

# Modified Retained FAQ Guide

## **Modified 2006 Firefighters Pension Scheme, as modified by SI 2014/445**

First edition issued May 2015

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## Foreword

These Notes consolidate answers to previously advised frequently answered questions, and have been provided to give some guidance and clarification on the completion of the exercise

### **Important Disclaimer**

***Please note that it is the responsibility of each FRA to apply the rules of the pension scheme in accordance with their interpretation of the scheme and to obtain legal advice where they consider this necessary.***

***The information in this guide has been provided to give some guidance and clarification of the rules of the pension scheme, and answers some frequently answered questions. However they should be used only as an informal view of the interpretation of the firefighters' pension scheme as only a Court can provide a definitive interpretation of legislation.***

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## Background

Following the introduction of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, a claim was made by a number of retained firefighters that they should receive equal treatment with full-time regular firefighters and thereby be able to access pension benefits under the 1992 Firefighters' Pension Scheme. The claim proceeded through the Employment Tribunal and Court of Appeal before judgement was given in the House of Lords in favour of the retained firefighters.

Although, since 6 April 2006, retained firefighters have been eligible to join the Firefighters' Pension Scheme 2006 ("FPS 2006") the House of Lords judgement allowed those who were serving during the period 1 July 2000 to the date on which they elected to join the 2006 Scheme, to have special provisions which generally reflect the rules of the Firefighters' Pension Scheme 1992 ("FPS 1992"). They could not be given backdated membership of FPS 1992 because that Scheme is now closed. Consequently FPS 2006 was amended for these "special" retained firefighters; they have their own modified version of the Scheme within the main Scheme rules.

Those who qualify for membership of the modified Scheme must make an election to join which must be no later than 30 September 2015 (as extended by SI 2015/590)

## The Regulations

The relevant regulations that amended the 2006 scheme to allow for the modified scheme are listed below

2014/445 The Firefighters' Pension Scheme (England) (Amendment) Order 2014

2014/446 The Firefighters' Pension Scheme (Amendment) (England) Order 2014

2014/447 The Firefighters' Compensation Scheme (England) (Amendment) Order 2014

2015/590 The Firefighters' Pension Scheme (Amendment) Order 2015 -

<http://www.legislation.gov.uk/uksi/2015/590/schedule/2/paragraph/1/made>

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## Limited Period

The 2015 amendment order [1c]<sup>1</sup> amends the definition of limited period. This confirms that the end date of the limited period is the earlier of

- the date on which the member became a special member or as a standard member before 31st March 2015
- the date on which they ceased to be employed
- For those members who will be provisionally enrolled and subsequently elect to become special members between 1st April 2015 and 30th September 2015 inclusive
  - an unprotected member - 31st March 2015
  - a tapered member - the earlier of joining the scheme as a special member or the members taper date up until 30th September 2015
  - full protection member - the date on which the person joins the scheme as a special member up until 30th September 2015

Therefore for a member who would qualify as tapered, and is not already a standard NFPS member the end of the limited period would be the earlier of the date of joining the scheme as a special member and the member's tapered date. Ie for someone who joins the scheme as a special member on 1st June 2015, but whose taper date was 24th May 2015, the end of the limited period would be 24th May 2015.

The limited period for a tapered member who does not transfer into the 2015 scheme until a date after 30 September 2015 or a protected member would be the earlier of 30<sup>th</sup> September 2015<sup>2</sup> or the date that they make an election to join the modified scheme.

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<sup>1</sup> <http://www.legislation.gov.uk/uksi/2015/590/schedule/2/paragraph/1/made>

<sup>2</sup> The member has to have made an election by 30<sup>th</sup> September 2015 or they would cease to be enrolled

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## Provisional Enrolment

Essentially this means that those individuals who are eligible to join the modified scheme but have not yet made a positive election to join the scheme as 'special members' will be provisionally enrolled into the modified scheme on 31 March 2015 for the purposes of meeting the deadline of 1 April 2015. 'Those individuals who are provisionally enrolled' will not actually join the modified scheme unless they subsequently agree to pay the pension quote for purchasing past service (when the fire authority provided it to them), and they confirm an election to join the scheme. It will be at this stage that they will be considered special members of the modified scheme. Whether or not the member (and the employer) start paying contributions when an election has been received will depend on the member's status at the point of joining i.e. those who join as special deferred and special pensioner members will not be accruing future service but will have to pay contributions in respect of their past service (the employer contributions in respect of past service will be picked up in future Valuations and reflected in future increases in the employer contribution rate).

However, those who join as active special firefighter members will also be accruing future service (post 31 March 2015) in the modified scheme (or 2015 Scheme depending on whether they have any transitional protections) and will, therefore, be required to start paying contributions in respect of any future service accrued. Employers will only start paying contributions in respect of any future service accrued on or after 1 April 2015 by active special firefighter members.

The limited period for a provisionally enrolled member;

- who does not become a full protection or tapered member of the modified scheme, ends on 31 March 2015, or
- who becomes a full protection member of the modified scheme, ends on the date that they make an election to join the modified scheme, or
- who becomes a tapered protection member of the modified scheme, ends on the earlier of the date that they make an election to join the modified schemes, and the date that their tapered protection ends

Transfer date to the 2015 scheme means;

- 31<sup>st</sup> March 2015 for an unprotected member
- Taper date for a member who would transfer into the 2015 scheme on either the 24<sup>th</sup> May 2015, 12<sup>th</sup> July 2015 or 5<sup>th</sup> September 2015 NB – please note that the full and tapered protections applicable to special firefighter members of the modified scheme will reflect those that apply to 1992 Scheme members

### **Do we need to take pension contributions from pay for those that have been provisionally enrolled?**

No, contributions should not be deducted during period of provisional enrolment; it has to be done as a retrospective exercise once the election has been made. However normal pension contributions in respect of ongoing service should continue to be deducted.

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## Pay

Reference Pay as determined by the interpretations of the 2006 scheme SI 2006/3432 (Part 1, rule 2, interpretation) means the whole time equivalent pay for a whole time regular firefighter in a similar role with equivalent qualifying service.

