

EXPLANATORY MEMORANDUM TO

The Firefighters' Pension Schemes (Amendment) Regulations (Northern Ireland) 2022

SR 2022 No. 155

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Health, to accompany the Statutory Rules (detailed above) which are laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rules are made under powers conferred by sections 1(1), (2)(f), (3) and (4), 2, 3(1), (2) and (3)(a) to (c), 4(1), (2) and (5), 5(1), (3)(c) and (5) and 8(1)(a), (2)(a) and (4), paragraph 6 of Schedules 1 and 2, Schedule 3 and paragraph 6 of Schedule 5 to the Public Service Pensions Act (Northern Ireland) 2014.

2. Matters of special interest to the Examiner of Statutory Rules

- 2.1. The Department of Health apologises to the Examiner that this Statutory Rule, which comes into operation on 1st April 2022, is laid in breach of the 21-day rule.
- 2.2. The Statutory Rule could not have been made and laid sooner because it is dependent on the Public Service Pensions and Judicial Offices Act 2022 (“the Act”), which received Royal Assent on 10 March 2022. Chapter 4 of Part 1 of the Act contains the operative prospective remedy provision necessary to bring to an end the unlawful age discrimination identified in the McCloud judgment (referenced in paragraph 3 below).
- 2.3. In particular, section 88(5)(c) of the Act has the effect of closing the legacy public service pension schemes to future accrual after 31st March 2022. This Regulation makes consequential provision for the NI firefighters’ pension scheme. This provision must come into operation immediately after the legacy pension schemes are closed to future accrual by the Act to ensure legal certainty and fairness. If there is any delay, then there will be a period in which certain members can no longer accrue pension in the legacy scheme but scheme rules would prevent those members from joining the new scheme.
- 2.4. Scheme members have been on notice, through consultation processes, including the Department of Finance consultation document of August 2020 and consultation response document of February 2021, through the introduction of the Bill in the House of Lords on 19th July 2021, and through

the scheme-specific consultation referenced in paragraph 5 below, that the commencement date for the prospective remedy would be 1st April 2022. In these circumstances, a breach of the 21-day rule should not give rise to any unfairness.

3. Purpose

3.1. These Regulations make amendments to the Firefighters' Pension Schemes in order to align with similar changes that were introduced to firefighters' pension in England. The main purpose of these regulations is to implement the prospective remedy required by the McCloud judgement which will close the Firefighters' Pension Scheme (FPS) and the New Firefighters' Pension Scheme (NFPS) to future accrual from 31 March 2022 and ensure all members who remain in service from 1 April 2022 do so as members of the reformed scheme ("the 2015 Scheme") and makes consequential changes to scheme regulations in line with the Public Service Pensions and Judicial Offices Act (PSPJO). It is also being used to address other minor amendments to the Firefighters' Pension Schemes. The main amendments are:

- **Prospective McCloud Remedy:**
 - Makes amendments to deliver the changes required to close Firefighters' Pension Schemes to future accrual from 31 March 2022 and moves all members who remain in service from 1 April 2022 to the reformed scheme from 1 April 2022;
 - Ill-health retirement (IHR) – makes a amendments to ensure that members of the Firefighters Pension Scheme 2007 (FPS), awaiting a decision on whether they are entitled to an ill-health award, on 1st April 2022 (when they move to the Firefighters' Pension Scheme 2015) are considered using the criteria to determine entitlement to such an award under the FPS; and
 - Legacy scheme purchasing of additional benefits – makes an amendment to ensure that those provisions which allow arrangements for purchasing service in the legacy schemes by means of periodical contributions can continue after 31 March 2022 and that no new legacy scheme arrangements can be entered into after 31 March 2022.

- **Summary of additional amendments to the NI Firefighters' Pension Schemes**
 - Club Transfer Value Payments – makes amendments to align with GB on transfer-in membership of another public service pension scheme which has been accrued on a final salary basis;

- Scheme Administrator – makes amendments to clarify administrator responsibilities for the purposes of Part 4 of the Finance Act 2004;
- Abatement – makes amendments to extend the Board’s power to abate pension so this applies when a pensioner takes up employment in any capacity with the NI Fire and Rescue Service or a fire authority in England, Scotland or Wales;
- Pension Board - makes minor amendments to correct references from the Pension Board to the Scheme Manager;
- Internal Dispute Resolution Procedure (IDRP) - makes amendments to provide arrangements implemented for dispute resolution under article 50 of the Pensions (Northern Ireland) Order 1995.

