

1992 FIREFIGHTERS' PENSION SCHEME – GUIDANCE FOR FRAs FOLLOWING THE INTRODUCTION OF THE EMPLOYEES “CONTRIBUTIONS HOLIDAY”

1. Background

- 1.1 Under the previous terms of the 1992 Firefighters' Pension Scheme (the “1992 Scheme”), the maximum pensionable service that a member can accrue is 30 years' service, whilst the earliest point at which they can retire is at age 50. This means that some scheme members – mainly those who joined before age 20 – must continue to pay employee contributions beyond the point of accruing maximum pensionable service but before they are able to retire. For example, if someone joined the scheme at 18 and paid contributions for 30 years then by age 48 they would have accrued maximum pensionable service in the pension scheme but could not retire until age 50.
- 1.2 The Welsh Government has concluded that this is unfair, and has legislated to correct that. It has done so by introducing an employee contributions holiday for 1992 Scheme members who accrue the maximum 30 years' pensionable service prior to age 50. This applies from the point of accruing maximum pensionable service in the Scheme until the member's 50th birthday. ***This change applies retrospectively to 1 December 2006.*** The legislation giving effect to the employee contributions holiday will come into force on 31 December 2016.

2. Details of employee contributions provision

2.1 The main details of the contributions holiday are set out below:

- General – members who joined the scheme between the ages of 18 and 20 and worked for 30 years, accruing the maximum pensionable service in the scheme prior to age 50 (the earliest point at which they could retire), will receive a refund of any contributions paid after they had reached maximum pensionable service. Any members who find themselves in this position in future will no longer have to pay contributions until age 50.
- Deceased members – contributions made by members who are now deceased should be refunded to their personal representatives. FRAs will be able to use the same principles set out in this guidance for dealing with personal representatives, although the draft letter would need to be adapted.
- Service from transfers into the scheme is included - members who transferred in service from another scheme (such as the armed forces pension scheme), and this contributed to them achieving the maximum 30 years pensionable service prior to age 50, will also receive a refund of contributions paid (or no longer have to pay contributions) once maximum pensionable service was (or is) achieved.
- Compound interest at the Bank of England (BoE) base rate – compound interest at the BoE base rate will be applied to the refund payments.

- Re-instatement of employee pension contributions post age 50 – once firefighters reach age 50 they are again liable to pay employee pensions' contributions until such time as they choose to retire (or opt out of the scheme).
- Employer contributions during any holiday period – Employing FRAs will be required to continue paying employer contributions in respect of the member during any period that the member becomes entitled to a contributions holiday. Also, only the employee contributions are to be refunded for past periods.
- Additional Pension Benefits (APB) – the contributions holiday provision will not impact on the requirement for employee/employers to continue paying contributions in respect of pay that is pensionable under APB arrangements. These contributions should continue to be paid during any contributions holiday period and should not be refunded.
- Chief Fire Officers (CFOs) up to age 50 – CFOs who accrue the maximum 30 years' pensionable service prior to attaining age 50 are treated like any other scheme member and are entitled to a contributions holiday.

3. Implications for FRAs

3.1 As FRAs have a statutory responsibility for the administration of the firefighters' pension schemes, they will be expected to implement the employee contributions holiday provision.

3.2 There are two main impacts of this change on the administration of the 1992 Scheme:

- (i) From 31 December 2016, which is the date that the legislation underpinning the provision comes into force, FRAs should cease deducting employee contributions from current members of the 1992 Scheme who are under age 50 and have accrued the maximum 30 years' pensionable service. If these affected members subsequently remain in employment with the fire service beyond age 50 then FRAs should **resume deducting contributions from their pay as before until the member retires**, or opts out of the scheme (becoming entitled to a deferred pension payable from age 60).

Employer contributions should continue to be paid during any period that a member is on a contributions holiday.

- (ii) As the employee contributions holiday is being applied retrospectively, FRAs will need to identify those serving and retired 1992 Scheme members who are now entitled to a contributions holiday during the period 1 December 2006 to 31 December 2016 inclusive. Essentially, this will include those members who had accrued maximum pensionable service before age 50. These members will now be entitled to receive a refund of the contributions that were deducted, plus interest. HMRC have confirmed that these refunds

constitute unauthorised payments and, as such, will attract an Unauthorised Payments Charge (UPC). Further guidance on how FRAs can calculate the refund payments due to affected members is set out in paragraph 4.3 below.

4. Calculation of Refund Payments

4.1 We will shortly be issuing FRAs with a bulk calculator (and accompanying user guide) which has been produced by GAD for FRAs to use to calculate the refund payments to be made to those members affected by the retrospective application of the employee contributions provision.

