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**Consultation on changes to the Firefighters' Pension Scheme (England) 2006:  
Local Government Association response**

The LGA submits its response to the Home Office consultation seeking views on the draft Firefighters' Pension Scheme 2006 (England) (Amendment) Order 2023. Thank you for the opportunity to provide this response.

I respond on behalf of the Local Government Association (LGA). The LGA is a politically led, cross-party membership organisation which represents more than 330 councils of all types and 44 fire authorities across England. We work on behalf of our members to support, promote and improve local government.

The response has been drafted by the Pensions Team at the LGA. The team provide employer and administrator support to various public service pension schemes, including the Local Government Pension Scheme (LGPS) and the Firefighters' Pension Scheme (FPS).

We are pleased to provide our responses to the consultation questions below.

Yours faithfully,



Joanne Donnelly  
Head of Pensions

## Consultation questions

### **Question 1. Are the categories of individuals that have been identified as being eligible to join the modified scheme as part of the 2023 Options exercise appropriate?**

1. The LGA are in agreement that the correct categories of individuals have been identified as being eligible. The difficulty will be, for some fire authorities, identifying the specific individuals who are eligible because records may not exist any more for those people concerned. Additionally fire authorities may need to check addresses for those who are eligible so that they can ensure that the relevant correspondence will reach the correct recipient.

### **Question 2. Do the categories of individuals that have been identified as being eligible to join the modified scheme as part of the 2023 Options exercise include everyone who ought to be included?**

2. The LGA believes that this is the same question as question 1, and are therefore in agreement that it does.
3. We are pleased that the exercise recognises those who were not given a reasonable opportunity to join, but should have been, in the first options exercise.
4. We would like clarity on 5.2, bullet point 4 in the consultation document, as to the expectation for providing individuals with their options. This part of the consultation document suggests that FRAs would only write to those who initially expressed an interest. The LGA has concerns that if only those who have expressed an interest are written to, this would lead to FRAs having a group of individuals in the future who are in the same position as those in Cohort 3 who are only in this exercise, due to them not being given their options in the first options exercise, as they did not express an interest.
5. We would also like clarity on 5.2, bullet point 3, as this suggests that those who were not notified by their FRA would have nine months from the date that the legislation comes into force to express their interest. Whilst the timescale itself is not so much of an issue, the concern is that if they did not know about the exercise, because they were not notified by the FRA, then how could they express an interest? The LGA would therefore like confirmation that this is not contradictory to 5.3 within the consultation document, which suggests that there will be provision for flexibility for those who were not identified by their FRA within the 18 month implementation window.

**Question 3. Do the proposed amendments to the Firefighters' Pension Scheme (England) Order 2006 achieve the policy intention of ensuring all individuals in Cohort 1 can purchase any of their uninterrupted retained service in the modified scheme and place these members in the position they would have been had they been entitled to purchase their service at the time?**

6. The proposed amendments enable individuals in Cohort 1 to purchase their uninterrupted retained service in the modified scheme. However consideration should be given to the following points:
- The members will only be in that position if they are able to be traced successfully.
  - The member will be paying contributions at a different point in time and are now subject to different pension and income taxes. Retrospective contracting-out is also no longer possible.
  - More data might have been available at the time of the first options exercise.
  - The member may have taken actions in the meantime which are now potentially difficult to reverse. Examples would include paying for added years so that the member would now breach the service cap, and also trivial commutation where the benefits now exceed the relevant limits.

**Question 4. Do the proposed amendments to the Firefighters' Pension Scheme (England) Order 2006 achieve the policy intention of ensuring all individuals in Cohort 2 can purchase any of their uninterrupted retained service in the modified scheme and place these members in the position they would have been had they been entitled to purchase their service at the time?**

7. The proposed amendments enable individuals in Cohort 2 to purchase their uninterrupted retained service in the modified scheme, however the comments in our response to question 3 above are also relevant here.
8. Based on our understanding as highlighted in our response to question 6 below, we believe that the date included within Cohort 2 should be amended to 31 March 2015.

