

Scottish Firefighters' Pension Scheme

Scheme Advisory Board

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HM Treasury Consultation - Public service pension schemes: changes to the transitional arrangements to the 2015 schemes

Introduction

On behalf of the Scottish Firefighters' Pensions Scheme Advisory Board (SAB), I attach a response to the consultation paper *Public Service Pension Schemes: changes to the transitional arrangements to the 2015 schemes* dated 16 July 2020. This response summarises the discussions held at the SAB in relation to the proposals set out in the HM Treasury paper. The SAB, which comprises representatives from the Scottish Fire and Rescue Service (SFRS), Fire Brigades Union (FBU) and Fire Officers' Association, met on 10 September and again on 29 September 2020 to consider the proposals set out in the paper.

The findings of the SAB are generally in common with the findings of the equivalent discussions in England. However a key difference is that the SFRS is a single service and the pension scheme has a single, centralized scheme administrator, the Scottish Public Pensions Agency (SPPA). This contrasts to the structure in England where schemes for 45 Fire and Rescue Authorities are administered by 18 different authorities.

Summary

The SAB unanimously supports the Deferred Choice Underpin (DCU) as the only option that can remove age discrimination. However to fully mitigate risk of future challenge, the SAB suggests that consideration is given to allow the member an indicative choice in 2022 before making a final decision at retirement. The advantages of this are set out in the responses to the consultation questions.

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The SAB hopes that in implementing the remedy that a co-operative and integrated cross-government approach is taken, both within Whitehall departments and cross Border.

The SAB fully recognizes the complexities of remedying discrimination, and notes that there remains a good deal of uncertainty about implications and implementation. The response therefore represents the SAB's current understanding of the issues in the consultation but there remain concerns about the level of scheme specific discussions that still need to take place in a critically short timescales.

Yours faithfully,



Tom Nash
Chair, Scottish Firefighters Pension Scheme Advisory Board.

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The Scottish Firefighters' Pension Scheme Advisory Board offers the following answers in response to the consultation:

Q1. Do you have any views about the implication on the proposals set out in this consultation for people with protected characteristics as defined in section 149 of the equality act 2010? What evidence do you have on these matters? Is there anything that can be done to mitigate any impacts identified?

- On behalf of the SAB, SPPA has commissioned an equalities impact assessment (EIA) specific to the firefighters scheme and membership and the SAB will consider that assessment in due course.
- Whilst this EIA will not be completed before the end of this consultation period, the SAB will be keen to share its findings with HM Treasury in due course should any notable issues be identified.

Q2. Is there anything else you would like to add regarding the equalities impacts of the proposals set out in this consultation?

- As mentioned in response to Q1, SPPA has commissioned an EIA specific to the firefighters' scheme and membership.
- The proposals being consulted upon would apply from 1st April 2022, the day after existing tapered protection ends for members of the Firefighters' Pension Schemes. There should, therefore, be no notable impact on people who are currently covered by tapered protection. There would however, be a detrimental impact on people who were fully protected by being within 10 years of normal pension age in April 2012 who would not have sufficient pensionable service to meet the retirement criteria for an 'Ordinary Pension' before April 2022; the criteria for the 1992 Firefighters' Pension Scheme being: -

Ordinary pension

B1.—(1) Subject to paragraph (2), this rule applies to a regular firefighter who retires if he then—
(a) has attained the age of 50, and
(b) is entitled to reckon at least 25 years' pensionable service, and
(c) does not become entitled to an ill-health award under rule B3.

- It could be considered that older entrants to the SFRS would be subject to indirect age discrimination because they cannot obtain an Ordinary Pension due to commencing service aged 39 or older.
- Whilst all other members of current firefighter pension schemes will continue to have access to the equivalent of an Ordinary pension, the group mentioned above would not.
- For many firefighters whose legacy scheme was the 2006 Firefighters' Pension Scheme, the 2015 reformed scheme could be a better choice as the default scheme. The suggestion at paragraph 2.40 of the consultation is, therefore, welcomed since it seems likely that the Firefighters Scheme would choose a

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different default scheme. There might, however, be a risk of challenge where an employer makes a choice on a member's behalf and that choice does not ultimately correspond with the member's wishes.

