

DRAFTING NOTE

The Firefighters' Pension Scheme (England) (Amendment) Regulations 2022

Introduction

1. This note sets out and explains the changes we propose making to the existing fire pension schemes (in S.I. 2014/2848, S.I. 2006/3432 and S.I. 1992/129) to implement the prospective remedy part of *McCloud*. These changes are necessary as a consequence of the provisions in the Public Service Pensions and Judicial Offices Bill which deal with the prospective remedy – clauses 76 and 77 on introduction in the Lords.
2. As the drafting and checking process continues throughout the rest of September and October, ahead of formal consultation, the approach may change (e.g. with the need for additional amendments becoming clear). This note simply sets out the changes we propose making at this stage, and explains the effect they will have.

Amendments proposed

3. We propose making the following three (relatively short and minor) changes to Sch 2 to S.I. 2014/2848 (transitional provisions):
 - a) Amending the definition of 'closing date' in para 1 (interpretation) to provide that, **for full protection members, the closing date is 31 March 2022**;
 - b) Amending the definition of 'transition date' in para 1 to provide that, **for full protection members, the transition date is 1 April 2022**;
 - c) Amending para 9(2) (full protection members of the 1992 Scheme or the NFPS) to provide that **a person ceases to be a full protection member on 31 March 2022** (if they have not already ceased to be a full protection member).

Explanation

4. The effect of these changes is as follows (with references being to provisions of the 2014 Regs, unless otherwise stated).
5. Full protection members would, from 31 March 2022, **no longer be eligible to be in pensionable service under the NFPS or the 1992 Scheme**. This is because the exception in para 10 of Sch 2 (exception for full protection member during protection period) would no longer apply to them, it being clear that the 'protection period' ends when the person ceases to be a full protection member.
6. The person would become **eligible to be an active member of the new scheme**. This is because para 11 of Sch 2 (full protection member not eligible to join this scheme) only prohibits this while a person is a full protection member. In addition, reg 7 (eligible persons) only prohibits protected members of the 1992 Scheme or the NFPS from being eligible to be active members of the new scheme. 'Protected member' is defined in reg 3 (interpretation) and para 1 of Sch 2 as a full protection member or tapered protection member. It follows that when a person ceases to be a full protection member, they become eligible to be an active member of the new scheme.
7. Full protection members would **become active members of the new scheme when they begin pensionable service under it**. That is because para 8 of Sch 2 (commencement of active membership of this scheme) says that transition members entering pensionable service under the new scheme who have continuity of service become active members of the scheme (i) on the transition date (i.e. 1 April 2022), if they are in pensionable service in a scheme employment on that date, or (ii) if they are not in pensionable service in a scheme employment on that date, on the day after that date that they enter pensionable service in a scheme employment.
8. Those **full protection members who are opted-out of the 1992 Scheme or the NFPS on 31 March 2022 wouldn't be automatically enrolled in the new scheme** on 1 April 2022. This is because reg 11 (automatic enrolment) is clear that automatic enrolment does not apply to transition members with continuity of service whose first eligible day of service in a scheme employment is the day after their closing date (i.e. 31 March 2022), if on that date they were in service in the same employment and had opted-out of the 1992 Scheme or NFPS in relation to that service. Reg 12 (interpretation of Chapter) defines 'first eligible day of service' as the day on which a person becomes an eligible person in relation to that service. And, as set out above, it follows from para 11 of Sch 2 and reg 7 that when a person ceases to be a full protection member they become an eligible person.

9. Full protection members who move to the new scheme would be **covered by the provisions on final salary link** in the same way as other transition members. That is because of the operation of para 32 of Sch 2 (final salary of certain transition members for any purposes of the NFPS) and para 33 of Sch 2 (final salary of certain transition members for any purposes of the 1992 Scheme).
10. Likewise, full protection members who move to the new scheme would be **covered by the provisions on the payment of ill-health benefits to, and death benefits in respect of, transition members** in the same way as other transition members. That is because of the operation of Parts 3A and 3B of Sch 2.
11. We do not propose making changes to the 1992 Regs or 2006 Regs. This is not necessary, as those Regs will function on the back of the changes to the 2014 Regs outlined above (with full protection members who move to the new scheme being treated the same as other transition members). In particular, and by way of example:
- a) As regards the 2006 Regs (the NFPS is set out at Sch 1):
 - i. Rule 1B of Part 2 (cessation of firefighter membership and special firefighter membership) – this is clear that a person who is a full protection member ceases to be a firefighter member or special firefighter member on the date on which the person ceases to be a full protection member. The definition of ‘full protection member’ in rule 2 of Part 1 points to para 9 of Sch 2 to the 2014 Regs.
 - ii. Rule 1C of Part 2 (standard membership of this Scheme after the transition date) and rule 1D of Part 2 (special membership of this Scheme after the transition date) – these are clear what happens to a person to whom rule 1B of Part 2 applies, in terms of their membership of the NFPS, once they join the new scheme. For example, a standard member of the NFPS who remains in pensionable service under the new scheme becomes a connected member of the NFPS.
 - iii. Rule 4(5) of Part 2 (last day of membership) – this is clear that the last day of membership of a firefighter member or a special firefighter member who is a full protection member is the date on which the person ceases to be a full protection member.

- b) The 1992 Regs (the 1992 Scheme is set out at Sch 2):

- i. Rule F2 (current service) – this is clear that a person is not entitled to reckon as pensionable service under the 1992 Scheme any period of service as a regular firefighter beginning on the day on which para (6) of Rule A3 applies to them.
- ii. Rules A3(6) (exclusive application to regular firefighters) – this para says that it applies to a person who is a full protection member of the 1992 Scheme on the date on which the person ceases to be a full protection member of the 1992 Scheme. The glossary in Sch 1 points to para 9 of Sch 2 to the 2014 Regs for the definition of ‘full protection member’.
- iii. Rule A3(7) – this is clear that, where para (6) of rule A3 applies, if the person remains in continuous pensionable service under the new scheme (or is treated as an active member of that scheme), after the transition date, the person is entitled to a pension under rule B1A (continuous service pension) of the 1992 Scheme. That is calculated in accordance with Part 2A of Sch 2, with the formula set out there taking into account the person’s total length of service (i.e. **weighted accrual**).

12. We do not propose making any changes in respect of **tapered protection members (or anyone else)**. The law is already clear that for tapered protection members, the period of protection ends on or before 31 March 2022. If, so far as 1 April 2015 to 31 March 2022 goes, it turns out that some were not transitioned to the reformed scheme when the law is clear they should have been, that will be dealt with as part of the immediate detriment aspect of the retrospective remedy.

13. That said, we are giving further consideration to two issues of general application dealt with in Part 3C of Sch 2 to the 2014 Regs (transitional provisions relating to the NFPS and the 1992 Scheme). These are:

- a) the **purchase of additional service** – para 31 of Sch 2 (pensionable service under the NFPS) and para 34 of Sch 2 (continuous pensionable service under the 1992 Scheme) refer; and
- b) **ill-health cases unresolved on 31 March 2022** – para 37 of Sch 2 (authority determines the entitlement of a member of the NFPS to an ill-health award) and para 38 of Sch 2 (authority determines the entitlement of a member of the 1992 Scheme to an ill-health award) refer.