**Question 5. Do the proposed amendments to the Firefighters' Pension Scheme (England) Order 2006 achieve the policy intention of ensuring all individuals in Cohort 3 can purchase any of their uninterrupted retained service in the modified scheme and place these members in the position they would have been had they been entitled to purchase their service at the time?**

9. The proposed amendments enable individuals in Cohort 3 to purchase their uninterrupted retained service in the modified scheme however the comments in question 3 are also relevant here.
10. Based on our understanding as highlighted in our question 6 response, we believe

that the date included within Cohort 3 should be amended to 31 March 2015.

**Question 6. Are there any changes to the proposals required for those individuals who are entitled to both the Matthews remedy and McCloud/Sargeant remedy simultaneously?**

11. Whilst there is provision within the proposals to cover those who are affected by both the Matthews and McCloud/Sargeant remedy, it is our understanding that you would not be able to purchase service beyond 31 March 2015, due to restrictions within the Public Service Pensions Act 2013. Therefore, the proposals as they are set out, would require amendment to allow for service post 31 March 2015 to be remedied under the McCloud/Sargeant remedy.
12. Based on the above, under Schedule 2, Amendment of Part 1, under the definition of “extended limited period” d) would require amendment to 31 March 2015.

**Question 7. Do the proposed changes to the special death grant and additional death grant sufficiently address the scenario where the deceased member had pre-2000 service?**

13. Yes the proposed amendments appear to address the scenario where the deceased member had pre-2000 service due to research done by the Government Actuary’s Department (GAD), according to footnote one of point 5.36 of the consultation document:

*“In setting the level of these payments, Home Office has had regard to the range and net capital value of benefits that survivors could have received had the deceased individuals had access to modified scheme benefits. That is the broad range and capital value of survivor pensions net of member contributions eligible survivors would have received had the deceased individuals been members of the modified scheme and had pensionable service in that scheme to the extent allowed under the 2023 Options exercise.”*

And footnote 2 of point 5.40 of the consultation document:

*“In setting the level of these payments, Home Office has had regard to the range and net capital value of benefits that survivors could have received had the deceased individuals had access to modified scheme benefits under the terms of the 2023 Options exercise rather than the 2014 Options exercise. That is the broad range and capital value of survivor pensions net of member contributions eligible survivors would have received had the deceased individuals been members of the modified scheme and had pensionable service in the scheme to the extent allowed under the 2023 Options exercise in addition to those received due to their election under the 2014 Options exercise”.*

However, the LGA feels that the Fire Sector should be able to see how the data has been formulated to understand how these figures have been derived.

14. We would also like to highlight an amendment of Part 5:

14.1. Under “*Death grant for extended limited period*” 1B(2) and (3), a date of 30 September 2024 is given as a deadline date for a beneficiary to apply for the death grant payment. This does not allow for cases where the FRA has been unsuccessful in contacting the individual in that timeframe.

14.2. Under “*Additional death grant*” 1C(a) we believe that this date would be 7 April 2000 and not 1 July 2000.

14.3. Furthermore under 1C(c) it references that if someone has died before 31 March 2025 that under (2) and (3) they would be able to make an application up until 30 September 2024. This is an earlier date than the qualifying date and therefore we believe this needs to be amended to a date post 31 March 2025 and provision made for those beneficiaries who an FRA has been unable to trace.

15. We would also like clarity as to why the wording under 1C(5) is different to that under 1B(5), which also differs from the existing rule 1A(5) of Part 5. We would suggest that 1B(5) is amended to the existing wording for consistency with the other two:

*“1C(5) The authority may request from the person making the application under paragraph (2) or (3) such information required to enable the authority to determine the deceased’s pensionable pay, or, where no information is provided, the authority may determine the amount of pensionable pay from their records.”*

*“1B(5) The authority may determine the amount of the deceased’s pensionable pay based on –*

*a) Information provided by the person making the application in response to a request by the authority, or*

*b) If no information is provided, the authority’s records.”*

*“1A(5) The authority shall request from the person making the application under paragraph (2) or (3) such information required to enable the authority to determine the deceased’s pensionable pay, or, where no information is provided, the authority shall determine the amount of pensionable pay from their records.”*

**Question 8. 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 (England) Order 2006?**

**Definition of Reasonable Endeavours**

16. The LGA believes that it is necessary to define the meaning of “reasonable endeavours” stated in 5.2 of the consultation document in the context of the Matthews second options exercise. This provides those involved in the exercise with clear instruction as to what measures they need to take to identify individuals, whether

reminder letters are necessary and whether fire authorities will be expected to undertake tracing exercises where addresses are not known.

