

EXPLANATORY MEMORANDUM TO
THE POLICE AND FIREFIGHTERS' PENSION SCHEMES (AMENDMENT)
REGULATIONS 2022

2022 No. 336

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 makes amendments to two instruments (the Firefighters' Pension Scheme (England) Regulations 2014 and the Police Pensions Regulations 2015) relating to pensions payable in respect of police officers in England and Wales and firefighters in England. The instrument changes the current regulations to allow all those who are currently legacy scheme members to be members of the reformed schemes from 1 April 2022.
- 2.2 These amendments arise as a result of the Public Service Pensions and Judicial Offices Act 2022 (PSPJO Act).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Home Office regrets that this instrument, which comes into force on 1 April 2022, is laid in breach of the 21-day rule.
- 3.2 The instrument could not have been made and laid sooner because it is dependent on the PSPJO Act, which received Royal Assent on 10 March 2022. Chapter 4 of Part 1 of the PSPJO Act, contains the operative prospective remedy provision necessary to bring to an end the unlawful age discrimination identified in the McCloud judgment (referenced in section 7 below).
- 3.3 In particular, section 88(2)(c) of the PSPJO Act has the effect of closing the legacy public service pension schemes to future accrual after 31 March 2022. This instrument makes consequential provision for the police and firefighters' pension schemes. This provision must come into force immediately after the legacy pension schemes are closed to future accrual by the PSPJO 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.
- 3.4 Scheme members have been on notice, through consultation processes, including the HM Treasury's consultation document of July 2020 and consultation response document of February 2021, through the introduction of the Bill in the House of Lords on 19 July 2021, and through the scheme-specific consultation referenced in section 10 below, that the commencement date for the prospective remedy would be 1 April

2022. In these circumstances, a breach of the 21-day rule should not give rise to any unfairness.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is (i) England and Wales, so far as the amendments relating to police pensions are concerned; and (ii) England only, so far as the amendments relating to firefighters' pensions are concerned.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 These amendments arise as a result of the PSPJO Act.
- 6.2 This instrument amends the Firefighters' Pension Scheme (England) Regulations 2014 ('the 2014 Regulations') and the Police Pensions Regulations 2015 ('the 2015 Regulations').

7. Policy background

What is being done and why?

- 7.1 In 2010, Lord Hutton of Furness was invited to chair the Independent Public Service Pensions Commission (IPSPC). The IPSPC was tasked with undertaking a fundamental structural review of public service pension provision. This led to reformed public service pension schemes being introduced by 1 April 2015 for workers in local government, teachers, the NHS, the armed forces, firefighters, the police, the judiciary and the civil service. As part of the 2015 reforms, those within 10 years of the normal pension age remained in their legacy pension schemes, while other, usually younger, members had to move into the new, reformed, schemes.
- 7.2 In December 2018, the Court of Appeal in the case of McCloud & others v Lord Chancellor & another; Sargeant & others v London Fire and Emergency Planning Authority and others [2018] EWCA Civ 2844 ('McCloud') found that these transitional arrangements gave rise to unlawful age discrimination, as this transitional protection was only offered to older scheme members. The government accepted that this age discrimination applied across all the public service pension schemes which had implemented similar transitional arrangements.
- 7.3 In July 2020 the Government launched a public consultation on options to remedy the discrimination, and also measures to bring the ongoing discrimination to an end. The options were to give all eligible members an immediate choice (at the point of remedy implementation) or a deferred choice (at the member's retirement) between taking legacy and reformed scheme benefits for the service accrued during the period 2015 to 2022. The Government published its [Response](#) to that consultation in February 2021 deciding that the deferred choice was more appropriate as members would be aware of their personal circumstances at this time and in a better position to make the decision. In July 2021, the Bill (now the PSPJO Act), which provides the legal framework for the remedy, was introduced into Parliament.

- 7.4 The PSPJO Act provides a remedy to address the discrimination identified by the courts and ensure that all scheme members will be treated in the same manner for any future service accrued on or after 1 April 2022. The PSPJO Act closes all legacy public service pension schemes to future accrual from 1 April 2022.
- 7.5 This instrument makes consequential changes following on from the PSPJO Act. These changes ensure that the 2014 Regulations and the 2015 Regulations reflect the position set out in the PSPJO Act that the legacy schemes are closed to further accrual, and that those members who were within the scope of the transitional arrangements move to the reformed schemes on 1 April 2022.
- 7.6 The PSPJO Act preserves arrangements to purchase additional service in a legacy pension scheme made prior to 1 April 2022, but prohibits such arrangements being entered into on or after that date. This instrument provides the necessary amendments to the 2014 Regulations and the 2015 Regulations to ensure that no new elections to purchase additional service in a legacy pension scheme may be made on or after 1 April 2022.

