

## **EXPLANATORY MEMORANDUM TO**

### **The Firefighters' Pension Schemes (Amendment) Regulations (Northern Ireland) 2023**

**SR 2023 No. 178**

#### **1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department of Health, to accompany the Statutory Rule (detailed above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under powers conferred by sections 1(1), (2)(f), (3) and (4), 2, 3(1), (2) and (3)(a) to (c), 4(1), (2) and (5), 5(1), (3)(c) and (5) and 8(1)(a), (2)(a) and (4), paragraph 6 of Schedules 1 and 2, Schedule 3 and paragraph 6 of Schedule 5 to the Public Service Pensions Act (Northern Ireland) 2014.

#### **2. Matters of special interest to the Examiner of Statutory Rules**

- 2.1. The department of health apologises to the Examiner that this Statutory Rule, which comes into operation on 31st October 2023, is laid in breach of the 21 day rule.
- 2.2. These regulations are to implement the government's commitment to provide further remedy to those individuals who were employed as retained firefighters between 7 April 2000 and 5 April 2006 inclusive by providing access to the modified section of the New Firefighters' Pension Scheme.
- 2.3. A Memorandum of Understanding (MOU) was agreed by the Home Office (HO), Local Government Association (LGA), the Fire Brigades Union (FBU) and the Fire and Rescues Services Association (FRSA) on 9 March 2022. The MOU detailed that remedy for the retained firefighters affected by the O'Brien judgment would be provided by way of a second options exercise. The second options exercise will be implemented via legislation amending the New Firefighters Pension Scheme (NFPS) and the Firefighters Pension Scheme (FPS).
- 2.4. The agreed MOU committed the HO to deliver the legislation needed to implement the second options exercise by October 2023. These regulations have now been made which came into force on 1 October 2023.
- 2.5. The devolved nations were not involved in the discussions or negotiations of the MOU, and it doesn't apply to Scotland, Wales, or Northern Ireland.

However, to ensure parity with our counterparts in England, Ministerial direction given on 24 October 2022 committed the Department to closely follow the HO approach and timeline for bringing the regulations into operation in October 2023. Therefore, the changes cannot be deferred as the regulations must now come into operation as soon as possible.

### **3. Purpose**

- 3.1. The Statutory Rule makes amendments to the New Firefighters' Pension Scheme Order (Northern Ireland) 2007 (NFPS) and the Firefighters' Pension Scheme Order (Northern Ireland) 2007 (FPS). The purpose of these Regulations is to extend the period during which persons who were employed in the Northern Ireland Fire and Rescue Service (NIFS) as retained firefighters have access to a pension scheme.
- 3.2. These Regulations amend legislation containing firefighters' pension schemes, in order to give effect to a 2018 ruling by the Court of Justice of the European Union ('CJEU') in the context of long running employment tribunal litigation brought by retained firefighters. The New Firefighters' Pension Scheme (Amendment) Order (Northern Ireland) 2015 (S.R. 2015 No. 9) amended the NFPS, to provide those persons who were employed in NIFRS as retained firefighters during the period from 1 July 2000 to 5 April 2006 inclusive with access to a pension scheme for that period.

### **4. Background and summary of proposals**

- 4.1. 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.
- 4.2. Historically, retained firefighters did not have any entitlement to membership of the FPS. Retained firefighters were first given access to a fire service occupational pension arrangement when the NFPS was introduced on 6 April 2006. The NFPS was established when the Firefighters' Pension Scheme Order (Northern Ireland) 2007 came into operation.
- 4.3. A group of retained firefighters brought legal proceedings against the government in the case of "Matthews v. Kent and Medway Towns Fire Authority (2006)" ('the Matthews case') under the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 ('the PTWR'). The claims related to the exclusion from the FPS, which was then provided solely to full-time regular firefighters.
- 4.4. Following the Employment Tribunal's determination that the denial of access to pension rights for retained firefighters constituted unfavourable treatment which could not be justified in the Matthews case, a new pension arrangement

was introduced through the creation of a modified section in the NFPS (the 'modified scheme') on 1 April 2015.