“reference pay”, in relation to the pay of a retained or volunteer firefighter for any period, means the whole-time equivalent pensionable pay for that period of a regular firefighter employed in a similar role and with equivalent qualifying service

**We have 2 members who were retained firefighters who also helped provided driver instructor training. They were never given separate contracts for the driving instructor work and paid NFPS pension contributions on all earnings.**

**Do the earnings for the 2 ‘roles’ need to be separated out and separate quotes provided? Or should it be treated as one job and therefore only one quote provided?**

If your FRA considers that the pay received for the role was pensionable under the NFPS regulations, it would be treated as pensionable under the modified scheme. (Norman v Cheshire Fire and Rescue Service judgment).

**If a retained firefighter’s actual retained pay exceeds that of the reference pay in any given year what are other FRA’s doing: are they restricting them to 1 years’ service for that year and only asking for contributions for the equivalent reference pay or are you allowing them to exceed the 1 year service and pay contributions on the full amount of actual pensionable pay received? Can DCLG confirm the approach?**

The special pensionable service for any given year is calculated by reference to the formula:

$\frac{A}{B} \times 365$ , where—

B

A is the actual pensionable pay received in that year, and

B is his reference pay for that year.

Where the actual pay is higher than the reference pay, the pensionable service credited for that year will be more than 365 days. This formula is set within the legislation.

**Anthony will check with GAD to see if the calculator is placing a restriction on special service for any given year – pending**

**The calculator is not allowing Reference Pay to be entered in the following scenario for years 2000-01, 2001-02 and 2002-03:**

**Special Pensioner member who wishes to convert standard membership to special membership. Again, the reference pay figures being entered are correct and are higher than the pensionable pay figures being used in the other column.**

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**Scenario: Special pensioner member who does not wish to convert standard to special membership.**

**The GAD calculator for years 2002-03 and 2003-04 in the Reference Pay column is not allowing pay details to be entered, stating 'Reference Pay is outside of the expected range'. The reference pay figures that are being entered are correct and are higher than the pensionable pay.**

There was an issue with the reference pay ranges being too low, with reference to the retained FF's rank. This has been corrected.



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## Administration processes/Using the GAD calculator

**If an individual completed their election form some months ago but had received incorrect calculations do we calculate the amount to pay for the modified scheme only based on the date they completed option form or date when we prepare corrected calculation?**

Part 11, rule 6B(10)<sup>3</sup> states that the election takes effect on the day the notice is received by the authority.

**What should FRAs be doing with regards to the calculation date and any subsequent recalculations? We are producing a benefit estimate and a CLG calculation repayment estimate with a calculation date of 30 June 2014 (for those still employed and not transferring) as this is the date I currently have pay data to. It is likely we would send a copy of each of these out with the letter/form/guidance you have sent me. As the individual has a choice of when they join the scheme (within the limited period), we were then thinking of recalculating the estimate and the CLG calculations with a later calculation date, taking into account any individuals specified dates. So my question is, when do we establish the period the individual wishes to join from/purchase? I don't see any specific reference to where an individual should state their preferred dates in the forms/letter/guidance. Are we asking them to sign up within the four months and then when we respond to their completed 'Options Election Form' we ask for specific dates at that point? Or should the letter/guidance be amended by each FRS to request the dates and then the individual would respond ASAP and then we would resend the information with accurate dates, all within the four months. I am concerned about the timescales and us giving information to individuals which will just cause more questions (e.g. if we give them estimates they may request different dates depending on the costs therefore meaning work).**

DCLG has not produced any official administrative paperwork in respect of this 'Exercise'. It is for individual FRAs to satisfy themselves that their forms & guidance material enables them to comply with the terms of the 'Exercise'. It is advisable that the individual is afforded enough time to consider his/her options and make their final election. FRAs could supply more than one scenario to the member. FRAs should remember that they have the discretion to extend the deadlines although the member will need enough time to elect to join prior to 1/4/2015.

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**If special members cannot pay all the lump sum now, can they pay a portion of it now and then pay a lower monthly instalment to pay back the rest?**

There is no provision within the Settlement Agreement for this.

**Can the GAD calculator be amended to show what pension (and lump sum?) benefits are payable if the member purchases the service – if not this will generate a whole raft of member enquires as they all want to know if it is worth their while joining the scheme and this piece of information is essential to allow them to arrive at an informed decision. If the GAD Calculator is not able to provide this information how can it best be provided on an individual basis – FRS’s surely cannot be expected to provide an individual pension calculation to give to each member who is still in the process after stage 1 to help them arrive at an informed decision with regards to whether they wish to continue to be in the process or not**

Unfortunately, to include these additional features will incur significant costs and add more complexity to the calculator. The manual calculation of member benefits should be a relatively straightforward as the FRA would be able to calculate the special pensionable service and would know the individual’s final pensionable pay

**Would it be possible to add a formula into the calculator so the pensionable service auto populates.**

Please refer to response 1. This is a similar issue and it should be relatively straightforward for FRAs to complete this calculation manually.

**What is the calculation date? The SI states ‘in the case of payment of the mandatory special period pension contribution by periodic contribution, the date when the member joined this Scheme as a special member’ When using the calculator you need this date to get the assessment however the individual has not given the date they wish to join the scheme? The calculator defaults to the current date, do we use this to obtain an estimate and then recalculate when the individual confirms they wish to join?**

The calculation date for the purpose of providing the quotes will be the date that the data has been input to the calculator. These calculations will need to be updated on the date the member elects to join the modified scheme. The initial calculation will be an informal quote – the updated calculation will represent the formal quote.

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**What if a live member leaves, how do we collect the arrears?**

It will be up to the employing FRA to agree an arrangement for collecting the contributions. The Scheme's provisions set out what happens if the member defaults – please refer to Part 6B of the Order 2006/3432.

