS are set out in Part 2 of the draft Regulations.

8.2. It is important that eligible members are provided with accurate and relevant information that meets their specific circumstances. The content, timing and frequency of an RSS will therefore depend on whether the eligible member is to make an IC or a DC. The format of the RSS will be tailored to the circumstances of particular groups of members.

RSS for active and deferred members

8.3. This RSS will set out dual benefit information based on the remediable service in the member's legacy scheme and for reformed scheme equivalent benefits. The timing for this RSS will align with the requirement to provide annual scheme

information by 31 August each year¹¹, so the RSS will be incorporated into the Annual Benefit Statement (ABS) for these members. This means that for active members the first statement will be issued to this group by 31 August 2024.

8.4. Active members, and deferred legacy 2006 scheme members, will then receive an annual RSS combined with their ABS until they reach the point of retirement or other benefits crystallisation event that means they must make a deferred choice. Deferred legacy 1992 scheme and new 2015 scheme members (those who are no longer contributing to their pension but have not accessed their pension benefits), will only receive one RSS and will not then receive an ABS for each year however deferred members can request one RSS each year.

Deferred choice election RSS for active, deferred, and deceased members

8.5. Eligible active or deferred members who, on or after 1 October 2023, apply to retire and access their pension benefits, will be given a DC RSS. The information provided in this statement will enable the active or deferred member to make a choice about which set of benefits they wish to receive in respect of their remediable service.

8.6. Where an active or deferred member dies on or after 1 October 2023, the scheme manager will provide a DC RSS to an eligible decision-maker¹², and they will make the choice in respect of the deceased member's remediable service.

Immediate choice election RSS for pensioner and deceased members

8.7. Eligible pensioners or the beneficiaries of deceased pensioners who retired before 1 October 2023, will be provided with an IC RSS within 18 months of 1 October

¹¹ section 14 of the Public Service Pensions Act 2013

¹² see Schedule 1 of the draft Regulations for who can be an eligible decision-maker

2023 (or such later date as the scheme manager considers reasonable after considering the circumstances of a particular member or class of members).

8.8. The IC RSS will illustrate the effect of choosing alternative scheme benefits to the benefits already in payment and those to be paid in the future. This will include details of the total benefits for annual pension, and pension commencement lump sum (if applicable), and any under or overpayments that may occur if an election for alternate scheme benefits is made (including the consequences of any adjustments in respect of correcting member contributions, voluntary contributions and transferred-in benefits). The IC RSS will also detail how to make the choice, the timeframe in which members must make their choice (the election period)¹³, and what happens if no choice is made within the election period.

8.9. The distribution of RSS will be prioritised so that those who are considered by the scheme manager to be in the most immediate detriment will receive a choice statement first, and those who are considered more likely to already be in receipt of preferred benefits receive a choice later in the statutory period. In all cases, if the member's choice results in a member being owed extra pension benefits by the scheme, the scheme manager will backdate the extra pension benefits to the member's retirement date and pay the difference with interest. See section 15 for more information about how interest will be applied to these sums.

8.10. Where an eligible member dies before these regulations come into force the scheme manager will provide an RSS to a designated person (see regulation 8) and they will make the choice election in respect of the deceased member's remediable service.

¹³ See Sections 5 & 6 of this document for the election periods for DC & IC decisions

9. Contingent decisions

9.1. A contingent decision is a decision that was taken by an eligible member during the remediable service period that they believe they may not have taken had it not been for the discrimination identified by the courts. In order to use the process set out below, the decision must relate to the member's firefighters' pension and in all cases an eligible member must make a claim to the scheme.

9.2. To facilitate this, an application process is being designed and members will be made aware of the process and time limits for making a contingent decision application. Within the application, members will be expected to confirm the decision that was made and outline how that decision would have been different had they been able to either remain in their legacy scheme or join the reformed scheme in the remedy period.

9.3. Evidence to support the claim will be required and should be submitted with the application. This may be evidence the member holds or reference to information that is already known to the scheme administrators such as information held in an opt out form or an application for additional pension that was not acted on. On receipt of the application and evidence the scheme manager will consider and decide if the claim is accepted or not. If the application is rejected, the applicant may submit an appeal for independent assessment through the existing Internal Dispute Resolution Procedure process.