Fire specific changes

- 7.7 This instrument makes changes to the 2014 Regulations to ensure that where a member of the firefighters' 1992 legacy pension scheme is being considered for ill-health retirement when they transition to the reformed pension scheme, where the assessment process began on or before 31 March 2022, the test which is applied to determine whether they qualify is the same as the test which would have applied (under the firefighters' 1992 legacy pension scheme) had a decision been made before the transition. This ensures that such people are not placed in a worse position than they would have been in had a decision on ill-health retirement been made on 31 March 2022.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

- 9.1 This instrument makes limited amendments to the 2014 Regulations and the 2015 Regulations and this is not considered to be a suitable opportunity to consolidate these amendments with other amendments made to those instruments. This is particularly because we know that we will seek to make more amendments to the regulations governing the police and fire pension schemes relatively soon in relation to other elements of the McCloud remedy.

10. Consultation outcome

- 10.1 Public consultations were carried out from 8 November 2021 to 2 January 2022 by the Home Office on these measures. During the consultation period, the Home Office engaged with the Firefighters' Pension Scheme Advisory Board (England) and the Police Pension Scheme Advisory Board (England and Wales) . Part of the role of these boards is to provide advice to the Home Secretary on the desirability of making changes to the firefighters' or Police pension schemes.
- 10.2 A [response to the police consultation](#) and a [response to the fire consultation](#) were published on 8 March 2022.

Police pension issues

- 10.3 The majority of respondents that gave a view agreed that the proposed amendments achieved the aim of ensuring that the reformed police pension scheme continued to function after the PSPJO Act came into force. Where those that said they disagreed gave an explanation, it was a disagreement with the policy in the PSPJO Act of closing legacy schemes from 1 April 2022, rather than with this instrument.
- 10.4 Many respondents raised their concerns about the effect of the PSPJO Act on members in closing the legacy police pension schemes and requiring them to become members of the reformed police pension scheme from 1 April 2022. However, the amendments made by this instrument are consequential to the PSPJO, rather than a new policy position. The overriding objective of the PSPJO Act is to remove the discrimination identified by the courts in McCloud and make sure that public service pensions are reformed appropriately, and this instrument ensures that the schemes can function prospectively to meet that aim. Further regulations will be made to address retrospective changes needed to remedy the discrimination that has already happened.

Firefighters' pension issues

- 10.5 The majority of respondents agreed that the proposed amendments achieved the aim of ensuring that the reformed firefighters' pension scheme continued to function after the PSPJO Act came into force. A number of respondents did raise concerns about the ability of firefighters to maintain fitness levels beyond age 55 to the higher normal pension age in the reformed firefighters' pension scheme. The changes being made do not impact this as all affected members will already have attained age 55 and will still need to continue to meet the fitness standards if they choose to continue in employment, regardless of which pension scheme they are in.
- 10.6 Many respondents agreed for the need to protect members who are in the process of being assessed for ill-health retirement during the time of their move to the reformed firefighters' pension scheme. The changes which the instrument makes ensure that these members will be no worse off than they would have been had the process been completed on 31 March 2022..

11. Guidance

- 11.1 No Home Office guidance is to be issued on this instrument. Updated guidance will be available to members of the affected pension schemes through scheme administrators who will be contacting all members who are directly affected this instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because no significant impact on business, charities or voluntary bodies is foreseen.

13. Regulating small business

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

14. Monitoring & review

- 14.1 There are no proposals to actively monitor or review the outcome of the changes made by this Statutory Instrument. Nonetheless, if a stakeholder (for example, pensions administrators, police forces, police pension authorities, fire authorities, the relevant scheme advisory board, local pension boards, unions or staff associations) raised a particular issue with the Home Office on the operation of the regulations as a result of one of the amendments we would investigate.
- 14.2 The instrument does not include a statutory review clause.

15. Contact

- 15.1 Sara Alderman (police pensions issues) at the Home Office; telephone 07909 890002 or email sara.alderman@homeoffice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Anthony Mooney (fire pensions issues) at the Home Office; telephone 07504 737245 or email anthony.mooney@homeoffice.gov.uk can be contacted with any queries regarding the instrument.
- 15.3 Peter Spreadbury, Deputy Director for Police Workforce and Professionalism, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.4 Lord Greenhalgh at the Home Office can confirm that this Explanatory Memorandum meets the required standard.