



Scottish Public  
Pensions Agency  
Buidheann Peinnseanan  
Poblach na h-Alba

# **Retained Firefighters' Pensions: Consultation on the Proposed Changes to The Firefighters' Pension Scheme (Scotland) Order 2007**

## About This Consultation

### Overview

This consultation is seeking views on the amendment of the New Firefighters' Pension Scheme (Scotland) Order 2007 Regulations to provide a cohort of retained firefighters with further options to purchase historical pensionable service.

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.

### Duration of Consultation

This consultation will run from 20 September 2023 to 8 November 2023.

### How to respond

Please use the consultation response form and once completed send to [SPPAPolicyConsultationResponses@gov.scot](mailto:SPPAPolicyConsultationResponses@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**

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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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In order to show that the consultation was carried out properly, the SPPA intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response.

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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- to lodge a complaint with the Information Commissioner's Office (ICO) who is the independent regulator for data protection.

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Agency Data Protection Officer  
Scottish Public Pensions Agency  
7 Tweedside Park  
Tweedbank  
GALASHIELS  
TD1 3TE  
Tel: 01896 892 469  
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The contact details for the Information Commissioner's Office are:

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Tel: 01625 545 745 or 0303 123 1113

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## 1. Background

- 1.1. In the employment tribunal case *Matthews v Kent and Medway Towns Fire Authority & others* (“*Matthews*”), the judgement reached held that firefighters employed on the Retained Duty System between 1 July 2000 and 5 April 2006 were permitted access to pension provisions with retrospective effect to 1 July 2000, in line with requirements of Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (PTWR). In response, in 2014 the UK Government (and Scottish and Welsh Ministers in the equivalent devolved schemes) made changes to the NFPS 2006 to introduce a category of “special membership” to allow eligible serving or former retained firefighters to purchase pensionable service for this period during an Options Exercise. In Scotland, this exercise was undertaken by Scottish Fire and Rescue Service (SFRS) with support from the Scottish Public Pensions Agency (SPPA). Special membership largely replicates the terms of the earlier Firefighters Pension Scheme 1992, from which this cohort had been excluded.
- 1.2. Subsequently, in a similar and long running case brought by a fee-paid judge seeking equal treatment in the Judicial Pension Scheme, the European Court of Justice ruled in *O’Brien v Ministry of Justice* that equal treatment should extend beyond the date of the Part-time Workers Directive (which led to the PTWR) on 7 April 2000. This ruling has a read across to *Matthews* and the NFPS and means a second options exercise should be conducted. To deliver this, a Memorandum of Understanding (MoU) was drawn up in England in 2022 between the Home Office, the Local Government Association (representing English fire and rescue authorities) and the Fire Brigades Union. This MoU sets out the cohort that is in scope for the second options exercise, chiefly those retained firefighters who were in active service before or on 7 April 2000 with continuous service before and after that date. Neither Scottish Ministers nor the SFRS were party to the MoU, however following the precedent set in 2014 it is felt that introducing similar changes in Scotland would be appropriate.

## **2. Consultation and who we want to hear from**

2.1 This consultation is seeking views on the amendment of the New Firefighters' Pension Scheme 2006 (Scotland) (NFPS) Regulations to provide a cohort of retained firefighters with further options to purchase historical pensionable service.

2.2 This consultation welcomes views from all interested parties on the draft regulations and policy intent contained in the 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', along with others who have an interest in firefighters' pensions and wider public service pensions.

## **3. Eligibility**

- The 2023 Options exercise will relate to three cohorts of eligible individuals.
  - Cohort 1 comprises those individuals who were employed as retained firefighters at any date during the period 7 April 2000 and 30 June 2000 inclusive. They may also have uninterrupted service prior to 7 April 2000.
    - They will not have any post 30 June 2000 service to purchase, and, as such, will not have fallen within the scope of the 2014 Options exercise.
  - Cohort 2 comprises those individuals who were employed as retained firefighters at any date during the period 7 April 2000 and 30 June 2000 inclusive, and between 1 July 2000 and 5 April 2006 inclusive. They may also have uninterrupted service prior to 7 April 2000 and uninterrupted service after 5 April 2006.



- Individuals in cohort 2 will have been given an opportunity to purchase their post 30 June 2000 service as part of the 2014 Options exercise. Where they did elect to join as part of the 2014 Options' exercise, they will only be able to purchase any of their service post 30 June 2000 service to the extent that it was or is not being purchased as part of the 2014 Options exercise.
- Cohort 3 comprises those individuals who were employed as retained firefighters at any date during the period 1 July 2000 and 5 April 2006 inclusive and should have been eligible to join as part of the 2014 Options exercise but were not given the opportunity to do so.
- These will be individuals who have exclusively all post 30 June 2000 service and should have been offered the opportunity to join the modified scheme as part of 2014 Options exercise.