9.4. There are three main categories of contingent decision in the firefighters' pension scheme:

- Opted-out service
- Transfers
- Additional service

Opted-out service

9.5. Provision is made in Part 3 of the draft Regulations for members who opted-out of the Firefighters' Pension Scheme because of the discrimination to have the opportunity to have their opted-out service during the remedy period reinstated.

9.6. The eligible member must complete a contingent decisions application within 12 months of section 2(1) coming into force on 1 October 2023. The decision to opt-out must have been communicated to the scheme on or after 10 March 2012. This was the date on which the reforms to the public service pension schemes were announced which may have prompted some members to opt-out of the scheme.

9.7. A decision to opt-out of the scheme may have been made before 1 April 2015, however only opted out service during the remedy period can be reinstated under this provision. Evidence in support of the application that demonstrates the decision to opt-out of the scheme related in some way to the discriminatory elements of the pension reforms must be provided.

9.8. The scheme manager will consider the application and where the claim is accepted the applicant will have a period of 12 months to confirm their election to have opted out service reinstated. An opted-out RSS will be sent to the applicant detailing the contributions (and any interest) required to be paid to the scheme by the member for the opted-out service and the options available to pay those contributions. If the member proceeds with the election and once the funds have been paid, by lump sum or by instalments, to have their opted-out service reinstated then they will be considered in the same way as other eligible members and offered either an immediate choice if they are already in receipt of benefits, or deferred choice of benefits at retirement (or other eligible Benefit Crystallisation Event (BCE)).

Transfers

9.9. In some cases, a member may have chosen to transfer (in and/or out) and now wishes to revisit the decision. Some may also have chosen not to transfer and now wish to do so.

9.10. Eligible members who have not transferred in and who could have done under the legacy scheme rules and now wish to retrospectively transfer in through the contingent decisions process will be given the opportunity to do so through scheme regulations. This is provided in Part 6 of the draft Regulations, where a window of 12 months from 1 October 2023 is offered to members wishing to transfer in retrospectively, or to reverse a transfer that was made, if the transferring scheme agrees to this request.

Additional Service

9.11. The legacy firefighters' pension schemes allowed members to buy additional service, known as added years. Eligible members may, through the contingent decisions application process, make a claim to retrospectively purchase this benefit under the terms that would have been available at the time.

9.12. Regulation 28 of the draft regulations covers this provision and sets out that members will have a period of one year from the issue of the RSS to make a claim of this nature. If accepted, contributions must be paid to retrospectively purchase this benefit, including an amount for interest. The closure of the legacy schemes on 1 April 2022 will not alter the qualifying criteria for additional service in that a member's circumstances must mean that they would have qualified, had they been in the legacy scheme at the time without anticipating the closure of the scheme by 1 April 2022.

10. Divorce and Dissolution

10.1. A pension, particularly a public service pension, may be one of the most valuable assets an individual has. Consequently, the value of any pension rights must be considered as part of a divorce settlement or on the dissolution of a civil partnership. In Scotland, a cash equivalent transfer value (CETV) is calculated for the period of marriage i.e. from date of marriage to date of separation, as only pension rights accrued during the period of marriage are deemed to be shareable on divorce.

10.2. Once pension assets have been identified and valued, the couple must determine how to value this in any financial settlement. There are a few ways in which this can be achieved. In Scotland, the main arrangements are:

- **A qualifying pension sharing agreement**, which is a formal agreement through which the parties agree to divide the value of the pension benefits
- **A pension sharing order**, a court order which directs how pension assets should be divided

Pension sharing agreements and orders

10.3. In Scotland, pension assets can be divided either by mutual agreement or by court order. Most commonly, this is done using either a qualifying pension sharing agreement or a pension sharing order. A pension sharing agreement is a formal agreement to divide a member's pension assets at the time of divorce or dissolution of a civil partnership. A pension sharing order is a court order that instructs a particular division of the pension assets. In the regulations, we refer to these methods collectively as "pension sharing arrangements".

10.4. The beneficiary of the pension sharing arrangement then becomes a “pension credit” member of the pension scheme the member has agreed to share the pension from. In Scotland, either a percentage or a monetary amount is stipulated to be shared.

10.5. A qualifying pension sharing agreement is made using a minute of agreement on how the assets are to be shared. This is recorded in the Books of Council and Session, whereby it becomes legally enforceable. A pension sharing order is issued by a court in response to a request from one of the separating parties. Where a member has benefits in both the legacy scheme and reformed scheme a separate order is created for each scheme.