### **Timeline for responses**

17. The LGA notes that the draft provisions give a timetable of when the exercise must be undertaken. We believe that this timetable does not give sufficient time for fire authorities to calculate the potential benefits which a firefighter may be able to purchase.

18. Note 5.2 of the consultation document states:

- *Eligible persons would indicate their interest in joining the scheme by applying to the relevant FRA for a statement of service accompanied by certain information. This information would confirm their details of service during the extended limited period (as further explained at 5.16 below), and other relevant details such as any service purchased as part of the 2014 Options exercise (if applicable). This would take place within six months of receiving notification from the FRA.*

19. We believe that as this stage only requires the firefighter to indicate an interest in the options exercise, then this period should be reduced to three months – we consider that six months is too long for this initial stage.

20. Note 5.2 of the consultation document also states:

- *FRA's would write to each eligible person who indicated an initial interest in joining the modified scheme within three months of the date of receiving their application. FRA's would set out the amount of special service that eligible individuals have entitlement to purchase during the extended limited period and the associated costs of purchasing those past service rights.*

The timeframe of three months for providing each firefighter with the costs and details of special service will be unachievable, and the LGA believes that this should be extended to six months. Given that fire authorities will be calculating benefits which we know through GAD's data collection go back to the 1960s, and given that McCloud means that fire authorities are simultaneously having to enact the age discrimination remedy at exactly the same time, then the change to six months is absolutely necessary for the Matthews second options exercise to be completed. This would also give fire authorities time to deal with complex cases such as ill health retirements which, according to the regulations, will need to be calculated by the scheme actuary. We note that if there is delay in processing of cases by the scheme actuary then the timescales could easily be breached and we believe that the regulations should allow for this.

21. Additionally we are aware that firefighters will have the option to buy parts of their

service and if firefighters request different scenarios then this will ultimately affect the time that the fire authorities need to complete the Matthews second options exercise.

22. Note 5.2 of the consultation document also states:

- *The eligible person would confirm to the appropriate FRA, within six months of receiving this information, that they wish to take up membership of the scheme and pay the required historic contributions. They would also be required to elect the date that they wish their service in the modified scheme to begin (the start date of the 'mandatory special period').*

As stated above, the LGA believes that giving the firefighter six months to decide is too long and that the period should be reduced to three months. Feedback from administrators has also raised the point that giving a person six months to respond increases the risk of non-replies. Giving a shorter timescale would therefore be more appropriate.

#### **Contracted out date of the pension scheme**

23. The LGA understands that the contracted-out date of the pension scheme cannot be changed for the Matthews second options exercise. We also understand that where individuals can prove that they will be detrimentally affected as a consequence of this, that they can request that this is rectified. The LGA would like clarification on the process that should be followed for these cases.

#### **Annual Allowance Charges**

24. Under 6.7 – 6.8 of the consultation, consideration is given to the impact on the annual allowance of purchasing additional service. The consultation suggests that the increase in pension will be taxed in accordance with when the contributions for it are made, rather than the tax rules at the time the pension would have been earned if the member had not received unfavourable treatment as a result of being part time. It is not clear how accrual will be allocated to the individual tax years if periodic pension payments are made.

25. We note that individuals suffering financial detriment as a result of the annual allowance tax charges will be considered on a case-by-case basis, but it is not clear what the process for this would be and – importantly – who the cases should be considered by. As these cases will arise, especially for members with pension benefits elsewhere or in their whole time role, the process for applying for compensation needs to be clarified.