**A standard stage 2 (notification of how much historic contributions / service credit / options to repay etc.) template letters which has consistent language and content would be desirable as well as quoting any relevant legislative information that needs to be on such a document. Is such a template / document going to be made available or not or is it up to each service individually to come up with their own design? – This will lead to a huge variation both in style and content – which is not great especially as this is a national settlement.**

This issue was raised at the TWG. I am not aware that any FRAs/devolved administrations volunteered to work on producing generic letter templates and therefore I assume that each fire and rescue authority will produce their own. It is open to FRAs/devolved administrations to produce and share a template with the TWG if they would like to ensure consistency across the UK.

Regional FOG groups are now working together to create standard documentation for the completion of the RDS Settlement cases.

**The 'Action to be Taken' notes refer to the issuing of two information leaflets - one relating to terms of payment and the other for transfers, which it says 'should be specially designed for serving firefighters'. Can anyone tell me where these are, please, as surely each Brigade is not expected to produce their own as this could lead to a lack of consistency in information provided as well as a waste of resources?**

This issue was raised at the last meeting of the Technical Working Group and volunteers were sought to help produce some generic letter templates. I not aware that any FRAs volunteered to undertake this task, however, the opportunity for FRAs to work together to create generic letter templates is still available.

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## Special Firefighter Member

**Retained firefighter becomes a regular wholetime firefighter without break in employment. Then opted out in 2012 and opted back in on March 2014. Can he convert his service NFPS into modified? What do we do with Opt out period?**

Yes the amendment of Part 2, [1A(1b)(iii)]<sup>4</sup> confirms that a retained firefighter who commenced employment before 6<sup>th</sup> April 2006 and continues in that employment until after 6<sup>th</sup> April 2006, then becomes a wholetime firefighter after 6<sup>th</sup> April 2006 and without a break in employment can be treated as a special firefighter member of this scheme in respect of the employment as a whole-time firefighter and if the election is made within the required period under 1A(1b)(iv). Therefore as long as the opt-out does not constitute a break in employment, then they are treated as a special firefighter member of this scheme, and can convert active NFPS service. The opt-out period is dis-regarded from the service calculated for conversion. It is important to note that if the individual kept their employment as a retained firefighter at the time of becoming a whole-time firefighter, then the ability for the individual to treat the whole-time employment as special service in the modified scheme will be at the employing authority's discretion – please check amended Part 11, Rule 5A(2)(b)(iii)<sup>5</sup>.

**We have a number of firefighters who were retained and then, after April 2006, became wholetime firefighters and stopped working on the RDS. They did not have a gap in employment so have continuous service.**

**Are they able to:**

- A) Transfer their 2006 scheme pot for their wholetime role into the Modified Scheme pot?**
- B) Join the Modified scheme as a special firefighter member in their wholetime role and pay back contributions on the difference between the NFPS contributions**
- C) can do neither**

if they satisfy [Part 2, 1A(1b)(iii)]<sup>6</sup> that employment was continuous, they can convert service from their wholetime role in the NFPS to special modified service and if the election is made within the required period under 1A(1b)(iv)

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**If a retained firefighter has continuous service but at some point after April 2006 also took up a wholetime post with us concurrent with their retained role, as above, are they allowed to?**

**A) Transfer their 2006 scheme pot for their wholetime role into the Modified Scheme pot?**

**B) Join the Modified scheme as a special firefighter member in their wholetime AND retained role and pay back contributions on the difference between the NFPS contributions and modified scheme contributions for their wholetime AND retained pension pots**

**C) can do neither**

In summary, if the firefighter was required to keep their retained role as part of their wholetime contract, the amendment to Part 11 [5A(2b)(iii)]<sup>6</sup> provides a discretion for the authority to permit the individual to convert their service from their wholetime role in the NFPS to special modified service.

**What pensionable pay is used where the individual has gone from retained to whole-time, and has joined as a special firefighter member? The SI amendment to Part 3, [1A(5) & (6)]<sup>7</sup> says that you must split the pension calculation in to two chunks: the retained bit and then the whole-time bit; and then add the two together. However what final pensionable pay figure is applied for the retained portion of service. Are we literally saying that the final pensionable pay from the whole-time service is also applied to the retained service portion; or do we need to apply a notional reference pay final pay figure to the retained service portion?**

No, the final pensionable pay from the whole-time service is applied to the retained service portion.

**For FF members who wish to convert special membership to standard, it is unclear what age at entry means in Table A in the Pension regulations - is this age on entry into employment or age on entry into the special scheme or age on entry into the standard scheme? We are unclear which the correct interpretation is.**

As per Chapter 6, paragraph 4 of the amendment to Part 12, Chapter 6<sup>8</sup> the factors apply to the age the person was on 6<sup>th</sup> April 2006.

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**What happens to interest on lump sum with regard to transfer?**

Not quite sure what is being asked but will assume that it relates to the conversion of a lump sum in the standard NFPS to special service in the modified scheme. If this is the case, then no interest is payable as the CETV is simply being used to buy service in the modified scheme.

**We have been asked by an individual if they can transfer in benefits from another pension scheme (ie a private pension) and use that balance to pay off the amount that they would owe to buy the backdated period. My feeling is no but our Pensions Department weren't able to substantiate this. Please could someone clarify?**

No, any permitted transfer would purchase a service credit in the scheme. Paragraph 8 of rule 6A, Part 11<sup>3</sup> confirms that the service may only be purchased by contribution or lump sum.

(8) The mandatory special period pension contributions may be paid by periodic contributions which shall be calculated in accordance with tables provided by the Scheme Actuary so as to discharge his liability over a period of 10 years or may be paid by way of a lump sum contribution.

**For Special FF Members the informal guide, states that members have to pay the backdated contributions within 10 years or up to the point they attain their 55th birthday. I have a few queries from members who do not plan to take their modified pension at 55 but intend to continue working. Do they have to still pay contributions by their 55th birthday? The individuals in question are around 53 now and are therefore fully protected in the Modified Scheme.**

With regards to your first question, I agree the guide does say about paying contributions over a period of 10 years up to age 55, this was based on the assumption that special firefighters would take their pension from the Normal Pension Age. Notwithstanding this, there does not appear to be anything in the regulations that suggests contributions have to be paid by age 55.