10.6. The beneficiary of a pension sharing arrangement is entitled to a Pension Credit and the scheme member’s pension benefits are subject to a Pension Debit. The Pension Credit is retained within the scheme, as a deferred benefit payable at the scheme’s NPA, or earlier with an actuarial reduction.

10.7. The value of a CETV used as the basis for a pension sharing arrangement may be different if the remediable benefits are calculated for the alternative pension scheme, so the approach proposed for the remedy is to calculate the CETV value for both legacy and reformed scheme benefits. This would operate differently depending on when the arrangement has been put in place.

Pension sharing arrangement in place before 1 October 2023

10.8. Where the pension debit member has remediable service, that service will be rolled back to the legacy scheme on 1 October 2023. The pension debit member will then receive a choice to elect for reformed scheme benefits either as an immediate choice election if they are already a pensioner, or as a deferred choice election at retirement.

10.9. Whatever choice the pension debit member makes, the debit to be deducted from their pension should reflect the agreed proportion in the pension sharing arrangement. In order to achieve this, administrators will need to work out the percentage of the total pension value that has been attributed to the pension credit member and then use that to calculate the new value of the pension sharing arrangement¹⁴. It should not be linked to whether any top-up amount is paid to the pension credit member.

10.10. In order to obtain the correct value of pension credit, administrators should use the percentage worked out from the original pension sharing arrangement amount to work out what the value of the arrangement would be in the alternative scheme. If that value is higher than what has already been attributed, then this top-up amount should be awarded to the pension credit member.

Pension sharing arrangement in place on or after 1 October 2023

10.11. For eligible active and deferred members who are going through divorce or dissolution on or after 1 October 2023, the proposal for pension sharing arrangements is to calculate two CETV's. One CETV based on legacy scheme benefits for the remedy period and the other based on reformed scheme benefits. The higher value CETV will be used as the basis for either a qualifying pension sharing agreement or a pension sharing order. This means that the pension credit will be derived from the higher of the two CETVs (and will not be affected by the member's choice at retirement). For the debit member, the pension sharing arrangement will apply to their pension choice i.e. the debit may change to reflect the member's choice at retirement.

10.12. For an eligible pensioner member who has made their IC before the pension sharing arrangement is finalised, the scheme administrator will provide a CETV

¹⁴ where the pension sharing arrangement does give a percentage, the pension debit is the percentage specified in the qualifying pension sharing agreement or order applied to the pension benefits the member chooses at retirement

based on the pension in payment. The effect of this is that since the member's choice of benefits in respect of their remediable service is already known at the point of calculation, both the pension credit and the pension debit should reflect the member's actual choice.

Arrangements other than a pension sharing arrangement

10.13. Where a divorce decision has been made that affects an eligible member's remediable firefighters' service through a mechanism other than qualifying pension sharing arrangement or pension sharing order, the regulations set out that the value of the remediable rights for the purpose of the proceedings is to be the greater of those rights secured in either the legacy scheme or the reformed scheme. This will be established by the scheme in consultation with the scheme actuary.

11. Voluntary contributions

11.1. Reformed scheme members can elect to pay additional voluntary contributions in order to increase the value of their pension benefits, through additional pension (AP). This means that when remediable service is rolled back to the legacy scheme on 1 October 2023, the AP arrangements taken out in the reformed scheme for that period require to be dealt with in line with the rollback.

11.2. The draft regulations propose to provide members with compensation for the voluntary contributions that were made towards that arrangement in the reformed scheme. From 1 October 2023. The scheme administrator will write directly to eligible members with voluntary contributions arrangements in the reformed scheme to provide information on the compensation, including a calculation of the compensation due. Compensation for the contributions will be paid to the member as soon as possible after 1 October 2023.

12. Transfers in the remedy period

12.1. Pension scheme members can apply to transfer their public service pension from previous employment(s) into their current pension arrangement if both schemes allow for such transfers. Applications to Transfer benefits are generally accepted up to one year from commencing pensionable employment.