### **Determining those who are eligible to join as Cohort 3**

- An individual who does not have any service before 1 July 2000 will not be eligible to join (as part of cohort 3) where SFRS had notified the person of their entitlement to join this Scheme as a special member during the 2014 Options Exercise.
- SFRS would have the initial responsibility for identifying those retained firefighters they believe were given an opportunity to take part in the 2014 Options exercise, and therefore whether a person is excluded.
- SFRS must determine whether this exclusion applies in accordance with guidance issued.
- Where they can produce a file copy of the letter which was addressed to the individual concerned, at their correct most recently notified home address; or

Where SFRS can establish that:

- the correct name and most recently notified home address was included at the time of sending the letters on a relevant mail merge database.
- the mail merge was created before it is claimed the letters were sent, allowing SFRS to cite other evidence that the letter was sent.
- where an individual retained firefighter had consented in writing to communication by email, references to 'letters' include emails and references to 'most recently notified home address' include most recently notified email address.

The individual would be able to dispute SFRS determination that they were informed as part of the 2014 Options Exercise by means of the Scheme's dispute resolution procedures.

Those individuals who are eligible to join the modified scheme under the 2023 Options exercise will have the opportunity to purchase their past service during the extended limited period as follows:

Cohort 1 individuals will be able to purchase:

- all their retained service between 7 April 2000 and 30 June 2000 inclusive.
- all uninterrupted retained service prior to 7 April 2000.

Cohort 2 individuals will be able to purchase:

- all their retained service between 7 April 2000 and 5 April 2006 inclusive.
- all uninterrupted retained service prior to 7 April 2000.
- all uninterrupted retained service after 5 April 2006 (up to 31 March 2022).

All these individuals will have been given an opportunity by SFRS to purchase their post 30 June 2000 retained service as part of the 2014 Options exercise. Where they did elect to join as part of the 2014 Options' exercise, they will only be able to purchase any of their retained service post 30 June 2000 service to the extent that it was not or is not being purchased as part of the 2014 Options exercise.

Cohort 3 individuals will be able to purchase:

- all their retained service between 1 July 2000 and 5 April 2006 inclusive.
- all uninterrupted retained service after 5 April 2006 (up to 31 March 2022).

Although our current proposal is for individuals to be able to buy service up to 31 March 2022 as set out above, we are considering further how to make provision for this in legislation, as it may be complex. We are also considering whether it is necessary and proportionate to allow accrual up to 31 March 2022, or whether accrual up to only 31 March 2015 is appropriate, given that members could have joined the 2015 Scheme from this date, and given the interaction with the McCloud remedy which will "roll back" service from 2015-2022 into the relevant legacy Scheme (2006 Scheme or 1992 Scheme), as set out at below.

We would be interested in views on this from those who would be eligible for the *Matthews* remedy and who do not currently have service in any of the Firefighters Pension Schemes (for example, because they opted out of the 2015 Scheme), and whether they would wish to purchase service from 2015-2022 as special service.

#### **4. Extended Limited period**

The 'extended limited period', which represents the full period that an individual is entitled to purchase in the modified scheme, as set out above, applies to all three cohorts, and is described as follows:

“The period beginning on the date on which that person was first employed as a retained firefighter and ending on the earlier of—

(a) the date, if applicable, on which that person joined this Scheme as a special member or as a standard member in respect of service which that person could otherwise reckon as special pensionable service,

(b) the date, if applicable, on which that person joined the 2015 Scheme in respect of service which that person could otherwise reckon as special pensionable service,

(c) the date, if applicable, on which that person ceased to be employed as a retained or a regular firefighter, and

(d) [31st March 2022]”

(Although a “backstop” date of 31 March 2015 is also under consideration, as explained at above).

The intended effect of this for each cohort is set out below.

For Cohort 1 – The extended limited period will be from the start of an individual's retained employment and the date they left their retained employment (this will be between 7 April 2000 and 30 June 2000 inclusive for Cohort 1 members).

For Cohort 2 – The extended limited period will be from the start of an individual's retained employment (which, for Cohort 2 members, would be before 1 July 2000) and the earliest of:

I. the date they joined the 2006 Scheme as a special firefighter member or as a standard member, or the 2015 Scheme, in respect of service that could otherwise be treated as special pensionable service.