Paragraphs 8 & 9 of 6A<sup>3</sup> -, just say the liability will be discharged over 10 years and at retirement he can pay the remainder by lump sum.

“(8) The mandatory special period pension contributions may be paid by periodic contributions which shall be calculated in accordance with tables provided by the Scheme Actuary so as to discharge his liability over a period of 10 years or may be paid by way of a lump sum contribution.

(9) If a special firefighter member makes a contributions election, or retires, he shall cease to pay periodic contributions and he may then pay within three months of the date of the contributions election a lump sum of an amount equivalent to the contributions which would

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otherwise be paid calculated in accordance with tables provided by the Scheme Actuary.”

Retained FF with limited period starting 1/7/2000 was auto-enrolled into NFPS 2006 in September 2013. He opted out within 3 months and received a refund through payroll. NFPS rules state that he is treated as never having been a member of NFPS 2006. However, for the purposes of this ‘exercise’ SI 445 / 2014 defines the limited period as: **“limited period” means the period beginning on 1st July 2000 or if later, the date falling before 6th April 2006, on which the person was first employed as a retained firefighter and ending on the earlier of—**

**(a) the date on which that person joined this Scheme as a special member or as a standard member in respect of service which he could otherwise reckon as special pensionable service, and**

**(b) the date, if applicable, on which he ceased to be employed as a retained or regular firefighter;”**

Therefore, the limited period seemingly ceases 31/8/2013, and FF can only join the modified scheme as a special deferred member? This doesn’t seem right – is this correct?

Member should be treated as never having joined NFPS so limited period is ongoing

If a retained firefighter is both whole-time and retained and they are eligible to become members of the modified scheme - and they are also a member of the NFPS 2006 for their whole-time contract, can they transfer their NFPS entitlement under their whole-time contract into the modified scheme? I cannot see a provision that cover this clarification on this issue would be useful.

If this is a reference to two separate contracts then no conversion is allowed

If a current Retained FF who is an active member of NFPS 2006 scheme did not elect to backdate his membership to 06/04/2006 (as part of 2007 ‘options exercise’), do they get the option again under the new options exercise by inputting his end date into the calculator as the day before they actually joined the 2006 scheme and entering the relevant pay figures etc?

If not, does this gap in pension service mean that they cannot convert their current standard NFPS pension to modified pension? Although they have continuous *employment* service they have not been paying into a pension scheme therefore don't have continuous *pension* service (the guides are not explicit about what 'service' means for the purposes of this exercise).



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**If they can't convert it, could they transfer their standard pension pot into the modified pension pot in another way? Does it also mean they should be processed as a special deferred member rather than a special firefighter member?**

The policy intention is that if the retained FF is an active member of the standard NFPS, they can join the modified scheme as a special FF member by converting NFPS 2006 service to modified scheme. They cannot purchase any gaps. Where the member joins the modified scheme and converts modified service to NFPS service, they must purchase standard NFPS service from 6/4/06 to date of joining standard NFPS, to ensure continuity of standard NFPS membership moving forwards.

**If an employee joined the NFPS 2006 when they turned whole time (for example in 2008), but did not join the NFPS whilst a retained firefighter (for example 2005 to 2008), can they only transfer their modified pension into the NFPS or elect to join the modified scheme as a special deferred member?**

**Or**

**If a retained firefighter joined the NFPS in 2006 and subsequently became a whole time firefighter in 2008 and remained an active NFPS 2006 member, can they transfer their NFPS 2006 pension into the modified pension scheme? If no, can they transfer their NFPS 2006 (wholetime) service into the modified pension scheme in another way?**

As long as they satisfy the eligibility criteria for the modified scheme and the change from retained role to whole time role was post 5/4/06 (and there was no break in continuity of service) the member can convert standard NFPS service to modified service

**Is it correct that a Special FF Member can transfer pension benefits from an external pension into the modified scheme within 12 months of their joining the scheme but would not be able to transfer external pension benefits where they were converting special membership to standard as they would already have had the option to do this on joining the NFPS previously.**

Yes – that is the situation

**When using the calculator for a special FF member who wishes to convert special membership to standard membership for the mandatory special period to 5/4/06, why is the lump sum to be paid calculated at 11% of the pensionable pay over the period? We can understand why 11% would be the contribution rate for this to**



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**be purchased as special membership, but would have expected it to be calculated at 8.5% where the membership is being converted to standard membership.**

The purchasing cost is applied as if the individual could have joined 1992 scheme so 11% contributions fall due.

**Where a retained FF has joined NFPS 2006 and is purchasing additional service – and wishes to convert NFPS 2006 service to modified scheme – what happens to the NFPS 2006 additional service contract?**

The administrator needs to establish how much service the individual has purchased as at the date of joining the modified scheme as a special FF member, and apply the GAD conversion factors used to convert transferred in service to standard NFPS

**If the limited period for an individual captured by the ‘Exercise’ is less than 3 months, but they are a contributing member of NFPS 2006, can they still join as a special FF member if they convert NFPS 2006 to modified service? If they chose not to convert, they would not be entitled to a deferred benefit in the modified scheme.**

If the “Limited Period” is less than 3 months, the individual has no eligibility to join the modified scheme. There is no conversion options to consider.

**Where members are joining as a special FF member by converting standard NFPS 2006 membership to modified scheme, what happens to the members’ accrued APB? This doesn’t appear to be covered anywhere. Do they simply lose it as a consequence of service conversion.**

The question regarding what happens to the accrued APB did not form part of the terms of the Agreement.

