

Information

Summary of “Matthews” MoU and second options exercise

Purpose

This factsheet has been prepared to provide a summary of the “Matthews” MoU and second options exercise under which certain retained firefighters will be able to purchase further pension entitlement.

Background

Stakeholders will be aware of the category of members of the Firefighters’ Pension Scheme 2006 (FPS 2006) known as “special members” who were introduced in 2014, following [Matthews v Kent and Medway Towns Fire Authority & others](#), which allowed retained firefighters employed between 1 July 2000 and 5 April 2006 to join the FPS 2006 with retrospective effect to 1 July 2000.

Matthews & others v Kent & Medway Towns Fire Authority & others concerns the application of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 to retained duty system employees. Those Regulations were brought into force on 1 July 2000 to implement the EU Part-time Workers Directive (albeit that had an implementation deadline of 7 April 2000). Following a protracted legal process up to and including the House of Lords judgment, settlement agreements were reached in respect of terms and conditions in 2015 with both the RFU (now FRSA) and the FBU in regard to the many thousands of Employment Tribunal cases. The defence of the pensions aspect of the case was led by government. The LGA coordinated the defence and settlement of the claims for FRAs through the auspices of the National Employers.

The House of Lords judgment led to those who were serving during the period 1 July 2000 (the date the Regulations came into force) 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), further details of which can be found on the dedicated [FPS 2006 Special Members section of the FPS Member website](#).

A time-limited options exercise took place between 2014 and 2015 to allow eligible individuals to join the FPS. While the benefits awarded to special members largely mirrored the benefits under the FPS 1992, the FPS 2006 was amended as the FPS 1992 was closed.

More recently, work has again had to take place on the pensions aspect of this case, following the European Court of Justice's decision in [O'Brien v Ministry of Justice](#) concerning fee paid judges in the Judicial Pension Scheme. The judgment held that remedy could extend back before the Part-time Workers Directive was required to be implemented on 7 April 2000. As a binding judgment, that finding applies across all such claims and therefore the UK Government recognised the right applies to retained firefighters' claims or potential claims.

After an extended period of negotiations on the scope and mechanics of the settlement, a [Memorandum of Understanding \(MoU\) was agreed by all parties on 9 March 2022](#). Negotiations were again led by government given the issues were solely around the pension aspect of the case. The role of the LGA within the negotiations was to endeavour to mitigate potential issues that could cause problems for FRAs, as far as it was possible to do so.

Remedy for retained firefighters affected by the O'Brien judgment will be provided by way of a second options exercise allowing in-scope individuals the opportunity to purchase pension entitlement as a special member of the FPS 2006.

Scope

The following individuals are in scope for the second options exercise:

1. Retained firefighters employed on any date between 7 April 2000 and 30 June 2000 (inclusive);
2. Retained firefighters employed on any date between 7 April 2000 and 30 June 2000 (inclusive) as well as on any date between 1 July 2000 and 5 April 2006 (inclusive);

3. Retained firefighters employed on any date between 1 July 2000 and 5 April 2006 (inclusive), but not on any date between 7 April and 1 July 2000, who were eligible to take part in the first options exercise **but were not given opportunity to do so.**

~~3. Retained firefighters employed on any date between 1 July 2000 and 5 April 2006 (inclusive) who were eligible to take part in the first options exercise **but were not given opportunity to do so.**~~

Retained firefighters employed on any date between 1 July 2000 and 5 April 2006 (inclusive)), but not on any date between 7 April and 1 July 2000, who were given opportunity to take part in the first options exercise but did not elect to do so within the statutory time limits are **not in scope for the second options exercise** (see below for more details).

~~Retained firefighters employed on any date between 1 July 2000 and 5 April 2006 (inclusive) who were given opportunity to take part in the first options exercise but did not elect to do so within the statutory time limits are **not in scope for the second options exercise** (see below for more details).~~

In scope individuals do not need to have made an Employment Tribunal claim in order to be offered retrospective access to the FPS 2006.

Entitlement

Retained firefighters in scope will be able to purchase pension entitlement as a special member for some or all of their service between 7 April 2000 and 5 April 2006, as well as any continuous service up to 7 April 2000 and/ or continuous service from 5 April 2006.

A retained firefighter transferring from one Fire and Rescue Authority (FRA) to another without a break in service will be treated as having continuous service with the second FRA.

