

EXPLANATORY MEMORANDUM TO

The Firefighters' Pension Schemes and Compensation Scheme (Amendment) Regulations (Northern Ireland) 2024

SR 2024 No. 130

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Health, to accompany the Statutory Rule (detailed above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is 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. Purpose

- 2.1. The Statutory Rule makes amendments to the Firefighters' Pension Scheme Order (Northern Ireland) 2007 (FPS), the New Firefighters' Pension Scheme Order (Northern Ireland) 2007 (NFPS), the Firefighters' Compensation Scheme Order (Northern Ireland) 2007 (FCS) and the Firefighters' Pension Scheme Regulations (Northern Ireland) 2015 (2015 Scheme). The purpose is to make amendments to the provisions for Survivors' Benefits and provide remedy for an error relating to the Public Service Pensions Revaluation Orders (NI) for 2021 and 2022.

3. Background and summary of proposals

- 3.1. 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. These changes will align NI with similar changes which have been introduced to Firefighters Pensions in GB.

Survivors' Benefits - Retention of survivor's benefits upon entering into a new marriage or civil partnership

- 3.2. Under the FPS and the FCS, the surviving widow, widower or civil partner of a firefighter who dies is entitled to survivor benefits. Under these provisions,

survivor benefits cease to be payable if the widow, widower or civil partner forms a new marriage or civil partnership. Survivor benefits can be reinstated, at the discretion of NIFRS if the marriage or civil partnership subsequently ceases.

- 3.3. As part of the March 2015 Budget, the Chancellor announced that survivors of firefighters who are killed on duty would be allowed to retain their survivor benefits upon entering into a new marriage or civil partnership. These changes will be applied retrospectively to marriages and civil partnerships entered into on or after 1 April 2015.
- 3.4. The changes will apply to awards under the Compensation Scheme to all survivors of firefighters who are killed as a result of an injury received without their own default in the execution of their duty or, so far as awards under articles 25, 26, 27, 28 and 30 of the FPS are concerned, on a related journey.
- 3.5. There is no requirement for the survivor benefit provisions to be reformed in the NFPS or the 2015 Scheme because under the applicable regulations, survivor benefit is not terminated on re-marriage or on the formation of a new civil partnership.

Survivor's Benefits (Cohabiting Partner/Brewster Supreme Court Ruling)

- 3.6. This change is to eliminate certain requirements that the Supreme Court found to constitute unjustified discrimination giving rise to a breach of the European Convention on Human Rights. Following an application for Judicial Review by Denise Brewster in relation to the Local Government Pension Scheme (Northern Ireland), the Supreme Court found on 8 February 2017 ([2017] UKSC 8), that the nomination process for a surviving adult partner to receive survivor benefits, where they satisfied other underlying conditions, constituted unjustified discrimination and was therefore a breach of a pension scheme member's rights under the European Convention on Human Rights. The other underlying conditions in such schemes still have to be satisfied for a surviving partner to receive payment of survivor benefits.
- 3.7. As a consequence of the Supreme Court decision, pension schemes should no longer impose a requirement for members to have completed a nomination form in respect of their cohabiting partner in order for survivor's pension to be paid. Of the firefighters' pension schemes, only the NFPS has such a requirement. Regulation 3(2)(a), (3), (4)(b), (5) and (7) removes this requirement and will be effective from 6 April 2006, when the NFPS came into force.

Survivor's Benefits (Walker Supreme Court Ruling)

- 3.8. These Regulations make changes to reflect the Supreme Court's ruling on 12 July 2017 in the Walker v Innospec case ([2017] UKSC 47) that the company's position had been incompatible with EU Directive 2000/78/EC on

discrimination in the workplace. It was concluded that Mr Walker's male spouse should be entitled to a pension calculated on the basis of all the years of his service with Innospec, provided that at the time of Mr Walker's death they remained married.

- 3.9. Of the firefighters pension schemes only the FPS is being amended because it is the only scheme that limits the service to be taken into account when calculating the survivor benefit for same-sex civil partners or spouses. The FCS is also being amended for the same reason. The amendments abolish the existing limitations under which only service since 1988 is taken into account.