II. the date, if applicable, on which they ceased to be employed as a retained firefighter or regular firefighter.

III. 31 March 2022 (although a “backstop” date of 31 March 2015 is also under consideration, as explained at above).

For Cohort 3 – The extended limited period will be from the start of an individual’s retained employment (which would have to be between 1 July 2000 and 5 April 2006 inclusive) and the earliest of:

I. the date that they joined the 2006 Scheme as a standard member or the 2015 Scheme in respect of service that could otherwise be treated as special pensionable service.

II. the date, if applicable, they ceased to be employed as a retained or regular firefighter.

III. 31 March 2022 (although a “backstop” date of 31 March 2015 is also under consideration, as explained above).

## **5. Mandatory special service period**

The mandatory special period, is the period during the extended limited period, defined in section above, that an individual elects to purchase in the modified scheme. It starts on the day selected by the member and ends on the last day of the extended limited period.

## **6. Historical pay and service period**

The 2014 Options exercise provided individuals with the opportunity to purchase their historic retained service back to 1 July 2000. SFRS raised concerns about the

accessibility/availability of historic data that would allow a fire and rescue authority to determine the service that an individual would be able to purchase. To mitigate the risks of this, where there was a lack of reliable historic data available FRAs could determine pay based on:

- the relevant employee and pay records that it holds.
- any relevant documentation provided by the employee where the fire and rescue authority does not hold historic pay records; OR
- recent pay data and/or turnout rates for retained firefighters at the specific fire stations that each of eligible members was located in order to determine average pay rates.

The 2023 Options exercise will provide eligible individuals with the opportunity to purchase historic service from before 1 July 2000. This raises further complications with regards to the availability of employee records. To resolve this, the following assumptions will be applied:

- For service from 1 July 2000 onwards, this will continue to apply as it did during the 2014 Options exercise.
- For service prior to 1 July 2000, where there is no robust historic data SFRS will apply the following assumptions/principles:

## **Service**

- SFRS must determine service based on the records that are held (e.g., payroll or HR records, or other evidence such as official dated group photographs of watches or crews).
- Where SFRS are not able to determine the period of the person's service from their records, the person may provide the authority with relevant documentation (e.g., pay slip, P60 or contract of employment).

- If there is no record held of that person's service for that period, and the person cannot provide the necessary documents, it may be determined that the person does not have service during that period, meaning there is no entitlement to join the modified scheme/purchase service in respect of that period.

## **Pay**

- SFRS are to use the same data as per the 2014 Options exercise for pay on or after 1 July 2000.
- For cases with service pre-July 2000, SFRS are to use the data that they have on record.
- Where SFRS are not able to determine the pay from their records, the person may provide the authority with relevant documentation (e.g., pay slip, P60 or contract of employment).
- In the absence of pay data for pre-July 2000 membership it is to be assumed that the retained firefighter earns 25% of the pay of a whole-time firefighter. This proportion has been informed by data collected by Fire and Rescue Authorities covering around one sixth of the group expected to be eligible. The data shows latest retained and whole-time equivalent pay at the end of the individuals' retained service from 2000 to present. It would be important this 25% assumption only be used for periods where no records exist so that a member does not receive a lower or higher pension than they are entitled to.

## **Rank**

- In the absence of evidence/data, it is assumed that the individual was a competent firefighter for the purposes of estimating pensionable pay.

## **7. Application of Interest**

- Interest is applicable on contributions owed by a member to the scheme and pension owed by the scheme to a member. The interest rates will apply to the 2023 Options exercise in the same way as they applied to members who joined the modified scheme during the 2014 Options exercise.

## **8. Adjustment for loss of tax relief on employee contributions**

- Individuals who join the modified scheme as part of the 2023 Options exercise will also be entitled to tax relief on their historic employee contributions. It is expected many of those individuals will not be able to seek this from HMRC via established processes (PAYE or self-assessment).
- To avoid any tax relief complications from implementing the 2023 Options exercise, eligible individuals will be compensated by means of reducing the costs of purchasing their past service in the modified scheme to reflect an assumed tax relief entitlement for each member. For these purposes, it will be assumed that all members who join the modified scheme as part of the 2023 Options exercise will be standard 20% marginal taxpayers.
- Where an individual provides robust evidence to show that they were a higher marginal rate taxpayer during the period that they were employed as a retained firefighter then this will be factored into the calculation accordingly.
- To be eligible for this deduction, a member must provide a statement to the FRA that they will not claim tax relief in respect of the mandatory special period pension contributions. This is to ensure that a person does not receive tax relief twice.