12.2. Transfers between public sector schemes are agreed under public sector transfer club rules and are known as “club transfers”. Other transfers, in particular those between public sector and private sector occupational schemes, are known as “Cash Equivalent Transfer values”(CETV). Benefits received from club transfers are calculated with reference to the salary and accrual in the sending scheme (the previous pension scheme) whereas benefits received from CETV transfers are calculated by reference to the member’s salary in the receiving scheme (the current pension scheme). Club transfers are generally more beneficial to members as they tend to generate a higher credit in the receiving scheme than they would if they were calculated as a CETV.

12.3. Bulk transfers occur when a group of members are compulsorily moved between public sector employers. There are no examples of bulk transfers taking place in the remediable period in this pension scheme, so we do not propose to make any provision specifically addressing retrospective treatment of bulk transfers.

12.4. As a result of the rollback of remediable service to the legacy scheme, transfers that were completed in and out of the 2015 scheme during the remediable period will be re-calculated to reflect this rollback. The PSPJOA 2022 gives scheme managers powers to determine what happens to transfers in during that period.

12.5. Part 6 of the draft regulations set out the provision for transfers impacted by the remedy.

Transfers completed on a CETV basis before 1 October 2023

12.6. Draft regulations set out that the scheme administrator will calculate the transfer value of the member's remediable service under both the legacy and reformed scheme. If the value would have been higher had the member been in the alternative scheme during the remedy period, an additional amount will be paid to the receiving scheme where possible. Where the value cannot be paid to the scheme, for example if the other scheme no longer exists, compensation may be offered representing the difference in amounts.

12.7. For transfers into the scheme from another public service pension scheme on a CETV basis the opposite will occur and the transferring scheme will provide the alternative CETV value to facilitate the calculation of benefits under the alternative scheme rules in anticipation of the member choice process. For transfers in from the private sector there will be no change to the CETV, as private sector pension schemes are not required to be remedied.

Club transfers completed before 1 October 2023

12.8. Transfers out of the scheme on a club basis that were completed before 1 October 2023 require to be revisited to take into account the remediable service in the alternative scheme. The regulations provide that the scheme manager must calculate the transfer value and provide the receiving scheme with that alternative value and the value of the remediable service in the original transfer.

12.9. Where a transfer into the scheme on a Club basis was completed before 1 October 2023 the sending scheme will provide the scheme manager with the remediable service transfer value in both schemes which will be held on the members record and reflected (through the transfer credit) in any RSS the member is issued. In most cases when there is an increase in the value of the club transfer,

no payment between club schemes will be made. However, for Club transfers involving the Local Government Pension Scheme (LGPS) a top up payment may be due either to or from the LGPS.

12.10. For all transfers completed before 1 October 2023 the scheme manager must send a transfer out RSS in accordance with direction 6 of the 2022 directions to members who have transferred out rights in respect of remediable service.

Transfers that would not have been accepted in the legacy scheme

12.11. Where a transfer that has been accepted into the reformed scheme would not have been accepted by the legacy scheme then there are two possible solutions proposed in the regulations. If the member has reformed scheme membership from 1 April 2022, the transfer may be allocated to the reformed scheme. If there are no reformed scheme benefits to attach the transfer to then the member may be paid compensation up to an equivalent value from the legacy scheme.

Transfers completed on or after 1 October 2023

12.12. For transfers out of the Firefighters' Pension Scheme that occur on or after 1 October 2023, the scheme must calculate two transfer values - one that represents the legacy scheme accrual in the remedy period and another representing reformed scheme accrual. For Club transfers, both values will be given to the receiving scheme and the highest of the two values will be paid to the scheme. For non-Club CETV transfers the highest value CETV should be used and that value paid to the receiving scheme.

12.13. For Club transfers in to the firefighters' pension scheme, the sending scheme will provide the SPPA with two transfer values - one that represents the legacy scheme accrual in the remedy period, and another representing reformed scheme accrual. Both values will be held on the members record and these will be applied

to the members options for retirement as illustrated on the RSS. The transferring scheme will pay the highest transfer value to the receiving scheme. For non-Club CETV transfers the sending scheme will only send one transfer CETV reflecting the value of benefits.

12.14. As set out in Section 6 of the PSPJOA 2022, eligible pensioner members will not have their pension benefits changed until an IC is made, or the election period expires.

13. Contributions

13.1. All active scheme members must pay contributions in return for the benefits they will receive in retirement. Contribution rates differ between the reformed scheme and the two legacy schemes, with the legacy 1992 Firefighters' Pension Scheme rates set higher than the reformed scheme. So, members who rollback to the 1992 scheme will owe the scheme contributions for their remediable service. Conversely, the contribution rates for the legacy 2006 Firefighters' Pension Scheme are lower than those in the reformed scheme so those members who rollback to that scheme will be owed the difference in contributions paid as compensation from the scheme.