Anthony to investigate further

**Just a query in respect of the RDS issues with the modified scheme. CLG advised in their consultation responses that when converting standard 2006 scheme service to special membership that any member who had a transfer in from another pension provider to the NFPS would have that service credit converted to the modified based on bespoke factors and guidance from GAD to ensure an actuarial equivalent service credit in the modified scheme.**

**Surely it would be beneficial when informing members of the estimated costs of converting their NFPS membership to modified that the previous Transfer in will be recalculated and to give them an indication of the revised service credit in the modified scheme.**

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**I am concerned that if we do not provide this information at this stage the member will not have the full facts to allow them to make an informed decision. If we do not inform them now it could raise questions from members at a later date after they have made their election and give rise to members saying they were not fully informed.**

**Is this something that could be added on to the existing calculator?**

The factors for converting transferred in service to the modified scheme are still being constructed. If a member decides to convert their standard service to the modified scheme then they will have to accept that the TV that they transferred into the standard scheme will be actuarially revised to provide a service credit in the modified scheme. Whilst it is not possible at this stage to calculate the service credit (as the factors are not ready yet), the TV will simply be converted to buy service in the modified scheme. I think it is safe to assume that the service credit will be smaller due to the more preferential terms.

**When the calculation is made an individual has the option of paying the contribution in a lump sum or over a period of ten years. Is this a mandatory period that all contributions must be paid over, or hypothetically if an individual is close to retirement age could they pay it back over a shorter period of time ?**

The period for repayment by contributions is 10 years or to the point that they reach retirement, whichever is shorter [this is set out in Part 11, Rule 6A of Order 2006/3432. Obviously, if the member retires before the expiration of 10 years they will have to pay any outstanding contributions by lump sum, or have their limited period service prorated to reflect the contributions that they paid.

**Can a current FF elect not to backdate but join the new modified scheme and convert to 2006 membership?**

**How do we deal with service where a transfer has previously been received from a personal pension in respect of the same period?**

The individual will have to join the modified scheme for his/her retained service at some point between 1 July 2000 and 5 April 2006. He/she will not be able to elect to join the modified scheme later than 5 April 2006.

**Can individuals transfer in service to the Mod Scheme where they either haven't previously transferred it in to their NFPS scheme or they haven't joined the NFPS?**

Subject to the standard 2006 scheme rules, those persons entitled to join the modified scheme as special firefighter members will have the option to transfer pension benefits from other pension schemes into their special membership provided that the member has not

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already had the option to transfer in such service as a member of the standard 2006 scheme following the options exercise in 2007.

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**What do we do with transferred in service under the NFPS where individual wants to go from standard to special membership? Reference to conversion table being provided by actuaries but nothing in Order that we can see, only for special to standard.**

These factors are currently being produced by GAD. For the purposes of the Options exercise, any individual who is a member of the standard 2006 Scheme (with transferred in service credit) would still be able to convert their accrued service in the standard scheme to the modified scheme and would then have to accept the special service credit offered in respect of any transferred service – this would be calculated at a later date when the factors are finalised.

**Factors now Available (Dec 14)**

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## Special Deferred Member

**What is the position with a Retained Firefighter who changed FRA to become a WT Regular Firefighter, but had a (post 2006) 6 day break between leaving one FRA and joining another? Is he a Special Deferred Member due to the break or can he be deemed a Special Firefighter Member with the new FRA?**

**Thinking along lines of had he been eligible for the 1992 scheme originally and had appreciated the potential impact of 'a few days to prepare for training' the break may not have happened and he would have remained in the 1992 scheme. I know this may be a stretch, but feel the question needs asking, presumably had there been no break, the position would be a straightforward ongoing Special Firefighter Member (assuming election made etc...)**

As there was a break in employed service (for whatever reason), there is no continuity of service, so the second period cannot be treated as special pensionable service in the Modified Scheme. Therefore if they were under 55 at the point of the break in service they would be treated as a special deferred member, or if over 55 they would be treated as a special pensioner.

**Example Case: Retained FF with service from 01/07/2000, DOB 21/08/1959. Was auto enrolled into NFPS 2006 on 1/2/2014 and remained a member until last day of service 21/08/2014 – age 55. Has deferred pension entitlement in NFPS 2006, understand that he can now elect to become a special pensioner member who can convert his NFPS 2006 service into modified and take immediate pension from the modified scheme – is this correct? Recall that back in 2006 retained firefighters were told that they will not be disadvantaged if they join NFPS 2006 scheme**

Limited period seemingly 1/7/2000 – 31/1/2014. Member could join the modified scheme as a special pensioner member and receive retrospective pension payments from age 55. Member cannot convert NFPS 2006 membership, as he is neither an active NFPS 2006 member; nor a retiree from NFPS 2006.

SI 445 / 2014 says:

**Converting membership from standard membership to special membership – special pensioner members**

**18.—(1) This rule applies—**

(a) to a person who is entitled to be a special pensioner member and who is in receipt of an ordinary pension, a higher tier ill-health pension or a lower tier ill-health

pension;

(b) in respect of pensionable service which he would be entitled to treat as special

pensionable service

**Another case – with almost the same scenario as Issue 1: Retained FF joined NFPS 2006 6/4/2006 and subsequently left service with NFPS 2006 deferred pension, aged 51.**

**Seemingly, he can only purchase service up to 05/04/2006 and cannot convert NFPS 2006 service into the modified scheme – is this correct?**

Limited period seemingly 1/7/2000 – 5/4/2006 with no option to convert NFPS deferred 2006 membership.

**Retained FF with Limited Period start date 1/7/2000; joined NFPS 2006 and subsequently opted out with a deferred pension entitlement. Has remained in active service with FRA.**

**A) Can he only join modified scheme as a special deferred member?**

**B) Can he convert NFPS 2006 service to modified scheme?**

The limited period terminates the day before joining NFPS 2006, and has no conversion options. At present the terms of the Settlement do not allow for a special deferred member to convert standard service to special service in the modified scheme.