## 9. Retrospective ill-health awards

- The policy on retrospective ill-health awards is the same as it was during the 2014 Options exercise. That is, any former retained firefighters who are eligible to join the modified scheme and who were medically retired (with no pension entitlement as they were excluded from the 1992 Scheme) before 6 April 2006 will be entitled to receive the retrospective pension payments associated with a higher tier ill-health retirement (to include both lower tier and higher tier elements). This will be calculated in accordance with the standard 2006 scheme provisions and based on their special pensionable service up to the point of medical retirement.
- This entitlement would be subject to the certification by an Independent Qualified Medical Practitioner that a person was permanently incapable of performing the duties of a firefighter at the date of their dismissal and that the permanent disablement had continued to the date of the medical assessment. Where entitlement has been confirmed, the payment of the ill-health pension would take effect from the date of a member's dismissal or retirement and would be conditional on the payment of all historic contributions and interest by a member. SFRS will also pay a member a lump sum for any backdated ill-health pension payments. This would include interest.
- There are individuals who will have joined as part of the 2014 Options exercise and will have received a retrospective ill-health pension based on their pensionable service from 1 July 2000 (as this was the backstop date). For these cases, the 2023 Options exercise will provide further opportunity to purchase pre-July 2000 service which will now need to be reflected in their retrospective ill-health award and recalculated from the point that they left employment.
- The recalculation of this award will be complex as it will require some intricate interest calculations. We intend to provide that these cases must be referred to

the Scheme Actuary so that they can calculate the adjusted ill-health pension, and the rectification payment for any ill-health pension paid to the member to date.

## 10. Special Death Grant

- As part of the 2014 Options exercise, any individuals who would have had an option to join the modified scheme but had died during the period 1 July 2000 to 5 April 2006 were given a special death grant of 2.5 times their pensionable pay at the time of death – payable to the surviving spouse.
- As part of the 2023 Options exercise, the special death grant provision will be extended to include those who would have been entitled to join during the 2014 Options exercise but died during the period 7 April 2000 to 30 June 2000 inclusive.
- As part of further remedy, the scheme will also provide an additional top up to the special death grant in respect of an individual's pre-7 April 2000 service. The Special death grant will provide eligible survivors with a single lump sum payment equal to 0.1 times the deceased member's pensionable pay for each full qualifying year of service that the deceased member had prior to 7 April 2000.
- GAD provided Home Office with analysis which evidenced the need to extend the special death grant provision as explained above. This means as part of further remedy, the scheme will also provide an additional top up to the special death grant in respect of an individual's pre-7 April 2000 service. The Special death grant will provide eligible survivors with a single lump sum payment equal to 0.1 times the deceased member's pensionable pay for each full qualifying year of service that the deceased member had prior to 7 April 2000<sup>[\[footnote1\]](#)</sup>.

In summary, the policy is:

- anyone who died between the 7 April 2000 and 5 April 2006 with no pre-7 April 2000 service will receive a special death grant of 2.5 times their pensionable pay at the time of the death;
- anyone who died between the 7 April 2000 and 5 April 2006 with pre-7 April 2000 service will receive a special death grant of 2.5 times their pensionable pay at the time of the death; and
- anyone in receipt of a special death grant will receive an additional top up to the special death grant in relation to their pre-7 April 2000 service.

## **11. Additional Death Grant**

- It is expected that there will be individuals who will have joined the modified scheme as part of the 2014 Options exercise and purchased their past service to 1 July 2000 and have died prior to the implementation of the 2023 option exercise.
- Members who joined the modified scheme as part of the 2014 Options exercise and who have pre-July 2000 service but have subsequently died would have been able to purchase pre-July 2000 service under this 2023 Options exercise. We intend to provide that the eligible survivor will receive an additional death grant in relation to such members' pre-July 2000 service.
- The additional death grant will provide eligible survivors with a single lump sum payment equal to 0.1 times the deceased member's pensionable pay for each full qualifying year of service that the deceased member had prior to 1 July 2000

## **12. Employee contribution rates**

- The contributions payable during the 2023 Options exercise for purchasing historic service in the modified scheme would be the same rate as those that were

paid by members who joined as part of the 2014 Options exercise. These rates will be included in the information provided to those eligible for the exercise.

### **13. Right to transfer special service**

- Individuals would have a right to request a transfer value in respect of their special service under the modified scheme.

### **14. Transferring accrued 1992 Scheme service into the modified scheme**

- Any persons who are eligible to join the modified scheme as a connected special member and who currently have accrued uninterrupted service in the 1992 scheme (in the form of a deferred pension) may be eligible to transfer this service into the modified scheme. The transfer would be undertaken under the terms of the Public Sector Transfer Club. Any election by a member to transfer this service would need to be made to the employing FRA within one year of receiving notice of details of the costs of purchasing their past service pension rights.
- The modified scheme's pensionable service cap of 30/45ths of a member's average pensionable pay would still apply even if the total of a member's special pensionable service exceeded 30 years at retirement. The modified scheme does not provide for special deferred or special pensioner members to transfer in accrued service from the 1992 scheme.