13.2. At rollback, the scheme manager must calculate the correct contributions position for each affected active and deferred members and arrange for over and underpayments to be corrected. This will affect those eligible members' who were previously tapered and unprotected members as they will have paid the wrong rate of contributions when their remediable service reverts to their legacy scheme for the remedy period.

13.3. Members can elect to receive compensation for overpaid contributions immediately on notification of the amount due, or they may wish to keep the adjustment on record until benefit crystallisation.

13.4. If a member who has received compensation subsequently makes a deferred choice option for reformed scheme benefits, and as a result owes member contributions to the scheme, that amount must be settled by lump sum at the point of benefit crystallisation and deducted from the pension benefits.

13.5. It is proposed that members who owe the scheme an amount for underpaid contributions can elect either to settle the underpayment immediately or defer making the payment until benefit crystallisation. Members may elect to pay immediately, either through a lump sum payment, or through instalments from pay, collected through employer payroll. Instalment plans must last for no longer than the period that the underpayment occurred, or until benefit crystallisation if earlier, and be agreed between the member, employer, and scheme.

13.6. There may need to be a final contributions adjustment, particularly where a member dies before retirement and a DC is then made by an eligible decision-maker. When a DC is made in respect of a deceased member, this will be treated as taking effect immediately before the member's death.

13.7. Pensioner members, who retired during the remedy period (or the dependents of deceased pensioners) may need to have contributions corrected if they make an IC for membership of a scheme which is different from the one from which they retired. In this case, it is proposed that the recalculation of contributions and resulting over/underpayment should be dealt with during the IC process.

13.8. If the pensioner is owed compensation for overpaid contributions this will be paid to the member with any backdated pension and/or lump sum. If the pensioner owes the scheme for underpaid contributions, this will be deducted from their

pension benefits. For example, a member who retired on reformed scheme terms who then makes an immediate choice election for the legacy 1992 scheme may be liable to pay an amount for underpaid contributions. However, they would be entitled to tax relief on those contributions and may also become eligible for a higher retirement lump sum. These sums should be netted off against one another and the balance paid to or by the scheme member.

13.9. At the point of paying pension contributions, members are entitled to tax relief on their pension contributions. This tax relief is only available to individuals who are active scheme members at the point contributions are paid and is based on the individual's marginal rate of income tax when the pension contributions are paid. Former members will have the tax relief included in the overall calculation and where outstanding contributions are due to be settled, they will always be offset against any benefits due to be paid under the scheme. The calculation of contribution adjustments will take into account any tax or tax relief and the appropriate interest (in line with section 26 of the PSPJOA 2022 and PSP Directions 2022).

14. Liabilities and Payment

14.1. As a consequence of the remedy there will be occasions where payments will need to be made between the scheme manager and eligible members (or those acting on behalf of deceased members). For example, the correction of contributions, correction of pensions in payment, payment of contributions for retrospective opt-ins and for additional voluntary arrangements, and tax corrections.

14.2. Where overpayments and underpayments have occurred the scheme manager will calculate and apply interest on the amount owed or owing. The interest rate(s) to be applied to these amounts are determined by the PSP Directions 2022.

14.3. Where more than one overpayment or underpayment arising from the remedy occurs at once, the scheme manager must net off the amounts in accordance with the PSP Directions 2022. The effect of this is that the amounts will be aggregated, with the balance of the amounts becoming payable to either the scheme or the scheme member, thus avoiding the need for multiple payments to and from the pension scheme. The PSP Directions 2022 stipulate that the scheme manager must provide an explanation of the calculation where the netting off approach has been used.

14.4. The draft regulations also provide that amounts owed by an eligible member may be reduced or waived. The use of these powers is expected to be limited to situations where the liability has arisen from an unavoidable consequence of the remedy. For example, where the removal of entitlement to mixed benefits in the remediable period arising from tapered protection leads to a member being given the option of a lower overall pension in both the legacy and reformed scheme design. This may result in an overpayment of benefits. In this specific case, the member's liability for any overpayment may be reduced or waived entirely subject to the conditions below.

