

FPS Bulletin 55 – March 2022

Welcome to issue 55 of the Firefighters' Pensions Schemes bulletin.

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Calendar of events

Please see below a calendar of upcoming events relevant to the Firefighters' Pension Schemes. Only those events which are hyperlinked are currently available to book. If you have any events you would like to be included in a future bulletin, please email bluelightpensions@local.gov.uk.

Table 1: Calendar of events

Event	Date
FPS coffee morning	5 and 19 April 2022
SAB	23 June 2022
SAB	8 September 2022
SAB	8 December 2022

Actions arising

Readers are asked to note the following actions arising from the bulletin:

[Matthews](#): No later than **31 May 2022** FRAs to inform LGA of total numbers of member, split by scheme (FPS 1992, FPS 2006), affected by aggregation.

[Member communication post 1 April 2022](#): FRAs to contact all current former protected members and provide key features of FPS 2015 communication.

[Top up grant 2022 – Collection of pensions accounting data](#): In addition to the pensions income/expenditure data that you will be submitting on DELTA, FRAs to send the Home Office electronic copies of the trial balances from audited accounts where the pensions income/expenditure data was extracted for completion of the audited 2020/21 DELTA return, to include any post balance sheet adjustment events.

FPS

Home Office consultation response and amending legislation

On 8 March 2022, the Home Office published its [consultation response on prospective remedy](#), along with a [frequently asked questions document](#).

The consultation response confirms the amendments to the pension scheme regulations which will deliver the first set of changes and remove the transitional protections from the FPS 2015. In addition, it confirms provisions for an ill health underpin which will ensure that a protected member who applies for ill health retirement before 31 March 2022, and which is determined in their favour after that date, is treated no less favourably than if the application had been determined on that date.

The Home Office has identified one scenario where a member who transitions on 1 April 2022 with an ill-health decision pending could be placed in a worse position. This would be where a legacy FPS 1992 member moves across to the FPS 2015 and does not meet the qualifying criteria for ill-health retirement in the FPS 2015 but would have met the corresponding criteria under the legacy FPS 1992.

To avoid any such members being in a worse position than if the decision had concluded prior to 1 April 2022, changes have been made to the FPS 2015 regulations which mean that the member is assessed for ill-health retirement against a Normal Pension Age (NPA) of 55

The response also makes provisions to allow arrangements for members who are purchasing service in the legacy schemes by way of periodical contributions, entered before 1 April 2022, to continue on after that date.

These changes enact the policy announced in February 2021 and are consequential to the provisions in the Public Service Pensions and Judicial Offices Act 2022 (PSPJOA 2022) which received Royal Assent on 10 March.

[The Police and Firefighters' Pension Schemes \(Amendment\) Regulations 2022](#) were laid in parliament on 21 March. The amendments come into force on 1 April 2022 and enable the prospective elements of the 2015 Remedy as set out in the consultation.

A further Home Office consultation will take place later in the year on the retrospective amendments that are required to fully deliver the remedy. This includes establishing the deferred choice underpin (DCU) and the changes needed to offer pensioners and beneficiaries of deceased scheme members an immediate choice between legacy or reformed scheme benefits.

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Matthews – Second options exercise

Readers may 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.

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 "Matthews", 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.

On 9 March 2022, after an extended period of negotiations, a [Memorandum of Understanding \(MoU\)](#) was agreed between the government, the Fire Brigades Union, the Fire & Rescue Services Association, and FRA employers.

It was confirmed that 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. More details on the scope and mechanics of the settlement are available in our [summary of "Matthews" MoU and second options exercise factsheet](#).

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.

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. This will help FRA's determine whether the retained firefighter is in scope again this time around.

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We have also asked FRAs to identify any retained firefighters who have transferred from retained to wholetime employment and maybe subject to aggregation. For clarity, the individual must have been in retained employment at some point between 7 April 2000 and 5 April 2006 and they must have joined wholetime employment without a break in, or overlap of, service. Once these individuals have been identified, and **no later than 31 May 2022**, FRAs should email bluelightpensions@local.gov.uk with the total number of members, split by scheme that the firefighter joined in respect of their wholetime employment, for example, FPS 1992 = 3, FPS 2006 = 5.

Member communications post 1 April 2022

On 8 March 2022, the [FPS Coffee Morning was dedicated to the preparation for prospective remedy](#). Attendees were reminded that all current members of the Firefighters' Pension Schemes who remain active employees beyond 31 March 2022 do so as a member of FPS 2015. Full details on what action must be taken can also be found in [FPS Bulletin 54 – February 2022](#).