Q3. Please set out any comments on our proposed treatment of members who originally received tapered protection. In particular, please comment on any potential adverse impacts. Is there anything that could be done to mitigate any such impacts identified?

- The consultation proposals are that the members are given the choice to choose legacy scheme benefits or reformed benefits for the whole remedy period. They will not be given the choice to have legacy benefits for some of the period and reformed benefits for the rest. The SAB recognises the principle that by being a part of the transitional protection arrangements the concept of tapered protection is also discriminatory, however it is not clear whether some members will be disadvantaged by losing an accrued right and we consider further work and legal consideration is given in respect of any such affected individual.
- In particular, attention is drawn to Section 23 of the Public Service Pensions Act 2013, which requires the consent of any scheme members who may be affected by retrospective provision. If it is found that tapered protection members are being detrimentally affected, the SAB will be interested to learn what appropriate action may be and how these legal provisions will interact.

Q4. Please set out any comments on our proposed treatment of anyone who did not respond to an immediate choice exercise, including those who originally had tapered protection?

- The consultation proposes a default choice of the 'legacy' scheme for current protected members.
- It proposes that the default for members without full protection is the reformed scheme. A tapered protection member of the 1992 scheme may be better off with legacy scheme benefits for the period 1 April 2015 – 31 March 2022
- A protected 2006 scheme member may be better off in the 2015 scheme.
- Given this difference we would expect consideration to be given to a different default scheme in different scenarios based on further legal and actuarial advice. For the avoidance of doubt, Special Members of the FPS 2006 should be treated as FPS 1992 members for the purposes of a default.

Q5. Please set out any comments on the proposals set out above for an immediate choice exercise.

- Immediate choice gives the member prompt resolution.
- The member's decision would be based on various assumptions such as future earnings, career aspirations and earnings indexation.
- There is considerable risk that the member makes the wrong decision and then further challenge.

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- This option indirectly favours members closer to retirement, placing younger members at a disadvantage.
- Immediate choice may require individuals to seek advice in order to make a full and appropriate decision. However it is not clear how that advice will be provided due to the complexity and specific nature of firefighter pensions there may be a shortage of available marketplace financial advice.

Q6. Please set out any comments on the proposals set out above for a deferred choice underpin.

- Under DCU the member will have comparisons that will allow them to make an informed choice based on their personal circumstance at the time of retirement.
- There is a degree of uncertainty attached to this option as the member will not know exactly what benefit they are likely to receive until nearer retirement.
- Under the current proposals it would also mean that current members in the FPS 2015 who were former members of FPS 2006 would be returned to their legacy scheme and have some contributions refunded. At retirement the member would then be offered a choice to receive FPS 2015 benefits for the reform period if better. However, because that would be done at retirement it would be based on known benefit entitlements. For FPS 2006 members that could mean they then have to pay back the additional contributions they were refunded in 2022
- Returning contributions to a substantial proportion of members under this option would have some DEL budget implications for Scottish Government.
- The FPS 2015 scheme in Scotland has more generous Early Retirement Factors (ERF's), therefore active 2006 members may wish to have their benefits from the 2015 scheme.
- Taking all this into account, the SAB feels that consideration should be given providing members with an "indicative choice" in 2022, returning the member to the scheme they think they will want to be in. This would not preclude the application of the final deferred choice underpin when presented with full information at retirement, but would in the meantime simplify some aspect of administration.
- This option would mitigate the risk of future challenge.

Q7. Please set out any comments on the administrative impacts of both options.

- Both options represent an administrative challenge.
- Further investigation will be required to ensure sufficient data has been retained for the remedy period, although SFRS and SPPA consider this low risk based on data currently held.
- Both proposals will require changes to pension administration systems, and the drafting of scheme regulations. In the timescale presented presents significant challenges to delivery of the options. For example lead in time, system testing and administrator training will all have to be factored in.
- Cost – the SAB is aware that additional funding for increased administration costs has been suggested but it is not clear if this will be sufficient. It should be

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noted that additional resourcing and costs for SFRS payroll is likely and funding should be made available should this be the case.