### **15. Converting special service to standard service – connected special members**

- Any person who joined the standard 2006 Scheme from 6 April 2006, and who are also eligible to join the modified scheme as connected special members, may be able to convert their special membership to their standard membership.

## **16. Converting standard service to special service – connected special members**

- Any persons who join the modified scheme as part of the 2023 Options exercise as a connected special member will be able to convert standard membership accrued in the 2006 Scheme (which they would be entitled to treat as special service) to special service.

## **17. Converting standard service to special service – special pensioner/deferred members**

- Any persons who join the modified scheme as special pensioner members or special deferred members as part of the 2023 Options exercise may be able to convert standard membership accrued in the 2006 Scheme (which they would be entitled to treat as special service) to special service.

## **18. Conversion decisions made during the 2014 Options exercise**

- During the 2014 Options exercise some members who joined the modified scheme had the option to convert any uninterrupted standard 2006 Scheme service (where they joined the standard 2006 Scheme) to special service; or vice versa.
- Those members who elected to join and purchase their service in the modified scheme may now purchase further service from before 1 July 2000. This further option could have a material impact on the 'conversion' decisions that the member made/did not make during the 2014 Options exercise.
- We are proposing that all members who joined the modified scheme during the 2014 Options exercise and who have pre-July 2000 service will be able to revisit the conversion decisions that they made. Where the member elected to convert their special service to standard service, they will be able to undo that election.

Where they did not elect to convert their special service to standard service, they will now be able to make that decision as part of the 2023 Options exercise.

- Additionally, where the member elected to convert their standard service to special service, they will be able to undo that election. Where they did not elect to convert their standard service to special service, they will be able to make that decision as part of the 2023 Options exercise.
- The Home Office is still considering the detail on how this policy will be achieved in practice. As such, the draft regulations do not cover this policy.

## **19. Payment of employee contributions for historic service**

### **Post 30 June 2000 service**

- Those individuals who join the modified scheme as a special pensioner member will have the option to pay the cost of historic contributions by means of lump sum only. The lump sum would have to be paid to SFRS/SPPA within six months of electing to join the modified scheme and before the pension comes into payment.
- These individuals would have the option of purchasing their past service rights from any commuted lump sum, or a lump sum payable in relation to the retrospective ill-health award. A commuted lump sum is the lump sum members can choose to receive in exchange for giving up part of one's annual pension payable from retirement. Where this option is made, the employing FRA would deduct the past service costs from the commutation lump sum prior to being paid to a member. If the value of the commuted lump sum is not sufficient to pay the full balance of historic contributions, an individual would be required to pay any outstanding balance within six months and before becoming entitled to receive payment of their pension to which these contributions relate.

- Where a member had elected this option and the lump sum had not been received by SFRS before the expiration of this six-month period, the election to join the modified scheme would be revoked.
- Those individuals who join the modified scheme as a special deferred member would also have the option to pay the historic contributions by means of lump sum. Under this option, any lump sum would need to be paid within six months from the date of electing to pay for service during the extended limited period by lump sum.
- Where a member had elected this option and the lump sum had not been received by SFRS before the expiration of this six-month period, the election to join the modified scheme would be revoked.
- Alternatively, those individuals who join as special deferred members would have the option of purchasing their past service rights (in relation to post 30 June 2000 service) by means of making periodic contributions, which would include interest, over the earlier of 10 years or up to the point where they become entitled to receive payment of their deferred pension. Upon becoming entitled to receive payment of their deferred pension, any outstanding balance could be paid at that time from a member's commuted lump sum, or from another source, if a member so elects.
- As with those persons who join as special pensioner members, if the value of the commuted lump sum is not sufficient to pay the full balance of historic contributions, a member may pay any outstanding balance within three months of the date they become entitled to the deferred pension, and before becoming entitled to receive payment of their pension to which these contributions relate.
- Those persons who join the modified scheme as a connected special member would have the option of paying the historic contributions by means of a lump sum payment or periodic contributions. A member who elects to pay by lump sum

would have six months from the date of electing to join the modified scheme to pay the lump sum. Where a member had elected this option and the lump sum had not been received by SFRS before the expiration of this six-month period, the election to join the modified scheme would be revoked.