It was agreed that, in addition to distributing the [protected member letter](#) in advance of 1 April 2022, FRAs should contact **all** protected members once the transition into FPS 2015 has taken place; this is to ensure that members become familiar with some key features of the scheme. To help FRAs with this we have provided a [protected member communication post-April 2022](#) that can be used. It is strongly advised that FRAs send this communication to all former protected active members as soon as possible.

Contingent decisions – Optant outs

On 25 March 2022, we shared a communication with relevant stakeholders on contingent decisions, more specifically on the area of optant outs. The communication confirmed that, due to the pension changes in 2015 and the subsequent introduction of FPS 2015, some firefighters chose to opt out of the pension scheme rather than transition into FPS 2015. The government has recognised in its [Public Service Pensions consultation response](#) that some members would have taken a different course of action had they known that continued membership of their legacy scheme (FPS 1992, FPS 2006 including special members) during the remedy period was an option. The government therefore intends to legislate for decisions such as this through the contingent decision aspect of the retrospective legislation. This is confirmed in [section 5 of the PSPJOA](#).

Although the final policy on this matter is yet to be determined and we cannot provide any guarantees that a particular case will be deemed a contingent decision, we thought it would be prudent to bring the matter to FRAs' attention so that action can be taken where required.

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It is our understanding that contingent decisions only cover the remedy period (1 April 2015 to 31 March 2022). This means that should a member remain opted out beyond 1 April 2022 they may, under retrospective legislation, be given the option to buy back their opted-out service which occurred during the remedy period. However, it is unlikely that regulations will permit them to buy back service after 31 March 2022. This could therefore mean that their pension would remain deferred with a payment age of 60 for FPS 1992 and 65 for FPS 2006 (special members have a deferred payment age of 60), regardless of whether they buy back the opted-out service during the remedy period.

We understand that some members have indicated that they want to buy back their opted-out service for the remedy period, as they want to retire as an active member. If this is the case, members should speak with their pension/payroll department and arrange to be opted back into the FPS on or before 1 April 2022.

FRAAs were strongly advised to communicate this message with staff.

As expected, this communication generated a significant amount of interest from members, and we received many questions in respect of this. Unfortunately, as a final policy decision is yet to be determined, we cannot provide any more clarity on this matter. We understand that members have questions about whether the contingent decision provision captures them and their personal set of circumstances. We also understand that members want to understand the cost implications and what repayment options may look like. However, we cannot provide definitive further clarity at this time. We appreciate that this is frustrating for all concerned and give our assurance that more detail will be provided as and when it is available.

Cost control valuation 2016 finalised

Following HM Treasury's publication of Amending Directions in October 2021, the Home Office has finalised the 2016 valuations for the FPS providing certainty on the outcome to scheme members.

On 16 March 2022, the [final outcome of the cost-control element of the 2016 valuation](#) for the FPS in England was published, confirming a breach to the cost cap ceiling of 14.6%.

This process had previously been paused following the uncertainty arising from the McCloud and Sargeant judgments and was 'un-paused' in 2020.

The report confirms that the cost control element 2016 valuation is not used to set the employer contribution rate and changes to the employer contribution rates resulting from the 2020 valuations will take effect from April 2024.

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In 2021, the government [announced proposed reforms to the Cost Control Mechanism](#) which will be implemented in time for the 2020 valuations. These reforms do not affect the 2016 valuations as the government previously decided that it would be inappropriate to reduce member benefits based on a mechanism that may not be working as intended.

The government therefore announced that any ceiling breaches found when schemes complete the 2016 valuations will be waived. This means that no member will face a reduction in their benefits as a result of the 2016 valuation.

We reported in November that unions across the public sector had launched a judicial review against the government about including McCloud/ Sargeant remedy costs in the cost control mechanism. The provisional results of the 2016 cost cap valuation showed that all public service schemes were cheaper than expected. This would have led to a reduction in contributions or improvements in benefits from April 2019 had the cost control process not been paused.

[The Home Office has published a set of FAQs](#) on the valuation results to assist stakeholders.

