

EXPLANATORY MEMORANDUM TO
THE FIREFIGHTERS' COMPENSATION SCHEME AND PENSION SCHEME
(ENGLAND) (AMENDMENT) ORDER 2015

2015 No. 590

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 amends Schedule 1 to the Firefighters' Compensation Scheme (England) Order 2006 (S.I. 2006/1811) which provides a compensation scheme for firefighters and dependants of firefighters in England ("the Compensation Scheme") in consequence of the coming into force of the Firefighter's Pension Scheme 2015 ("the 2015 Scheme") set out in the Firefighters' Pension (England) Regulations 2014 (S.I. 2014/2848), which deals with the payment of pensions and other benefits to, or in respect of, firefighters employed by fire and rescue authorities in England. The amendments:

- update provisions as a consequence of the coming into force of the 2015 Scheme, to ensure that members of the 2015 Scheme, firefighters eligible to be members of the 2015 Scheme, and their qualifying survivors, receive compensation awards in the event of a qualifying injury or death in service in accordance with the Compensation Scheme.

2.2 This Order also amends Schedule 1 to the Firefighters' Pension Scheme (England) Order 2006 (S.I. 2006/3432) which sets out the New Firefighters' Pension Scheme (England) ("the 2006 Scheme"). The amendments:

- clarify provisions in the 2006 Scheme.
- extend the period that members can elect to join the modified schemes, by identifying eligible members and extending the period for which they can make an election to pay additional pension contributions during the specified period in respect of their service during the specified period;
- clarify provisions relating to the payment of interest in respect of contributions payable during the period 6 April 2006 and the date that an eligible individual joined the standard 2006 Scheme;
- amend the commutation factors table set out in Annex ZA of the 2006 Scheme to reflect the commutation factors as on 31st March 2014.
- update provisions and terminology as a consequence of the coming into force of the 2015 Scheme.
- revise the 2006 Scheme pensionable pay bands to include a 1% annual uprating for the next four years from 1st April 2015.

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

3.1 None.

4. Legislative Context

4.1 Section 34 of the Fire and Rescue Services Act 2004 (“the 2004 Act”) allows the Secretary of State, by order, to make provision for a pension scheme for firefighters. The 2006 Pension Scheme is made under this power.

4.2 Section 34 of the 2004 Act also allows the Secretary of State, by order, to make a scheme for the payment of compensation to, or in respect of, firefighters who have been injured or who have died. The Compensation Scheme is made under that power. Section 34(3) provides that an order under that section may take effect from a date which is earlier than that on which the order is made.

4.3 This Order complies with section 34, which was amended by the Public Service Pension Act 2013 (“the 2013 Act”) with the insertion of sub-paragraph (1A) which introduces a restriction (pursuant to sections 18 and 19 of the 2013 Act) on benefits provided under existing schemes for firefighters regarding the payment of pensions, allowances and gratuities to or in respect of persons who are or have been employed by a fire and rescue authority and persons who die or have died while so employed.

4.4 The 2015 Scheme is made under the powers provided in the 2013 Act.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

Compensation Scheme

7.1 The cost of public service pensions has risen significantly in recent years. This increased burden on taxpayers and employers, and led to the Government setting up the Independent Public Service Pensions Commission under Lord Hutton. The Commission was tasked to undertake a “fundamental structural review” of public service pension provision and to make recommendations relating to 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 It was recognised that reform of the firefighters’ pension scheme, like other public service pension schemes, was required to take account of increases in life expectancy and ensure the burden of support carried mainly by the working age population did not become unmanageable or unfair. As a result of Lord Hutton’s

report, the Government introduced the 2015 Scheme in October 2014. The 2015 Scheme comes into force on 1 April 2015. This scheme meets Lord Hutton's requirement "to make public service pension schemes simpler and more transparent, fairer to those on low and moderate earnings". The final scheme design ensures that firefighters continue to get a good quality pension in retirement, that older firefighters are protected from the effects of the reform by transitional protections, and that firefighters, due to the unique nature of their role, are able to retire from age 60 with an unreduced pension.

7.3 The Compensation Scheme provides compensatory benefits for qualifying firefighters who are injured on duty. The Compensation Scheme, references the two existing firefighter pension schemes which firefighters are eligible to join, namely the Firefighters' Pension Scheme (set out in Schedule 2 to the Fireman's Pension Scheme Order 1992) ("the 1992 Scheme") and the 2006 Scheme. With the introduction of the 2015 Scheme and the identification of transitional members of that scheme, changes to the Compensation Scheme are required to ensure that where appropriate, the Compensation Scheme applies to the 2015 Pension Scheme as well as to the 1992 and 2006 Pension Schemes. The changes will ensure that the Compensation Scheme makes reference to, and therefore accounts for, qualifying members, 2015 Pension Scheme members and those who are eligible to be members of the 2015 Scheme but elect not to join.

