

**EXPLANATORY MEMORANDUM TO**  
**THE FIREFIGHTERS' PENSION SCHEME (AMENDMENT) (GOVERNANCE)**  
**REGULATIONS 2015**

**2015 No. 465**

**1.** This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

These Regulations (“the Regulations”) establish a national scheme advisory board to advise the Secretary of State on the desirability of changes to the Firefighters’ Pension Scheme (“the Scheme”). Provision is also made for each scheme manager to establish local pension boards to assist them with the effective and efficient management and administration of the Scheme. The Regulations also provide for a cost control mechanism for the Scheme.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

None.

**4. Legislative Context**

4.1 The Firefighters’ Pension Scheme (England) Regulations 2014 (“the 2014 Regulations”) were made under section 1 of the Public Service Pensions Act 2013 (“the 2013 Act”) which received Royal Assent on 25th April 2013.

4.2 Certain provisions in the 2013 Act impose requirements in respect of scheme regulations under the 2013 Act: sections 5 to 7 in respect of local pension boards and a scheme advisory board; and sections 11 and 12 in relation to valuations and employers’ costs. Those provisions were not commenced initially in relation to the Scheme but no significant practical consequences arise out of the initial absence of such provisions from the regulations. This is because all significant functions of the boards, in particular in relation to cost control, will arise only after the first triennial valuation of the Scheme which is due to take place in 2016.

4.3 The commencement order bringing the remaining sections of the 2013 Act into force in relation to the Firefighters’ Pension Scheme was made on 6 January 2015 S.I. 2015/4. The substantive provisions take effect from 1st April 2015 and section 13 of the Interpretation Act 1978 enables reliance on those provisions to give full effect to the 2013 Act.

## **5. Territorial Extent and Application**

This instrument applies to England.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- 7.1. The 2014 Regulations introduced the Scheme where accrual of pension builds up on a career average basis rather than linked to final salary. They were the culmination of over two years of discussion and consultation with all interested parties, which began after the publication of the Independent Public Service Pensions Commission final report in March 2011. A full account of the consultation process regarding the 2014 Regulations were set out in paragraphs 8.1 to 8.6 of the explanatory memorandum accompanying that instrument.
- 7.2. Paragraph 4.4 of that memorandum set out the intention to come forward with a separate statutory instrument on governance and cost management. Details of the consultation with interested parties on these regulations can be found at section 8 below. In addition to that formal consultation, there has been a continuous dialogue with practitioners and other scheme interested parties to help deliver the finalised instrument.
- 7.3. The primary aim of the Regulations is to introduce into the 2015 Scheme by 1 April 2015 the requirement under sections 5 and 7 of the Public Service Pensions Act 2013 for the 46 scheme managers in England to establish local pension boards and for a new national Scheme Advisory Board to be established by the same date. The regulations also include provision on valuations and employers' costs required by sections 11 and 12 of the 2013 Act
- 7.4. The main provisions are described in paragraphs 7.8 to 7.32.

### **Preliminary Provisions**

- 7.5. Regulation 1 covers the citation, commencement, interpretation and extent of the Regulations. The regulations will apply to the Scheme in England and will come into operation on 1 April 2015.
- 7.6. Regulations 2 and 3 amend the 2014 Regulations.
- 7.7. Regulation 4 inserts new regulations 4A, 4B, 4C, 4D, 4E, 4F, 4G, 4H and 150A into the 2014 Regulations. These provisions are described in more detail below.

## **Main Provisions**

### **Local pension boards: establishment**

- 7.8 Regulation 4A(1) provides for each scheme manager in England to establish a local pension board to assist it to secure compliance with the 2014 Regulations; any other legislation relating to the governance and administration of the Scheme; and any requirements imposed by the Pensions Regulator in relation to the Scheme. Regulation 4A(1)(b) further requires local pension boards assist scheme managers to ensure the effective and efficient governance and administration of the Scheme.
- 7.9 Regulation 4A(2) provides for a joint local pension board to be established where administration and management functions are wholly or mainly shared by two or more scheme managers and where approval has been given by the Secretary of State.
- 7.10. Regulation 4A(4) makes provision for each scheme manager to determine the procedures applicable to their local pension board.
- 7.11 To ensure that scheme member and employer representatives of local pension boards have a decisive influence, Regulation 4A(5) restricts the right to vote on questions to those representatives.

