

# **The Firefighters' Pension Scheme (Scotland) Amendment Order 2023**

## **REPORT ON THE CONSULTATION ON AMENDMENTS TO CORRECT THE PUBLIC SERVICE PENSIONS REVALUATION ORDERS 2021 AND 2022**

### **1. Introduction**

1.1 The Scottish Government issued an open consultation on the scheme amendments needed to correct errors contained in the Public Service Pensions Revaluation Order 2021 (the “2021 Order”) and the Public Service Pensions Revaluation Order 2022 (the “2022 Order”). The consultation ran from 6 October 2023 to 3 November 2023. The purpose of this document is to provide a summary of the responses from that consultation and to set out the Scottish Government’s position following that consultation.

### **2. Data Protection Statement**

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

2.2 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 including consultation responses. Responses are seen in full by SPPA staff dealing with the issues which this consultation is about or planning future consultations.

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

2.4 In order to show that the consultation was carried out properly, the SPPA is publishing this summary of the responses. Although we have not published any responses in full, we reserve the right to do so at a later date if necessary. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the full response except where respondents have expressly stated that they do not want their personal details published. In these cases, we will redact them before publishing.

2.5 You should also be aware of our responsibilities under Freedom of Information legislation.

2.6 If your details are published as part of a consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by SPPA will be kept for no more than three years.

2.7 Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is the independent regulator for data protection

2.8 For further details about the information the SPPA holds and its use, or if you want to exercise your rights under the GDPR, please refer to our Privacy Policy in the first instance or contact:

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

Tel: 01896 892 469

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

The contact details for the Information Commissioner's Office are:

Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Tel: 01625 545 745 or  
0303 123 1113

Website: [Information Commissioner's Office \(ICO\)](https://ico.org.uk/)

### **3. Background**

- 3.1 Reformed public service pension schemes were established by regulations made under section 3 of the Public Sector Schemes Act 2013 (“the 2013 Act”). The reformed Firefighters’ Pension Scheme in Scotland (FPS 2015) is set out in the Firefighters’ Pension Scheme (Scotland) Regulations 2015 (SSI 2015/19) (the 2015 regulations”). The same issue to be addressed here applies to the counterpart schemes for Firefighters in England, Wales and Northern Ireland, and also the Armed Forces Pension Regulations 2014.
- 3.2 The accrued pensions of active members of the FPS 2015 are revalued annually by reference to “earnings” inflation. For most of the other public sector pension schemes, the revaluation is by reference to “price” inflation. The annual revaluation rates based on both “prices” and (materially to the 2015 regulations) “earnings” are set by annual HM Treasury (HMT) orders made under section 9(2) of PSPA 2013 (the annual “Revaluation Order”). HMT has discretion under section 9(3) to decide how the increase is determined.
- 3.3 The metric used by HMT for earnings-based revaluation is a measure of “Average Weekly Earnings” (“AWE”). The Office of National Statistics (“ONS”) publishes provisional AWE figures in November each year before publishing revised figures in December. In practice, the relevant percentage increase in the Revaluation Order is based upon the revised December figure.
- 3.4 It has recently emerged that the 2021 Order and the 2022 Order each specified an earnings figure which was based on ONS’ provisional November AWE figures, rather than the revised December figures. This was a deviation from the standard approach of using the revised December figures and led to the revaluation for the FPS 2015 being lower than it would have been had the revised December figures been used in those two years. The 2021 Order specified 2.4% whereas the December figure was 2.6%; and the 2022 Order specified 4.1% whereas the December figure was 4.5%.
- 3.5 HMT considers that the use of the provisional November figures in both 2021 and 2022 rather than the revised December figures was an error [Written Ministerial Statement](#). Scottish Ministers agree with this, and consider that the errors must be rectified as quickly as possible. Amendments to the 2015 regulations is the best approach to delivering this. Under the 2013 Act, the Scottish Ministers are the responsible authority for making changes to the 2015 regulations.

## 4. Consultation process

4.1 The Scottish Government consultation document was issued by email to stakeholders on 6 October 2023 and ran from 6 October 2023 to 3 November 2023. The documentation was also published on the SPPA's website. Hard copies of the consultation were available on request.

## 5. Analysis of responses

5.1 The consultation invited comments on the proposed amendments. The main themes from the comments are summarised in part 6. There were two responses to the consultation.

Respondents can be broken down as follows:

<b>Respondents</b>
<b>Staff side representatives (1)</b>
The Fire Officers' Association
<b>Other (1)</b>
Heywood Pension Technologies

## 6. Summary of Responses

### 6.1 All respondents answered this question: *Are you content with the proposed approach for correcting the 2021 and 2022 Annual Weekly Earnings Revaluation in the Firefighters' Pension Scheme 2015?*

Respondents accepted that the Pensions Revaluation Order errors need to be corrected and agreed that the proposed amendments will achieve this objective.

One respondent asked that the explanatory note to the regulations clarified that the supplement forms part of the annual indexation and is not a separate item, would give additional assurance to stakeholders and potentially alleviate queries from scheme members.

The same respondent questioned whether additional amendments to accommodate the uplift will need to be made to the regulations of other Public Service Pension Schemes so that the correct revaluation of Club transfer tranches can be applied. The respondent noted that the consultation document refers to Club schemes reflecting “that de facto percentage increase in respect of the relevant club transfer earned pension for former members of the FPS 2015”. However, the respondent questioned if this could be a statutory requirement.

The same respondent questioned whether the amendment of [regulation 23](#) by insertion of 23(3)(g) to add the index supplement as a discrete amount would result in the supplement being double counted in the calculation of accrued pension for deferment or retirement, as it has also been included in the definition of “index adjustment” in [regulation 3](#).

### Scottish Government Response to Question 1

The Scottish Government thanks respondents for all of the comments received to this question and note the areas where further clarification is requested and will address accordingly.

In addressing the question raised regarding double accrual the Instrument has been amended. The inclusion of “index supplement” as a component of accrued pension in regulation 23 has been removed. Index supplement is also being added into the meaning of “index adjustment”.

In relation to the point on receiving Club Transfer schemes applying the index supplement, we are content that the index supplement, being part of the “in-service revaluation index”, means that schemes should uprate any transferred-in accrued pension taking into account the additional element over and above the rate included in the 2021 and 2022 Orders. However it will be up to relevant scheme managers to consider this.

## **7 Conclusion**

The Scottish Government has considered the responses to the consultation on the prospective legislation contained in the draft presented and are content to proceed. Regulations will be laid in the Scottish Parliament on 8 December 2023 will impact all members who fit the eligibility criteria.

For those still in active employment the amendments will be reflected in their next Annual Benefit Statement. Members who have retired or had another type of pension event since 1 April 2021 will be contacted by SPPA in due course.

Scottish Public Pensions Agency  
*An Agency of the Scottish Government*  
December 2023