**Retained FF with Limited Period start date 1/7/2000 joined NFPS 1/1/2010, opted out 31/12/2011 with a deferred benefit entitlement. Was then auto-enrolled 1/9/2013, combined NFPS 2006 PB with active membership, and has stayed an active NFPS 2006 member to present date.**

**Can he join as a special firefighter member by converting all NFPS 2006 membership and paying historical contributions for the gaps 6/4/06 – 30/6/2000 and 2/1/2010 – 31/8/2013? The policy intention vs SI 445 / 2014 appears to be confused.**

Only periods of NFPS membership can be converted can join as special FF member

NFPS service gaps cannot be bought

Only periods of NFPS membership can be converted and the retained FF can join as special FF member if he makes an election within the designated period. Membership can be converted in relation to 'pensionable service periods' that are entitled to be treated as 'special pensionable service' (see Part 10 rule 2A-5), which includes periods in which special pension contributions are paid as a special firefighter; and any period during the limited period entitled to be reckoned as pensionable service (from 1/7/2000 to 1/1/2010).

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**Member joined retained service on 01/04/2005, joined NFPS on 06/04/2006, left on 14/04/2014. The calculator only allows calculation for benefits without conversion of standard service to special – so for this member I can only calculate service from 01/04/2005 to 06/04/2006, or for the whole period 01/04/2005-14/04/2014, but it does not give opportunity to convert NFPS from 06/04/2006 to 14/04/2014 to special service. I would expect deferred member to be able to move his standard NFPS to special deferred and have 1 deferred pension for the conversion. There is no example in the booklet to convert standard service into special for deferred member**

The terms of the Settlement do not allow for a special deferred member to convert standard service to special service in the modified scheme.

**Can anyone in the 1992 scheme transfer their pension rights from the modified scheme into the 1992 scheme?**

The 1992 Scheme is closed to new memberships. Notwithstanding this, the transfer rules of the 1992 Scheme, as set out in Rule F7 of Order 1992/129 will apply.

**A FF has DB's in the 2006 scheme, can they transfer any purchased special service to the DB record and vice versa?**

**How do we deal with service where a transfer has previously been received from a personal pension in respect of the same period?**

There are arrangements in which an active special firefighter member can convert their service between the standard and modified scheme. Please refer to Part 12, Rules 16, 17 & 18 of the Order 2006/3432.

**A member is W/T in the 2006 scheme – can they elect to purchase any special DB membership and transfer into the 2006 scheme?**

The normal transfer rules will apply. You will have to check to see whether a member of the standard 2006 Scheme is eligible to transfer from the modified scheme into the standard scheme – bearing in mind that the modified scheme is a subsection of the standard 2006 Scheme. Notwithstanding this, I'm not sure what the benefit would be of doing this. Assuming that they are a special deferred member, their special pension will come into payment from age 60 (assuming that they retire) which is the same date as they will have an entitlement to retire from the standard scheme.

**If a FF is not currently a member of the 2006 scheme but elects to purchase previous special modified service, do they have to join either the 2006 or new retained scheme from the current date, or can they elect to have this service as a special DB; if they do join currently, can they convert this service to either the 2006 or new modified membership?**

This is covered in the consultation paper

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/226429/Retained\\_Firefighter\\_Pension\\_Settlement\\_consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226429/Retained_Firefighter_Pension_Settlement_consultation.pdf)

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**A FF transferred his retained service out of our scheme but has now returned as a current FF in a W/T capacity – can he purchase any previous retained service and convert to either the new retained scheme or add this onto his new W/T record?**

The individual will not be able to convert any special service into the standard scheme as there has been a break in service between his retained employment and his W/T employment.

With regards to adding his special deferred pension to his current standard membership – I do not think this will be possible but you will need to check the regulations. Notwithstanding this, I'm not sure what the benefit of this would be as both pensions will come into payment from age 60 years, if the individual retires.

**If a FF has already transferred their retained service out, can they elect to purchase service and then we send an additional transfer into their new scheme?**

Assuming that you are referring to transferring post 5 April 2006 retained service out of the 2006 Scheme. If this is the case then they will only be able to purchase their past service in the modified scheme up to the point where they had joined the standard 2006 Scheme. Effectively, they won't have retained service in the standard scheme beyond this point as it has been transferred out to another pension arrangement.



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## Special Pensioner Member

**NFPS member (with transfer in from other pension arrangements) in receipt of pension entitled to join Modified Scheme.**

**The member's ordinary service in the NFPS is 2 years 226 days, which is made up of 1 year 226 days service, and 1 year transferred in service, purchased by a transfer from a personal pension scheme. The members limited period they can purchase as special service is 1 year 276 days.**

**For the purpose of the calculation of historic contributions:**

**When I calculate retirement benefits due to member I add together modified service and NFPS service (1 year 226 days and 1 year 276 days) multiply by pensionable pay at the date of retirement then deduct pension from NFPS adjusted for 1.6191 years only, and completely disregard transfer in service of 1 year.**

**Do I then convert this transfer into modified pension scheme? Do I need to perform an extra calculation to allow conversion of the transfer in service into modified benefits, or not?**

Yes, transferred in benefits must be converted to special membership using the GAD Guidance dated 12<sup>th</sup> February 2015<sup>9</sup>. However, you must bear in mind that as the TV/in conversion has the effect of increasing the special modified pension, then it would be expected that the standard 2006 pension *including* the TV/in would need to be offset, otherwise the special modified pension would be inflated; alternatively once TV/in conversion has taken place, the standard 2006 pension should be recalculated discounting the TV/in – since the TV/in has effectively been converted? This approach will be confirmed with GAD and further advice issued. Additionally, any APB pension included in the standard 2006 pension in payment must also be discounted – this means that a notional standard 2006 pension would need to be calculated and this notional pension offset from the special modified pension in payment. The APB would also need to be converted separately, and the same question arises as above, in terms of the offsetting approach to adopt.

**The calculator does not provide a breakdown of the split of the amount due to special pensioner members (if the total arrears due to them are higher than the amount due in pension arrears). Can you confirm how we can ascertain the split of the amount between pension arrears (which are subject to PAYE) and lump sum arrears (non taxable), plus interest on both of these amounts**

The answer is to use the calculator twice, once showing the lump sum and the other just the pension. Please see this short recording linked here as a practical demonstration -

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<https://attendee.gotowebinar.com/recording/7224189783684304897>

**I would appreciate confirmation of the minimum pensionable service in order to access a pension under the 2006 Modified Scheme. Is it the 2 years' pensionable service as per the old 1992 scheme or the 3 months' pensionable service as per the 2006 standard scheme?**

This is three months as per the 2006 scheme. However, the limited period can be less than three months as long as the overall service including pre-July 2000 or standard NFPS service is more than three months.