- Alternatively, connected special members would either have a period of 10 years or until they retire, whichever is shorter, to pay the historic contributions (in relation to post-30 June 2000 service) by means of periodic contributions which would include interest. Upon retiring, any outstanding balance could be paid from a member's commuted lump sum or from another source if a member so elects. The balance should be paid within three months.
- If the connected special member or special deferred member were to opt out, cancel the periodic contributions, or not pay the balance due, then a member would receive a prorated service credit for the service purchased during the extended limited period. They would become entitled to a deferred pension in the modified scheme. There would be no ability for a member to restart the periodical payment of contributions later.
- If the connected special member died during the spreading period and before becoming entitled to receive payment of the special pension, then their special pensionable service would be credited with the full amount of service that they elected to purchase.
- If a connected special member commenced ill-health retirement during the spreading period, then they would have the option to pay any outstanding amount for the past service they elected to purchase by lump sum. If they were to choose not to pay an outstanding balance, then the past service credit would be prorated to reflect the past service contributions actually paid.



- The same rules for purchasing past service in the modified scheme will apply to the 2023 Options exercise as it did for the 2014 Options exercise, except as set out below. As part of the 2014 Options exercise, members who chose to purchase their past service by means of periodical contributions were given 10 years to discharge their liability.
- However, the 2023 Options exercise may involve members paying historic contributions in respect of a longer period – potentially going back to the 1960's and 1970's, when compared to the period of service individuals were purchasing during the 2014 Options exercise (which was a maximum of 15 years' service). As such, having a spreading period of only 10 years may act as an impediment to taking up their entitlement to join the modified scheme.
- Individuals who join the modified scheme as part of the 2023 Options exercise and who have the option to pay for their service by periodical contributions will have the option to purchase post 1 July 2000 service by means of spreading over 10 years which is the same arrangement available to those who joined during the 2014 Options exercise. For any historic service from before 1 July 2000, the member's periodical contributions will be spread over 20 years. For both options, if the member retires prior to the expiration of the periodical contributions spreading period they will have the option to pay any outstanding amount from their lump sum commutation payment.
- As with the 2014 Options exercise, all members will also have the option to pay the full costs by means of an upfront single lump sum payment.

### **Financing arrangements – past service employer contributions**

- The implementation of the 2023 Options exercise is likely to create a scheme deficit as members purchase past service rights for which no employer contributions have been paid. The extent of this deficit will be established in

actuarial valuations of the Firefighters' Pension Schemes. Government policy is that any scheme deficit will be recovered by adjusting the employer contribution rates (assuming repayment of the deficit over a period of 15 years from the implementation date). Employer pensions cost pressures will be considered as part of wider funding agreements.

## **20. Other Policies**

### **Aggregation issue**

- The Employment Tribunal is considering claims from a further cohort of retained firefighters seeking access to the scheme. New claims have been received with regards to individuals who have periods of service as a retained firefighter and a regular firefighter seeking to aggregate these periods of service under membership of the Firefighters' Pension Scheme 1992. The terms of the MoU and draft scheme amendments will not include this cohort, however we will continue to work closely with relevant parties in responding to these claims.

### **Guaranteed Minimum Pensions**

- The provision of further remedy for those with pre-1 July 2000 service has given rise to a complex technical issue that requires dealing with Guaranteed Minimum Pensions (GMPs) where any eligible retained firefighter elects to purchase past service from between 6 April 1978 and 5 April 1997.
- Occupational pension schemes that contracted out of the State Second Pension (S2P) between 6 April 1978 and 5 April 1997 had to ensure that a GMP was provided by the scheme for members at State Pension Age. Members of 'contracted out' occupational pension schemes pay lower National Insurance Contributions (NICs) than those contracted into the S2P as the GMP liability rests with the individual pension scheme, rather than the S2P.

- The modified scheme is currently contracted out of the S2P back to 1 July 2000 which means that retained firefighters, who joined the scheme as part of the 2014 Options exercise, were able to claim back a refund of the higher NICs that they had originally paid. However, their S2P will then be adjusted to reflect the lower NICs that they actually paid.
- The 2023 Options exercise will mean that there will be some retained firefighters that will elect to purchase past service during the GMP period i.e., between 6 April 1978 and 5 April 1997. However, unwinding GMPs for everyone is no longer possible.
- The proposal, aligned with the approach proposed by the Home Office, is to leave the contracted-out status of the modified scheme unchanged. Claims from individuals that they have suffered financial detriment as a result of not being contracted out of the S2P for the pre-July 2000 period will be considered on a case-by-case basis.