Top up grant 2022 – Collection of pensions accounting data

On 28 March 2022, the Home Office sent an email to Claim Certifiers and Administrators to advise that FRAs should now be working towards submitting **audited 2020/21** and **unaudited 2021/22** pensions income/expenditure data as part of this year's top up grant claim. This year's pension accounting data will need to be submitted on the DELTA online data collection system. Notification will be sent via DELTA when the forms go live in the first week of April.

ACTION: In addition to the pensions income/expenditure data to be submitted on DELTA, the Home Office is also requesting that all FRAs provide electronic copies of the trial balances from audited accounts where the pensions income/expenditure data was extracted for completion of the audited 2020/21 DELTA return by email, to include any post balance sheet adjustment events. These should be sent to Anthony.Mooney@homeoffice.gov.uk.

Also, please let Anthony Mooney know if you have had a change in staff from last year's submission as they will need to be set up on DELTA to be able to input data.

Please note that this information is needed by **Friday 13 May 2022** to enable the relevant checks to be undertaken (and further clarification sought from FRAs where necessary) in time to make the next batch of grant payments in July.

The Home Office will only be able to make Top Up grant payments on any claims that they can validate as being correct and, as such, failure to provide the requested information, or the submission of incomplete information, will delay any grant payments due in July.

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Please also note that there are a number of automatic comparison checks on the data that you submit on DELTA with the data that you previously submitted. The automatic checks include:

1. a cross-reference check on the audited 2020/21 pension income/expenditure data with the unaudited 2020/21 pension income/expenditure data submitted last year by each FRA. This level of check will be necessary as it will be the last chance to identify errors before the period falls outside the Top Up grant's 3-year financial cycle; and
2. a cross-reference check on the unaudited 2021/22 pension income/expenditure data with the updated forecast 2021/22 pensions income/expenditure data (submitted by each FRA in August 2021).

If the variances breach certain tolerance levels, then the DELTA form will request a short explanation to explain the difference before the form can be submitted.

The DELTA forms also include a 'declaration form' link which sets out the terms of the submission – effectively this details what data should be included/excluded from the returns. Please note that this does **not** need to be signed and returned but should be read and applied before finalising your submissions.

Please contact Anthony.Mooney@homeoffice.gov.uk if you have any questions.

FPS annual update 2022

We confirmed in [FPS Bulletin 54 – February 2022](#) that FPS contribution rates remained unchanged for 2021-22.

All relevant thresholds and rate changes for 2022 are available in the [FPS annual update 2022](#).

All relevant legislation can be viewed on our website under annual update Statutory Instruments.

Technical query log

The current [log of queries and responses](#) is available on the FPS Regulations and Guidance website. The queries have been anonymised and divided into topics. The log is updated monthly in line with the bulletin release dates. There have been no new queries added this month.

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FPS England SAB updates

FPS 1992 Scotland – commutation provisions

On 24 December 2021, the Scottish Public Pensions Agency (SPPA), on behalf of the Scottish Government, conducted a public consultation inviting stakeholders to register their views on changes to existing provisions for commutation in the FPS 1992.

Those changes were proposed following discussions at the Police Scheme Advisory Board on two aspects of commutation in the equivalent legacy police scheme. Having reached a position on those aspects with police stakeholders, and given the similarities in the legacy schemes, Scottish Ministers were of the view that similar consideration should be given to the equivalent firefighters' provisions.

The first aspect concerned the existing commutation factor underpin, which gives retiring firefighters access to the commutation factor available to an equivalent firefighter in England, should that provide for a higher lump sum. This underpin was due to expire on 31 March 2022, and Scottish Ministers proposed to extend this indefinitely.

Secondly, regulation B7 of the FPS 1992 allows commutation of pension to a tax-free lump sum. Generally, this allows a member to commute up to 25 per cent of their pension to a lump sum on an actuarially neutral basis, but where the member is at least age 50, has more than 25 years' but less than 30 years' service and retires before the age of 55, a commutation restriction is applied.

In those cases, a lump sum of no more than two and a quarter times the member's pension can be paid. The proposed changes remove this cap entirely, allowing all firefighters who are entitled to an ordinary pension to commute up to the maximum 25 per cent of their pension.

The consultation closed on 1 February 2022 and the amending regulations were laid on 3 March 2022. The proposals were adopted in full. The changes due to come into force on 1 April 2022 and the changes to the commutation cap will not be retrospective.

We have been approached by several stakeholders asking whether there are any immediate implications for English FRAs as a result of the removal of the commutation restriction in Scotland and, if not, if there is any intention for the regulations for England to be amended in due course. The change to the Scottish regulations has no direct impact on English FRAs; regulation B7(5) for the Firemen's Pension Scheme Order 1992 (England) remains in force and restricted commutation continues.