4.2 The personal data required to calculate the refund payment due to each member affected is:

1. Member reference number (such as NI Number).
2. Date of Birth.
3. Current status (active, deferred, pensioner, deceased).
4. Date when maximum pensionable entitlement reached.
5. Date of retirement or leaving the scheme (if no longer active).
6. Contributions paid in each month of the period for which the refund is being calculated, excluding contributions payable in respect of APBs.
7. Annual Pensionable Pay for final salary benefits only, (***therefore, excluding pay pensionable in respect of APBs***) for each scheme year over the period for which the refund is being calculated. This should be the aggregate of the pensionable pay (as defined in rule G1 of the 1992 regulations) for each scheme year. It should be grossed up to be an annual amount in scheme years when members were only in receipt of pensionable pay for part of the year (using a similar approach as is used to calculate average pensionable pay in rule G1(5) of the 1992 regulations). For part-time members, the pay figure used should be part-time pay, rather than the full-time equivalent, so that it is consistent with the employee contributions that were paid.
8. Amount of Pensionable Pay for APB arrangements only, (***therefore, excluding pay pensionable in respect of final salary arrangements***) for each scheme year over the period for which the refund is being calculated.
9. Additional 'non-pensionable' income that is subject to income tax, for each scheme year over the period for which the refund is being calculated which the member received in relation to their employment as a firefighter.

Please note that where a member's contributions holiday period commences after the start of the scheme year, or ends before the end of a scheme year, the pay under items 8 and 9 should reflect the amount paid for the full scheme year.

10. Where the member retired during the scheme year that their 50th birthday falls within or retired before age 50 on grounds of ill-health, the gross

pension paid (after any election to commute) in the scheme year of retirement.

4.3 This is the personal data that each FRA will need to input into the GAD calculator in order to calculate the refund of contributions that each affected scheme member will be entitled to receive. In order for Welsh Government to provide sufficient additional top up grant funding to FRAs to enable the payment of refunds to affected members, we now need FRAs to provide estimates of the total amount of refund payments that they expect to make. ***Please follow the instructions set out in GAD's bulk calculator guidance to input each affected member's personal details in order to calculate the total estimated refunds to be paid. When providing the estimates please split these as follows:***

- The total net contributions plus interest (the sum of column F in the Results tab of the GAD calculator).
- The total original income tax relief (the sum of column G in the Results tab of the GAD calculator).
- The total additional tax payable in excess of the figure in (ii) above, to meet the Unauthorised Payments Charge (the sum of column H in the Results tab of the GAD calculator).
- The total estimated refund payment for your FRA (the sum of (i) to (iii) above, which should also be equal to the sum of column J in the Results tab of the GAD calculator).

Please complete the table provided and send your estimated costs direct to Kerry.citric@wales.gsi.gov.uk by cop Tuesday 31 January.

4.4 With regards to data item 6, please note that there is a facility within the GAD calculator to calculate the contributions paid by each affected member based on their pensionable pay; however, this will be an estimate. Welsh Government ***strongly recommend*** that FRAs obtain and input the actual contributions paid by each member during the period as this will be more accurate.

4.5 With regards to data item 9, in order to determine the effective rate of income tax relief that each affected member would have received on the pension contributions they paid during the period of the contributions holiday, FRAs will also need information on any additional 'non-pensionable' income received from their employment as a firefighter during that time.

4.6 It is also worth noting that some scheme members may have received additional income from other sources outside their employment as a firefighter during the contributions holiday period and may have sought additional tax relief on their firefighter pension contributions direct from HMRC based on this additional income. This would have the effect of reducing the member's final refund payment entitlement.

4.7 Where this is the case, the members should be asked to provide the relevant additional information. **The GAD calculator cannot be used** to calculate the refund for any such members and FRAs should then contact GAD via the email

address Refund.Calculator@gad.gov.uk to arrange a bespoke calculation if required.

- 4.8 If any member does not provide a response to a request by the FRA for any additional income information, then a default position that the member had received an effective rate of income tax relief based on the salary information held by the FRA seems reasonable. Their refund payment would be calculated on this basis.
- 4.9 Please note that regardless of whether members respond to the FRA's request for information on additional income from outside their employment as a firefighter, members should still be included in the GAD calculator with no additional non-firefighter income entered for any of the members **for the purposes of the estimates only**. This will help to ensure that the estimates cover all relevant members. The **actual refund payments** made to any members who do provide additional non-firefighter income, should still be based on bespoke calculations by GAD.
- 4.10 Note that the GAD calculator cannot be used to process any calculations for the following members:
- deferred members;
 - deceased members;
 - members who have provided additional non-firefighter income on which they have claimed tax-relief (as described in paragraph 4.6 above); and
 - members who are subject to an Unauthorised Payments Surcharge (as described in paragraph 5.4 below).

FRAs should contact GAD via the email address Refund.Calculator@gad.gov.uk to arrange a bespoke calculation for such members if required. However, FRAs should note that the Welsh Government is unable to cover the costs of any bespoke calculations and the **FRAs themselves will be required to cover any such costs incurred**.

- 4.11 Please also note that where a scheme member has transferred between FRAs during any period where they are entitled to a contributions holiday, we would suggest that the FRA that last employed or that currently employs the member should implement the contributions holiday. This will require communications between both FRAs to ensure that all the necessary data is available to calculate the refund payment entitlement. This will also ensure that no scheme member receives a duplicate refund payment.

