



Scottish Public
Pensions Agency

Buidheann Peinnseanan
Poblach na h-Alba

**Firefighters' Pension Scheme
(Scotland) Order 2007 proposed
Further Matthews amendments**

**Consultation Response
Document**

March 2026

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).

1.2 In response, in 2014 the Scottish Ministers introduced changes to the New Firefighters Pension Scheme 2006 (NFPS) 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. This mirrored the equivalent changes to the scheme in England. In Scotland, this exercise was undertaken by the Scottish Fire and Rescue Service (SFRS) with support from the Scottish Public Pensions Agency (SPPA). Special membership is intended to replicate the terms of the earlier Firefighters’ Pension Scheme 1992, from which this cohort had been excluded.

1.3 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.

1.4 This ruling had a read across to Matthews and the NFPS and meant a second options exercise had to 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.

1.5 This MoU sets out the cohorts that are 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 SFRS were party to the MoU, however following the precedent set in 2014 it was felt that introducing similar changes in Scotland would be appropriate.

1.6 To deliver the Matthews Second Option Exercise, the Scottish Ministers made the Firefighters’ Pension Schemes (Scotland) Amendment Order 2024, which came into force on 18 March 2024 and subsequently made minor technical changes in the Firefighters’ Pension Schemes (Scotland) Amendment (No. 2) Order 2024 which came into force on 11 December 2024.

1.7 The second options exercise was due to be completed by 17 September 2025.

2. The 2025 Amendments

2.1 The UK Government has subsequently acknowledged a number of areas which should have been covered by the Matthews remedy but were not captured by the legislative changes introduced in 2014 and 2023.

2.2 This consultation focuses on the Scottish Minister's commitment to provide the same additional remedy and flexibility to those members who were employed as retained firefighters between 7 April 2000 and 5 July 2006 inclusive, by providing further access to the modified provisions of the Firefighters' Pension Scheme (Scotland) Order 2007 (referred to as the modified scheme). This order also extends the time limit for this options exercise by 12 months to 17 September 2026. Views are sought as to whether these proposed amendments achieve the policy intention for eligible members.

3. Data Protection Statement

3.1 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).

3.2 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.

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

3.4 In order to show that the consultation was conducted 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.

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

3.6 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.

3.7 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'

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- 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

3.8 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 \(ICO\)](#)

4. Consultation process

4.1 The Scottish Government consultation document was issued by email to stakeholders on 19 September 2025 and ran from 19 September 2025 to 14 November 2025. 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 three responses to the consultation.

Respondents can be broken down as follows:

Respondents
Staff side representatives (2)
The Fire Officers’ Association Fire Brigade Union
Employer Representatives (1)
Scottish Fire & Rescue (SFRS)

5.2 SPPA is grateful to all those that took the time to respond to the consultation. The questions included in the consultation, a summary of comments received and the Scottish Government’s response are set out in the following section:

Summary of Responses

6. Question 1 – Do you agree that the proposal to provide a survivor’s missed pension lump sum payment achieves the stated policy objective?

6.1 Two respondents agreed with the proposal. One did not and raised several points. The FBU stated that it understands the intention of the amendment is to cater for those who would have been entitled to join the modified scheme under the first Options Exercise, or the 2023 Options Exercise, but have died after retiring, and without having had the opportunity to buy back their full retained service in the

modified scheme. The FBU agrees that the survivors or estates of such retained firefighters should receive a remedy under this heading.

6.2 However, the FBU is concerned that there may remain a category of deceased retained firefighters whose survivors or the estate of the deceased will be left without remedy under the current proposals. These are former retained firefighters who had service (whether wholetime or retained) between 6 April 2000 and 6 April 2006 who had retired, and subsequently died, between 6 April 2006 and the date the first options exercise opened.