### **Local pension boards : membership**

- 7.12. Regulation 4B(1) provides that each scheme manager shall determine the membership of their local pension board; the manner in which members may be appointed and removed and the terms of their appointment.
- 7.13. Regulation 4B(2) requires membership of a local pension board to consist of an equal number of scheme member representatives and employer representatives which is no less than four in total. This carries forward the requirement in section 5(4)(c) of the 2013 Act and ensures that each board will have the capacity to undertake the functions described at paragraph 7.8.
- 7.14. Before appointing scheme member or employer representatives to a local pension board, Regulation 4B(2)(a) and (b) provides that the scheme manager must be satisfied that they have the capacity to represent scheme members and employers respectively.
- 7.15. Regulation 4B(3) provides that any member who is a member of a local pension board must be appointed as either an employer or member representative (and consequently will be entitled to vote on any questions). Regulation 4B(4) provides that no officer or member of a scheme manager responsible for discharging any

pensions function under the 2014 Regulations (apart from any function relating to local pension boards or the Scheme's Scheme Advisory Board) may be a member of that scheme manager's local pension board. This will ensure that no officers and members appointed to a local pension board will be in a position of scrutinising their role elsewhere in the Scheme.

### **Local pension boards: conflict of interest**

- 7.16 Regulation 4C provides that each administering authority must ensure that there is no conflict of interest relating to a person that is to be appointed to a local pension board or from time to time once appointed. To assist the scheme manager, Regulation 4C(3) and (4) requires the individual to provide such information that the scheme manager believes to be reasonable for this purpose.

### **Local pension boards : guidance**

- 7.17. Regulation 4D provides that each scheme manager must have regard to any guidance issued by the Secretary of State about local pension boards.

### **Scheme advisory board : establishment**

- 7.18 Regulation 4E establishes a new Firefighters' Pension Scheme Advisory Board ("scheme advisory board") on 1 April 2015. Under Regulation 4E(2), the role of the scheme advisory board will be to provide advice in response to a request from the Secretary of State on the desirability of making changes to the Scheme.
- 7.19 For locally administered schemes like the Firefighters' Scheme, the 2013 Act confers an additional function on the scheme advisory board to advise scheme managers and local pension boards. Regulation 4E(3) carries forward this provision into the 2014 Regulations.
- 7.20. Regulation 4E(4) provides that the scheme advisory board may determine its own procedures.

### **Scheme advisory board : membership**

- 7.21. Regulation 4F(1) provides that the scheme advisory board is to consist of a Chairman and at least 2, and no more than 14 members appointed by the Secretary of State. In making these appointments, Regulation 4F(2) requires the Secretary of State to have regard to the desirability of there being an equal representation of scheme member and scheme employer representatives.
- 7.22 Regulations 4F(3) to (7) provide the scheme advisory board with a range of powers to appoint up to three non-voting advisory members and to establish sub-committees to assist the scheme advisory board.

- 7.23. Regulation 4G provides that the Secretary of State must ensure that there is no conflict of interest relating to a person that is to be appointed to the scheme advisory board or from time to time once appointed. To assist the Secretary of State, Regulations 4G(3) and (4) requires the individual to provide such information that the Secretary of State believes to be reasonable for this purpose.

#### **Scheme advisory board: funding**

- 7.24. Regulation 4H(1) sets out the funding arrangements for the scheme advisory board and requires the scheme advisory board to prepare an annual budget for approval by the Secretary of State.
- 7.25. Regulation 4H(2) provides that the expenses of the scheme advisory board are to be defrayed by scheme managers in such proportions as are determined by the Board based on the budget approved under Regulation 4H(1).
- 7.26. Regulation 4H(3) provides that a scheme manager must pay the amount it is required to pay under regulation 4H at such time or times as required by the scheme advisory board.

#### **Employer cost cap**

- 7.27. Regulation 150A(1) provides that the employer cost cap for the 2015 Scheme calculated in accordance with Treasury directions made under section 11 of the 2013 Act is 16.8% of pensionable earnings.
- 7.28. Regulation 150A(2) requires the Secretary of State to follow the procedure outlined in paragraph 3 for bringing scheme costs back to the employer cost cap when the margins specified in regulations made under section 12(5) of the 2013 Act are breached at any Scheme valuation.
- 7.29. Regulation 150A(3) requires the Secretary of State to consult the scheme advisory board and seek a consensus on the steps necessary to achieve the target cost. Where such agreement is not possible within 3 months of the end of the consultation period, Regulation 150A(4) provides that the Secretary of State must adjust the Scheme's accrual rate under Regulation 34 of the 2014 Regulations to achieve the target cost.