5. Tax treatment of refund Payments

- 5.1 HMRC has confirmed that the refund payments generated by the retrospective application of the employee contributions holiday provision constitute unauthorised payments and, as such, will generate an Unauthorised Payments Charge (UPC) tax liability for the scheme member. Refund payments will be grossed up to take account of this tax charge and the GAD calculator allows for this adjustment.

- 5.2 The Welsh Government **strongly recommends** that FRAs process any refund payments to affected scheme members by using the HMRC ‘Mandating’ process whereby the Unauthorised Payments Charge is deducted at source and paid direct to HMRC by the FRA. This will avoid any requirement for the member to have to declare the payment via HMRC’s ‘Self-Assessment’ process. Note that this requires you to seek individual member approval of this approach. A draft letter to individuals affected is provided for this purpose. Further guidance on this process can be accessed at: <https://www.gov.uk/guidance/pension-schemes-and-unauthorised-payments>).
- 5.3 HMRC has also confirmed that the Scheme Sanction Charge will **not** be generated as part of this process.
- 5.4 HMRC rules provide for an Unauthorised Payments Surcharge (UPS) to be payable if unauthorised payments in a 12 month reference period total 25% or more of the value of the member’s scheme benefits. In this case the total tax charge would be 55% rather than 40%. Notwithstanding this, we do not expect that the refund payments will be large enough to trigger an UPS in isolation, but FRAs should check this point, taking into account any other unauthorised payments made to the member, to satisfy themselves that no UPS is payable for each member who is receiving a refund payment. If a UPS is payable then a bespoke calculation will be required and **the GAD calculator cannot be used**. Please contact GAD via the email address Refund.Calculator@gad.gov.uk to arrange a bespoke calculation if any refund calculations are required for members subject to a UPS.

6. Funding arrangements

- 6.1 Any refunded contribution payments should be made via the pension scheme. The Welsh Government are preparing to make an additional ‘top-up’ grant payment to FRAs via the pension fund account to provide additional funding to FRAs to enable refund payments to be made to affected individuals. After estimates have been provided, we expect to make the additional grant payment to FRAs by 31 January 2017.
- 6.2 The additional grant payment will be based on the estimated costs to be provided by FRAs (see paragraph 4.3) - this will **include** costs relating to Unauthorised Payments Charges. Each FRA will receive a grant payment to cover 100 per cent of their estimated costs. Any refund payments made by a FRA which are over and above the additional grant provided will be taken into account as part of the top up grant payments to be made in August 2017.

7. Timetable

- 7.1 The timetable of actions is set out in the table below.

Date	Action
By 31 December 2016	FRAs to identify current members eligible for a “contributions holiday” and put steps in place to cease contributions.
By 31 January 2017	FRAs provide the Welsh Government with estimates on refund payments to be made using the GAD calculator provided.
By 15 February 2017	The Welsh Government to pay additional grant to FRAs based on 100% of estimates submitted by FRAs.
By 31 March 2017	FRAs to make refund payments to affected scheme members, with the majority of payments to be made by end of FY 2016/17.
May/June 2017	The Welsh Government to collect unaudited 2016/17 pensions income and expenditure data as part of the existing top up grant mechanism.
August 2017	The Welsh Government to pay top up grant to reflect any differences between unaudited pension income and expenditure in respect of 2016/17 compared to that estimated (where income should include the additional grant payment received from the Welsh Government and the expenditure should include refunded contribution payments made to affected scheme members)

8. Process for recording additional grant payments and refund payments in pension fund accounts

- 8.1 Once the additional grant payments are made, FRAs will be required to record the grant payment received as eligible pension income in their pensions account. To ensure that this income can be distinguished from other elements of normal pension income, ***FRAs should allocate the grant received with a unique General Ledger code.***
- 8.2 In order to distinguish the refund payments made to affected 1992 Scheme members from other elements of normal pension expenditure, ***FRAs should also allocate the refund payment with a unique General Ledger code.***
- 8.3 It is important that, when the unaudited 2016/17 pensions income and expenditure accounting data is collected from FRAs in May/June 2017, Welsh Government can clearly identify the additional grant payment in income, and the refund payments in expenditure. We will be asking FRAs to specifically declare

these separate elements of pensions' income/expenditure on their unaudited 2016/17 FPF2 form.

9. Summary of Actions for FRAs

9.1 FRAs should:

- Make the necessary administrative arrangements to cease deducting employee contributions **from 31 December 2016** for those active members who are entitled to a contributions holiday for the duration of the holiday period.
- Complete the attached table to provide an estimate of the total refund payments to be made to affected members to Kerry.citric@wales.gsi.gov.uk **by cop 31 January**;
- Make the necessary administrative arrangements to process refund payments to affected 1992 Scheme members, with the majority being made by **31 March 2017**, where possible;
- Ensure internal finance processes can take account of the necessary GL codes as set out in section 8 above.

9.2 If you wish to discuss any part of this guidance or any other matter relating to the employee contributions holiday provision please contact Kerry.citric@wales.gsi.gov.uk.