

EXPLANATORY MEMORANDUM TO
THE FIREFIGHTERS' PENSION SCHEME (AMENDMENT AND TRANSITIONAL
PROVISIONS) (ENGLAND) ORDER 2016

2016 No. 878

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument will enable pension scheme members who joined the Firefighters' Pension Scheme 1992 (the "Scheme") 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 50th birthday. Any members who find themselves in this position in future will no longer have to pay contributions.
- 2.2 The Department for Communities and Local Government ('DCLG' - formerly the Department with responsibility for firefighters' pensions) had been seeking a judgment from the High Court as to the legality of the Scheme in these circumstances, however 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.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The provision in article 2(2) of the Order is a retrospective provision in exercise of the powers in sections 12 and 16 of the Superannuation Act 1972. Where a person might be disadvantaged by a retrospective provision of a statutory instrument that amends the Scheme, section 12(4) of the Superannuation Act 1972 imposes a requirement to give such an individual the option of electing that certain amendments should not apply to them. If there is unlikely to be a detriment then it is not necessary to include such a provision. The Home Office does not consider that any such detriment applies here and accordingly no such provision is required.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The Firemen's Pension Scheme Order 1992 (S.I. 1992 No. 129) consolidated previous regulations providing for an occupational pension scheme for firefighters. This is a minor amendment to that Scheme to ensure that scheme members are not in a position whereby they have reached maximum pensionable service but have to continue to pay employee pension contributions for no further pension accrual before they are able to retire at age 50.
- 4.2 This amendment to the Scheme follows an agreement signed by Government to settle a case before the High Court. The Fire Brigades Union represented employees in this case.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 DCLG received a number of queries from firefighters as to the appropriateness of scheme members having to continue paying employee contributions having reached maximum pensionable service. DCLG had been seeking a judgment from the High Court as to the legality of the Scheme in these circumstances, however 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. These changes give effect to that agreement in so far as legislation is required to do this.
- 7.2 Article 2(2) of the instrument amends rule G2 of the Scheme to ensure that any firefighters that have reached their maximum 30 years pensionable service before they can retire at age 50 will no longer have to pay employee pension contributions.
- 7.3 Article 2(3) of the instrument amends rule LA1 of the Scheme to provide that the payments to be made to affected members are paid from the fire and rescue authority's pension fund account.
- 7.4 Article 3 of the instrument makes provision about the repayment of contributions paid during the period 1st December 2006 to 30 September 2016. Paragraphs (1) and (2) oblige a fire and rescue authority 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.

- 7.5 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 representatives.

Consolidation

- 7.6 There are no current plans to consolidate the pension scheme's legislation.

8. Consultation outcome

- 8.1 In 2011, DCLG consulted on an employee contributions holiday for those individuals in the aforementioned circumstances, whereby they had accrued maximum pensionable service in the Scheme but had to continue to pay employee contributions before they were able to retire at age 50. The regulatory amendments follow closely that proposed approach and have been agreed with the Fire Brigades Union on behalf of the affected employees.
- 8.2 A copy of the consultation and the Government's response is available on the gov.uk website at the links below:

Consultation

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8459/1958095.pdf

Government Response

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/205716/Amendments_to_the_Firefighters_Pension_Scheme_1992_and_New_Firefighters_Pension_Scheme_2006_-_Summary_of_responses.pdf

- 8.3 Of the 34 responses received to the original consultation, fifteen were in favour, eleven supported the principle of the policy but raised questions about the solution proposed, three respondents did not agree with the policy, and five responses had no objections.
- 8.4 In light of the consultation DCLG decided that seeking a declaration from a court would provide certainty and clarity about the legal position and ensure that the Scheme complies with equalities legislation.
- 8.5 As an agreement has now been reached prior to a court decision the Home Office will proceed in implementing the contributions holiday, as consulted upon, without further consultation.

9. Guidance

- 9.1 The Home Office will continue to work with employers, the Local Government Association and employee representative bodies to ensure the impact of these regulatory amendments are fully understood.
- 9.2 The Firefighters' Pensions Scheme Advisory Board (made up of employer and employee representatives), which advises the Secretary of State for the Home Department, is also undertaking work to ensure employers and employees are abreast

of firefighters' pensions matters. The Home Office will engage with that Board on the laying of these regulations as appropriate.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is minimal. The Home Office will work with fire and rescue authorities, who administer the pension scheme, to ensure refunds are paid in good time and that they understand the future application of the regulations.
- 10.3 An Impact Assessment has not been prepared for this instrument as it has no impact on the private and voluntary sectors and a minimal impact on the public sector – as per paragraph 10.2 above.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 These regulations will be monitored by the Home Office in the context of its stewardship responsibilities of the firefighters' pension schemes.

13. Contact

- 13.1 Marc Sherratt, at the Home Office (marc.sherratt@homeoffice.gsi.gov.uk), can answer any queries regarding the instrument.