

## **EXECUTIVE NOTE**

### **THE FIREFIGHTERS' PENSION SCHEME AMENDMENT (SCOTLAND) ORDER 2006 SSI/2006/342**

The above instrument is made in exercise of the powers conferred by section 26(1) to (5) of the Fire Service Act 1947 and sections 12 and 16 of the Superannuation Act 1972. These powers have been executively devolved to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750) and the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2006 (S.I. 2006/304). The instrument is subject to the negative resolution procedure.

#### **Policy Objectives**

The instrument amends the Firefighters' Pension Scheme ("FPS") set out in Schedule 2 to the Firemen's Pension Scheme Order 1992 (S.I. 1992/129), as it has effect in Scotland. Many of the amendments are consequential on the splitting of the FPS to remove provisions relating to injury awards and other compensation elements into a separate Compensation Scheme Order (the Firefighters' Compensation Scheme (Scotland) Order (S.S.I. 2006/338). There are also other amendments of which details are given below.

#### **Closure of the FPS to new members**

The amendment of rule A3 and the substitution of rule G2(1) anticipate the making of a new pension scheme by order under section 34 of the 2004 Act. The rule A3 amendment provides for the FPS to cease to have effect in relation to a person joining the Fire and Rescue Service on or after 6th April 2006, the day from which it is proposed that the new pension scheme should have effect. The paragraph substituted in rule G2 has the effect of requiring persons who take up employment with a fire and rescue authority as firefighters on or after 6th April 2006 to make pension contributions at a lower rate than is required of firefighters whose employment began before that date.

#### **New arrangements for ill-health retirement**

The amendments include the introduction of two-tier ill health benefits, a mandatory recommendation for public sector pension schemes following HM Treasury's "Review of Ill Health Retirement in the Public Sector" in 2000. There is a higher tier award with enhancements for those who are unable to take other regular employment and a lower tier award for those who meet the criteria for ill-health retirement but who are assessed as being capable of regular employment elsewhere.

The amendments made by paragraphs 6, 46 and 55 of Schedule 1 to the pension scheme amendment order, which relate to ill-health awards, have effect, subject to transitional provisions contained in article 3 of that order, from 1st July 2006. These provisions ensure that if a firefighter was being considered for an ill-health award at 1st July, that consideration will continue under the unamended provisions.

A new rule B3 and Part III of Schedule 2 to the FPS, are substituted and provide for the payment and calculation of pensions awarded to firefighters whose employment ceases by reason of ill-health. Those who are found to be incapable of undertaking regular employment will be entitled to a higher tier ill-health pension. A higher tier ill-health pension (paragraph 4 of Part III of Schedule 2) will be calculated on the same basis as previous ill-health awards and the same level of enhancements will be given. Regular employment is defined as employment for at least 30 hours a week on average over a period of 12 consecutive months (whether or not any employment is taken up). A lower tier award will be awarded where the scheme member is capable of regular employment. The method of calculating a lower tier pension for a regular firefighter who has less than 5 years' pensionable service (paragraph 3 of that Part) remains unchanged. For others, the amendments provide for the immediate payment of an amount calculated as if he/she had been entitled to immediate payment of a deferred pension under rule B5 of the FPS (the calculation is set out in Part VI of Schedule 2).

To satisfy HM Revenue and Customs' requirements, a higher tier award is made up of two separate elements; the lower tier award topped up by an enhancement. This enables variations to the award to be made on review.

### **Review and cancellation of ill-health pensions**

New rules K1 and K1A remove fire and rescue authorities' discretion not to conduct reviews and allow a fire and rescue authority to terminate a higher tier ill-health pension where, on a review of the pensioner's condition, it is established that he/she is capable of undertaking regular employment. The pensioner's lower tier ill-health pension will be unaffected unless, on a review of his/her condition, it is established that he/she is capable of performing the duties of the role from which he/she retired and he/she accepts or declines the authority's offer to take up employment in that role. If the pensioner declines such an offer, he/she becomes entitled to a deferred pension, payable at age 60, and entitlement to a lower tier ill-health pension is terminated.

