Scottish Public Pensions Agency
Buidheann Peinnseanan Poblach na h-Alba

The Firefighters' Pension Scheme (Scotland) Amendment Order 2023

Overview

This consultation is seeking views on the scheme amendments needed to correct errors contained in the Public Service Pensions Revaluation Order 2021 (the “2021 Order”) and the Public Service Pensions Revaluation Order 2022 (the “2022 Order”).

Duration of Consultation

This consultation will run from 6 October 2023 to 3 November 2023

How to respond

Please use the consultation response form and once completed send to SPPAPolicyConsultationResponses@gov.scot before midnight on the closing date.

Alternatively, responses can be posted to:

Scottish Firefighters’ Pension Scheme Consultation
SPPA
Tweedside Park
Tweedbank
Galashiels
TD1 3TE

Further information

If you are unable to access an electronic version of the document, please write to the above address and a paper copy will be provided.

Data Protection Statement

The Scottish Public Pensions Agency (SPPA) is an executive Agency of the Scottish Government and forms part of the legal entity of the Scottish Ministers (Framework Document).

This framework of statutory powers and responsibilities, as agreed with the Scottish Ministers, enables SPPA to undertake the role of data controller for the processing of personal data which is provided as part of your response to the consultation. Any response you send us will be seen in full by SPPA staff dealing with the issues which this consultation is about or planning future consultations.

The process allows informed decisions to be made about how SPPA exercises its public function.

Where SPPA undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g., a research organisation or a consultancy company). Any such work will only be undertaken under contract. SPPA use Scottish Government standard terms and conditions for such contracts which set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the SPPA intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response.

If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation.

If your details are published as part of the consultation response, then these published reports will be retained indefinitely. Any of your data held otherwise by SPPA will be kept for no more than three years.

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- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is the independent regulator for data protection.

For further details about the information the SPPA holds and its use, or if you want to exercise your rights under the GDPR, please refer to our Privacy Policy in the first instance or contact:

Agency Data Protection Officer

Scottish Public Pensions Agency

7 Tweedside Park

Tweedbank

GALASHIELS

TD1 3TE

Tel: 01896 892 469

Website: https://pensions.gov.scot/

The contact details for the Information Commissioner's Office are:

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Tel: 01625 545 745 or 0303 123 1113

Website: https://ico.org.uk

Purpose

1. To consult on scheme amendments needed to correct errors contained in the Public Service Pensions Revaluation Order 2021 (the “2021 Order”) and the Public Service Pensions Revaluation Order 2022 (the “2022 Order”).

Background

2. Reformed public sector pension schemes were established by regulations made under section 3 of the Public Sector Schemes Act 2013 (“the 2013 Act”). The reformed Firefighters’ Pension Scheme in Scotland (FPS 2015) is set out in the Firefighters’ Pension Scheme (Scotland) Regulations 2015 (SSI 2015/19) (the 2015 regulations”). The same issue to be addressed here applies to the counterpart schemes for firefighters in England, Wales and Northern Ireland, and also the Armed Forces Pension Regulations 2014.

3. Accrued pensions of active members of FPS 2015 are revalued annually. The annual revaluation rate is done by reference to “earnings” inflation. For the other public sector pension schemes, the revaluation is done by reference to “price” inflation). The annual revaluation rates based on both “prices” and (materially to the 2015 regulations) “earnings” are set by an annual HM Treasury (HMT) order made under section 9(2) of PSPA 2013 (the annual “Revaluation Order”). HMT has discretion under section 9(3) to decide how the increase is determined.

4. The metric used by HMT for earnings-based revaluation is a measure of “Average Weekly Earnings” (“AWE”). The Office of National Statistics (“ONS”) publishes provisional AWE figures in November each year before publishing revised figures in December. In practice, the relevant percentage increase in the Revaluation Order is based upon the revised December figure.

5. It has recently emerged that the 2021 Order and the 2022 Order each specified an earnings figure which was based on ONS’s provisional November AWE figures, rather than the revised December figures. This was a deviation from the standard approach of using the revised December figures. The deviation led to total revaluation for the FPS 2015 affected members being significantly lower than it would have been had the revised December figures been used. (The 2021 Order specified 2.4% whereas the December figure was 2.6%; and the 2022 Order specified 4.1% whereas the December figure was 4.5%.)

6. HMT considers that the use of the provisional November figures rather than the revised December figures was an error, both in 2021 and 2022. Scottish Ministers agree with this, and consider that the errors must be rectified as quickly as possible. Amendments to the 2015 regulations is the best approach to delivering

this. Under the 2013 Act, the Scottish Ministers are the responsible authority for making changes to the 2015 regulations.

Objective

7. Amendments are required to the 2015 regulations to correct the errors in the 2021 Order and the 2022 Order by correcting the index adjustment. Due to powers granted by the 2013 Act by which responsible authorities may make changes to the schemes, it is proposed that this is done by increasing the pension entitlement for those individuals in scope. This approach is preferred as making changes to the revaluation indexation would more rightly be made under section 9 to the 2013 Act, which falls outside the scope of the responsible authority's powers.