6.3 The FBU notes that the missing lump sum payment grant will be available where a retained firefighter had not died prior to making an election to join the 2006 scheme as a special member under proposed new rule 3 [missed pension lump sum grant] in Part 5 (awards on death) of Schedule 1 of the Firefighters' Pension Scheme (Scotland) Order 2007). They maintain that this suggests that the intention is to cater for the category of deceased retained firefighters identified by the FBU. However, the FBU is concerned that is not made clear in the draft rule that this should extend to 17 September 2026 because a retained firefighter who died before the 2014 options exercise opened could not have taken part in the original exercise. The FBU states that draft rule 3 should make clear that those in the category identified in the previous paragraph is entitled to a missing pension lump sum.

6.4 The FBU also responded that draft rule 3 should be clarified further to make sure that retained firefighters who joined the modified scheme during the 2014 options exercise but who died before being able to take up entitlement under the 2023 options exercise are entitled to the missed pension lump sum grant. That is clearly the intention expressed in the consultation document, but the draft rule only refers to a person who 'would have been' a special firefighter member.

Scottish Government Response

6.5 The Scottish Government thanks those who have responded. The Scottish Government agrees with the comments made in the FBU response. Officials propose that the next Scottish Government considers these comments with a view to making any necessary amendments in the next parliament. Given the narrow window for applicants SPPA will consider administrative implementation in advance of the amendments where it is appropriate to do so.

7. Question 2 - Do you agree that the proposal for missed pension payments for deceased individuals achieves the stated policy objective?

7.1 Two respondents agreed with this proposal. One respondent did not and raised several points in response.

7.2 Insofar as eligibility for a survivor's missed pension payment depends on eligibility for a missed lump sum payment, the point made at paragraph 6.2 above applies.

7.3 The FBU notes that it is proposed that the amount of the 'survivors' missed pension payment' will be $0.1 \times$ the deceased member's pensionable pay for each full qualifying year of service that is used to calculate the missed pension lump sum. The FBU presumes that, as was the case with the changes to the special death grant and additional death grant introduced alongside the 2023 options exercise, this amount has been derived from "something akin to the 'broad range and capital value of survivor pensions'". The FBU would like to know how these have been evaluated before commenting on whether the amounts are appropriate.

7.4 The FBU is unclear how the amount of the survivor's missed pension payment expressed in draft regulation 4(4) of Part 5 has been arrived at. The formula used is $0.1 \times A \times B$, where A is the amount of pensionable pay the authority determine that the deceased received in their last year of service, and B is the number of years from 1 July 2000 to the end of the date of the deceased's extended limited period. The FBU is not clear how this formula has been arrived at and cannot comment further until this is clarified.

7.5 The FBU notes that the draft rules provide that the authority must determine the amount of the deceased retained firefighter's pensionable pay during the relevant period. The FBU suggests that, where information as to pensionable pay cannot be provided, there is facility to use an assumed minimum level of pay of 25% of a wholetime firefighter's pensionable pay, consistent with the approach adopted to the determination of pensionable pay in the 2023 Options Exercise.

Scottish Government Response

7.6 The Scottish Government thanks those who have responded and is content that the proposed amendments meet the policy intention as set out in the question. In relation to the point raised by the FBU set out in paragraph 7.3. onwards - The amount of $0.1 \times$ deceased pensionable pay and the number of years' service before 2000 is based estimates provided by the Government Actuary's Department of how the value of these benefits increased for firefighters who started work in earlier decades.

8. Question 3 - Do you agree that the proposal to extend the eligibility criteria for the 'additional death grant' achieves the stated policy objective?

8.1 Two respondents agreed with this proposal. One respondent, The FBU, did not and raised several points in relation to this question.

8.2 The FBU understands the policy intention is to extend eligibility in respect of those retained firefighters with service before 1 July 2000 who:

- (i) were eligible to take part in the 2014 options exercise, chose not to do so and were eligible to join the modified scheme in the 2023 options exercise, but died before they were able to do so; or
- (ii) were eligible to take part in the 2014 Options Exercise, were not given a reasonable opportunity to do so, were eligible to join the modified scheme in the 2023 Options Exercise, but died before they were able to do so.

