

EXPLANATORY MEMORANDUM TO
THE FIREFIGHTERS' PENSION SCHEME (ENGLAND) (TRANSITIONAL AND
CONSEQUENTIAL PROVISIONS) REGULATIONS 2015

2015 No. 589

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1. This instrument establishes the transitional provisions for the Firefighters' Pension Scheme 2015 ("the 2015 Scheme") which deals with the payment of pensions and other benefits to, or in respect of, firefighters in England.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None.

4. Legislative Context

4.1. This instrument ("the instrument") deals with the benefits of firefighters who are members of the Firefighters' Pension Scheme 1992 ("the 1992 Scheme") or the Firefighters' Pension Scheme 2006 ("the NFPS" or "the 2006 Scheme") and subsequently under the 2015 Scheme. The instrument is made under the powers provided in the Public Service Pensions Act 2013 ("the Act").

4.2. The main provisions for the 2015 Scheme are set down in The Firefighters' Pension Scheme (England) Regulations 2014 (S.I. 2014 No. 2848). In addition, The Firefighters' Pension Scheme (England) (Consequential Provisions) Regulations 2015 made additional provisions in relation to certain taxation matters. A further consultation on the new governance arrangements, which proposes the establishment of a national Scheme Advisory Board and local pension boards from 1 April 2015, has been concluded and can be found at:
<https://www.gov.uk/government/consultations/firefighters-pension-scheme-2015-proposals-for-new-governance-arrangements>.

5. Territorial Extent and Application

5.1. This instrument applies to England only.

6. European Convention on Human Rights

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

7. Policy background

7.1. The cost of public service pensions has risen significantly in recent years. This increased burden on taxpayers and employers led to the Government setting up the Independent Public Service Pensions Commission under Lord Hutton. The Commission was tasked to carry out a “fundamental structural review” of public service pension provision and to make recommendations on pension arrangements that are “sustainable and affordable in the long term, fair to both the public service workforce and the taxpayer, and consistent with the fiscal challenges ahead, while protecting accrued rights”.

7.2. In his report Lord Hutton made clear that change is needed “to make public service pension schemes simpler and more transparent, fairer to those on low and moderate earnings”. The Firefighters’ Pension Scheme (England) Regulations 2014 (S.I. 2014 No. 2848) and the accompanying Explanatory Memorandum detail members’ entitlements and how the 2015 Scheme will work. The aim of this instrument is to protect the rights that members have accrued in the 1992 and 2006 schemes, ensuring that these rights will be correctly represented and administered from the time that the member joins the 2015 Scheme.

7.3. The Proposed Final Agreement set out the principal elements of the design for the 2015 Scheme and stated that there would be full statutory protection for accrued rights for all members as follows:

- a) “All benefits accrued under final salary arrangements will be linked to the member’s final salary, in accordance with the rules of the member’s current schemes, when they leave the reformed scheme
- b) Full recognition of a member’s expectation to double accrual for service accrued under the 1992 scheme, so that a member’s full continuous pensionable service upon retirement will be used to calculate an averaged accrual rate to be applied to service accrued under the 1992 scheme
- c) Members to be able to access their 1992 scheme benefits when they retire at that scheme’s ‘ordinary pension’ age (i.e. from age 50 with 25 or more years’ pensionable service), subject to abatement rules for that scheme. Pensionable service for the purpose of calculating the ordinary pension age will include any continuous pensionable service accrued under both the 1992 scheme and the 2015 scheme
- d) Members of the 1992 scheme will continue to have access to an actuarially assessed commutation factor for benefits accrued under that scheme.”

7.4. The Firefighters’ Pension Scheme (England) Regulations 2014 set out the conditions for full and tapered protection for members of the 1992 and 2006 schemes, and detailed when those members should transfer into the 2015 Scheme. This instrument addresses these remaining issues, describing how members will access their accrued rights.

- Consolidation

7.5. There is no requirement to consolidate these regulations.

8. Consultation outcome

8.1 Section 21 of the Public Service Pensions Act 2013 requires the Secretary of State responsible for making the regulations to consult either individuals who are likely to be affected by them, or the representatives of those persons, before making any regulations. The regulations were subject to one statutory consultation beginning on 22 January 2015 and concluding on 19 February 2015, which received fifteen responses.