It should be noted that there are a number of substantive differences between the management and governance of the FPS in England and in Scotland. For example, the Scottish FRS is a single FRA employer with a single administrator, the responsible authority is also the scheme manager, and different funding arrangements apply.

Since 2013, FRAs in England have had the [discretion to pay a lump sum in excess of two and a quarter times the full amount of the pension](#) under regulation B7(5A). If an FRA chooses to use this discretion, an amount equal to the difference between the restricted and unrestricted lump sum has to be paid by the FRA into the pension account. There could therefore be a financial implication for FRAs if the restriction was removed entirely.

Commutation is an HM Treasury (HMT) policy and any change to the policy would also require an amendment to the scheme regulations. Scottish government did not need HMT consent in order to implement the change in Scotland.

A discussion paper was taken to the Scheme Advisory Board (SAB) on 24 March 2022 to ask Board members to consider whether the Home Office, as responsible authority, should be asked to consider a change to the regulations.

Concerns were raised at the meeting in relation to impact on workforce planning, financial implications, and member welfare (ensuring that members have sufficient long-term monthly income in retirement, if retiring at a younger age and 'cashing in' more of their pension). The Board established that it would need to understand more about the impact on the members, employers, and the scheme, before any formal application is made to the Home Office. The secretariat has taken an action to follow up on obtaining this data and an update will be provided to Board members at a future meeting.

HMT respond to the SAB on immediate detriment

We reported in [FPS Bulletin 52](#) that the chair of the SAB had written an [open letter to HMT on the withdrawal of the Home Office informal guidance](#) on immediate detriment. The letter, dated 17 December 2021, asked for more information on the risks and uncertainties which HMT said arose as a result of processing cases ahead of legislation.

On 23 March 2022, [HMT provided a response outlining the factors behind the withdrawal](#) in more detail. The response highlights that Section 61 of the Equality Act 2010 does not, in HMT's opinion, allow for amendment of a member's tax position. The response details several tax complexities which have been identified and will be dealt with through legislation.

The SAB acknowledges the response, which has been shared with the LGA and the FBU as parties to the Memorandum of Understanding/ Immediate Detriment Framework.

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Other News and Updates

PSPJOA 2022 receives Royal Assent

The Public Service Pensions and Judicial Offices Bill received Royal Assent on 10 March 2022 and became the [Public Service Pensions and Judicial Offices Act 2022](#) (PSPJOA 2022), which will come into force on 1 April 2022.

The PSPJOA 2022 legislates for how the government will remove the discrimination identified by the courts in the way that the 2015 reforms were introduced for some members.

The main elements of the Act are:

- Changes implemented across all the main public service pension schemes in response to the Court of Appeal judgment in the McCloud and Sargeant cases.
- Eligible members of the main unfunded pension schemes have a choice of the benefits they wish to take for the “remedy period” of April 2015 to 31 March 2022.
- From 1 April 2022, when the remedy period ends, all those in service in main unfunded schemes will be members of the reformed pension schemes, ensuring equal treatment from that point on.
- Bespoke measures implement corresponding changes in the Judicial Pension Schemes and Local Government Pension Scheme to reflect their different arrangements.
- Ensures there are no reductions to member benefits as a result of the 2016 cost control valuations.

These changes provide public service workers with greater certainty of their benefit entitlements. Going forwards, public servants will receive guaranteed pension benefits, but on a fairer basis, and in a way that ensures that they are affordable and sustainable into the future.

DWP consultation on pensions dashboards

On 11 March 2022, the LGA and SAB submitted their responses to the Department for Work and Pensions (DWP) [consultation on the draft Pensions Dashboards Regulations 2022](#) in respect of the Firefighters' Pension Schemes.

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Pensions Dashboards will allow individuals to see information about all their pensions, including the State Pension, in one place. These draft regulations set the requirements to be met to deliver this and will place a legal duty on pension providers to provide information to the dashboards. The consultation proposes a staging deadline of the end of April 2024 for public service pension schemes, including the Firefighters' Pension Scheme. This means that Fire scheme administrators will need to be able to connect to the digital architecture by this date and be ready to provide individuals' data to them via the dashboards.