Opportunity to take part in the first options exercise

A retained firefighter will be deemed to have been given opportunity to take part in the first options exercise where the FRA can evidence all of the following:

- Eligible individuals were notified within two months of 1 April 2014 that they may be entitled to join the FPS 2006 as a special member ([Part 11, Rule 5A\(4\)](#));
- Applicants were provided with a statement of service and contributions within four months of their application being received ([Part 11, Rule 5A\(13\)](#));
- On or before 31 May 2015, eligible individuals who received a notification under Part 11, Rule 5A(4) were provided with a statement of service and contributions if they had not already received one ([Part 11, Rule 6C\(4\)](#)); and
- Any election to pay mandatory special pension contributions took effect from the date that the election was received, and the individual became a special member ([Part 11, Rule 6C\(5\)\(a\)](#)).

Acceptable evidence will be either:

- File copies of the expression of interest letter and detailed offer letter (Annex A and B to the MoU) addressed to the relevant individual at their last known address; or
- A mail merge database including the name and last known address of the relevant individual created on a date before the letters were sent, together with templates of the letters.

- This includes emails and email addresses, where an individual consented in writing to receive communications by email.

Where there is a dispute between a retained firefighter and an FRA as to whether adequate opportunity to take part in the first options exercise was provided on the basis of the evidence produced, the matter shall be dealt with under the FRA's Internal Dispute Resolution Procedure (IDRP).

If the dispute is not resolved through IDRP, the individual retains the ability to pursue the matter with the Pensions Ombudsman.

The second options exercise

The regulations to implement the second options exercise in England will be drafted by the Home Office and consulted on before they are laid before Parliament. The Home Office has a maximum period of 18 months to draft, consult, and introduce the necessary secondary legislation.

FRA's will be expected to start the second options exercise as soon as possible after the legislation comes into force. The exercise will run for a maximum period of 18 months after it begins.

Retained firefighters who elect to join the FPS 2006 under the second options exercise will be required to pay the relevant employee contributions, with interest applied¹.

Retained firefighters who elect to join the FPS 2006 under the second options exercise as a special pensioner member will receive interest on their pension arrears.

Retained firefighters who elect to join the FPS 2006 under the second options exercise and who are unable to obtain tax relief on their contributions through self-assessment will have the cost of purchasing past service reduced accordingly, in line with guidance provided by GAD.

Aggregation

A further issue arose around during negotiation of the MoU around an inability to aggregate periods of pensionable service in the FPS as a retained firefighter with periods of service as a wholetime firefighter ("aggregation"). This has been addressed by affected retained firefighters (or their representatives) having the ability to give written notification to the GLD (on behalf of the Home Office) and FRA's prior to the commencement of the second options exercise of:

- their identity; and
- details of the factual and legal basis of any aggregation claims

¹ Employer contributions will be picked up through future valuations as a past service cost.

with a view to discussions for six months from the MoU date leading to a resolution of those claims. If agreed resolution of the aggregation issues is not reached by then those Claimants can pursue Tribunal claims to determine outstanding issues in relation to them.

FRA's are asked to identify any retained firefighters who have transferred from retained to wholetime employment and are potentially affected by aggregation, and notify the LGA of the number of these potentially affected retained firefighters.

Next steps

Prior to the legislation coming into force, FRA's are advised to take steps to identify retained firefighters who were employed between the relevant dates and ascertain what steps were taken to identify and contact individuals who were eligible for the first options exercise.

FRA's are also asked to provide the information on aggregation set out above, split by scheme that the firefighter joined in respect of their wholetime employment (i.e. FPS 1992 or FPS 2006). The deadline for providing this information is 31 May 2022.

The LGA will be working closely with the Home Office and GAD on the data requirements for the second options exercise over the coming months.

The LGA will also be working with the parties to the MoU and its wider stakeholder groups on communications for the second options exercise.

FRA's are strongly encouraged to respond to the Home Office consultation on the draft regulations to implement the second options exercise when it is published.

Further information and resources will be provided in due course.

This factsheet has been prepared by LGA to provide a summary of the MoU agreed on 9 March 2022, however it 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. This factsheet should not be interpreted as legal advice

Please address any queries on the content of this factsheet to bluelightpensions@local.gov.uk

March 2022