8.2 The consultation paper was sent to the fire and rescue authorities, members of the Firefighters' Pension Committee, and key employer and employee representative bodies. A full list of consultees can be found at: <https://www.gov.uk/government/publications/firefighters-pension-scheme-regulations-information-on-who-should-be-consulted>

8.3 In addition to the statutory consultation, further discussion took place with administrators of the pension scheme on the detail of the regulations.

8.4 As a result of the consultation responses, a number of changes to the draft Regulations have been introduced as follows:

- some cross-references to the 1992 Scheme have been made more precise in Schedule 1
- the formula used to determine the 1992 scheme pension entitlement for those members treated as active in that scheme has been amended

8.5 A copy of the consultation and the Government's response is available on the Government's website: <https://www.gov.uk/government/consultations/firefighters-pension-schemes-transitional-arrangements>

8.6 The purpose of the Instrument is to resolve matters arising from the accrual of pension in both one of the final salary schemes and in the career-average Firefighters' Pension Scheme 2015. The areas covered are as follows:

Active and deferred membership (New paragraphs 34, 35 and 36 of Schedule 2 of the 2014 Regulations; Rules 1C and 4 of Part 2 and Rules 3 and 4 of Part 3 of the 2006 Order; and Rules A3, A13A, B1A, B1B, B5 and F2 of the 1992 Order)

8.7 These provisions determine when a member is active or deferred in each of the 1992, 2006 and 2015 schemes, having participated in more than one of those schemes.

8.8 For members of the 2006 Scheme other than special members, the regulations ensure that if a member ceases to have active membership in the 2015 Scheme but returns after a gap of not more than five years, their previous 2015 Scheme service and any connected 2006 Scheme service will no longer be deferred. Instead, it will be treated as active for certain purposes and as continuous with any new 2015 Scheme service. If a member re-joins and the gap in membership exceeds five years, the earlier membership in both the 2015 Scheme and the 2006 Scheme will remain deferred and the new membership in the 2015 Scheme is treated as a separate pension entitlement.

8.9 A different approach applies in respect of 1992 Scheme members and special members of the 2006 Scheme, as the 1992 Scheme is closed to re-joiners. As a consequence, the member is not treated as active for certain purposes in the 1992 Scheme once they leave pensionable service in the 2015 Scheme. In such instances they would become a deferred member of the 1992 Scheme. If the member elects to re-join a firefighters' pension scheme while still transitionally or fully protected, they would join the 2006 Scheme, rather than the 2015 Scheme. However, a member of the 1992 Scheme who is in continuous pensionable service in that Scheme before the transition date and remains in continuous pensionable service in the 2015 Scheme until they leave pensionable service or retire, is treated as an active member of the 1992 Scheme for certain purposes.

End of active membership in one of the final-salary schemes (Amended Parts A and B of Schedule 2 to the 1992 Order and amended Parts 2 and 3 of Schedule 1 to the 2006 Order)

8.10 These provisions ensure that the transitional protections set out in the 2014 Regulations are reflected in the 1992 and 2006 Scheme Orders. The transitional protections set out when a member of the 1992 and 2006 schemes must move into the 2015 Scheme, or else become a deferred member of their scheme.

Qualifying for benefits (New paragraphs 40 and 41 of Schedule 2 of the 2014 Regulations; amended Rule 1 of Part 10 of the 2006 Order and amended Rule F2 of the 1992 Order)

8.11 Two years' membership of the 1992 Scheme is the minimum amount required in order to qualify for benefits in that scheme. The equivalent provision in the 2006 and 2015 schemes is three months. In considering whether a 2015 scheme member with service in either the 2006 or 1992 scheme qualifies for benefits in either the member's previous scheme or in the 2015 Scheme, any linked 1992, 2006 and 2015 Scheme service is to be taken into account. For qualifying purposes, transferred-in service in the 1992 or 2006 Scheme is counted on the same basis as before 1 April 2015.