While the LGA and SAB are supportive of dashboards and their purpose, there are strong concerns over the proposed staging schedule given the conflicting pressures faced by administrators and the data that will be available at that time. The [LGA response to the DWP consultation](#) and the [SAB response to the DWP consultation](#) both therefore ask for the staging date to be delayed a further 12 months until April 2025.

The Finance Act 2022

The Finance Act 2022 received Royal Assent on 24 February 2022 and comes into force on 6 April 2022. [Sections 9 and 11](#) will have consequential impact on the 2015 Remedy for the FPS:

- Section 9: Annual allowance deadlines. Deadlines for electing for scheme pays and associated payment and reporting deadlines will be extended for certain members who are informed of a change in pension input amount for a past pension input period.
- Section 11: Powers to change tax rules related to the McCloud remedy. The Act provides HM Treasury (HMT) with wide powers to make regulations to address tax impacts that arise as a result of implementing the McCloud remedy. Different regulations may apply to different public service pension schemes. The regulations will have retrospective effect.

More information on the likely powers under section 11 can be found in the [HMRC policy note issued in October 2021](#). Any measures will require secondary HMT legislation to implement, which is not anticipated until later in 2022

Mandatory scheme pays deadlines are changing

[The Finance Act 2022](#) and the [Registered Pension Schemes \(Miscellaneous Amendments\) Regulations 2022](#) ('the new regulations') will change the timescale for members to make or amend a mandatory scheme pays election when paying an annual allowance charge. The changes will apply when the information used to calculate a member's pension input amount is retrospectively amended.

The LGA is currently reviewing the impact of these changes and we will provide more information in due course.

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Job vacancy at the LGA

The Scheme Advisory Board (SAB) to the LGPS in England and Wales is looking for a Pensions Secretary. The successful candidate will provide professional support to the SAB and its committees and will also lead on developing the SAB's digital presence.

For more information and to apply see the [Jobtrain website](#). The closing date is 19 April 2022.

Events

FPS coffee mornings

Our MS Teams coffee mornings are continuing every second Tuesday. The informal sessions lasting up to an hour allow practitioners to catch up with colleagues and hear a brief update on FPS issues from the LGA Bluelight team.

The next session is due to take place on 5 April 2022.

We are pleased to include the presentations from recent sessions below:

[8 March 2022 – Preparing for prospective remedy](#)

[22 March 2022 – 'Matthews' and the 2023 options exercise](#)

If you do not already receive the meeting invitations and would like to join us, please email bluelightpensions@local.gov.uk. Please note that attendance at the coffee mornings is generally restricted to FPS practitioners and managers.

Legislation

Acts

[Public Service Pensions and Judicial Offices Act 2022](#)

SI	Reference title
2022/79	The Firemen's Pension Scheme (Amendment) (Scotland) Order 2022
2022/103	The Firefighters' Pension Scheme (Scotland) Amendment Regulations 2022
2022/215	The Public Service Pensions Revaluation Order 2022
2022/216	The Social Security Revaluation of Earnings Factors Order 2022

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2022/232	<u>The Social Security (Contributions) (Rates, Limits and Thresholds Amendments and National Insurance Funds Payments) Regulations 2022</u>
2022/259	<u>The Occupational Pensions Schemes (Fund Compensation Levy) (Amendment) Regulations 2022</u>
2022/297	<u>The Guaranteed Minimum Pensions Increase Order 2022</u>
2022/333	<u>The Pensions Increase (Review) Order 2022</u>
2022/336	<u>The Police and Firefighters' Pension Schemes Amendment Regulations 2022</u>
2022/343	<u>The Firefighters' Pension Scheme (Wales) (Amendment) Regulations 2022</u>
2022/392	<u>The Registered Pension Scheme (Miscellaneous Amendments) Regulations 2022</u>

Useful links

- [The Firefighters' Pensions \(England\) Scheme Advisory Board](#)
- [FPS Regulations and Guidance](#)
- [FPS Member](#)
- [Khuf Firefighters Pensions Discussion Forum](#)
- [FPS1992 guidance and commentary](#)
- [The Pensions Regulator Public Service Schemes](#)
- [The Pensions Ombudsman](#)
- [HMRC Pensions Tax Manual](#)
- [LGA pensions website](#)
- [LGPS Regulations and Guidance](#)
- [LGPC Bulletins](#)
- [LGPS member site](#)
- [Scottish Public Pensions Agency - Firefighters](#)
- [Welsh Government Fire circulars](#)

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