

## **EXPLANATORY MEMORANDUM TO**

### **The Firefighters' Pension Scheme (Amendment) (No 2) Order (Northern Ireland) 2014**

**SR 2014 No. 169**

#### **1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department of Health, Social Services and Public Safety to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under powers conferred by Article 10(1), (3), (4) and (5) of the Fire Services (Northern Ireland) Order 1984 and is subject to the negative resolution procedure.

#### **2. Purpose**

- 2.1. The Order amends the Firefighters' Pension Scheme Order (Northern Ireland) 2007 in order to align with similar changes that were introduced to firefighters' pensions in England in July 2013. The main provisions to be amended are:
  - Article 10: Compulsory retirement on grounds of efficiency – removal of the Article;
  - Indexation – changes to the indexation on additional pension benefit;
  - Commutation – changes to the maximum commutation payment;
  - Pensionable Pay amendment of the definition and additional pension benefits;
  - Age Discrimination – proposals to deal with potential age discrimination;
  - Appeals – allow medical decisions to be reviewed and introduce Internal Dispute resolution Procedures;
  - Abatement of pensions;
  - Pension tax – to align the FPS with tax legislation;
  - Club Transfers;
  - General tidying amendments.

#### **3. Background**

- 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. In July 2013 England made amendments to current Firefighters legislation, and in order for Northern Ireland to remain in parity similar amendments need to be made to current legislation.

#### **4. Summary of main proposals**

- 4.1. Article 10 – Compulsory retirement on grounds of efficiency

It is proposed that this provision which currently permits the Fire and Rescue Service to compulsorily retire a firefighter who has attained the age of 50 and completed 25 years pensionable service should be removed so that any decision to compulsorily remove a firefighter from employment is dealt with in accordance with employment and equality legislation.

#### 4.2. Indexation – amend Additional Pension Benefit arrangements to allow for the change in indexation

It is proposed to amend the scheme so that references to RPI are removed and replaced with a statement that amounts are increased by “any increase under the Pensions (Increase) Act (Northern Ireland) 1971”.

As the CPI up-rating was applied from 11 April 2011 in accordance with the annual Pension (Increase) Review Order this amendment will have to be applied retrospectively.

#### 4.3. Commutation – allow discretion to permit the maximum payment

It is proposed that the limit on the amount of pension which may be commuted for a lump sum could be removed at the discretion of the Fire and Rescue Service. It is hoped that this flexibility will, where the Fire and Rescue Service considers it appropriate, allow it to remove a disincentive for members to choose early retirement.

#### 4.4. Pensionable Pay – amendment of the definition and additional pension benefits

It is necessary to revise the definition of pensionable pay for final salary arrangements to ensure a consistent approach is taken and to protect the scheme from additional costs. Only basic annual pay for the role should be pensionable under “final salary” arrangements; temporary allowances or emoluments should not be included as pensionable pay.

#### 4.5. Age Discrimination – contributions holiday for affected members

Under the terms of the scheme the earliest a member can retire is at age 50, having completed 25 years service. The maximum pension entitlement that a firefighter can accrue under the FPS is 30 years (i.e. 40/60). Therefore members who joined the scheme before the age of 20 must pay contributions for over 30 years before having the option to retire without accruing any further pension entitlement.

To comply with equalities legislation it is proposed that such members are offered a contributions holiday from the time when they accrue 30 years service until they reach the age of 50. At that point the member could choose between retirement with pension, continued employment and payment of contributions or continued employment without paying contributions and electing to defer their pension. The fire and rescue service would continue to make payments.

As the question of potential age discrimination arises as a result of the introduction of the Employment Equality (Age) Regulations (Northern Ireland) 2006 it is proposed that this amendment is introduced with retrospective effect.

4.6. Appeals – allow medical appeal decisions to be reviewed and introduce Internal Dispute Resolution Procedures

It is proposed to amend procedures for the consideration of medical appeals. The intention is to reduce instances where an appeal occurs unnecessarily and allow an independent medical referee to review their opinion if further medical evidence is provided or review their opinion where they has been an error of fact.

The draft Order also introduces Internal Dispute Resolution Procedures which includes appeal to the Pensions Ombudsman. This change will ensure that the scheme is compliant with wider pension scheme legislation.

4.7. Abatement – to allow the withdrawal of pension where members are employed by Northern Ireland Fire & Rescue

It is proposed to amend this proposal to provide a member with a regular income during retirement. Abatement is the process of reducing or stopping a member's pension if they retire and then return to work in the public sector. The associate pension fund payment would only apply to cases where the re-employment occurred after the coming into force of the amending statutory rule.

4.8. Pensions tax – to align the FPS with tax legislation

The draft Order amends scheme terminology to be consistent with HM Revenue and Customs' rules and definitions as set out in the Finance Act 2004.

4.9. Transfer payments to English, Scottish and Welsh fire and rescue authorities

The draft Order makes a provision to allow transfer value payments to be made between fire and rescue authorities where a firefighter transfers from the Northern Ireland Fire and Rescue Board to either a English, Scottish and Welsh fire and rescue authority.

4.10. General tidying amendments

The scheme has not been amended since 2008 and since this time there have been a number of regulatory changes which have not been reflected in the terminology used in the scheme. These amendments aim to ensure that all statutory references reflect existing legislation.

## **5. Consultation**

5.1. The proposals, including the draft Order, were available for public consultation from 26 September 2011 until 16 December 2011.

5.2. Two responses were received – Fire Brigades Union (FBU), Northern Ireland Fire & Rescue Services (NIFRS)

## **6. Equality Impact**

6.1. The Order will have no adverse differential impact on equality of opportunity.

## **7. Regulatory Impact**

7.1. As the Order will impose no additional costs on businesses, charities or the voluntary sector a full Regulatory Impact Assessment has not been completed.

## **8. Financial Implications**

8.1. The amendments to the FPS and NFPS in respect of additional pension benefit in an additional requirement of approximately £199k for the Northern Ireland Fire and Rescue Service.

## **9. Section 24 of the Northern Ireland Act 1998**

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

## **10. EU Implications**

10.1 Not applicable

## **11. Parity or Replicatory Measure**

11.1. This Order will ensure Northern Ireland maintains parity with equivalent schemes across GB.

## **12. Additional Information**

12.1. Not applicable