

 **Information**

HMT Age Discrimination Consultation Proposals

Purpose

1. The purpose of this note is to provide Fire and Rescue Authorities (FRAs) with information on the Treasury (HMT) proposals for remedying age discrimination in the Firefighters Pension Scheme (FPS), and a summary of the proposed draft responses on behalf of the Scheme Advisory Board (SAB) and the LGA on behalf of the Fire and Rescue Authorities in their capacity as employers.
2. The SAB and the Employers will be indicating a preference for Deferred Choice Underpin ([DCU](#)) as this is considered the option that provides most mitigation to the risks that have been identified.
3. The SAB and Employers will be making strong recommendations that to avoid unnecessary and complicated reversals at retirement, members make an indicative choice in 2022, rather than a default return to the legacy schemes.
4. If indicative choice is not an option, then the SAB and employer representatives propose a different default for former members of FPS 2006 that they are defaulted to FPS 2015 for the remedy period.

Background

5. The [formal HMT consultation](#) on remedying age discrimination was published on 16 July 2020 with a closing date of 11 October 2020.
6. The proposals are in two parts. The first is to rectify the retrospective effect of the current age discriminatory regulations by allowing members to be returned to their former final salary scheme or to choose to receive benefits based on the current Career Average Revalued Earnings (CARE) scheme.
7. The proposals consult on two options on when the member might make the choice to remedy the benefits for the seven-year period of 1 April 2015 to 31 March 2022, referred to as the remedy period.
 - 7.1. Immediate Choice: The choice will be made during a twelve-month period following the end of the remedy period, this will be the same time right across public sector.

or

- 7.2. Deferred Choice Underpin (DCU): All members will be returned to the legacy scheme at 1 April 2022 and the member can make a choice at retirement whether they wish to choose benefits from the reformed scheme.
8. Government Actuary's Department (GAD) valuations are not yet available in order to consider the cost of either option on employer contributions.
 9. The Board submitted their [informal response](#) to the early technical discussions with GAD in April 2020 which, although caveated, reflected a general agreement for DCU.
 10. The second part of the HMT proposals are to rectify the age discrimination going forward and move all members into the reformed CARE schemes with effect from 1 April 2022.
 11. A dedicated [age discrimination remedy page](#) has been created on www.fpsregs.org to hold the background to scheme reforms and Court processes, along with the consultation documents.

The HMT Proposals

• Immediate Choice

12. Under the immediate choice proposals, the member would make an irrevocable decision on the benefits for the remedy period 01 April 2015 to 31 March 2022.
13. Members would be given some time to make the choice, most likely twelve months from when they are first contacted, although the consultation does not comment on how soon they would expect that to be after 1 April 2022.
14. Members will stay in the current scheme until they have made their irrevocable choice, at which point the choice will be implemented retrospectively.
15. Where members do not make a choice at the end of the choice exercise, the consultation proposes a default choice that keeps them in the scheme they are currently in.
16. The member's decision would be based on various assumptions such as future earnings, career aspirations and earnings indexation.
17. For some members the decision may be more straight forward, these are likely to be former members of FPS 1992 with more service, for others such as FPS 2006 members or those with less service the decision may require more assumptions about their future. However all decisions will be based on individual circumstances, and members may need to take advice.

18. In order to support the members decision, the consultation points to tools being developed to project benefits at retirement for the member. It is unclear who is expected to be responsible for these tools, but it is expected to be each scheme manager, which for the FPS is each Fire and Rescue Authority.
19. This will prove very challenging to develop for the FPS due to the complexity of the administration and management arrangements; they will also incur additional costs.
20. In order to make the irrevocable choice, members will need assurance that the information they are provided with is 100% accurate.
21. Providing the advice, tools and information that will be required to consider making an immediate choice will require significant investment of resources and finances as well as a comprehensive communication strategy.
22. Returning members to the position they would have been in, if they hadn't left the final salary scheme will require an adjustment of the tax relief they either would have received or paid, and in some cases trigger annual allowance tax charges. Under immediate choice those adjustments only need to happen once.