8.3 The FBU agrees that the additional death grant should be extended to the survivors or estates of deceased firefighters in those categories. However, the FBU is concerned that the wording of draft rule 1C of Part 5 may not achieve that objective because it seems to require that an application has been made under rule 5A of Part 11 (i.e. in the 2014 Options Exercise) which may not have been the case – particularly in the case of those in category (ii) above.

8.4 The FBU sees a further difficulty in relation to those who died after 7 April 2006 but before the 2014 Options Exercise opened. They would not have been able to make an application under rule 5A of Part 11 because that provision was not in force at the time of their death. They were also not eligible to make an election under rule 6A. As matters stand, the survivors or estates of retained firefighters in this category are left without a remedy.

8.5 The FBU agreed with the proposal in 6.1 of the consultation document that the current use of the term ‘additional death grant’ is confusing, and welcomes the proposed amendment.

8.6 Respondents also agreed with the proposal for the closure deadline of the 2023 options exercise to be extended by 12 months to 17 September 2026. The FBU stated that they were aware that many FRAs in England had expressed concerns about meeting the deadline for implementation of the 2023 options exercise. They felt that this was regrettable, but the FBU saw no alternative to extending that deadline.

8.7 The FBU’s experience from its members is that the FRAs have often not been successful in reaching former retained firefighters who are entitled to take part in the 2023 options exercise. If there is to be an extension of 12 months to implement the 2023 options exercise, they have suggested that there should be an extension of the time within which applications can be made, of not less than six months from the date these rules come into force.

Scottish Government Response

The Scottish Government thanks those who have responded and is content that the proposed amendments meet the policy intention as set out in the question. In relation to the points raised by the FBU. The additional death grant in respect of those individuals will also reflect eligible service accrued by them on or after 1 July

2000. Regarding extension of timeframes within which applications can be received, there is additional flexibility to allow for extension past 17 September 2026 in these circumstances.

9. Question 4 - Do you agree that the proposal to extend the conversion options for special deferred members achieves the stated policy objective?

9.1 All three respondents agreed with the proposal. One respondent felt it would be helpful to provide guidance for situations such as, where a person over 55 with standard 2006 FPS service left without taking a reduced pension - Would this person be able to pay backdated payments, convert service to 'special' then receive immediate payment of benefits?

Scottish Government Response

9.2 The Scottish Government thanks those who have responded. On the point raised in 9.1, the change will allow individuals who join the modified scheme as special deferred members to convert any continuous standard service to special service. Where such individuals left employment where they were accruing standard 2006 Scheme service after attaining age 55, they will become entitled to immediate and retrospective payment of their special pension from the date they left their employment.

10. Question 5 - Do you agree that the proposal to amend the formula at Part 5, Rule 1B (8) to change the reference from additional death grant to extended death grant achieves the policy objective?

10.1 All three respondents agreed with the proposal, with no comments made.

11. Question 6 - Do you agree that the proposal to allow individuals to purchase any periods of opted out service as special service achieves its stated objective?

11.1 All three respondents agreed with the proposal, with no comments made.

12. Question 7 - Do you agree that the proposal to allow special pensioner members who are in receipt of a member initiated early retirement (MIER) pension to convert standard service achieves the stated policy objective?

12.1 All three respondents agreed with this proposal, with no comments made.

13. Question 8 - Do you agree that the closing date for the Second options exercise should be extended by 12 months to 17 September 2026?

13.1 All three respondents agreed with this proposal. One respondent suggested that SPPA might consider the extension to be 12 months from when the SSI comes into force.

Scottish Government response

13.2 The Scottish Government thanks respondents for their comments received for this question. After consideration it is felt that sufficient discretion already exists within the regulations to allow for certain applications after 17 September 2026.

14. Question 9 - Do you agree that flexibility should be applied to these new provisions beyond 17 September 2026?

14.1 All three respondents agreed with this proposal, though one respondent mentioned that every effort should be made to progress cases as soon as practicable, and that information and tools need to be in place.

Scottish Government Response

14.2 The Scottish Government thanks respondents for their comments received for this question and agrees that progress should be made in processing cases and that the necessary systems and resources should be in place.