7.4 This Statutory Instrument makes these changes, so that qualifying transitional members, 2015 Scheme members and those eligible to be members of the 2015 Scheme, are covered by the compensation arrangements in the event of injury or death in service.

Modified Scheme

7.5 'Retained' firefighters are a group that is distinctly identifiable from regular firefighters in that they only attend a fire station when they receive an emergency call-out or undertake other activities. They were historically precluded from membership of the 1992 Scheme but have been entitled to join the 2006 Scheme since 6th April 2006.

7.6 Following a series of appeals by retained firefighters to the Employment Tribunal and the House of Lords claiming access to the 1992 Scheme under the Part-time Workers (Prevention of Less Favourable Treatment) Regulations (S.I.2000/1551), the 2006 Scheme was amended in April 2014 to introduce a 'modified section'. This is known as the "Modified Scheme" and provides individuals employed as retained firefighters during the period 1 July 2000 and 5 April 2006, with an opportunity to purchase pension benefits in respect of this employment. The benefits provided by the Modified Scheme are comparable to those that are available to members of the 1992 Scheme. Fire and rescue authorities had until 31 March 2015 to undertake and conclude, an options exercise to identify all those former and current employees with an entitlement to join the Modified Scheme; inform them of this entitlement to join; provide a quote advising them of the costs of purchasing their past service; and ultimately enrol those individuals who then elect to join into the Modified Scheme.

7.7 The Department was approached by a number of authorities who were concerned that they would not meet this deadline. Therefore, following consultation, the Government is extending the time available to fire and rescue authorities to complete the options exercise by 6 months, meaning that the new deadline will be 30 September 2015. This Statutory Instrument gives effect to this extension.

7.8 The Modified Scheme requires the application of interest to any retrospective pension or lump sum paid, and on any employee contributions paid in respect of purchasing past service. The Department identified that the current provisions regarding individuals who elect to convert special service to their standard membership, and are required to buy any break in scheme membership between 6 April 2006 and the date they joined the standard 2006 scheme, did not address the interest payable during this period. The Government is therefore amending the 2006 Scheme provisions to reflect the original policy intention.

7.9 The amendments to the 2006 Scheme also correct a number of small errors in the commutation factor tables that apply to special members who retire. These corrections ensure that the original policy intention to provide special members with fixed commutation factors – that reflect those in the 1992 Scheme as at 31st March 2014 – is achieved.

Amendments to the 2006 Scheme

7.10 When the 2015 Scheme was developed, it was recognised that firefighter salaries might see pay rises to reflect inflation each year. In order to avoid the unintended consequence of a member being drawn into a higher contribution band because of a pay rise to reflect inflation, it was decided to increase the pay bands in the 2015 Scheme in line by 1% each year up to and including 1st April 2018. By which time, the contribution rates will need to be reviewed again to take account of the next 2015 Scheme valuation.

7.11 This risk also exists for members of the 1992 and 2006 Schemes. The Government is therefore applying the same annual 1% uprating of contribution bands to the 1992 and 2006 Schemes to cover the period from 1st April 2015 to 1st April 2018 inclusive. This Statutory Instrument effects this change in relation to the 2006 Scheme.

- Consolidation

7.12 There is no intention to consolidate the Firefighters' Pension Scheme (England) Order 2006, or the Firefighters' Compensation Scheme (England) Order 2006.

8. Consultation outcome

8.1 The draft Order was subject to one statutory consultation beginning on 22nd January 2015 and concluding on 19th February 2015.

8.2 The consultation paper was sent to fire and rescue authorities, members of the Firefighters' Pension Committee, and key employer and employee representative

bodies. A list of organisations that the Secretary of State typically seeks to consult on this in this respect is available from the following webpage:
<https://www.gov.uk/government/publications/firefighters-pension-scheme-regulations-information-on-who-should-be-consulted>.

8.3 15 responses were received to the consultation. Copies of the consultation paper and the Government's response, which includes a full list of respondents, can be found at <https://www.gov.uk/government/consultations/firefighters-pension-schemes-transitional-arrangements>.

8.4 Having considered the consultation responses, which broadly agreed that the compensation arrangements reflected the intended policy, only minor drafting changes were considered to be required for the compensation arrangements to ensure that the existing approach to the 1992 and 2006 Schemes is continued for the 2015 Scheme.

8.5 Similarly, no changes were thought to be required to the Modified Scheme reforms as a result of the consultation. However, in response to comments received to the consultation, amendments will be made to the 2006 Scheme to make clear that persons who have already rejected the opportunity to enrol into the Modified Scheme will not be provisionally enrolled.