### **8. Consultation outcome**

- 8.1. The draft regulations were subject to a statutory consultation which commenced on 10 October 2014 and ended on 21 November with 42 responses.
- 8.2. In addition to the main statutory consultation, members of the Firefighters' Pension Committee were consulted separately in October 2013 on the "Advice

on Assumptions” and later in October 2014 on the “Report on Methodology”, both prepared by the Government Actuary’s Department for the purpose of publishing the scheme’s valuation report, including the scheme’s employer cost cap figure. The employer cost cap figure was not available at the time of the main October 2014 consultation but the figure which emerged from the report based on the methodology and assumptions was shared with members of the Firefighters’ Pension Committee during the period 30 January to 11 February 2015 and no objections were raised.

- 8.3. The format used in the main consultation included a narrative section explaining the consultation process and policy context, a set of draft regulations and a series of questions on outstanding policy issues.
- 8.4. A Copy of the main consultation paper and a full list of consultees can be found at <https://www.gov.uk/government/consultations/firefighters-pension-scheme-2015-proposals-for-new-governance-arrangements>.
- 8.5. As a result of the consultation responses and the feedback from meetings with the Firefighters’ Pensions Committee, a number of significant changes to the regulations have been introduced. In addition, the department maintained a high level of engagement with key interested parties throughout the consultation period in order to explain, respond to queries and revise various elements of the draft proposals to achieve as much consensus as possible.
- 8.6. A summary of responses and the outcome of each consultation are set out in a separate document available at [https://www.gov.uk/government/consultations/firefighters-pension-scheme-2015-proposals-for-new-governance-arrangements -governments-response](https://www.gov.uk/government/consultations/firefighters-pension-scheme-2015-proposals-for-new-governance-arrangements-governments-response)
- 8.7. The main alterations in the final version of the regulations are summarised below :
  - A change to allow joint pension boards to be established where administration and management is wholly or mainly shared between a number of scheme members. This was one of the policy questions included in the October consultation which received a high level of support.
  - A change to restrict voting rights to the core membership of scheme member and employer representatives and that members of authorities may only be appointed as either employer or scheme member representatives. This will ensure that employer and scheme member representatives have an equal and decisive influence within the board as a whole however it is constituted.
  - The October consultation included a provision requiring nominees to local pension boards to have understanding and capacity to represent either employers or scheme members. Changes made to the Pensions Act 2004 by the Public Service Pensions Act 2013 would require all members appointed to a local pension board to acquire understanding as set out in the Pension Regulator’s Code of Practice.

To avoid duplication and to remove any unhelpful barrier to nominations, the final regulations no longer require understanding as a pre-condition of membership.

- Removal of the restriction in the draft regulations for scheme member representatives on local pension boards to be in scheme employment. The final regulations extend the scope to include, for example, deferred and pensioner members who will have valuable skills and experience to bring to local pension boards.
- The employer cost cap figure had yet to be published when the October consultation was published. Following a short technical consultation with members of the Firefighters' Pension Committee, the final regulations include a figure of 16.8% of pensionable paybill.

## **9. Guidance**

9.1 Where mentioned in the regulations, guidance for the new sections of the 2014 Regulations will be issued by the Department. In addition, the Local Government Association is preparing guidance to assist Fire and Rescue Authorities in establishing their local pension board. The intention is to publish the guidance to coincide with the regulations being introduced.

## **10. Impact**

- 10.1 The legislation does not impact on business, charities or voluntary bodies.
- 10.2 The legislation does not impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

The legislation does not apply to small business.

## **12. Monitoring & review**

- 12.1 These regulations will be monitored by the Department and reviewed on a regular basis. To assist in this process, the Department will rely on the function conferred by these regulations on the scheme advisory board to advise the Secretary of State on scheme changes.

## **13. Contact**

Robert Holloway at the Department for Communities and Local Government Tel: 0303 44 42182 or email: [Robert.holloway@communities.gsi.gov.uk](mailto:Robert.holloway@communities.gsi.gov.uk) can answer any queries regarding the instrument.