15. Question 10 - 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?

15.1 Two respondents made no additional points. One respondent raised the experience of a group of firefighters known as 'volunteer firefighters' who are stationed within volunteer duty stations and receive retaining fees. These fees are paid in respect of an obligation to attend the station to carry out maintenance and administrative functions rather than to attend emergency incidents. The respondent wishes to draw attention to this group as one which does not currently fall into the category of 'retained firefighters' but still receives pay by way of attendance fees.

Scottish Government Response

15.2 The Scottish Government thanks respondents for their comments in relation to Volunteer Firefighters who receive Retaining Fees. This group of firefighters are not currently in scope for Matthews 2nd Option Exercise.

16. Conclusion

16.1 The Scottish Government has considered the responses to the consultation on the prospective legislation contained in the draft presented and is content to proceed.

16.2 Due to the time restraints in ensuring the legislation was made within a shortened parliamentary period and the requirement for the legislation to be laid

before the parliamentary recess in anticipation of the Scottish Parliament elections these amendments are laid without any material modification from what was presented during consultation. Where this consultation has highlighted where further clarifications may be useful these will be considered in the next set of scheme Amendments due to be consulted on.

16.3 These Amendment Regulations were laid in the Scottish Parliament on 18 December 2025 and came into force from 21 February 2026 with retrospective effect.

Scottish Public Pensions Agency
An Agency of the Scottish Government
18 March 2026

Equalities Impact Statement

1. This Equalities Impact Summary Statement accompanies The Firefighters' Pension Scheme (Scotland) (Amendment) Order 2025 (the 2025 Order), which makes amendments to the Firefighters' Pension Scheme (Scotland) Order 2007. This explains how the Scottish Government has given due consideration to our equalities duties under the Equality Act 2010 and in particular sets out the details of the plans to address historic inequalities that have been experienced by retained firefighters in accessing pension rights.
2. The 2025 Order makes various amendments to the pension scheme relating to retained firefighters. These include changes decided in light of the decision in *Matthews v. Kent and Medway Towns Fire Authority* (the Matthews case) and to rectify historical disparities in treatment between retained (part-time) and whole-time firefighters.
3. At the centre of this policy lies the recognition that retained firefighters, part-time firefighters who serve their communities on an on-call basis, were historically denied access to the pension benefits available to full-time firefighters. This exclusion was ruled unlawful in the Matthews case, which found that denying pension access constituted unfavourable treatment under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000. The tribunal concluded that the distinction between retained and whole-time firefighters could not be objectively justified.
4. Following this determination, the Scottish Fire and Rescue Service (SFRS) conducted an options exercise, running from 1 April 2014 to 30 September 2015, during which eligible retained firefighters were offered the opportunity to join a modified version of the New Firefighters Pension Scheme 2007 and to purchase service dating back to July 2000. However, this initial remedy did not fully resolve the issue. Not all eligible individuals were able to join the modified scheme during this period, and several legal developments emerged shortly thereafter that have necessitated further adjustments.
5. A key development occurred in March 2014, when a related case (*Dermot Patrick O'Brien v Ministry of Justice, Case*) questioned whether part-time workers should also be permitted to include service performed before 7 April 2000 when calculating pension entitlements. This question was ultimately answered by the Court of Justice of the European Union (CJEU) on 7 November 2018, which determined that full pre-2000 service should indeed count toward pension rights. This ruling clarified that the limitation built into the modified scheme, which restricted eligible service to periods after 1 July 2000, was inconsistent with EU law as interpreted through the Part-Time Workers Regulations. Consequently, the modified scheme's "backstop date"

was considered incompatible with the requirement to ensure equal treatment for retained firefighters’.