- 4.5. The modified scheme currently provides preferential pension terms, similar to those provided by the FPS, to retained firefighters who were employed between 1 July 2000 and 5 April 2006 inclusive. It also applies a backstop date, as only service accrued on or after 1 July 2000 can be considered for pension entitlement.
- 4.6. In March 2014, before the modified scheme was introduced, the claimants in a related legal case, O'Brien v Ministry of Justice (the 'O'Brien case'), indicated that they were seeking to appeal to the Court of Appeal. Their aim was to ensure service accrued in the Judges' Pension Scheme prior to the PTWR coming into force would be included for the purposes of calculating pension entitlement for part-time judges. This prompted claimants in the Matthews case not to withdraw their claims after the introduction of the modified scheme. Instead, they successfully applied to the Employment Tribunal for a stay pending the outcome of the O'Brien case.
- 4.7. The relevant legal aspect of the O'Brien case was whether a part-time judge could include service from before 7 April 2000 for the purposes of calculating their pension entitlement. This legal point was referred to the CJEU for a decision
- 4.8. On 7 November 2018, the CJEU gave its decision that claimants who were in service on 7 April 2000 and retired on or after that date should be able to include their full period of earlier service for pension entitlement.
- 4.9. At present, the modified scheme is restricted to service accrued by affected retained firefighters from 1 July 2000. The CJEU ruling effectively removes the backstop date for any retained firefighters employed on or beyond 7 April 2000. Further remedial policy ('the Matthews remedy') is required in respect of the Matthews case to reflect this CJEU ruling.
- 4.10. On 9 March 2022, the Home Office, the Local Government Association (LGA), Fire Brigades Union (FBU), and the Fire and Rescue Services Association (FRSA) signed a Memorandum of Understanding (MOU) relating to how the Matthews remedy will be delivered. The MOU set out that the remedy would take place through the offering of an 18-month long second options exercise ('the 2023 Options Exercise') and that the scope and operation of this exercise would be subject to consultation and the making of secondary legislation. Although the Department was not involved in the MoU, we believe its provisions are fair, and have used them as the basis for our proposals for retained firefighter pensions in Northern Ireland.
- 4.11. There may have been some individuals who were entitled to join the modified scheme under the 2014 Options Exercise were not given a reasonable opportunity by their employing Fire and Rescue Authority (FRA) to join. Any affected individuals are to be given an opportunity to join under the 2023 Options exercise.

## **5. Consultation**

- 5.1. The Department ran a statutory consultation between 12 May 2023 and 7 July 2023 seeking views on the policy proposals and draft regulations. The consultation was targeted at the main stakeholders namely the Northern Ireland Fire and Rescue Service (NIFRS) and the Fire Brigades Union (FBU). As part of governance arrangements for the Firefighter's Pension Scheme, the consultation document was also provided to members of the Firefighters Pension Scheme Advisory Board (SAB). The SAB comprises of firefighters' employer representatives (NIFRS) and employee representatives (FBU), therefore the Department is confident that both views have been considered as part of the SAB.
- 5.2. The Department welcomed any comments or views on the proposals and draft regulations; however, no responses were received to the consultation. A copy of the consultation document and consultation response can be found on the DoH website.

## **6. Equality Impact**

- 6.1. The Statutory Rule has been considered under Section 75 of the NI Act 1998 and fully complies with the legislation with no adverse impact on any of the Section 75 Groups. There are no Human Rights or rural needs implications.

## **7. Regulatory Impact**

- 7.1. A Regulatory Impact Assessment has not been completed for this Statutory Rule as it has no impact on businesses, charities or the voluntary sector.

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

- 8.1. It is the view of the Department that these Regulations are compatible with section 24 of the Northern Ireland Act 1998.

## **9. EU Implications**

- 9.1. Not applicable

## **10. Parity or Replicatory Measure**

- 10.1. This Regulation will ensure Northern Ireland maintains parity with their counterparts in England, Scotland and Wales.