

## POLICY NOTE

### THE FIREFIGHTERS' PENSION SCHEMES (AMENDMENT) (SCOTLAND) REGULATIONS 2015

#### SSI 2015/141

The above instrument was made in exercise of the powers conferred by section 1(1) and (2)(f) of, and paragraph 6(c) of Schedule 2 to, the Public Service Pensions Act 2013. The instrument is subject to negative procedure.

#### Policy Objectives

The purpose of this instrument is to provide transitional arrangements for members who transfer to the Firefighters' Pension Scheme (Scotland) 2015. In June 2014, SPPA consulted on the first tranche of the Regulations required to introduce the reform scheme from 1 April 2015. This instrument also sets out more detail on scheme governance and member contributions from 1 April 2015.

**Governance** – New regulations 5A to E of the Firefighters' Pension Scheme (Scotland) Regulations 2015 (“the 2015 Regulations”) provide more detail regarding the requirement for the scheme manager to set up Scheme Pension and Pension Advisory Boards. The provisions reflect the arrangements established for the other public service pension schemes in Scotland.

**Ill Health** - Regulations 51,59, 65, 66, and 69 of the 2015 Regulations, new paragraphs 22,23,24,25,37 and 38 of Schedule 2 of the 2015 Regulations and amended rule 2 of Part 3 and Annex 1 of the Firefighters' Pension Scheme (Scotland) Order 2007 (“the 2007 Order”); and rules B3, B7 and F9 of the Firemen's Pension Scheme Order 1992 (“the 1992 Order”).

These provisions set down how the ill-health benefits of individuals who have participated in the 2015 Scheme and in one of the final-salary schemes should be determined.

The Regulations provide that where a 2015 Scheme member who was previously in the 1992 or 2006 scheme (the scheme established by the 2007 Regulations is referred to as “the 2006 scheme”, since those Regulations had effect from April 2006) becomes entitled to a lower-tier ill-health pension, their entitlement is paid from the 2015 Scheme. However, to ensure that connected service in the 1992 or 2006 Scheme is also recognised, an equivalent amount of benefit is calculated in accordance with the rules of their earlier scheme, and this ‘equivalent amount’ is paid from the 2015 Scheme. Commuted lump sums are paid and determined on the same basis.

Any entitlement to a higher tier pension is calculated in accordance with the 2015 Scheme. However, the higher tier enhancement is applied to the lower tier pension, including the ‘equivalent amount’ calculated in accordance with the member’s earlier scheme rules, but ‘adjusted’ so that added pension is not taken into account.

As the member’s 1992 or 2006 scheme pension is left in their previous scheme, it is possible for that pension to be transferred to another pension scheme, even if they are already receiving ill-health benefits from the 2015 Scheme in respect of their prior scheme service. Consequently, if that pension is transferred out to another pension scheme, the corresponding

'equivalent portion' of ill-health pension is deducted from the ill-health pension being paid out of the 2015 Scheme.

When a member who has moved into the 2015 scheme from either the 1992 or 2006 scheme reaches the Normal Pension Age in their previous scheme, the 'equivalent amount' ceases to be payable from the 2015 Scheme and is replaced by a continued pension from the member's previous scheme payable from normal pension age.

There are special provisions to deal with the cases where any member is being considered for an ill-health award at the time of their transition.

Members with 1992 Scheme service who are awarded a lower-tier ill-health pension which is payable under the 2015 Scheme as an 'equivalent amount' will continue to be able to commute a proportion of these benefits to a lump sum under the 1992 Scheme terms, using actuarially neutral factors. Any connected 2015 Scheme service will count towards determining whether the member can commute the maximum 25% of their 1992 Scheme pension if they retire before age 55.

**Employer initiated retirement** – Amended regulation 62 of the 2015 Regulations and rule 6 of Part 3 of the 2007 Order.

Where a firefighter with 2006 Scheme membership is subject to employer initiated retirement in the 2015 Scheme, the employing authority must at the same time consider using the equivalent provisions in the 2006 Scheme.

**Death Benefits** - Amended regulations 78,86,93 and 96 and new paragraphs 26,27,28,29 and 30 of Schedule 2 of the 2015 Regulations and rules C1, D1, E1, E3 and E4 of the 1992 Order.