## **Tax**

- Annual Allowance (AA) tax charges – there will be eligible individuals who join the modified scheme as part of the 2023 Options exercise who will be able to purchase large periods of historic service in the modified scheme by means of a single lump sum. This will require individuals to pay the employee contributions that they would have been required to pay had they been in the scheme during the period that they choose to purchase.
- This may lead individuals to breach their AA for tax-relieved pension accrual. Purchasing all their historic service by means of a single lump sum will mean that the individual will be effectively accruing their full pension entitlement in a single tax year. If this pension growth in the year of purchase exceeds the individual's AA, the individual may become subject to an annual allowance tax charge.

- There is some mitigation whereby individuals can carry forward any unused AA from previous tax years where they are a member of a UK registered pension scheme or a qualifying overseas pension scheme.
- Claims from individuals that they have suffered financial detriment as a result of annual allowance tax charges will be considered on a case-by-case basis.

**Individuals entitled to join the modified scheme as part of the 2023 Options exercise and who are or may become eligible for the McCloud/Sargeant remedy**

- In December 2018, the Court of Appeal found in the *McCloud* and *Sargeant* cases that transitional protections contained in the scheme reforms in 2015 discriminated against younger members. The courts required that this unlawful discrimination be remedied by the government, and the government accepted that this should be applied across all of the main public service pension schemes.
- The Public Service Pensions and Judicial Offices Act 2022, which received Royal Assent in March 2022, provides the legislative framework for implementing changes in public service pension schemes to remedy the discrimination identified by the McCloud/Sargeant judgment. There are three broad elements of the remedy package:
  - a. Transferring all remaining members of legacy schemes into the 2015 Scheme on 1 April 2022. This has already been done, under the Firefighters' Pension Scheme (Scotland) (Amendment) Regulations 2022.
  - b. Reverting affected members into their legacy schemes for the remedy period, and dealing with the consequences of that; and
  - c. Establishing the mechanisms by which affected members can choose, at the point of retirement (or immediately, if they have already retired), the scheme

which applies to their service during the remedy period and providing for the consequences of such choices.

We consulted on detailed proposals for both b and c between 16 May 2023 and 23 July 2023. Following consideration of the responses received, the Scottish Ministers have introduced legislation that is currently before the Scottish Parliament, and is due to come into force on 1 October 2023 as required by the 2022 Act.

Individuals entitled to remedy as part of this new options exercise will also be entitled to age discrimination remedy (for the remedy period 1 April 2015 to 31 March 2022). These individuals will need to meet the required criteria which is that they were employed as an RDS firefighter from 31 March 2012 to 1 April 2015 inclusive, or had a break of service of less than 5 years covering one or both of those dates. Work is still being undertaken to clarify the precise mechanism that will apply for service during the period 1 April 2015 to 31 March 2022 and whether and how we need to make provision for this in legislation.

## **21. Principal terms of the 2023 Options Exercise**

### **Timetable**

- SFRS/SPPA would be required to undertake a '2023 Options timetable' to give all those eligible an opportunity to join the modified scheme. The Scottish Ministers would introduce legislative changes that will provide an indicative timetable to support SFRS to effectively implement the Options exercise within 18 months. The draft Regulations therefore set out a timetable but state that, where it is not reasonably practicable for SFRS/SPPA or an individual to comply with this timetable, the requirement is to do so as soon as reasonably practicable (although this is subject to the general rule that elections to take part in the 2023 Options exercise must be made within 18 months of the enabling legislation coming into force).

The indicative timetable is :

- SFRS/SPPA would be required to use reasonable endeavours to notify all persons eligible to join the modified scheme within three months of the enabling legislation coming into force.
- Eligible persons would indicate their interest in joining the scheme by applying for a statement of service accompanied by certain information. This information would confirm their details of service during the extended limited period, and other relevant details such as any service purchased as part of the 2014 Options exercise (if applicable). This would take place within six months of receiving notification from SFRS/SPPA.
- Eligible members who were not notified by SFRS/SPPA will have nine months from the date that the legislation comes into force to declare their initial interest in joining the scheme by applying for a statement of service, accompanied by certain information. As above, this information would set out their details of service during the extended limited period, and other relevant details.
- SFRS/SPPA would write to each eligible person who indicated an initial interest in joining the modified scheme within three months of the date of receiving their application. SFRS/SPPA would set out the amount of special service that eligible individuals have entitlement to purchase during the extended limited period and the associated costs of purchasing those past service rights.
- The eligible person would confirm within six months of receiving this information, that they wish to take up membership of the scheme and pay the required historic contributions. They would also be required to elect the date

that they wish their service in the modified scheme to begin (the start date of the 'mandatory special period').

