

EXECUTIVE NOTE

THE FIREFIGHTERS' PENSION SCHEME AMENDMENT (SCOTLAND) ORDER 2007 SSI/2007/200

The above instrument is made in exercise of the powers conferred by section 26(1) to (5) of the Fire services Act 1947 and sections 12 and 16 of the Superannuation Act 1972. These powers have been devolved to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750). The instrument is subject to the negative resolution procedure and extends to Scotland only.

This instrument introduces consequential changes to the Firefighters Pension Scheme ("FPS") provided by the Firefighters Pension Scheme Order 1992 (S.I. 1992/129) (as amended) resulting from the introduction of the new Firefighters' Pension Scheme (S.S.I. 2007/199) ("NFPS"). This instrument has effect from 6 April 2006.

Policy Objectives

As a consequence of the making of the NFPS, some amendments are necessary to the FPS to ensure that, where appropriate, there is parity between provisions in the two pension schemes. Other amendments are required to ensure that terminology is common between the pension schemes and the compensation scheme.

Short service awards

Under the Pension Schemes Act 1993, where a transfer payment in respect of rights under a personal pension scheme has been made to the scheme the scheme member is eligible for a pension, rather than a short service gratuity, regardless of length of service. This is currently not explicit in the rules of the FPS but is included in the drafting of the NFPS. Amendment is therefore required to rules B2 (short service award) and B5 (deferred pension) of FPS for parity between the schemes.

Ill-health awards

Both pension schemes contain provision for two-tier ill-health awards. All scheme members who are ill-health retired receive a lower tier award. Those who are permanently disabled from undertaking any further regular employment also qualify for a higher-tier award. The FPS currently restricts regular employment to employment outside the fire and rescue service whereas the test should be disablement from any regular employment, as provided for in the NFPS. Amendment is therefore required to rule B3 for parity.

Commutation

FPS members are able to commute a portion of their pension for a lump sum. Commutation from an ill-health pension is limited to a portion of the lower-tier element to prevent over-payment in circumstances where a higher-tier pension is reduced on review. The opportunity has been taken to amend rule B7 in line with the NFPS.

Limits on lump sum payments

The FPS provides for the commutation of small pensions for lump sum payments. The Finance Act 2004 (Schedule 29 – lump sum rule) limits commutation of such pensions for a surviving spouse, civil partner or child to pensions of a value that does not exceed the limit prescribed in the rule. The FPS provisions were drafted in a way that could allow[permitted?] pensions of a greater value to be commuted with the consequence that HM Revenue and Customs might regard the payments as unauthorised. This could result in a tax charge on the beneficiary and the scheme administrator. Amendment to rules E5 and E6 is therefore necessary.

Definition of “retained” and “volunteer” firefighter

Although retained and volunteer firefighters are not eligible for membership of the FPS, the scheme includes a definition of these terms because of the link with the provisions of the compensation scheme. Under that scheme, retained and volunteer firefighters are eligible for benefits if they are killed or injured on duty and where this occurs their benefits are calculated as if they had been a whole-time regular firefighter. Retained and volunteer firefighters are eligible for membership of the NFPS. The definitions in the FPS and the compensation scheme have therefore been amended for consistency.

The amendment to the FPS also ensures that there is equal treatment for regular, retained and volunteer firefighters with regard to the question of permanent disablement as qualification for ill-health and injury benefits. A regular firefighter is permanently disabled if he is unable to perform the duties of the role (i.e. engaging in fire-fighting or other duties appropriate to his role, whether instead of, or in addition to, engaging in fire-fighting). This test will now also apply to retained and volunteer members.

Consultation

The amendments outlined in this instrument have been the subject of consultation with the Fire Pensions Committee (“FPC”). The Committee is chaired by the Department for Communities and Local Government (“DCLG”) and has representatives from employers (the Local Government Association and the Chief Fire Officers Association), unions (the Fire Brigades Union and Retained Firefighters Union) and staff associations (Association of Principal Fire Officers and the Fire Officers Association) as well as representatives from the Scottish Executive, COSLA, the Welsh Assembly and Northern Ireland.

In addition, a draft of this instrument was issued to the FPC and other Scottish stakeholders for consideration. This instrument mirrors an amendment order recently introduced in England by the DCLG

Financial Effects

Regulatory Impact Assessments have not been prepared as there is no impact on business charities or voluntary bodies.

The impact of the consequential amendments to the FPS is that the different firefighter schemes that fire and rescue authorities will be required to operate for different groups of employees, will be up to date, compatible and consistent. There will be no additional costs for fire and rescue authorities arising from the amendments.