14.5. Chapter 3 of Part 9 of the draft Regulations sets out the powers a scheme manager holds to reduce or waive a liability incurred by an eligible member. Where a scheme manager considers applying these powers, the scheme manager must comply with the requirements set out in the PSP Directions 2022 in that they must:

- Have regard to the particular circumstances of the member (or personal representative) by whom the liability is owed
- Apply a presumption in favour of recovering the liability unless it is considered uneconomical to do so

- Have regard to whether, instead of or in addition to reducing or waiving the liability, it is appropriate to, in the reasonable opinion of the scheme manager, to exercise powers to vary the process of the payment of relevant amounts

14.6. In addition, the scheme manager will use existing policy on the management of overpayments, including the principles published in the Scottish Public Finance Manual¹⁵.

15. Ill-health retirement

15.1. Scheme members who are unable to continue working due to ill-health may be entitled to receive enhanced ill-health retirement benefits. In order to qualify for ill-health retirement, members must meet particular criteria set in scheme regulations. These criteria may differ between the reformed scheme and legacy schemes. Consequently, eligible members who applied for and received an ill-health pension during the remediable period may be entitled to ill-health benefits in the alternative pension scheme.

15.2. This applies to applications for ill health benefits received from eligible active and deferred members and applies whether or not the member originally qualified for an ill-health pension as a result of their application.

15.3. In order to understand whether ill-health retirement in the alternative scheme is possible, the scheme manager is required, through Part 7 of the scheme regulations, to review the original application along with the supporting medical evidence and decide whether the member would have qualified for an ill-health pension in their alternative scheme. Where the member's original application was assessed under the reformed scheme regulations, the alternative scheme is the member's legacy scheme, and where the member's original application was

¹⁵ [Scottish Public Finance Manual - gov.scot \(www.gov.scot\)](http://gov.scot)

assessed under the legacy scheme regulations the alternative scheme is the reformed scheme.

15.4. Once the review is completed the scheme manager will write to eligible members to inform them of the outcome of the review. For IC members, this must be before the remediable service statement is sent, and for DC members, this must be as soon as is practicable after 1 October 2023.

15.5. The majority of eligible ill-health members will be in receipt of pension benefits so will be entitled to IC for their remedy benefits. If a member meets the criteria for ill-health retirement in both schemes, then they will be able to choose between ill-health retirement benefits they are in currently in receipt of, or the ill-health benefits offered in the alternative scheme.

15.6. If an eligible pensioner member retired without ill-health benefits but would have qualified in the alternative scheme then they will be able to choose ill-health benefits in the alternative scheme in place of their normal pension benefits in their existing scheme. If this includes actuarially reduced benefits, then these will be replaced, and any underpayment of benefits will be paid to the member in accordance with the draft Regulations.

15.7. Some members may have been turned down for ill-health retirement and decided to leave employment, becoming entitled to a deferred pension (e.g. if they were under the minimum pension age for their scheme). If these members are accepted for ill-health retirement in the alternative scheme, they may choose these benefits through DC and may be backdated to the date on which the member left employment.

16. Benefits for surviving adults and children

16.1. The principal mechanism of the remedy is for eligible members to receive a choice of legacy scheme accrual or equivalent reformed scheme benefits for their remediable service. Where an eligible member dies before they have made an IC or DC, an ‘eligible decision-maker’ must make a choice between the eligible deceased member’s remediable service in the legacy and the reformed scheme, in respect of benefits that are already in payment, or benefits that are about to be paid. Schedule 1 of the draft scheme regulations set out the criteria for who is an eligible decision-maker. In many cases, the eligible decision maker may be a surviving spouse or other dependant of the deceased member.

16.2. The election period for an eligible decision-maker is aligned with that of an eligible member making the same choice. For an eligible decision-maker making an IC, the time-limit is no later than one year from the issue of the RSS. This period is set by the PSPJOA 2022 so cannot be varied. The draft scheme regulations propose that the DC election period for an eligible decision-maker is set at 12 weeks from the date the RSS was issued, in line with that of an eligible member.

16.3. Where a pensioner has died after making a DC but before benefits are in payment, scheme regulations allow for that choice to be revoked. Where a pensioner has died after making a DC and where benefits are already in payment, the eligible decision-maker will not be entitled to make another choice.