Under the 2015 Scheme, survivor benefits are provided in the form of surviving partner's pension, bereavement pension, children's pension and lump sum death benefits, which reflects similar provision in the 2006 Scheme. Surviving partners of all 2015 Scheme members who are not deferred members of the 1992 or 2006 scheme, who die in pensionable service in the 2015 Scheme, will have their benefits determined under the 2015 Scheme. Similarly, where these members die in service and have eligible children, they will also receive benefits under the 2015 Scheme, rather than under the member's previous scheme. However, if the individual was a deferred member of the 1992 or 2006 scheme, the survivor will receive deferred survivor benefits in accordance with those scheme rules. The provisions for lump sum death payments are no less than they would have been under the 1992 or 2006 scheme.

**Member Contributions** - Amended regulation 110 of the 2015 Regulations sets out the member contribution rates for the 2015 scheme for each of the four years from 1 April 2015 and mirror the rates being introduced to the Firefighters' scheme in England.

**Employer Cost Cap** - New regulation 140A in the 2015 Regulations sets out the employer cost cap for the 2015 Scheme.

**Accrual Rate** – New paragraphs 31 and 34 of Schedule 2 of the 2015 Regulations and new Part 2A of Schedule 2 of the 1992 Order.

At present 1992 Scheme members can benefit from “double accrual”, which takes effect after 20 years’ service. 2015 Scheme members with 1992 Scheme benefits who remain in continuous pensionable service in the 2015 Scheme, will have those benefits calculated on the basis of the accrual rate that they would have received had they remained in the 1992 Scheme until retirement. This is achieved by taking into account the pensionable service accrued in the 2015 Scheme. For example, if a member accrued 30 years’ continuous service between the 1992 and 2015 Scheme, their accrual rate for any service accrued under the 1992 Scheme will be calculated on the basis of 45ths. A formula that provides for this effect is set out in new Part 2A of Schedule 2.

**Additional pension** - New paragraphs 31 and 34 of Schedule 2 of the 2015 Regulations and rule 7 of Part 11 of the 2007 Order and rules B5D, G2A, G7 and G8 of the 1992 Order.

If a member has already arranged to purchase additional service or increased benefits in the 1992 scheme, the arrangement will remain valid even after the member transfers to the 2015 Scheme provided that they had remained in continuous pensionable service in the 2015 Scheme if they were members of the 1992 Scheme, or if they were members of the 2006 Scheme and had continuous service. These members will continue to pay additional contributions on the same basis as they did before transferring from their final-salary scheme.

**Final pensionable pay** – New paragraphs 32, 33, 34, 42 and 43 of Schedule 2 of the 2015 Regulations; and rule 2 of Part 11 and rule 8 of Part 12 of the 2007 Order and rules B1A, B5A, G1 of the 1992 Order.

Schedule 7 to the 2013 Act requires that the old scheme retirement pension is calculated using earnings at retirement or upon leaving the new scheme so enabling the old scheme pension rights to be honoured in full (“the final salary link”) Paragraphs 42 and 43 of Schedule 2 provide that this right may only be exercised once and that any subsequent period of employment and scheme membership will not lead to a recalculation of any old scheme pension that is in payment.

Where a member of the 2015 Scheme has service that is continuous from the 1992 or 2006 Scheme, the member’s final pensionable pay is used. Service is still regarded as “continuous” so long as any break in service is no more than five years, or if any longer, spent in pensionable public service. Provided that continuity of service is maintained in this way, benefits relating to the member’s earlier scheme will be linked to their final salary when the member ceases active membership of the 2015 Scheme.

Where the ‘final salary link’ applies, there is a requirement in the 2013 Act that the member’s ‘pensionable pay’ in the 2015 Scheme is not less generous than it would have been in their previous scheme. This includes certain allowances and supplements that would previously have been deemed to be pensionable and could also apply if the member has seen a reduction in salary. The regulations therefore ensure that a member is not disadvantaged if the definition of final salary used to determine their benefits would have been higher in their original scheme than under the 2015 Scheme.

When a decrease in pay occurs before the member becomes a member of the 2015 Scheme and pay does not again rise above that high point, final pensionable pay is determined using the member’s 1992 or 2006 scheme pensionable pay and rules. When the decrease occurs after transition, the member’s pensionable pay in the last year of service before the decrease

occurred is used. When a member joins the 2015 Scheme, but does not re-join the scheme in time to retain continuity of service, final pensionable pay would be that at the point of deferment from the member's original membership.

**Deferred membership** – New paragraphs 35 and 36 of Schedule 2 of the 2015 Regulations, rule 1C of Part 2 of the 2007 Order and rules 3 and 4 of Part 3 of the 2007 Order and rules A3, A13A, B1A, B1B, B5 and F2 of the 1992 Order.