Accrual rate (New paragraphs 31 and 34 of Schedule 2 of the 2014 Regulations and new Part 2A of Schedule 2 of the 1992 Order)

8.12 At present 1992 Scheme members can benefit from "double accrual", which takes effect after 20 years' service. 2015 Scheme members with 1992 Scheme benefits who remain in continuous pensionable service in the 2015 Scheme, will have those benefits calculated on the basis of the accrual rate that they would have received had they remained in the 1992 Scheme until retirement. This is achieved by taking into account the pensionable service accrued in the 2015 Scheme. For example, if a member accrued 30 years' continuous service between the 1992 and 2015 Scheme, their accrual rate for any service accrued under the 1992 Scheme will be calculated on the basis of 45ths. A formula that provides for this effect is set out in new Part 2A of Schedule 2 to the 1992 Scheme.

Final pensionable pay (New paragraphs 32, 33, 34, 42 and 43 of Schedule 2 of the 2014 Regulations; amended Rule 2 of Part 11 and Rule 8 of Part 12 of the 2006 Order; and Rules B1A, B5A, G1 of the 1992 Order)

8.13 Schedule 7 to the 2013 Act requires that the old scheme retirement pension is calculated using earnings at retirement or upon leaving the new scheme so enabling the old scheme pension rights to be honoured in full (“the final salary link”). Paragraphs 42 and 43 of schedule 2 provide that this right may only be exercised once and that any subsequent period of employment and scheme membership will not lead to a recalculation of any old scheme pension that is in payment.

8.14 Where a member of the 2015 Scheme has service that is continuous from the 1992 or 2006 Scheme, the member’s final pensionable pay is used. Service is still regarded as “continuous” so long as any break in service is no more than five years, or if any longer, spent in pensionable public service. Provided that continuity of service is maintained in this way, benefits relating to the member’s earlier scheme will be linked to their final salary when the member ceases active membership of the 2015 Scheme.

8.15 Where the “final salary link” applies, there is a requirement in the 2013 Act that the member’s “pensionable pay” in the 2015 Scheme is not less generous than it would have been in their previous scheme. This includes certain allowances and supplements that would previously have been deemed to be pensionable and could also apply if the member has seen a reduction in salary. The regulations therefore ensure that a member is not disadvantaged if the definition of final salary used to determine their benefits would have been higher in their original scheme than under the 2015 Scheme.

8.16 When a decrease in pay occurs before the member becomes a member of the 2015 Scheme and pay does not again rise above that high point, final pensionable pay is determined using the member’s 1992 or 2006 scheme pensionable pay and rules. When the decrease occurs after transition, the member’s pensionable pay in the last year of service before the decrease occurred is used. When a member joins the 2015 Scheme, but does not re-join the scheme in time to retain continuity of service, final pensionable pay would be that at the point of deferment from the member’s original membership.

Additional pension (New paragraphs 31 and 34 of Schedule 2 of the 2014 Regulations; Rule 7 of Part 11 of the 2006 Regulations and Rules B5D, G2A, G7 and G8 of the 1992 Regulations)

8.17 If a member has already arranged to purchase additional service or increased benefits in the 1992 or 2006 scheme, the arrangement will remain valid even after the member transfers to the 2015 Scheme provided that they had remained in continuous pensionable service in the 2015 Scheme if they were members of the 1992 Scheme, or if they were members of the 2006 Scheme had continuity of service. These members will continue to pay additional contributions on the same basis as they did before transferring from their final-salary scheme.

Transfer of final-salary benefits (New paragraphs 44, 45 and 46 of Schedule 2 of the 2014 Regulations and amended Rules 1, 8, 9 and 10 of Part 12 of the 2006 Order)

8.18 These provisions are necessary to cater for individuals wishing to transfer-in membership of another public service pension scheme, which has accrued on a final-salary basis. Upon joining, although their active membership may be in the 2015 Scheme, the transferred-in amount should be transferred into the 2006 Scheme. This is because the 2015 Scheme is operated wholly on a career-average basis and does not provide for final salary pensions.

Authority-initiated early retirement (Amended Regulation 62 of the 2014 Regulations and Rule 6 of Part 3 of the 2006 Order)

8.19 Where a firefighter with 2006 Scheme membership is subject to authority initiated early retirement in the 2015 Scheme, the employing authority must at the same time consider using the equivalent provisions in the 2006 Scheme.