#### **Option to change 2014 retained exercise decision**

26. The LGA understands from discussions with the Home Office that there is the intention to allow members to change the decision that they made during the first options exercise. As this is not covered in the regulations, we believe that these should

be amended appropriately to reflect this policy intention.

### **Administration challenges**

27. The LGA notes that administering the options exercise is complex, may entail the creation of new processes between the FRAs and their administrators, and that resource is already expected to be stretched administering the McCloud remedy. It is for this reason that the LGA is keen to promote sharing of solutions and information. Our suggestions in this regard would include ensuring that any data inputs which are not required for calculation purposes are minimised, that any guidance given by GAD over model use or creation of precedents is shared with model users as soon as possible, and that model outputs are created to enable bulk inputs to the systems and administration interfaces being created.

### **Financing arrangements**

28. The consultation document indicates at 5.69 that the deficit created by the Matthews remedy will be addressed through the actuarial valuation process and spread over a period of 15 years from the implementation date. We further note that employer pensions cost pressures will be considered as part of wider funding agreements. We are disappointed at the lack of certainty offered at this stage; and look forward to receiving more information in this regard to give fire authorities more clarity in this key area.

### **Previous cases of trivial commutation**

29. The LGA has been made aware that there are cases from the first options exercise where a member has bought their retained service and been able to commute the benefits to a trivial commutation payment. We are also aware that the same individuals are in scope for the second options exercise. Currently it is unclear what the options will be for people in this situation.

30. The LGA would like the Home Office to clarify what the member's options are in this scenario.

### **Added years cases where the member will exceed the service cap**

31. The LGA has been made aware that there are cases from the first options exercise where members have chosen to take out added years contracts to boost their special 2006 scheme pension. We are also aware that these people are eligible for the second options exercise and may now breach the service cap due to the added years purchased.

32. The LGA would like the Home Office to clarify what the member's options are in this scenario.

### **Aggregation**

33. The LGA notes that claims have been received with regards to individuals who have periods of service as a retained firefighter and a regular firefighter seeking an ability to aggregate these periods of service under the individual's membership of the 1992



Firefighters' Pension Scheme. We also note that the Home Office is currently considering its response to these claims. We look forward to the resolution of the aggregation claims as soon as possible.

### **Recommended Regulation amendments and queries**

34. Under Amendment of Part 10, 5(3) of rule 1, in (i) we believe this should be updated to 7 April 2000 and not remain as 1 July 2000:

*“Any period of service as a retained firefighter before 1st July 2000 which, if it had been a period of service during the limited period in relation to which mandatory special period pension contributions had been paid, would have been qualifying service in accordance with paragraph (h) and”*

35. Under the the definition of “extended limited period” we believe that it should read as follows, to be consistent with the definition of “limited period”:

*““extended limited period” means, the period beginning on the date on which the person was first employed as a retained firefighter and ending on the earliest of—”*

36. In the footnote a) we believe that this should also refer to the following Statutory Instruments: (SI's) 2015/319, 2018/269, 2018/997 and 2020/354.

37. We would like to highlight that under 5(c) “Purchase of service during the extended limited period – supplemental provision”:

- We believe under (5) that it should read “Where an authority “is” not able to determine” rather than “are”.
- Is it correct that the same is being inserted at (7) and (7A)? (after “*this scheme*” insert “*or purchase additional service during the extended limited period*”)
- In 7(c), we believe that it should read (amended where highlighted):

*“(4A) Where a person is required under paragraph (2), or has chosen under paragraph (4), (8) or (9), of rule 6A, to pay a lump sum contribution, this sum must be paid in full (subject to any deduction from the lump sum pursuant to paragraph (2), (6) or (10) of rule 6A) before the pension to which the lump sum contribution relates comes into payment.”;*

- In (5)(d) and (h), whilst we agree that those who are purchasing post 1 July 2000 should repay their past service costs on the same terms as the first exercise, and the period should be longer for those who were employed between 7 April and 30 June 2000, we believe that where only minimal amounts are owed by a firefighter to purchase their service, that there should be some form of provision for a Scheme Manager to determine a shorter timescale. This would only apply where the amount is small. The reason for suggesting this is because there would be an administrative burden to spread a small amount over 20 years.