Remedy to Address Errors Contained in the Public Service Pensions Revaluation Orders (NI) for 2021 and 2022

- 3.10. These Regulations also remedy an error in the Department of Finance (DoF) Revaluation Orders for 2021 and 2022. The orders specified an Average Weekly Earnings (AWE) figure based on provisional Office for National Statistics (ONS) figures, rather than revised ONS figures, which had been used in previous DoF Revaluation Orders from 2015 to 2020. Although the legislation setting out the revaluation of Public Service Pensions Schemes does not specify a figure of AWE growth to be used for the purposes of revaluation, it is the Government's view that the previous practice of using revised ONS estimates should have been maintained in 2021 and 2022.
- 3.11. DoF instructed affected schemes to correct the position affecting active, deferred and pensioner members who were in active service at any point between 1 April 2020 and 31 March 2022, through scheme regulations under section 3(2)(a) of the Public Service Pensions Act (Northern Ireland) 2014. Further details can be found in the [Written Ministerial Statement](#) (WMS) published by HM Treasury on 6 July 2023.
- 3.12. Amendments are required to the 2015 Scheme to correct the errors in the 2021 and 2022 Orders by 'topping up' the index adjustment to ensure member's pension entitlement is revalued in line with the WMS and the correct financial position is achieved for effected members.

Other Amendments in the Firefighters' Pension Schemes

- 3.13. These Regulations also makes minor amendments to the FPS, NFPS and 2015 Scheme to ensure that all of the firefighters' pension schemes work as intended. The areas that require amendments are limited and are detailed below.
- 3.14. Regulation 2(2) of the statutory rule amends article 13A(3) of the FPS to clarify the age for calculation of continuous service provision.
- 3.15. Regulation 2(9) amends Part IIA of Schedule 2 to the FPS in order to correct a minor error made in the Firefighters' Pension Scheme (Transitional and Consequential Provisions) Regulations 2015 (SR 2015 No. 420). This

amendment gives the correct formula for calculating the continuous service pension of a member who transitions from the FPS to the 2015 Scheme.

- 3.16. Regulation 5(3)(a) corrects minor drafting error in regulations 79 of the 2015 Regulations.
- 3.17. Regulation 5(3)(b)(ii) amends regulation 79A of the 2015 Regulations, which provides for a member's entitlement to commute part of a pension into a lump sum. In particular it amends regulation 79A to clarify the calculation of commutation of any part of any lower tier ill-health pension that may be awarded as an equivalent amount to the FPS. The 2015 Regulations set out certain provisions relating to the commutation of a lump sum for members transitioning from the NFPS to the 2015 Scheme. This amendment makes comparable provision for members transitioning from the FPS.
- 3.18. Regulation 5(4) amends regulations 86(1) and 100 of the 2015 Regulations, making it clear that three months' service is sufficient to achieve qualification and stipulating, where applicable, that bereavement pension is for the benefit of eligible children.
- 3.19. FPS and NFPS members are permitted to 'split' their pension in certain cases where they have a reduction in salary. Regulations 2(3)(b) and 3(4)(a) clarify that, where a firefighter has an entitlement to two pensions following such a split, the amount of the first pension is up-rated annually from the date that the firefighter ceased to earn the higher rate of pay. Regulation 2(3)(a) clarifies that two pensions should only be awarded in cases where the member's resulting overall level of benefit would be higher than if a single pension were to be awarded.
- 3.20. Divorcing partners of scheme members may be granted pension credit, which they may subsequently be permitted to commute for a lump sum. Regulations 2(6) and 3(6) update an out of date statutory reference in the FPS and NFPS to such commutation of pension credit.

4. Consultation

- 4.1. The Department ran a statutory consultation between 14 February 2024 and 29 April 2024 seeking views on the policy proposals and draft regulations. A copy of the consultation document and a summary of responses can be found on the DoH website.

[Consultation on The Firefighters' Pension Schemes and Compensation Scheme \(Amendment\) Regulations \(Northern Ireland\) 2024 – Survivors' Benefit and correction of the Public Service Revaluation Orders \(NI\) for 2021 and 2022 | Department of Health \(health-ni.gov.uk\)](#)

5. Equality Impact

5.1. The Statutory Rule is designed to remedy discrimination as identified by the Supreme Court. 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. There are no Human Rights or rural needs implications.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment has not been completed for this Statutory Rule as it has no impact on businesses, charities or the voluntary sector.

7. Financial Implications

7.1. The costs to the scheme for the correction of the Public Service Pensions Revaluation Orders (NI) for 2021 and 2022 are not significant and have been accounted for in the 2020 actuarial valuation. In relation to the survivor benefits amendments, these are unlikely to have a material cost to the scheme.

8. Section 24 of the Northern Ireland Act 1998

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

9. EU Implications

9.1. Not applicable

10. Parity or Replicatory Measure

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