8. HM Treasury announced by Written Ministerial Statement on 6 July 2023 that responsible authorities will bring forward amendments to make these changes.

Proposed amendment

9. In order to correct the revaluation for previous years, the amendments will require retrospective effect. Given it is not envisaged there will be any adverse effect on any individuals under the regulation, we consider the provisions of Section 23 to the 2013 Act will not be triggered.

10. Rather than a change to the index adjustment, these errors will be corrected by providing an increase to the pension entitlement for those members in scope. This top up will be included in pension and retirement pension accounts.

11. This increase to entitlement will be referred to as the index supplement. The approach proposed here has a precedent in scheme changes introduced firstly in 2009 and subsequently mirrored in 2018 in the form of a new entitlement in relation to Guaranteed Minimum Pension overpayments to members in the legacy 1992 Firefighters" Pension Scheme in Scotland (as well as the legacy Scottish Police and Local Government Pension Schemes). The "index supplement" will need to be included in the definition of any entitlement. Defining it as an amount of "earned pension" (as defined in regulation 3) delivers this in the most straightforward way.

> "earned pension" means earned pension payable without actuarial reduction at normal pension age;

To augment this definition, an "index supplement" is introduced:

> "index supplement" means an amount of earned pension equal to the value of the index adjustment where the change in earnings for 2021 is increased by 0.2% above the amount specified in the Public

Service Pensions Revaluation Order 2021 and the change in earnings for 2022 is increased by 0.4% above the amount specified in the Public Service Pensions Revaluation Order 2022"

12. Other options considered included changes to the definition of "earned pension" in regulation 3. Alternatively, and with greater complexity, amendments could be made to the components of the various pension accounts in part 4 of the scheme regulations, for example a new sub paragraph 23(3)(g) and a description in regulation 35. This index supplement would then have its own "opening balance" at the start of each scheme year" and be revalued consistently with the other components of pension.

13. We also consider it necessary to clarify an individual's entitlement to an index supplement. This is delivered by including the "index supplement" within the definition of "index adjustment", providing for it to be included in the calculation of accrued earned pension in the pension account. This amount in the pension account ultimately reflects the benefit accrued and the amount that will come into payment at retirement.

Protected elements

14. Section 22 of the 2013 Act requires responsible authorities to take certain steps when making changes to "protected elements" under the scheme. These protected elements are:

    (a) the extent to which the scheme is a career average revalued earnings scheme;
    (b) members' contribution rates under the scheme;
    (c) benefit accrual rates under the scheme.

15. The "benefit accrual rate" is not defined in the 2015 regulations. The closest definition is "amount of pension accrued for a scheme year", which is set out in regulation 34(3), at 1/61.6th of pensionable earnings. This amount is indexed, adjusted annually. SPPA does not consider this correction to the index adjustment to be a protected element, in particular as it is not a change to the benefit accrual rate under the scheme, which remains 1/61.6th of pensionable earnings.

Pension events affected by the 2021 and 2022 Orders

16. According to SPPA records, as at the date of consultation there are 149 individuals who have had a pension event under the 2015 Regulations (i.e. they have retired, transferred out, or had a scheme payment made to a survivor or their estate following their death) since 1 April 2021. The pensions, lump sums or transfer

values paid in respect of these individuals should be adjusted to reflect the higher revaluation they should have seen to their pensions whilst they were in service.

17. It is felt that explicit right to retrospective correction of payments does not need to be inserted as the sums will become due under the scheme. SPPA will contact the relevant individuals upon the coming into force of the amendments and correct the payments accordingly.

Public Sector Transfer Club

18. A further technical point arises in relation to transfers conducted under the rules of the Public Sector Transfer Club. These rules are set out in a Cabinet Office Memorandum; and subscribed to by all the main public service schemes and a number of other. The rules are designed to facilitate ease of movement for people moving between sectors, or from one nation to the other within the United Kingdom.

19. Where an individual moves between employments and transfers their pension, their former scheme (the "sending scheme") will transfer a value to the scheme of their new employer ("the receiving scheme"). Under the memorandum rules, a receiving scheme undertakes to revalue the transferred-in pension by reference to the "in-service revaluation index" of the sending scheme. This is set out in the regulations covering "pension accounts", which are similar across the schemes made under the 2013 Act.

20. In cases where the sending scheme is the Firefighters' scheme, there is no mechanism for other schemes to include the amounts correcting the 2021 and 2022 errors. To enable this, we propose to change the definition of "in-service revaluation index" in the firefighters scheme, to include the "index supplement" where relevant. This is delivered in regulation 3 of the draft instrument. IN addition, the index supplement serves to augment the percentage increase set out in Treasury Orders, creating an overall increase in revaluation for the two years in question. Club schemes that have received transfers in respect of firefighters for those years are then asked to reflect that de facto percentage increase in respect of the relevant club transfer earned pension for former members of the FPS 2015.

Equality Impact Assessment (EqIA)

21. SPPA does not consider it necessary to conduct an EqIA in respect of these proposed amendments, on the basis that they are simply designed to correct errors in the revaluation orders, and in any case will benefit all members of the scheme in the same way, regardless of any protected characteristic.