Refunds of contributions (New paragraph 39 of Schedule 2 of the 2014 Regulations)

8.20 If a member with existing 2006 Scheme service ceases active membership after transferring to the 2015 Scheme, contributions are refunded if the member has in total less than three months' qualifying service across both schemes and any further contributions for additional service cease to be payable.

Ill-Health (Regulations 51, 59, 65, 66 and 69A of the 2014 Regulations, new paragraphs 22, 23, 24, 25, 37 and 38 of Schedule 2 of the 2014 Regulations; new paragraph 2A of Part 12 and Annex 1 of the 2006 Order; and Rules B3, B7 and F9 of the 1992 Order)

8.21 These regulations set down how the ill-health benefits of individuals who have participated in the 2015 Scheme and in one of the final-salary schemes should be determined.

8.22 The Transitional Regulations provide that where a 2015 Scheme member who was previously in the 1992 or 2006 scheme becomes entitled to a lower-tier ill-health pension, their entitlement is paid from the 2015 Scheme. However, to ensure that connected service in the 1992 or 2006 Scheme is also recognised, an equivalent amount of benefit is calculated in accordance with the rules of their earlier scheme, and this 'equivalent amount' is paid from the 2015 Scheme. Commuted lump sums are paid and determined on the same basis.

8.23 Any entitlement to a higher tier pension is calculated in accordance with the 2015 Scheme. However, the higher tier enhancement is applied to the lower tier pension, including the "equivalent amount" calculated in accordance with the member's earlier scheme rules, but "adjusted" so that added pension is not taken into account.

8.24 As the member's 1992 or 2006 scheme pension is left in their previous scheme, it is possible for that pension to be transferred to another pension scheme, even if they are already receiving ill-health benefits from the 2015 Scheme in respect of their prior scheme service. Consequently, if that pension is transferred out to another pension scheme, the corresponding 'equivalent portion' of ill-health pension is deducted from the ill-health pension being paid out of the 2015 Scheme.

8.25 When a member who has moved into the 2015 scheme from either the 1992 or 2006 scheme reaches the Normal Pension Age in their previous scheme, the 'equivalent amount' ceases to be payable from the 2015 Scheme and is replaced by a continued pension from the member's previous scheme payable from normal pension age.

8.26 There are special provisions to deal with the cases where any member is being considered for an ill-health award at the time of their transition.

8.27 Members with 1992 Scheme service who are awarded a lower-tier ill-health pension which is payable under the 2015 Scheme as an 'equivalent amount' will continue to be able to commute a proportion of these those benefits to a lump sum under the 1992 Scheme terms, using actuarially neutral factors. Any connected 2015 Scheme service will count towards determining whether the member can commute the maximum 25% of their 1992 Scheme pension if they retire before age 55.

Death benefits (Amended Regulations 78, 86, 93 and 96, and new paragraphs 26, 27, 28, 29 and 30 of Schedule 2 of the 2014 Regulations and Rules C1, D1, E1, E3, E4 and E8A of the 1992 Order)

8.28 Under the 2015 Scheme, survivor benefits are provided in the form of surviving partners' pension, bereavement pension, children's pension and lump sum death benefits, which reflects similar provision in the 2006 Scheme. Surviving partners of all 2015 Scheme members who are not deferred members of the 1992 or 2006 scheme, who die in pensionable service in the 2015 Scheme, will have their benefits determined under the 2015 Scheme. Similarly, where these members die in service and have eligible children, they will also receive benefits under the 2015 Scheme, rather than under the member's previous scheme. However, if the individual was a deferred member of the 1992 or 2006 scheme, the survivor will receive deferred survivor benefits in accordance with those scheme rules. The provisions for lump sum death payments are no less than they would have been under the 1992 or 2006 scheme.

9. Guidance

9.1 There are a number of detailed resources available to prospective scheme members and employers, including pension calculators, frequently asked questions and guidance to calculate certain other pension benefits. The Department will continue to work with employers and the Local Government Association to provide detailed information and supportive resources to prospective scheme members on the application of the regulations.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 As with the main 2015 Scheme regulations, these regulations will be monitored by the Department and reviewed on a regular basis, including regular actuarial valuation.

13. Contact

13.1 Philip Perry, at the Department for Communities and Local Government, on 030344 42174 or philip.perry@communities.gsi.gov.uk, can answer any queries regarding the instrument.