4. Background and summary of proposals

- 4.1. This Department 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.
- 4.2. Public service pension schemes in Northern Ireland were reformed in April 2015 in line with reforms made to the schemes in the rest of the United Kingdom at that time. As part of these changes those within 10 years of retirement remained in their legacy pension schemes. This transitional protection was provided following consultation with member representatives and was intended to protect and provide certainty for people who were close to retirement.
- 4.3. Following legal cases taken by some members of the firefighters’ and judicial schemes in Great Britain in December 2018, known as the McCloud/Sargeant cases, the Court of Appeal found that this part of the reform unlawfully discriminated against younger members of those schemes as transitional protection was only offered to older scheme members. The Courts require that this unlawful discrimination be remedied.
- 4.4. The PSPJO Act provides that all firefighters who continue in service from 1 April 2022 onwards must do so as members of the reformed scheme, regardless of age, meaning all members will be treated equally in terms of which pension scheme they are a member. This is known as the Prospective Remedy. Legacy schemes (i.e. the Firefighters’ Pension Scheme and the New Firefighters’ Pension Scheme) will be closed in relation to service after 31 March 2022. The remainder of the amending provisions are summarised below.
- 4.5. Club Transfer Value Payments - Under the Firefighters’ Pension Scheme (Transitional and Consequential Provisions) Regulations (Northern Ireland)

2015 protected members of the FPS transferring to Northern Ireland from England, Scotland and Wales are not permitted to remain as FPS members. Paragraph 4(7) of Schedule 1 clarifies that such members are not included in the general prohibition on new joiners to the FPS, maintaining the position that existed prior to 1 April 2015.

- 4.6. Scheme Administrator – Paragraph 3 of Schedule 1 and paragraph 3 of Schedule 3 makes amendments to clarify administrator responsibilities for the purposes of Part 4 of the Finance Act 2004.
- 4.7. Abatements – Paragraph 2 of Schedule 3 amends article 83 of the FPS to increase the scope of the employer’s discretion to abate a member’s pension where they are re-employed following retirement. The amended provision will enable the employer to abate the whole or part of a member’s pension where they are re-employed in any capacity with the NI Fire and Rescue Service or a fire authority in England, Scotland or Wales. This change will help implement policy that pension payments should be abated where a member is re-employed in the public sector and receives a pension and salary exceeding earnings before retirement.
- 4.8. Pension Board – Paragraph 2(2), (3), (4) and (6)(a) of Schedule 1 makes minor amendments to correct references from the Pension Board to the Scheme Manager.
- 4.9. Internal Dispute Resolution Procedure (IDRP) - Paragraph 2(5) and (7) of Schedule 1, paragraph 2(3) of Schedule 2, paragraph 1 of Schedule 3 and paragraph 1(3) of Schedule 4 make amendments to provide arrangements implemented for dispute resolution by the Board under article 50 of the Pensions (Northern Ireland) Order 1995. These provisions replace the current arrangement whereby an appeal in respect of a non-medical matter is made to the Department with amendments to enable internal dispute resolution procedures to be set up pursuant to requirements under the Pensions (Northern Ireland) Order 1995. This amendment will ensure that the most appropriate mechanism for appeal is used, ultimately reducing reliance on the Department and making the appeals process easier to undertake for both scheme member and employer.

5. Consultation

- 5.1. The Regulations were available for consultation from 1 December 2021 until 11 January 2022. One response was received from the Fire Brigades Union (FBU).
- 5.2. A copy of the consultation document and a summary of responses can be found on the DHSSPS website.

[Consultation on amendments to the Northern Ireland Firefighters’ Pension Schemes | Department of Health \(health-ni.gov.uk\)](#)

6. Equality Impact

6.1. The Regulations will have no adverse differential impact on equality of opportunity.

7. Regulatory Impact

7.1. A Regulatory 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. The costs of removing the discrimination will feed into future employer contribution rates once the 2020 scheme valuations are completed.

9. Section 24 of the Northern Ireland Act 1998

9.1. It is the view of the Department that this Order is compatible with section 24 of the Northern Ireland Act 1998.

10. EU Implications

10.1. Not applicable

11. Parity or Replicatory Measure

11.1. This Regulation will ensure Northern Ireland maintains parity with their counterparts in England, Scotland and Wales.