- It is suggested that for the benefit of members and administrators that sufficiently clear communications are available, central and consistent. This could include the provision of calculator and any other tools for members to use. This will incur development costs and possible procurement challenges.
- The 1992, 2006 and 2015 firefighters' schemes each have different sets of member contribution rates. Under both options, contribution adjustments will be required over a seven year period. This will be complex and time consuming and will require careful handling of payments and expectations, for example where a member will be due to repay additional contributions. Appropriate timescales for recovery should be agreed to minimise inconvenience.
- If a tapered 1992 member chooses to go back into the legacy 1992 scheme, when that member achieves 30 years' service, the service becomes capped. Also if the member achieves 30 years' before age 50 they are due a contributions holiday until they reach age 50 and can start to accrue again.
- The challenges in addressing other pension events, e.g. transfers, divorce, contribution adjustments for deferred members should not be underestimated.
- The SAB anticipates that a significant number of people whose legacy scheme is the 1992 scheme, who would have sufficient service to retire when adding remedy period service, will do so in the lead up to April 2022 or shortly thereafter. Some members of the Board have proposed that if DCU is chosen as an option then administrative burden might be reduced if such individuals could choose their default scheme at the end of the remedy period as they are more likely to be sure about plans for future service and retirement. It is considered that very few would need to change their choice thereby allowing administrators to process the majority of retirements without the need to deal with Deferred Choice administration.

Q8. Which option, immediate choice or DCU, is preferable for removing the discrimination identified by the courts and why?

- Consensus reached is that of the two options DCU is the only choice which would remove discrimination
- DCU removes risk and allows time for administrators to prepare
- As mentioned in response to Q6, providing members with an indicative choice in 2022 would mitigate the risk of future challenge.
- Immediate choice does not, in the Board's opinion fully remove the age discrimination for younger members as they have to rely on assumptions that may prove not to be correct

Q9. Does the proposal to close legacy schemes and move all active members who are not already in the reformed schemes into their respective reformed scheme from 1 April 2022 ensure equal treatment from that date onwards?

- SAB recognizes the consultation confirms final salary linking will continue, but uncertainties remain about other aspects of transition post 2022, which could impact on workforce retention. For example, many firefighters are choosing to

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work past 30 years'. If they become a deferred member of the 1992 scheme and then begin to contribute to the 2015, they will be subject to NPA 60. It is not clear if the final salary link to legacy scheme will remain where the individual has attained maximum legacy scheme service. This could lead to members feeling forced out of the job at 30 years' service so that they can access benefits before age 60.

- Firefighters who are age 55 but have not accrued 30 years' service may decide to retire early (between 25-29 years' service) rather than go into the 2015 scheme and have to wait until age 60. There are workforce implications here with the potential loss of experienced staff.
- It is anticipated that a scheme specific EIA for Firefighters will highlight some of these issues and possibly uncover others.
- Member representatives do not believe the reformed scheme is workable for firefighters. There are issues around firefighters and in particular female firefighters' fitness working to age 60. There is also an issue when legacy 1992 members go into the reformed scheme in 2022 where if they were to be ill health retired, the 2022 scheme uses the one pot approach meaning the 1992 benefits won't be considered. This could open up further challenge further down the line. Member representatives propose that firefighters be given the choice to remain in the legacy schemes.

Q10. Please set out any comments on our proposed method of revisiting past cases.

- The Board believes that it is unacceptable to wait until the remedy is finalised. In particular, immediate action should be taken in respect retired scheme members who may be suffering detrimentally. It is therefore imperative that clarity is reached at the earliest opportunity to allow administrators and employers to take appropriate steps
- The SAB considers that a pragmatic and reasonable approach should be taken to any administration requirements borne from the remedy options. This could include any costs incurred from breaching timescales for any corrective action, such as tax charges.
- There would seem to be a low priority in revisiting a large number of remedy period retirements, where the firefighter has retired after reaching maximum pensionable service in the 1992 scheme.

Q11. Please provide any comments on the proposals set out above to ensure that the correct member contributions are paid, in schemes where they differ between legacy and reformed schemes.