For members of the 2006 Scheme other than special members, the regulations ensure that if a member ceases to have active membership in the 2015 Scheme but returns after a gap of not more than five years, their previous 2015 Scheme service and any connected 2006 Scheme service will no longer be deferred. Instead, it will be treated as active for certain purposes and as continuous with any new 2015 service. If a member re-joins and the gap in membership exceeds five years, the earlier membership in both the 2015 Scheme and the 2006 Scheme will remain deferred and the new membership in the 2015 Scheme is treated as separate pension entitlement.

A different approach applies in respect of 1992 Scheme members and special members of the 2006 Scheme, as the 1992 Scheme is closed to re-joiners. As a consequence, the member is not treated as active for certain purposes in the 1992 Scheme once they leave pensionable service in the 2015 Scheme. In such instances they would become a deferred member of the 1992 Scheme. If the member elects to re-join a firefighters' pension scheme while still transitionally or fully protected, they would join the 2006 Scheme, rather than the 2015 Scheme. However, a member of the 1992 Scheme who is in continuous pensionable service in that Scheme before the transition date and remains in continuous pensionable service in the 2015 Scheme until they leave pensionable service or retire, is treated as an active member of the 1992 Scheme for certain purposes.

**Refunds of Contributions** – New paragraph 39 of Schedule 2 of the 2015 Regulations.

If a member with existing 2006 Scheme service ceases active membership after transferring to the 2015 Scheme, contributions are refunded if the member has in total less than three months qualifying service across both schemes and any further contributions for additional service cease to be payable.

**Qualifying benefits** – New paragraphs 40 and 41 of Schedule 2 of the 2015 Regulations; amended rule 1 of Part 10 of the 2007 Order and amended rule F2 of the 1992 Order.

Two years' membership of the 1992 Scheme is the minimum amount required in order to qualify for benefits in that scheme. The equivalent provision in the 2006 and 2015 schemes is three months. In considering whether a 2015 scheme member with service in either the 2006 or 1992 scheme qualifies for benefits in either the member's previous scheme or in the 2015 Scheme, any linked 1992, 2006 and 2015 Scheme service is to be taken into account. For qualifying purposes, transferred-in service in the 1992 or 2006 Scheme is counted on the same basis as before 1 April 2015.

**Transfer of final-salary benefits** – New paragraphs 44,45 and 46 of Schedule 2 of the 2015 Regulations and amended rules 1, 8, 9 and 10 of Part 12 of the 2007 Order.

These provisions are necessary to cater for individuals wishing to transfer-in membership of another public service pension scheme, which has accrued on a final salary basis. Upon joining, although their active membership may be in the 2015 Scheme, the transferred-in amount should be transferred into the 2006 Scheme. This is because the 2015 Scheme is operated wholly on a career-average basis and does not provide for final salary pensions.

**End of active membership in one of the final-salary schemes** – Amended Parts 2 and 3 of the 2007 Order and amended Parts A and B of the 1992 Order.

These provisions ensure that the transitional protections set out in the 2014 Regulations are reflected in the 1992 and 2006 Scheme Orders. The transitional protections are set out when a member of the 1992 and 2006 schemes must move into the 2015 Scheme, or else become a deferred member of their scheme.

### **Consultation**

To comply with the requirements of section 21 of the 2013 Act, a consultation was undertaken from 28 January to 19 February 2015. All stakeholders were consulted, including the Fire Brigades Union, Fire Officers Association and relevant Scottish and UK Government Departments. Three responses were received in total, one from an individual and two from firefighters' unions. A copy of the consultation document and a summary of responses will be made available on the Scottish Public Pension Agency's website [www.sppa.gov.uk](http://www.sppa.gov.uk).

### **Impact Assessments**

The equality impact assessment has been completed and will be made available in due course. No impact is expected.

### **Financial Effects**

In line with the reform of public service pensions, these changes will support the introduction of a reformed scheme from 2015 that is designed to ensure long-term sustainability and affordability. The estimated required contribution yield from members for the period April 2015 to March 2019 takes into account the indexation of contribution bands.

### **Business and Regulatory Impact Assessment**

This policy introduces reform to the pension scheme for firefighters in Scotland, following recommendations by the Independent Public Service Pensions Commission. This policy does not impose any additional costs or reduce existing costs for business, third or public sector organisations and on that basis no Business and Regulatory Impact Assessment is required for these regulations.

Scottish Public Pensions Agency  
An Agency of the Scottish Government  
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