### **Costs of medical appeals**

The effect of the amendment to paragraph 8(2A) of Schedule 9 is that a person who withdraws his/her appeal to a board of medical referees within 21 days of the date appointed for the interview or medical examination may be required to pay the fire and rescue authority an amount not exceeding that payable by the authority in respect of the board's fees and allowances. The current provision refers to withdrawal within 10 days of the appointed date. Under the terms of a new contract with the service provider this has been extended to ensure that costs that have been reasonably incurred can be recovered.

### **Amendments consequential to the new tax regime for pensions**

As a consequence of the Finance Acts 2004 and 2005, HM Revenue and Customs have introduced a simplified tax regime for pensions. Amendments to the FPS are required to ensure that payments made in respect of pensions that come into payment after the 5<sup>th</sup> April 2006 comply with the new tax regime in order to avoid being deemed as unauthorised payments and incurring additional tax charges. The

amendments are, therefore, effective from 6<sup>th</sup> April 2006. Guidance on the changes has been provided to Fire and Rescue Authorities

Under the new tax regime, the cap of 15% of pensionable pay on tax privileged contributions for increased benefits is removed and contributions equivalent to an individual's relevant taxable UK earnings for the year are permitted. Rule G7 (Payment of periodical contributions for increased benefits) is amended accordingly but the limit on accrual of pension benefits to 40/60ths of pensionable pay remains.

The other main changes that affect the FPS are those concerning the conditions under which schemes can make lump sum payments, the limitations applied to lump sum payments and changes to the timescales in relation to decisions to commute pension for a lump sum. A short service lump sum (paid where a firefighter retires with less than two years' service) cannot exceed an amount equivalent to the aggregate of pension contributions. This applies to Rule B2 (Short service award) and Rule B3 (Ill-health award). Small pensions may continue to be commuted under "Trivial Commutation" rules but these stipulate that the value of the pension commuted must not exceed 1% of the Lifetime Allowance determined by HMRC (currently £1.5m). This applies to Rule B8 (Commutation – small pensions), Rule E5 (Lump sum in lieu of surviving spouse's or civil partner's pension), Rule E6 (Lump sum in lieu of child's allowance) and Rule E7 (limitation on discretion to commute pension or allowance for gratuity). Decisions to commute pension for a lump sum must now be made before the pension comes into payment and awards on death must be commuted before the date on which the deceased would have reached age 75.

## **Consultation**

The amendments in this Order have been considered by the Firefighters' Pension Committee which is composed and chaired by officials of the Office of the Deputy Prime Minister (ODPM), officials representing the devolved administrations, and national employer and staff and union representatives. In addition, a draft of this Order was issued for consultation to Scottish stakeholders and other interested Government departments. ODPM are also currently in the process of introducing similar changes for England.

## **Financial Implications**

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on businesses, charities or voluntary bodies.

The impact on the public sector is that decisions taken on ill-health retirement will be based on an individual's capability to undertake regular employment in the future; and consequently enhanced pension benefits will be directed at those with the greatest need. Fire and rescue authorities will be required to review decisions to ensure that the level of benefits remains appropriate to need and awards may be reduced or cancelled if necessary. The two-tier ill-health retirement and the review provisions therefore provide the potential for cost savings. The cost of pensions has been volatile for fire and rescue authorities as a result of significant fluctuations in the

number of firefighters retiring in any year. As a result of the new arrangements, fire and rescue authorities will also be able to manage the financing of awards more efficiently with the new central government grant providing a top-up should there be an unexpected increase in pension costs.

The placing of the compensation provisions into a separate Compensation Scheme will make clear the distinction between pension benefits (based on pension scheme membership and contributions) and compensation for service-related injury. As a result, serving firefighters will have a clearer understanding of benefits for which they are, or may become, eligible. The separation will also enable fire and rescue authorities to account for expenditure more efficiently (as compensation payments come from operating accounts rather than the pension fund).

The closure of the FPS to new members from 6th April 2006 is an important milestone towards the introduction of the new pension scheme. The Executive believes that the new scheme will provide new entrant firefighters with a good pension scheme tailored to the special needs of the service and will be a good deal for the tax payer.

**Scottish Public Pensions Agency**

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