• **Deferred Choice Underpin (DCU)**

23. Deferred choice underpin is in two parts:

In 2022

24. The consultation proposes that 'in 2022' eligible members will be returned to their legacy scheme (final salary) for the remedy period.
25. It is not clear what the expectations are on schemes to achieve this administratively within the year 2022, as this will require building up the final salary record, which will include any converting transfers, added pension, scheme pays and divorce debits from the FPS 2015 to final salary benefits, and creating any Additional Pension Benefits that become due.
26. To build an historic service record for retained firefighters in the period 1 April 2015 to 31 March 2022, both actual pensionable pay and reference pay will be needed for each year of remedy.¹
27. While the consultation does not clarify, it seems likely that returning members to the legacy scheme will automatically trigger from 31 March 2022 recalculation of annual allowance for each year of the remedy period, and if there are charges to pay it will trigger the tax clock for those payments to be made.
28. Employee and employer contributions would need to be adjusted and may be subject to interest:

¹ [FPS 2006 Part 10, Rule 6, Paragraph 5](#)

28.1. FPS 1992 contributions are higher than FPS 2015 which means both the member and the employer would have underpaid and owe contributions. These additional contributions would be eligible for tax relief in the year they are paid.

28.2. FPS 2006 scheme contributions are lower than FPS 2015, which means the member and employer would receive a refund of overpaid contributions. Contributions refunded would be taxed as income.

29. The consultation proposes that members receive annual benefit statements and pension saving statements showing both sets of benefits each year until they retire.

At retirement

30. When the member subsequently retires from the scheme, they will be asked to make a choice whether to receive the default benefits or benefits in the reformed scheme. This period will stretch from immediately at 1 April 2022 through to the last date an 18-year old who joined FPS 2006 at 1 April 2006 would retire at the normal retirement age of 60 of 31 March 2048.

31. This will require the scheme to continue administering the reformed benefits (the underpin) for the remedy period in order to calculate the benefits that would have been payable at retirement.

32. However, there would be no assumptions for the member to make as these benefits would be based on a known entitlement at retirement.

33. If at retirement a different choice is made to the default, a re-calculation of the annual allowance at the point of making the decision would need to be done, which in some cases may trigger a tax charge, although the consultation offers some mitigation for this where the tax charge is triggered by the remedy mechanism.

34. Likewise, if a different choice is made at retirement, further contributions or a refund will be due. This is likely to be the reverse position to the situation in 2022, as illustrated at paragraph 28 above.

• Move all members into FPS 2015 from 1 April 2022 onwards

35. Broadly, the proposals are to move everyone into the reformed schemes from 1 April 2022.

36. The consultation confirms that the final salary link will remain so that any increase due to promotion will be reflected in the final salary pension at retirement.

37. Based on information from HMT, it is understood this is the FPS 2015 as it is, with no amendments, as such it is our expectation that the double accrual guarantee, eligibility for retirement and arrangements for ill-health will remain as they are in the FPS 2015. However, this needs to be clarified as soon as possible.
38. The following might be used to argue that FPS 2015 could be considered as a more modern scheme which supports the employer and workforce in a more flexible manner:
- 38.1. FPS 2015 does not require abatement and supports flexible retirement.
 - 38.2. Early retirement factors² are more generous than in FPS 2006 for active members.
 - 38.3. FPS 2015 offers improved survivor benefits to FPS 1992.
 - 38.4. FPS 2015 employer contribution rates are lower than FPS 2006.
39. Submissions to the consultation from the employee representatives of the SAB will include strong opposition to this proposal.
40. The consultation asks whether the proposals ensure equal treatment, but no workforce specific Equality Impact Assessment (EIA) has been completed as yet.
41. There are several categories of members, where further clarity is needed on the effect of these proposals, and whether they raise equality issues:
- 41.1. Under the proposals taper members who have achieved 30 years' service before tapering will not be allowed to keep their reformed scheme membership and will need to make a choice for all FPS 1992 or all FPS 2015 for the remedy period.
 - 41.2. However, previously unprotected members could achieve near 30 years' service just after 1 April 2022 and move into the FPS 2015, thereby achieving nearly a full FPS 1992 pension and still being allowed to accrue new benefits.
 - 41.3. The FPS 2015 ill-health arrangements are what is known as one-pot, this means the eligibility for ill-health rests on the criteria of the FPS 2015 only, which has a higher bar for both lower tier and higher tier benefits.
 - 41.4. It cannot be assumed that all members who gained from original protection, had planned to retire from the scheme at 55. While members may have had the virtue of age, some didn't have the virtue of service, so might have planned to work longer in return for a bigger pension.