8.6 The majority of respondents were in agreement with the Government's proposals. However, three respondents suggested that an alternate indicator be used for the annual uprating of the contribution bands, rather than 1%. The Government has decided to continue to uprate the contribution bands by 1% because:

- Applying 1% each year until 1st April 2018 provides members with greater certainty about what they will pay for this period. The alternative rates proposed would vary each year.
- The proposed approach is consistent with the 2015 Scheme arrangements. Members could also move into a higher contribution rate band if the alternative rate dropped below a pay award to reflect inflation.
- The contribution rates paid from 1st April 2019 will need to be reviewed as part of the next valuation, so there is a clear opportunity to review the contribution bands again at this time.

8.7 As set out above, the purpose of this instrument is to ensure that the compensation scheme reflects the creation of the 2015 Scheme; to extend the time available to fire and rescue authorities to complete the options exercise for the Modified Scheme; and to uprate the contribution bands by 1% per annum each year until 1st April 2018. A detailed description of the proposed amendments is provided below.

Changes to the compensation scheme (Schedule 1)

Amendment of Part 1 (interpretation)

8.8 Part 1 provides definitions for specific terminology used within the Scheme's regulations. Paragraph 4 of Schedule 1 to this Order amends this part to:

- provide definitions for the additional terms used in respect of members of the 2015 Scheme;
- provide for the "normal pension age" in the 2015 Scheme to be determined by the 2013 Act (section 10), which is currently set at 60 years;
- correct an existing error so that it is clear that the "normal pension age" in relation to the 2006 Scheme is 60 years;
- increase the scope of the definition of "pensionable service" so that it also applies to members of the 2015 Scheme. In addition, the amendments ensures that the provision encapsulates linked service accrued by members of the existing 1992 and 2006 Schemes who subsequently transfer into the 2015 Scheme on or after 1 April 2015;
- increase the scope of the definition of 'relevant service' so that it also applies to those individuals who have an entitlement to join the 2015 Scheme but did not make an election to join, in keeping with the current arrangements for persons who are eligible to be members of the 1992 or 2006 Schemes, who have not joined those schemes;

Amendment of Parts 2, 3, and 5 (injury awards and duty related compensation; awards on death)

8.9 Paragraphs 5, 6 and 7 of Schedule 1 to this Order amend Parts 2, 3 and 4 of the Compensation Scheme, to ensure that the following provisions apply to the members, or eligible members of the 2015 Scheme:

- 'compensation for death or permanent incapacity while on work',
- 'awards on death; spouses and civil partners', and
- 'awards on death; additional provisions.'

8.10 The amendments also make provision for the commutation of small compensation pensions payable to members of the 2015 Scheme.

Amendment of Parts 7 and 7A (servicemen and reservists)

8.11 Paragraphs 8 and 9 of Schedule 1 to this Order amend Parts 7 and 7A of the Compensation Scheme to ensure that the compensation provisions relating to armed forces' 'reservists' and 'servicemen' also apply to members of the 2015 Scheme.

Amendment of Part 8 (special cases)

8.12 Paragraph 10 of Schedule 2 to this Order amends Part 8 of the Compensation Scheme to ensure that the 'special cases' provisions also apply to volunteer members employed on or after 1st April 2015. As such, volunteer firefighters who suffer a qualifying injury on or after 1st April are to be treated as whole-time, regular firefighters for the purposes of calculating an injury award. This reflects the current application for volunteer firefighters in respect of the existing 1992 and 2006 Schemes.

Amendment of Part 9 (review, withdrawal and forfeiture of awards)

8.13 Paragraph 11 of Schedule 1 to this Order amends Part 9 of the Compensation Scheme to apply the 'review, withdrawal and forfeiture of awards' provisions to

members of 2015 Scheme. Part 9 makes provision for the reduction of a 2015 Scheme member's injury award where the permanent disablement that gives entitlement to the injury award has been caused, or contributed to, by the member's own default. This is in line with the current application for existing members of the 1992 and 2006 Schemes.

Amendment of Part 10 (payment of awards and financial provisions)

8.14 The current 'prevention of duplication' provisions are extended to members of the 2015 Scheme as a result of the amendments at paragraph 12 of Schedule 1 to this Order to Part 10 of the Compensation Scheme. The amendments ensure that where a member of the 2015 Scheme has other separate employments as a firefighter that confer an additional entitlement to join one of the other firefighter pension schemes (namely, any one of the 1992, 2006 or 2015 Schemes), should they subsequently suffer a qualifying injury, they will not receive duplicate injury awards in respect of each employment. This reflects the current application of the provision to members of the existing 1992 and 2006 Schemes.