**We have this last group to send out (only about 10 individuals) but are not clear on all of the information that is required for the calculator in relation to Special Pensioner Members where they are in receipt of a pension.**

**Would someone be able to go through a couple of examples with me so that we can complete these as we are not finding the examples in the reference document sufficiently detailed?**

**David Golding is going to provide illustrated examples.**

**I am not sure how the tax with regards to pension arrears is going to work if they sign up to join. I see that the calculator is deducting the costs due to join from the commuted lump sum payment and gross pension arrears, leaving potentially a balance due to be paid by/to the member.**

**If there is a balance due to the member it is unclear if we then need to deduct tax from this balance (if applicable), using the non-taxable commuted lump sum first to pay the cost and then the pension arrears for any balance of cost. Also, the calculator is using gross pension arrears and I am unclear how the tax due will be accounted for.**

This is, seemingly, covered by section 10 of the attached.



Supplementary-Guide for Pension Payers.

DCLG does not believe that any special PAYE treatment would apply for the purposes of this exercise, so PAYE applies at the point of payment of the arrears. It would be down to the individual to apply for retrospective tax relief with HMRC.

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In using the calculator in the case of special pensioner members - Example 5 - when calculating the commuted lump sum would it be a quarter of the pension multiplied by the appropriate commutation factor based on the age of the member at the date the pension comes into payment. If the factor is greater than 20 and would thus result in a scheme chargeable payment, would it then be restricted to 20?

SI 445 / 2014 says that the commutation factor is established by reference to the pensioner's age at the date of retirement. Administrators will need to establish the maximum Lump Sum payable without giving rise to a scheme chargeable payment – the general approach is outlined in the GAD Commutation guidance.

**If a special pensioner member's pension was to come into payment on 01/08/13 would pensions increase be applied from that date?**

Pensions Increase legislation would appear to require this approach.

**SI 445 / 2014 states that:**

**(10) Subject to paragraph (15), a person who satisfies all of the conditions in paragraph (11) and who satisfies **at least one** of the conditions in paragraph (12) is a special pensioner**

**member of this Scheme.**

**(11) The conditions are that he—**

**(a) took up employment as a retained firefighter before 6th April 2006;**

**(b) was employed as a retained firefighter on or after 1st July 2000;**

**(c) retired from that employment before the date that his election under rule 6A of Part 11 to pay the mandatory special period pension contributions took effect;**

**(d) has elected, within the period required by rule 6B(1), or 6B(12) as the case may be, of Part 11, to pay the mandatory special period pension contributions.**

**(12) The conditions are that he—**

**(a) retired having attained the age of 55;**

**(b) was dismissed or retired by reason of permanent disability and the conditions of rule 2A of Part 3 (retrospective award on ill-health retirement) are capable of being satisfied; or**

**(c) has attained the age of 60.**

**We have cases where the retained FF (who is currently in active service but not in NFPS) could prospectively join the modified scheme and they are aged over 55. To clarify, if the individual was to time events so that they leave the service immediately before making a contributions election to join the modified scheme, could they then join as a special pensioner member, and have their pension (plus interest) backdated to age 55?; or as they haven't left prior to SI 445 / 2014 coming into force, is their only option to become a special FF member first and then retire (without any back-dating to age 55)?**

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**If they can have their pension retrospectively paid from age 55, does abatement have to be retrospectively applied from the date SI 445 / 2014 came into force (1/4/2014), covering the period between age 55 and the date they left service?**

The pension arrears have retrospective effect to date of leaving only. The individual has to purchase special modified service up to the date of leaving

**Where members are joining as special pensioner members, the guide does not recognise that this will trigger a new Benefit Crystallisation Event(s). As such, the individual should make a declaration to the scheme administration regarding any other pensions in payment / due to come into payment before or at the same time as the special pension benefits. Note: the BCE date may not be established until the member has paid the lump sum due representing the cost of purchasing past service.**

Where individuals join the modified scheme as special pensioner members, the benefits paid need to be assessed for LTA purposes. Administrators must comply with the statutory requirements regarding LTA statements.

**Our understanding is that a special pensioner member can convert standard membership to special membership IF they are already in receipt of a pension. Where the special pensioner member DID NOT join the NFPS, and is therefore not in receipt of a pension, what is the end date of their Mandatory Special Period for the purposes of the calculator? Is this 05/04/2006 or the date they left the Service, whether this was before or after 05/04/2006? Unfortunately the examples given are unclear as they do not explain where the dates used come from, for example are they retirement dates or date of joining the NFPS. Either way, the calculator is still asking for pension information which obviously isn't relevant where the individual did not join the NFPS as a standard member.**

In accordance with SI 445/2014 “mandatory special period” means that part of a person’s service during the limited period beginning on the date selected by him before 6th April 2006 and ending on the earlier of—

- (a) the date on which he joined this Scheme as a special member or as a standard member in respect of service which he could otherwise reckon as special pensionable service, and
- (b) the date, if applicable, on which he was dismissed or retired from employment as a regular or retained firefighter;

The term does not require retirement from standard NFPS membership; and the “Limited Period” end date can be either before or after 5/4/06.

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The GAD calculator requires that the user enters the special pension payable from the date of eligibility. Where conversion of standard NFPS pension is not applicable, there is no requirement to enter any standard NFPS pension information.

**When undertaking the ill health assessment process there is the potential that this runs on after the 31 March 2015, what are the implications of this?**

The individual will need to have made an election to join the Modified Scheme prior to 1 April 2015.

**Is there a formal appeal process for individuals who do not agree with the assessments provided to them?**

The normal process for appealing against an IQMP's opinion, as set out in the standard 2006 Scheme Order 2006/3432, will apply.