² <http://www.fpsregs.org/index.php/gad-guidance/early-retirement>

41.5. While the benefits in the FPS 2015 from 2022 remain unclarified, fear or a lack of knowledge may drive members to retire earlier than planned. Schemes will be able to provide detailed examples of how transitional retirements may work after 2022³, if this information is clarified by HMT or Home Office.

Summary

42. Both choice options are very challenging to the FPS due to the complexity of arrangements for administering and managing the scheme across 45 scheme managers with no direct contract management of software.
43. Significant change will be required to software systems, the timescale for which they are available are not in the scheme managers control.
44. The changes will require a significant level of additional resource to support and manage, which will not just be at administrator and software level, the FRA as scheme manager will be heavily impacted by the resource needed at an officer level. The governance challenge of ensuring the right decisions are taken will also be keenly felt.
45. Funding is of significant concern to FRAs. FRAs must fund pension costs arising from the administration and management of the scheme from their operating accounts, this is separate to the actual cost of providing benefits which is reflected in the employer contributions. The [AON report](#) commissioned by the board in 2019 indicated that the cost of administering the scheme was £77 per annum per member [appendix one].
46. The additional cost of remedy will mostly be in additional resource and software charges, due to the fact the ownership of the relationship with software providers is not with the FRA, it is difficult to have detailed discussions with software suppliers on ballpark costs. Nevertheless the SAB attempted to model the increase in costs in their [informal response](#).
47. Modelled Costs of administrating and managing the remedied schemes

Option	Lowest	Highest (based on 75% additional resource to current costs)
Current	£77 ⁴ per member	
Immediate Choice	£91 per member	£134 per member
Deferred Choice (assume 10% additional effort to immediate choice)	£100 per member	£147 per member

³ <http://www.fpsregs.org/images/admin/1992transition300519.pdf>

⁴ Appendix One - <http://www.fpsboard.org/images/PDF/Surveys/Aonreportfinal.pdf> Total excluding special projects

Deferred choice (assume 25% additional effort to immediate choice	£114 per member	£168 per member
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48. The decisions taken under immediate choice are irrevocable, and there is a risk the member could make what turns out to be the wrong choice for them. This could lead to cost and administrative inconvenience if the member is able to argue for reinstatement of the other option, and a reputational risk to the scheme manager if the decision is taken on incorrect or inadequate information.

49. Unlike centrally managed schemes such as NHS and Teachers which have contract management in place over commissioning of tools that will be available, the Firefighters schemes are not placed to centrally commission a tool for members to make assumptions and project benefits. Each FRA will be subject to arrangements made by their administrator.

50. An assessment of risk to both the FRA and member was considered the highest priority by the SAB, which was supported by both employee and employer members of the board.

51. Illustrations of reputational risk are:

51.1. Risk of inconsistency

The arrangements for responsibility and funding of the scheme mean that some FRAs have less resources and knowledge than others, which will likely lead to inconsistencies of approach with regards to the levels of technology and information members are given to support their decisions

51.2. Resources

Available resources and knowledge to implement a complex choice system are likely to be lower than for a centrally administered and managed scheme.

SAB Proposals

52. The SAB proposals supported by both the employer and employee side, are to give a broad preference towards DCU as this is considered the option that provides most mitigation to the risks that have been identified.

53. While a preference for DCU is recognised, the SAB will be making strong recommendations that members make an indicative choice in 2022 as to which scheme they will elect for.

54. Offering members an indicative choice removes the risk of an irrevocable choice and lessens the potential complications of reversal at retirement.

55. As recognised under immediate choice, there is a strong possibility that most FPS 1992 members will know their decision, but FPS 2006 or younger members may take a different decision that they later feel was wrong for them.

56. If indicative choice is not an option, then the SAB and LGA responses will propose a different default for former members of FPS 2006 that they are defaulted to FPS 2015 for the remedy period.

57. The SAB will also be proposing 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.

Please address any queries on the content of this request to
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