

## **EXPLANATORY MEMORANDUM TO**

### **The Firefighters' Pension Scheme (Amendment and Transitional Provisions) Order (Northern Ireland) 2019**

**SR 2019 No. 109**

#### **1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department of Health to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under powers conferred by Article 10(1), (3), (4) and (5) of the Fire Services (Northern Ireland) Order 1984 and is subject to the negative resolution procedure.

#### **2. Purpose**

- 2.1. The Statutory Rule amends the Firefighters' Pension Scheme Order (Northern Ireland) 2007 in order to align with similar changes which were introduced to firefighters' pensions in England in September 2016 to address potential age discrimination as a result of the introduction of the Employment Equality (Age) Regulations (Northern Ireland) 2006.
- 2.2. The Statutory Rule will enable pension scheme members who joined the Firefighters' Pension Scheme (FPS) and accrued 30 years pensionable service, the maximum pensionable service in the Scheme prior to age 50 (the earliest point at which they could retire), to receive a refund of any contributions they paid after the point at which they had reached maximum pensionable service up until their 50<sup>th</sup> birthday. Any members who find themselves in this position in future will no longer have to pay contributions.

#### **3. Background**

- 3.1. The Department of Health has policy responsibility for Firefighters' pensions, which are administered by the Northern Ireland Fire and Rescue Service (NIFRS). Firefighters' pensions have, in line with other public sector pension schemes in Northern Ireland, operated on the basis of parity with their counterparts in England, Scotland and Wales. In September 2016 England made amendments to Firefighters Pension legislation, and in order for Northern Ireland to remain in parity similar amendments need to be made to legislation.

- 3.2. Article 2(2) of the Statutory Rule amends article 57 of the FPS to ensure that any firefighters who have reached their maximum 30 years pensionable service before they can retire at age 50 will no longer have to pay employee pension contributions. It also clarifies that firefighters continue to pay contributions in relation to additional pension benefit as appropriate and that NIFRS pay the appropriate level of employer contributions.
- 3.3. Article 2(3) of the Statutory Rule amends article 90 of the FPS to provide that the payments to be made to affected members are paid from the NIFRS pension fund account.
- 3.4. Article 3 of the Statutory Rule makes provision about the repayment of contributions paid during the period 1st December 2006 to 17th June 2019. Paragraphs (1) and (2) oblige NIFRS to make a payment described as “the required amount” to a firefighter who has made pensions contributions that by virtue of article 2 are no longer payable. Paragraph (3) sets out that this “required amount” should be in the form of a lump sum equal to the net contributions paid (after deducting the tax that the individual would have paid had they received the contributions as income), plus compound interest at the Bank of England base rate that applied over the period from when the contribution was made to the time of the repayment. This is then uprated to reflect that these payments constitute unauthorised payments under the Finance Act 2004, and will, therefore, attract a personal Unauthorised Payment Charge of 40% which will be settled between the member and HMRC. Interest is to be calculated on a daily basis, allowing for the Bank of England base rate in force on each day. For practical reasons, interest is calculated from the start of the month of the original contribution to the end of the month before the repayment is made.
- 3.5. Where a member entitled to the payment of a lump sum has died before payment is made, the lump sum will be paid to their personal representative.

#### **4. Consultation**

- 4.1. In 2011 the Department of Health consulted on several policy changes within the FPS including an employee contribution holiday for members who had accrued maximum pensionable service in the FPS but had to continue to pay employee contributions before they were able to retire at age 50.
- 4.2. This amendment was deferred because the Department for Communities and Local Government (DCLG) (formerly the Department with responsibility for firefighters’ pensions in England) had been seeking a judgement from the High Court as to the legality of the Scheme in these circumstances. Following discussions with the employees’ representatives in this case, the Fire Brigades Union, an agreement was signed and approved by the High Court, to provide a contributions holiday to those affected members.
- 4.3. The amendment came into force in England on 30 September 2016 without further consultation. As there is no change to the policy proposals originally

consulted on a similar amendment is being proposed in Northern Ireland without further consultation.

## **5. Position in Great Britain**

- 5.1. An equivalent amendment came into force in England on 30 September 2016. This order will ensure Northern Ireland maintains parity with equivalent schemes across GB.

## **6. Equality Impact**

- 6.1. The Statutory Rule has been considered under Section 75 of the NI Act 1998 and fully complies with the legislation with no adverse impact on any of the Section 75 Groups. The amendment is required to address potential age discrimination. There are no Human Rights or rural needs implications.

## **7. Regulatory Impact**

- 7.1. An Impact Assessment has not been completed for this Statutory Rule as it has no impact on businesses, charities or the voluntary sector.

## **8. Financial Implications**

- 8.1. A number of scheme members will be impacted by the retrospective application of the proposed amendment Order, and will therefore be entitled to a refund of their contributions. The total cost of refunds is circa £235K plus interest. The liability will be accounted for through NIFRS annually managed expenditure pension accounts. (AME).

## **9. Section 24 of the Northern Ireland Act 1998**

- 9.1. Consideration has been given to the human rights implications of these regulations. They are considered compatible with section 24 of the Northern Ireland Act 1998.

## **10. EU Implications**

- 10.1. There are no EU implications.