- Under DCU, members who elect for legacy benefits in the 1992 will have to pay the additional contribution required for the 7 year remedy period. Given the difference in contribution rates substantial sums could fall due.
- Also, 2006 members will end up with additional contributions to pay if they choose the 2015 scheme. The need for employee contribution rate adjustment could be minimised by taking steps to identify the most appropriate default scheme. As previously mentioned at Q6, use of the 2006 Firefighters' Pension

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Scheme as a default for former members of that scheme is likely to result in a greater number of contribution adjustments that would be required if the default were the 2015 reformed scheme.

- SFRS and SPPA recall the special members exercise to allow retained firefighters retrospective membership to the modified section of the 2006 scheme and the administrative issues that came along with it. Learning lessons from that exercise is imperative, such as more flexibility about contribution recovery timescales.
- Returning contributions to a substantial proportion of members under this option would have DEL budget implications for Scottish Government.
- Previously referred to at Q7, the legacy 1992 FPS allows active members with 30 years' service and under the age of 50 to receive a 'contributions holiday' until reaching age 50 when they would be able to retire or voluntarily continue to work without accruing additional pensionable service. People who had already retired with more than 30 years' service were entitled to a refund of contributions paid for the excess period. Eligibility for a 'contributions holiday' needs to be taken into account alongside members' choice of legacy or reformed scheme benefits when assessing whether employee contributions have been overpaid or underpaid. It is suggested that the simplest way to deal with this would be to factor-in any 'holiday' due when determining whether a contributions deficit has to be repaid or whether a refund of overpayments is due.

Q12. Please provide any comments on the proposed treatment of voluntary member contributions that individuals have already made.

- In FPS 2015 additional contributions purchase added pension. In the legacy 1992 and 2006 schemes they purchase added years.
- Different criteria for purchase in the reformed and legacy schemes
- Conversion of added pension in 2015 scheme to added years in the legacy schemes could potentially take a member over 30 years' service.

Q13. Please set out any comments on our proposed treatment of annual benefit statements?

- Under DCU, 2 sets of annual benefit statements and pension savings statements, one based on legacy, the other on reformed benefits
- Regardless of Immediate or Deferred choice, software will need to be developed in order to calculate benefits due from exclusion or inclusion of remedy period benefits according to member choice.
- ABS very difficult to have in place for 2022/23 and possibly 2023/24
- Given the difficulties we wouldn't expect to be required to report breaches in that year.
- It would be a huge administrative burden and potentially confusing to the member. The SAB propose that annual benefit statements (ABS) showing the comparison of benefits based on the underpinned second option are only provided on request, and that ABS reflect the default legacy scheme or members choice only.

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Q14. Please set out any comments on our proposed treatment of cases involving ill-health retirement.

- There are differences in the benefits provided by each scheme. Therefore issues could arise under ill-health payments if a member would qualify for higher tier ill-health under the FPS 2015. The enhancement to pension paid on the higher tier ill-health can mean in some cases that the pension per annum is higher under the FPS 2015 than it would be under FPS 1992. Although the pension will be higher, the lump sum under FPS 2015 will be lower, so the member will need to consider the value of higher income / survivors' pension over a bigger lump sum.
- If the member was not married at the point of ill-health retirement but does have an unmarried partner electing to retire under reformed scheme benefits would provide a partner's pension.
- If the FPS 2015 pension was put into payment at the higher rate, and the member subsequently elects to have legacy benefits in order to receive a higher lump sum, would this result in overpayments from the pension scheme that would need to be repaid?
- The 'one pot ill health approach' requires members retiring on ill-health grounds to take benefits under the terms and conditions of the 2015 reformed scheme. Whilst this arrangement has been in place since 2015 and in some situations, benefits may be enhanced, the criteria for accessing ill-health benefits differs from the FPS 1992 legacy scheme for firefighters. This is inequitable in that members who were fully protected by the transitional provisions and continue to work beyond 2022 by choice or because they do not have enough service to retire with an FPS 1992 pension will suffer considerable detriment in the event of being considered for ill health retirement. Those with a choice in the matter will be consciously accepting the change but those with no realistic choice (age 55 or older) will suffer detriment.
- FPS 1992 members with full or transitional protection who have retired or will retire on ill health grounds between 2015 and 2022 will have an option to be considered for retirement under the terms of their legacy scheme but, under the proposals, their counterparts who remain in service will lose that option post April 2022.