8.15 The amendments also ensure that, where a 2015 Scheme member dies from the effects of a qualifying injury whilst employed as a regular firefighter and retained firefighter, duplicate survivor benefits will not be payable. Where survivor benefits are payable from both the Compensation Scheme and the 2015 Scheme, only the survivor benefits from the 2015 Scheme will be payable. This reflects the current application of the provisions to members of the existing 1992 and 2006 Schemes in the same position.

Amendment of Schedule 1 (injury awards and duty related compensation)

8.16 Paragraph 13 of Schedule 1 to this Order amends Schedule 1 to the Compensation Scheme ensure that where an individual is entitled to an injury award but is not an active member of the 2015 Scheme, the award is determined by reference to the person's 'relevant service'. Effectively, this is the service that the person would have accrued if they had become an active member of the 2015 Scheme. The amendment also ensures that any service, in respect of the same/similar employment, prior to 1st April 2015, where the individual had an entitlement to join either the 1992 or 2006 Schemes, is also to be included as relevant service for the purposes of calculating any injury award entitlement. This reflects the current position for those individuals that have elected not to join the 1992 or 2006 Schemes.

Amendment of Schedules 2, 3 and 4 (awards for spouses and civil partners, awards on death)

8.17 The provisions in paragraphs 14, 15 and 16 of Schedule 1 to this Order ensure that the 'special pension', 'child's special allowance', and 'adult dependent relative's special pension' provisions apply in respect of deceased members of the 2015 Scheme. It also provides for the calculation of the 'special pension', 'child's special allowance' and 'adult dependent relative's special pension' on the basis of the deceased's relevant service where they had an entitlement to join the 2015 Scheme but did not elect to join. This reflects the current position for those individuals that have decided not to join the 1992 or 2006 Schemes.

Changes to the Modified Section of the 2006 Scheme (Schedule 2)

Amendment of Part 1 (citation and interpretation)

- 8.18 Paragraph 1 of Schedule 2 to this Order amends the 2006 Scheme to:
- introduce definitions for specific terminology used in respect of the 2015 Scheme;
 - make provision for the ‘limited period’ to end on 1st April 2015 for those individuals that have no transitional protections and that are provisionally enrolled to the Modified Scheme; and for the ‘limited period’ to end on the date that they join the 2015 Scheme in respect of those provisionally enrolled members who have full or tapered protections;
 - to clarify references in the definitions of special deferred member, special eligibility criteria, special firefighter member, and special pensioner member.

Amendment of Part 2 (scheme membership, cessation and retirement)

8.19 The amendments in paragraph 2 of Schedule 2 to this Order permit provisionally enrolled members to temporarily join the Modified Scheme. Part 2 is also amended to remove the inclusion of a superfluous “a” in rule 2A(2), and to provide clarity that the retrospective award on ill-health retirement being referred to is paid under Part 3 of the 2006 Scheme regulations.

Amendment of Part 11 (pensionable pay, pension contributions and purchase of additional service)

- 8.20 The amendments in paragraph 3 of Schedule 2 to this Order:
- remove a superfluous reference to “member” in rule 5A(1) and make a minor adjustment to Rule 6A para 2 amend;
 - provide clarity that interest should be payable on any pension contributions owing where a special member converts their standard service in the 2006 Scheme to special pensionable service in the Modified Scheme. This provision was previously inadvertently omitted;
 - to make provision for individuals that have an eligibility to join the Modified Scheme to be provisionally enrolled for up to a maximum of 6 months, until 30th September 2015, to enable the responsible fire and rescue authority to conclude the options exercise of giving them the opportunity to make an election to join.

Amendment of Part 15 (miscellaneous provisions)

8.21 The provisions in paragraphs 4 of Schedule 2 to this Order correct an error in the commutation factors set out in Annex ZA of the 2006 Scheme so that they reflect the commutation factors of the 1992 Scheme as on 31 March 2014, as per original policy intention.

Amendments to the 2006 Scheme contribution bands (Schedule 3)

8.22 Paragraphs 5 and 6 of Schedule 2 to this Order sets out the revised 2006 scheme pensionable pay bands including the 1% annual uprating for the next four years from 1st April 2015. The contribution bands for special members have also been updated. The figures have been rounded down to the nearest pound to simplify the administration of the scheme. These amendments have been made to Annex A1 (pension contributions) and Annex AB1 (pension contributions for special members).

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 The changes made by this Order will be monitored by the Department and reviewed on a regular basis. The scheme will also be subject to regular actuarial valuation, following which the contribution bands will be reviewed.

13. Contact

13.1 Anthony Mooney, at the Department for Communities and Local Government, on 0303 444 2188 or anthony.mooney@communities.gsi.gov.uk, can answer any queries regarding the instrument.