### **Time Limited Death Grant**

**What pay do we use to calculate the death grant – the last 365 days of the person's service?**

Part 5, Rule 1A(6) of Order 2006/3432 sets out that the time limited death grant will be equal to 2.5 times the amount of the pensionable pay that the FRA determines that the deceased received in the last year of service.

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## HMRC

### **HMRC Tax / NI considerations for those who join the modified pension scheme – what is the process and who is responsible for advising modified members how to go about claiming any monies back that may be due from HMRC?**

An informal tax guide has been created that will set out how special members will be able to use existing HMRC procedures to claim back any tax relief entitlement on past service contributions. The guide will also set out the process by which FRAs/special members will be able to obtain a refund of NI contributions.

It will be for FRAs to work with special members to help them through this process.

### **How do I ensure the lump sum does not incur a scheme chargeable payment?**

SI 2014/445, amends Part 3 rule 9, paragraph 4<sup>10</sup> and restricts the commuted portion to the maximum amount that would enable a lump sum to be paid without incurring a scheme chargeable payment.

It is worth re-reading FSPC 6/2011<sup>11</sup> to refresh guidance on the effect of the commutation factors being above 20. However an example is provided below, demonstrating that a factor above 20 will breach the HMRC limit, therefore the commuted portion will need to be restricted.

#### **Example**

Annual (pre-commutation) pension = £3000.00.

Member elects to commute 25% (£750 a year)

Lump Sum of £15,600 (£750 x 20.8<sup>12</sup>)

Annual (post commutation) pension = £2,250.00.

#### **Breach HMRC Limit of 25% of LTA**

HMRC assess the total value of the benefits as 20 times the pension actually received plus the lump sum actually received i.e.  $(20 \times £2,250) + £15,600 = £60,600$

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Maximum tax-free lump sum permitted by HMRC is 25% of the total value of benefits vested i.e.  $25\% \times £60,600 = £15,150$ .

For this particular member the commuted lump sum of £15,600 will have exceeded the HMRC limit by £450.

### **Restrict commuted portion**

Therefore in order to comply with the regulations on payment of lump sums for special modified pensioners, the commuted portion should be restricted using the following formula

**$(20 \times \text{Gross Special Pension}) / [(3 \times \text{Commutation Factor}) + 20]$**

$(20 \times 3000.00) = 60,000.00 / [(3 \times 20.8) + 20] = 82.40 = \text{£728.15}$

### **Check Lump Sum as a result of restricted commuted portion does not breach the 25% limit**

Lump sum would equal  $£728.15 \times 20.8 = £15,145.63$ , with a residual pension payable of £2,271.85.

Checked against the HMRC test,  $[\text{£}2271.85 \times 20] + £15,145.63 = \text{£}60,582.63 \times 0.25\% = \text{£}15,145.66$

The lump sum is now within the 25% limit.

**Annual Allowance – we have a number of cases where the accrued pension under the modified retained exercise will result in a pension input of over £40000.00, which could potentially result in a tax charge.**

**Have HMRC definitely confirmed that the carry forward of previous years ‘unused’ allowance is possible given that the employees were not members of the pension scheme in these years.**

Under the Annual Allowance chapter of the informal view on income tax and national insurance<sup>13</sup> which has been reviewed by HMRC, says that “the retrospective effect of joining the modified Firefighters’ Pension Scheme would be expected to generate substantial unused allowances in any or all of the three tax years 2011/12 to 2013/14 inclusive which could be used in respect of the abnormal uplift in pension savings within the year 2014/15 resulting from the “purchase” of earlier service.” Section 3 of the guidance<sup>13</sup> sets out the qualifying conditions of the bring forward provision:

*For the bring-forward facility to apply, the person must be a member of a registered pension scheme at some time in the selected earlier tax year. For example, if a person joined a*

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*personal pension plan twenty years ago with an initial contribution of only £100 and had added nothing since, the continued existence of that plan would still entitle the member to have unused annual allowance of up to £50,000 brought forward from 2011/12, 2012/13 or 2013/14, less any pension savings from any other pension scheme relevant to those years*

**The Annual Allowance guidance shows no meaningful examples regarding how pension growth should be assessed, where individuals are purchasing special service. My understanding is that past service accrues as the contributions are paid – although this conflicts with ‘normal’ retained service which is actually assessed retrospectively at year end. A lump sum payment could cause a pension growth spike within the PIP it is paid. Conversion of membership could also cause a spike in pension growth. How should the input period be adjusted where members are converting service?**

Administrators will need to make individuals aware that there may be annual allowance implications associated with joining as special members.



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## Employer Financial Considerations

**We need to know if the calculation of contributions or reporting requirements differs between the 1992 scheme and the Modified scheme, in order to establish if there is a genuine reason for the creation of a separate Modified scheme.**

**If the differences relate purely to the individual pension entitlements built up within the schemes (i.e. only affect Pensions Admin) then I can't see the need for a separate scheme in ERP**

It is not known what the reporting requirements may be, but it would be considered good practice to record financial transactions made under the special modified scheme separately for use in future valuations or requests from the pensions regulator. As part of the next data collection exercise for the Top Up grant in August 2015, DCLG will be asking authorities to provide separate financial and non-financial data for all four existing schemes, namely the 1992, 2006, 2015 and Modified Schemes.

This question was posed during the webinar and respondents answered as follows

- our payroll provider is creating separate scheme for each of the schemes as we have identified that this will enable better accountancy administration
- we will be setting them up as 1992 scheme members, and then will be coding retained contributions separately by journal for reporting purposes

**Does the employer have to make employer contributions if the employee elects to pay back pension contributions, in order to purchase special pensionable service?**

Employer rate contributions will fall due in respect of those individuals joining as special firefighter members, and will mirror the 1992 scheme. The next scheme valuation will account for the historical 'cost' of the past service and may mean higher employer contribution rates moving forwards. For any individuals that join the modified scheme as active special firefighter members, both employer and employee contributions will have to be paid for any future service accrued.

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