38. Under 6D “Compensation deduction”:

- In (1) we believe that it is missing a word, and should read as follows (amended where highlighted):

*“The authority must deduct from a special member’s **mandatory** special period contributions an amount calculated in accordance with this rule (the “compensation deduction”) where a special member—”*

- In (1)(b) we believe that it should read as follows (amended where highlighted):

*“Provides the statement referred to at paragraph (5).”*

- (4)(a) and (b) states the following:

*“(4) The rate of tax relief which must be applied in the compensation scenario is—*

- (a) *where a member establishes, with such supporting evidence as the authority may reasonably require, that the rate of tax relief which would have applied to him in the compensation scenario is greater than 20%, that rate must be applied for the purposes of calculating the compensation deduction, or*
- (b) *in any other case, 20%.”*

We believe that a fire authority may also be in receipt of information when looking at a firefighters’ tax rate which indicates that they may be a higher rate taxpayer. We therefore suggest that (a) is amended to *“where a member or fire authority establishes,”*

39. In Part 11, Rule 6A(11), we feel that the date may need to be amended to 7 April 2000.

40. In Amendment to Part 12 7(2) we believe this should read:

*“(2) In rule 11A (Transfer of accrued rights under the 1992 Scheme to special membership of this Scheme) – “*

41. In Part 13, we would like clarity as to whether an ill health charge would be payable to the Firefighters’ Pension Fund for each ill health retirement under the second options exercise.

42. In Amendments to Part 14, in rule 4(2), we would like clarity as to how this would work in practice and whether this would include concurrent employments:

*“Where a person is, or is eligible to be, a special member of this Scheme in respect of more than one contract of employment (whether with the same or different authorities) the person may elect to treat those employments as one employment”*

43. The words “of Part 11”, are already in the regulations under Part 14, where the amendment is inserting *“(purchase of service during the limited period) or rule 5B(9)*

*(purchase of service during the extended limited period) of Part 11” and therefore do not need adding.*

44. The draft amendment regulations refer to cases needing to be referred to the scheme actuary. The LGA feels that clarity is needed in the regulations as to whether these references simply mean that fire authorities should refer to GAD guidance, or whether specific scenarios do need individually referring to the scheme actuary. This clarification may assist fire authorities when planning how long a case may take to complete.

**Question 9. The scheme will also provide an additional top up to the special death grant in respect of an individual’s pre-7 April 2000 service. The Special death grant will provide eligible survivors with a single lump sum payment equal to 0.1 times the deceased member’s pensionable pay for each full qualifying year of service that the deceased member had prior to 7 April 2000. Do you agree with this policy?**

45. Yes, we do, however we believe that the Fire Sector should be able to view the data which determined this calculation method.

**Question 10. Members who joined the modified scheme as part of the 2014 Options exercise and who have pre-July 2000 service but have subsequently died will receive an additional death grant in relation to such members’ pre-July 2000 service. The additional death grant will provide eligible survivors with a single lump sum payment equal to 0.1 times the deceased member’s pensionable pay for each full qualifying year of service that the deceased member had prior to 1 July 2000. Do you agree with this policy?**

46. Yes, we do, however we believe that the Fire Sector should be able to view the data which determined this calculation method.

**Question 11. It is proposed that where there is an absence of pay data for pre-July 2000 membership, FRAs can assume that the retained firefighter earns 25% of the pay of a WT firefighter, and that they will be employed at the rank of a firefighter. Do you agree with this policy?**

47. In principle yes we do because this data has been derived from data provided by fire authorities, however the LGA would like to highlight that it may not be possible to work this out for all firefighters. This is because firefighter pay scales may not exist for all relevant years. Additionally the payscales for 1977 split the firefighter grades into years of service and rank of firefighter.
48. The LGA would like confirmation as to which elements of these pay scales should be used. The 1977 pay scales, for example, splits the firefighter role into Firefighter, Long service Firefighter, Leading Firefighter, Firefighter (age 18 years). This is to ensure consistency across the sector.