

Contingent decisions

“Optant outs”



Contingent Decision – Timeline of Events



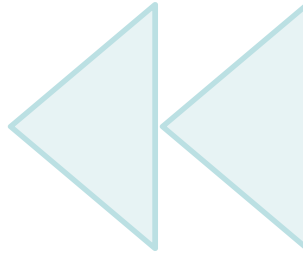
Oct 2023

Opted out before remedy period

Legacy = FPS 2006

Opted out during remedy period

Legacy = original legacy scheme (FPS1992 or FPS 2006)



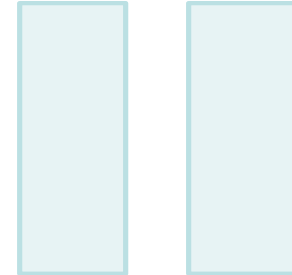
Jul 2024

Opted out before remedy period

Legacy = FPS 2006

Opted out during remedy period

Legacy = FPS 2006



Jan 2025 onwards

Pause supported by HO

CD guidance withdrawn

Current Position

Date of Opt out	Rejoined before 31 March 2022?	Treatment of Opted out service in Remedy Period
Before 31 March 2015	Yes	FPS 2006
	No	FPS 2006
On 31 March 2015	Yes	FPS 2006
	No	FPS 2006
After 31 March 2015	Yes	*FPS 1992 to rejoin date and FPS 2006 from rejoin date to 31 March 2022
	No	FPS 1992

*This would result in FPS 1992 becoming deferred.

PSPJOA

FPS
1992

PSPJOA – Primary legislation

Section 5 - Election for retrospective provision to apply to opted-out service

- Scheme regulations for a Chapter 1 legacy scheme must make provision so that a retrospective election may be made in relation to relevant opted-out service.
- Allows for remedy period service to be reinstated but does not provide the power to reinstate any service pre/post remedy period.

Section 4 - Meaning of “the relevant Chapter 1 legacy scheme”

- “the relevant Chapter 1 legacy scheme”, in relation to a person’s remediable service, means the *Chapter 1 legacy scheme for people in that employment, or holders of that office, under which the person most recently accrued pensionable service.
 - *Subject to subsections

PSPJOA - Section 4

Meaning of “the relevant Chapter one legacy scheme”

- [s.4\(1\)](#) most recently accrued pensionable service
 - Subject to subsections 2 to 8
- [s.4\(2\)](#)
 - (a) on or before closing date (1 April 2015) the person opted out, and
 - (b) on the closing date the rules of that scheme **prohibited** a person from becoming an active member, and
 - (c) on that date, the rules of another Chapter one legacy scheme **did not** include such prohibition,
 - The correct Chapter one legacy scheme is the one mentioned in (c)
- [s.4\(3\)](#)
 - (a) any time after the closing date the person opted out, and
 - (b) any time before 1 April 2022 the person opted that their service should become pensionable again, and
 - (c) at that date the rules of that scheme mentioned in subsection (1) **prohibited** a person from becoming an active member, and
 - (d) at that time the rules of another Chapter one legacy scheme **did not** include such prohibition,
 - The correct Chapter one legacy scheme is the one mentioned in (d)

Effect of FPS 2006 on FPS 1992

On the 6 April 2006 the government introduced a new pension scheme for Firefighters in England

[The Firefighters' Pension Scheme \(England\) Order 2006 \(FPS 2006\).](#)

The introduction of FPS 2006 saw the 'closure' of the [Firemen's Pension Scheme Order 1992 \(FPS 1992\)](#)

In general, the FPS 1992 continued to have effect for persons who were already members / entitled to awards, but thereafter **did not** have effect for persons who took up employment with a fire and rescue authority thereafter. This was given effect by the 2006 Regulations at [article 3](#).

FPS 1992 Regulations were also [amended](#)

The FPS 1992 rules themselves provided that it should cease to apply to members who had elected to opt-out of contributions under [rule G3 \(election not to pay pension contributions\)](#) and then also cancelled that election on or after 6 April 2006.

This meaning if that if any individual who made an election under [rule G3](#) chose to withdraw their request and elect to recommence payment of pension contributions, then they would do so under FPS 2006, **not** FPS 1992.

Purpose of remedy

To put members back into the position they would have been if the discrimination had not happened.

Available avenues of exploration

Do nothing

- High risk approach
- Question fairness on members
- Invite legal challenge

Amend PSPJOA

- Most favourable solution
- Red line from HMT

Compensation

- Highly complex

Opt out TWG

Compensation solution



Chaired by MHCLG with support from GAD



Wider stakeholder engagement



Data needed from sector



Is compensation a viable option?



Can it be achieved on its own?

What's been discussed so far?

Complexity

Lump sum v
regular
payment

Administration

Record
keeping

Mitigating
further
challenge

SM Discretion

Nullifying opt
outs?

Longevity of
compensation

Secondary
legislation
amendments

Ancillary
benefits

What happens in the interim?

LGA updating CD guidance

- To be published this week

Process the cases you can

- Original legacy scheme FPS 2006
- Post 31 March 2015 opt out who did not rejoin before 1 April 2022.

Alert the LGA to immediate cases

- Affected individuals due to retire.

Any questions



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Thank you for listening!

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