6. In response to these rulings and evolving legal interpretations, the Home Office committed to delivering a further remedy, commonly referred to as the “Matthews second options exercise”, to ensure that all retained firefighters employed on or after 7 April 2000 could receive full recognition of their service without artificial cut-off dates. To deliver this commitment, a Memorandum of Understanding (MOU) was signed on 9 March 2022 between the Home Office, the Local Government Association, the Fire Brigades Union (FBU), and the Fire and Rescue Services Association (FRSA). The MOU established that amendments would be delivered through an 18-month second options exercise, offering another opportunity for eligible individuals to join the modified scheme, purchase historic service, and receive equitable treatment. With agreement from SFRS and those representing firefighters in Scotland in the FBU and FRSA, the principles of the MOU were then extended to address the same issues in the firefighters’ pension scheme in Scotland. This ensures fair and consistent treatment for affected firefighters in Scotland.
7. The 2025 Order introduces various changes to the New Firefighters’ Pension Scheme 2007 to support the Matthews second options exercise and to correct residual inequalities. Among its provisions are the creation of new awards payable following the death of a retained firefighter, ensuring that survivors and dependants receive appropriate financial support. Amendments also extend the deadlines for purchasing pensionable service during the extended limited period.
8. Additionally, the 2025 Order revises eligibility criteria for certain awards and service conversions. These revisions are intended to accommodate individuals who, for various reasons, were unable to participate in the 2014 Options Exercise. Notably, the changes allow such individuals to join the modified scheme under the Matthews second options exercise, thereby ensuring that the remedy does not exclude any affected individuals. This aspect of the policy reflects the acknowledgement that timely access to the 2014 remedy was not uniformly available across the workforce, so a new opportunity has been facilitated through these amendments.
9. The amendments also address technical issues identified by the O’Brien ruling. Specifically, by removing the backstop date that limited pensionable service to periods after 1 July 2000, the scheme will now enable retained firefighters to include their full period of relevant service, provided they were employed on or beyond 7 April 2000. This adjustment aligns the scheme with legal requirements, ensures consistency for all eligible workers, and eliminates an artefact of earlier policy design that disproportionately disadvantaged individuals with longer retained service histories.

10. The broad purpose of these amendments is to ensure compliance with equality obligations while ensuring that pension entitlements accurately reflect periods of service. By embedding the Matthews remedy into the scheme through legislative amendments, the Scottish Government aims to standardise treatment with other affected jurisdictions, and provide clarity and reassurance to retained firefighters who have waited many years for equitable pension recognition.
11. The guiding principle of this legislation is to ameliorate technical inequalities identified by the court. There is very limited data available with which to assess practical impacts in light of the historic nature of this issue. Taking into account the demographic basis of the workforce and the affected timeline, however, the firefighters affected by this remedy are likely to be mostly older and male.
12. In assessing the equalities impacts of the amendments, this document considers implications for groups with protected characteristics under the Equality Act 2010. Unequal treatment historically experienced by retained firefighters interacted with workforce demographics in ways that may have produced indirect discrimination [because part-time workers are more likely to be women and older]. The amendments serve to remove historic systemic barriers and promote fair access across all eligible individuals, regardless of age, sex, or other protected characteristics. The extended deadlines and expanded eligibility criteria reduce the likelihood that older firefighters, women with career breaks, or those with irregular service patterns [because of disability?] might be disproportionately disadvantaged by administrative cut-offs or eligibility rules.
13. This statement also acknowledges operational considerations. By providing extended timeframes and clarifying eligibility requirements, this Order aims to reduce administrative strain while aligning as far as possible with the exercise set out in other jurisdictions, supporting consistent application across the United Kingdom. This strengthens the accessibility of the pension scheme and the fairness of the administrative process.
14. In summary, the amendments underscore the Scottish Ministers' commitment to rectify decades-long inequalities affecting retained firefighters' pension rights. The amendments introduced through the 2025 Order represent a fair and legally compliant response to tribunal and court determinations, ensuring that retained firefighters, who are integral to emergency services provision in Scotland, receive pension entitlements that reflect their full service. By expanding eligibility, updating benefit structures, extending deadlines, and aligning the scheme with judicial interpretation, the government aims to promote fairness, uphold equality duties, and provide long-overdue redress to those affected.