

**TRANSITIONAL AND CONSEQUENTIAL PROVISIONS****Issue**

1. This paper sets out proposals, for technical consultation with the Committee, on transitional and consequential changes to finance and wider pensions legislation in relation to the Firefighters' Pension Scheme 2015. Also attached are the draft regulations to implement these proposals.

**Background**

2. Affirmative regulations are needed to modify the existing contracting out provisions and the early leaver provisions of the Pensions Act 1993 to enable there to be a single period of service in both the old and new firefighter pension schemes for those transition members to whom the salary link applies for:
  - the purposes of Guaranteed Minimum Pensions
  - transfers (so that when a member transfers pension out of one scheme it is transferred out of both schemes, and that service in the new scheme counts as service for the old scheme), and
  - revaluation.
3. Modifications are needed to ensure that the early leaver provisions are not triggered when a transition member leaves the old scheme and remains active in the new scheme (i.e. so that they do not become deferred in the old scheme). The structure of the payment of ill-health pension for a transition member may result in the payment of a tax charge which would not otherwise be levied. Modifications are needed to prevent this.
4. Further modifications are needed to the Pensions Schemes Act 1993 to deliver the policy in section 10 of the Public Service Pensions Act 2013 that a deferred member of the new scheme has a different pension age to an active member.
5. The modifications listed in paragraphs 2 and 3 are common to nearly all public service pension schemes. The amendment in paragraph 4 is common to the uniformed services. Other Departments will be bringing forward similar draft transitional and consequential regulations for their schemes.

**Timing**

6. Comments on the draft regulations are required from members of the Committee by Tuesday 12 November at the latest. The draft regulations will then go to the Joint Committee on Statutory Instruments for pre-legislative scrutiny by mid-November.

**Explanation of the draft regulations***Part 1- Introductory*

7. Citation and commencement and interpretation

## *Part 2 – modification of contracting-out provisions*

8. HMRC will issue a certificate to new schemes in response to an election to contract-out the new scheme. The election to contract-out the new scheme will need to contain some information as specified in regulation 4(3) but it will not be required to contain all the currently prescribed information. Nor will some of the other requirements apply (e.g. requirement to notify earners or consult unions about the contracting out). The new scheme will still need to satisfy the 'reference scheme test', which is the statutory standard in section 12A of the Pension Schemes Act 1993.
9. The amendments will simplify the administrative procedures when contracting out (which will apply to the new scheme for one year). The full procedures required by the legislation would otherwise apply.

## *Part 3 – modification of early leaver and other provisions*

10. The amendments in Part 3 only apply when a transition member has their final salary in the old scheme determined by their final salary in the 2015 scheme as they meet the requirements in paragraphs 1 or 2 of Schedule 7 to the 2013 Act (final salary link).
11. Regulation 6 (certification) modifies section 15A (reduction of guaranteed minimum in consequence of pension debit) of the Pensions Schemes Act 1993 so that a person will be treated as having a single period of pensionable service in both the old and new schemes. This enables the reduction of the guaranteed minimum in the old scheme to take effect whether the member has moved to the new scheme and not transferred the GMP from the old scheme.
12. Regulation 7 (preservation of benefit) applies to modify the protection given to early leavers for the calculation of short service benefit. The modification means that the protections are not triggered when a transition member leaves the old scheme as termination of pensionable service is to be treated for that member as termination of pensionable service in the new scheme.
13. Regulation 8 (revaluation of preserved benefit) modifies section 87 of the Pensions Schemes Act 1993 concerning the revaluation of benefits so that the revaluation takes effect after the member leaves pensionable service in the new scheme. Whilst the individual is an active member of the 2015 scheme the transition member will not be treated as a deferred member of the old scheme. The transition member will also benefit from the final salary link so that revaluation before pensionable service ends in the new scheme is not intended.
14. Regulation 9 (protection of increases in guaranteed minimum pensions) concerns the protection of increases in guaranteed minimum pensions which contracted out schemes had to provide until 1997. For this purpose regulation 9 provides that the cessation date when a person ceases to be in contracted-out employment under the old scheme (and from which GMPs may need to be increased) is treated as the date when the person leaves their new scheme, and not the date when they transfer from the old scheme to the new scheme.
15. Regulation 10 (protection of increases in guaranteed minimum pensions after abolition of contracting-out) this regulation is required as section 87 is to be amended from April 2016 to implement the abolition of contracting-out for defined benefit schemes. Regulation 10 will come into force at the same time

whilst regulation 9 will cease to have effect (see regulation 1(2) for commencement).

16. Regulation 11 (transfer values) modifies chapter 4 of Part 4 which concerns cash equivalent transfers for early leavers. This regulation provides that a person will not acquire the right to a cash equivalent under the old scheme until pensionable service terminates in the new scheme, rather than when the person leaves the old scheme on transferring to the new scheme. However, where calculations of benefit are made based on length of service in the old or the new scheme, the two schemes are then treated separately.
17. Regulation 12 (transfer values regulations) modifies the Occupational Pension Schemes (Transfer Values) Regulations 1996 to enable scheme managers to delay transfers of preserved benefits until after the transition member has left new scheme employment.
18. Regulation 13 (cash transfers and contribution refunds) Chapter 5 of Part 4 concerns cash transfer sums or contribution refunds for those who leave a scheme after 3 months but within 2 years or before their benefits have vested. The Regulations provide that a person will not acquire rights under Chapter 5 until pensionable service terminates in the new scheme, rather than when the person transfers into the new scheme. The statutory time periods are also measured as though the person had one continuous period of service.

#### *Part 4 – modification of tax regime*

19. When a transition member whose old scheme service will have the final salary determined by their final salary in the FPS 2015 is awarded an ill-health pension, the 2015 ill-health pension may contain 3 elements:
  - An element in respect of the lower tier ill-health pension entitlement in respect of service in the old scheme;
  - A lower tier ill-health pension from pensionable service in the new scheme; and
  - If a higher tier ill-health pension is awarded in the FPS 2015, a higher tier ill-health pension.
20. When the transition member reaches their NPA in the old scheme, the element in respect of the lower tier ill-health pension will cease to be paid from the new scheme and is then paid from the old scheme. Under the current tax legislation as unmodified, this would result in an increase in the value of the pension input period. If this increase meant that the amount of the annual allowance for the pension input period was exceeded a tax charge would arise. Regulation 15 prevents this.
21. Under the current tax legislation, the initial value of the 3 elements of the ill-health pension would be measured against the lifetime allowance. Further the cessation of payment of the lower tier ill-health pension from the new scheme would not be deducted yet the lower tier ill-health pension coming into payment from the old scheme would be measured against the member's lifetime allowance. There would then be the possibility of a tax charge. Regulation 14 modifies the application of the current legislation to ensure that the payment of

the element in respect of the lower tier ill-health pension entitlement paid from the old scheme will not count against the lifetime allowance.

*Part 5- short service benefit: modification of provisions*

22. Regulation 16 modifies chapter 1 of Part 4 of the Pension Schemes Act 1993 to allow the calculations required by section 10 of the Public Service Pensions Act 2013 where a deferred member of the new scheme has a different pension age (set at state pension age) to that of an active member (set at 60).