Q15. Please set out any comments on our proposed treatment of cases where members have died since 1 April 2015.

- Survivor/family benefits differ between the 1992 and 2006/2015. Unmarried partners are not provided for in the 1992 scheme.
- There will be issues on whom should be contacted, particularly if the death occurred in the FPS 1992 scheme where there was no spouse / civil partner and death benefits may have been paid to estate rather than an unmarried partner. Retrospective options may also affect children's pensions where there is no spouse / civil partner

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- Agree with proposal that where no higher pension payment would be due to the survivor or to the deceased's estate, no contact should be made with the relevant parties.

Q16. Please set out any comments on our proposed treatment of individuals who would have acted differently had it not been for the discrimination identified by the court?

- Considering and handling retrospective opt-out cases on a case-by-case basis would place a huge administrative burden on schemes. A blanket approach by all schemes would be preferred.
- If opt-out cases are to be considered on a case by case basis, what criteria would they have to meet?
- Would they be required to meet the costs for both employee and employer contributions?
- Issues here are not limited to pension scheme membership. There could be implications for career changes, promotion (temporary or otherwise) and other lifestyle changes made as a consequence of pension provisions.

Q17. If the DCU is taken forward, should the deferred choice be bought forward to the date of transfer for Club transfers?

- The simplest option for the member and the scheme administrator would be if the choice is made at date of transfer.

Q18. Where the receiving club scheme is one of the schemes in scope, should members then receive a choice in each scheme or a single choice that covers both schemes?

- In terms of scheme administration, a single choice that covers both schemes.

Q19. Please set out any comments on our proposed treatment of divorce cases.

- The SAB recognised that pension sharing on divorce cases are administered slightly differently in Scotland. It is usual for a proportionate amount, rather than a percentage, of a notional CETV to be quoted in pension share orders. It may be difficult to unwind this agreement should a member's CETV be subsequently revised.
- If legal costs are incurred because of any revision to share orders, these should not fall to the pension credit or debit members.
- SPPA is seeking legal advice on this matter and will engage separately with HM Treasury.

Q20. Should interest be charged on amounts owed to schemes (such as member contributions) by members? If so, what rate would be appropriate?

- Member representatives consider that no interest charges should be imposed on member.

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Q21. Should interest be paid on amounts owed to members by schemes? If so, what rate would be appropriate?

- The consultation proposes that interest would be paid to members if owed. If under question 16 a taper member successfully argued that they would have acted differently if it was not for the discrimination and retired during the remedy period and has their pension re-instated from that point, they would be able to claim interest on those payments under this proposal. This would also be applied to all retirements that would have occurred during the remedy period whose benefits would be remedied.

Q22. If interest is applied, should existing scheme interest rates be used (where they exist), or would a single, consistent rate across schemes be more appropriate?

- There is no scheme interest rate set for the Firefighters Scheme, where interest rates have been set they are usually for individual circumstances such as the special members exercise in FPS 2006.
- As benefit / contribution rates differ across the public sector, is a single rate appropriate?
- Bank of England Interest rates have been consistently low for the remedy period, so in order to truly reflect the buying power of returned contributions a different measure should be used.

Q23. Please set out any comments on our proposed treatment of abatement?

- The consultation proposes that where the remedy choice might result in an increase to pension in the legacy schemes, which would ordinarily affect the level of abatement that the abatement would not apply.
- Abatement is at the employer discretion where they can withdraw all or part of the pension.

Q24. Please set out any comments on the interaction of the proposals in this consultation with the tax system?

- A 'broad brush' approach has been applied. The SAB is concerned that members may not have access to full and appropriate advice and support.
- There is a potential discrimination issue whereby protected members will have been liable to pay AA charges for the full 7 years of the remedy period. In opening up access to the legacy scheme, unprotected members may only be subject to the last four years' charges. This is potentially discriminatory as many protected members will have been protected on grounds of age.
- Clear central guidance from HMRC is required. Tax was a considerable issue in the administration of the Modified scheme for Special members (referred to in Q11) and lessons from that exercise must be learned to remove additional pressure on administrators and members in sorting tax issues arising from government discrimination.