Child’s pension or allowance - guarantee

16.4. The UK Government made a commitment in their consultation response that provision would be made to protect children’s pensions already in payment, which would otherwise be impacted by a decision taken by someone outside the child’s household. This commitment is reflected in Section 22 of the PSPJOA 2022.

16.5. Where such a child's pension is in payment then the amount of pension is dependent on the immediate choice of the eligible decision-maker. This choice could result in the child's pension value increasing, decreasing, or staying the same. In cases where the pension value is decreased, it is proposed through Part 7 of the draft regulations, that the higher amount will continue to be paid to the child.

17. Interaction of retirement ages between the Firefighters' pension schemes

17.1. The three firefighters' pension schemes each have different ages at which entitlement to a pension may arise. The 1992 scheme allows for actively contributing members to retire at 55. Additionally, there is the option to retire from 50 if they have accrued 25 years' service in the scheme. The 2006 scheme has a normal pension age of 60 for actively contributing members, whilst the normal pension age for deferred members with a preserved pension is 65. The 2015 Scheme has a normal pension age of 60 for actively contributing members, with a deferred pension payable from State Pension Age, as set by the 2013 Act. 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 ill-health. This means that 1992 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) but are not 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.

17.2. In addition, due to the pension ages set out in the 2013 Act, the treatment of early retirement pensions in the 2015 scheme is contingent on the status of the member – active or deferred – at the point of claiming benefits. This is because actuarial reductions from active service are calculated with reference to age 60, whereas for deferred members they apply from state pension age. Thus, the actuarial

reduction applying to accrued benefits is higher for claims made from deferred member status.

17.3. This interaction between the various elements of primary and secondary pensions legislation was introduced by the 2013 Act, and the 2015 Remedy does not introduce any new aspect to this interaction.

17.4. We acknowledge that respondents to this consultation may wish to make a statement about the impact of the interaction of the pension ages in the Firefighters' schemes, however we will not consider these statements to be in-scope of this consultation and will not specifically address these in our consultation response.

18. Consultation Questions

1. Immediate choice and Deferred choice – Do the proposals in this consultation achieve the policy intention of giving all eligible members a choice of retirement benefits for the remedy period?
2. Remediable Service Statements (RSS) – Do the policy proposals in relation to scheme members' receiving an RSS achieve what is required in the PSPJOA 2022 and PSP Directions 2022?
3. Deferred Choice - Does the proposed deferred choice (DC) RSS request timing of between six and 12 months from retirement, and the election period of 12 weeks from when the RSS is issued seem reasonable, in that it gives eligible members a suitable window to make a decision with consideration for the proximity to retirement and administrative requirements?
4. Deferred Choice - Does the proposed deferred choice (DC) election period of 12 weeks from when the RSS is issued seem reasonable, in that it gives eligible decision-makers enough time to make a DC decision taking into account the administrative requirements and the emotional impact of bereavement?
5. Deemed Election – Do you agree with the proposal for when and how a deemed election may be made? If not, please say why.
6. Added pension – Do the policy proposals for members with added pension ensure that all eligible members are put in the same position?
7. Contributions correction – Do you agree with the proposal that eligible members who owe the scheme an amount for contributions can choose to pay the amount either as a lump sum, or in instalments over a set period, or to defer payment until benefit crystallisation?

8. Contributions - Do you agree with the proposal for scheme members who are entitled to a refund of remedy period contributions to be able to defer the repayment, to avoid having to repay it on retirement if they choose reformed scheme benefits?
9. Ill-health retirement – Does the proposal for ill health retired members meet the requirements in the PSPJOA 2022?
10. Contingent decisions – Do the proposals for contingent decisions adequately provide members with an opportunity to revisit pension-related decisions taken during the remedy period?
11. Divorce and dissolution – Do the proposals for the treatment of pension sharing arrangements align with the requirements of the PSPJOA 2022?
12. Survivor benefits and child pensions – Does the proposed “Child’s pension or allowance - guarantee” ensure that children are fairly treated in line with the requirements of the PSPJOA 2022?
13. Do you agree with the overall policy approach set out in the consultation to address the discrimination with the transitional protection arrangements?
14. Do you agree that overall, the draft regulations deliver the policy objectives and requirements set by the PSPJOA 2022?
15. Do the equalities considerations set out in the equalities analysis address the impact of the remedy on members with protected characteristics?
16. Do you have any other comments about this consultation?