- The 2023 Options Exercise must be completed within 18 months of the enabling legislation coming into force, and the draft regulations provide elections to purchase special service after this date will not have effect. However, provision is made for some flexibility which allows an individual who was not identified prior to the expiration of the 18-month deadline to elect to purchase special service after the closure of the 2023 Options exercise.
- This flexibility will apply only in exceptional cases where, despite SFRS using reasonable endeavours to notify eligible individuals, they did not notify the individual in question of their entitlement to join the modified scheme during the 18-month options exercise period (for example, because the authority was not aware of an individual's entitlement). It will not apply to cases where an individual has been notified by SFRS but did not respond in good time.

## **22. Matters on which we are seeking your views:**

- Whether the correct categories of individuals have been identified as being eligible to join the modified scheme as part of the 2023 Options exercise in line with the O'Brien ruling.
- Whether the categories of individuals that have been identified as being eligible to join the modified scheme as part of the 2023 Options exercise include everyone who ought to be included.
- Whether the proposed amendments to the Firefighters' Pension Scheme (Scotland) Order 2007 achieve the policy intention of ensuring individuals in Cohort 1 can purchase any of their uninterrupted retained service in the modified scheme.

- Whether the proposed amendments to the Firefighters' Pension Scheme (Scotland) Order 2007 achieve the policy intention of ensuring individuals in Cohort 2 can purchase any of their uninterrupted retained service in the modified scheme.
- Whether the proposed amendments to the Firefighters' Pension Scheme (Scotland) Order 2007 achieve the policy intention of ensuring individuals in Cohort 3 can purchase any of their uninterrupted retained service in the modified scheme.
- Whether the proposed changes place members in the position they would have been had they been entitled to purchase their service at the time.
- Whether the proposed special death grant and additional death grant provisions achieve the policy intention (as set out above).
- Whether any changes are required for those individuals who are entitled to both the 2023 Options Exercise and 2015 Remedy simultaneously.
- Whether there are any additional points not covered in this consultation paper that need to be considered as part of the proposed changes to the Firefighters' Pension Scheme (Scotland) Order 2007.

## **23. Consultation Questions**

Q 1. Are the categories of individuals that have been identified as being eligible to join the modified scheme as part of the 2023 Options Exercise appropriate?



Q 2. Do the categories of individuals that have been identified as being eligible to join the modified scheme as part of the 2023 Options Exercise include everyone who ought to be included?

Q 3. Do the proposed amendments to the Firefighters' Pension Scheme (Scotland) Order 2007 achieve the policy intention of ensuring all individuals in Cohort 1 can purchase any of their uninterrupted retained service in the modified scheme and place these members in the position they would have been had they been entitled to purchase their service at the time?

Q 4. Do the proposed amendments to the Firefighters' Pension Scheme (Scotland) Order 2007 achieve the policy intention of ensuring all individuals in Cohort 2 can purchase any of their uninterrupted retained service in the modified scheme and place these members in the position they would have been had they been entitled to purchase their service at the time?

Q 5. Do the proposed amendments to the Firefighters' Pension Scheme (Scotland) Order 2007 achieve the policy intention of ensuring all individuals in Cohort 3 can purchase any of their uninterrupted retained service in the modified scheme and place these members in the position they would have been had they been entitled to purchase their service at the time?

Q 6. Are there any changes to the proposals required for those individuals who are entitled to both the 2023 Options Exercise and 2015 Remedy?

Q 7. It is proposed that where there is an absence of pay data for pre-July 2000 membership, SFRS can assume that the retained firefighter earns 25% of the pay of a whole time competent firefighter, and that they will be employed at the rank of a firefighter. Do you agree with this policy?

Q 8. The scheme will also provide an additional top up to the special death grant in respect of an individual's pre-7 April 2000 service. The Special death grant will provide eligible survivors with a single lump sum payment equal to 0.1 times the deceased member's pensionable pay for each full qualifying year of service that the deceased member had prior to 7 April 2000. Do you agree with this policy?

Q 9. Members who joined the modified scheme as part of the 2014 Options exercise and who have pre-July 2000 service but have subsequently died will receive an additional death grant in relation to such members' pre-July 2000 service. The additional death grant will provide eligible survivors with a single lump sum payment equal to 0.1 times the deceased member's pensionable pay for each full qualifying year of service that the deceased member had prior to 1 July 2000. Do you agree with this policy?

Q 10. Do the proposed changes to the special death grant and additional death grant sufficiently address the scenario where the deceased member had pre-2000 service?

Q 11. Are there any additional points not covered in this consultation paper that need to be considered as part of the proposed changes to the Firefighters' Pension Scheme (Scotland) Order 2007?



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