

EXPLANATORY MEMORANDUM TO
THE FIREFIGHTERS' PENSION SCHEMES AND COMPENSATION SCHEME
(AMENDMENT) (ENGLAND) ORDER 2017

2017 No. 892

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These Regulations amend the Firemen's Pension Scheme Order 1992, ("the 1992 Order", S.I. 1992/129) which governs the Firefighters' Pension Scheme 1992, "the 1992 Scheme"; the Firefighters' Pension Scheme (England) Order 2006, ("the 2006 Order", S.I. 2006 / 3432) which governs the Firefighters' Pension Scheme 2006 ("the 2006 Scheme"); the Firefighters' Compensation Scheme (England) Order 2006 ("the Compensation Order", S.I. 2006/1811) and the Firefighters' Pension Scheme (Amendment and Transitional Provisions) (England) Order, 2016 S.I. 2016/ 878. The amendments, in particular, allow surviving widows, widowers and civil partners of firefighters who die or have died, as the result of an injury received without their own default in the execution of their duty, or on journeys reporting for duty or returning home, to continue receiving their survivor benefits in the event of remarriage or formation of a civil partnership on or after 1 April 2015. Provision is also made for the preservation of payments made in the exercise of a fire and rescue authority's discretion to a person whose subsequent marriage or partnership is dissolved or partner dies on further remarriage or formation of a civil partnership.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Order is retrospective, as detailed in articles 1 (2) – (4).
- 3.2 The free issue procedure has been applied in the interests of transparency for users of the legislation as, whilst a key purpose of the instrument is to introduce the policy explained above in relation to survivors' benefits, it also corrects errors in S.I. 2015/589 and clarifies provision made in S.I. 2016/878.

Other matters of interest to the House of Commons

- 3.3 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 In addition to the 1992 Scheme, there are two further firefighters' pension schemes which currently have active contributing members, those governed by the 2006 Order

and the Firefighters' Pension Scheme (England) Regulations 2014 (S.I. 2014/2848), which relates to the 2015 Scheme. There is no need for the survivor benefit provisions to be reformed in either of those schemes, because under the applicable regulations, survivor benefit is not terminated on re-marriage or on the formation of a new civil partnership.

- 4.2 Survivors of firefighters who are not members of any of the occupational pension schemes can nevertheless be eligible for benefit under the Compensation Order.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England only.

6. European Convention on Human Rights

- 6.1 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

- 7.1 Under the 1992 Order and the Compensation Order, the surviving widow, widower or civil partner of a firefighter who dies is entitled to survivor benefits. Under these provisions, survivor benefits cease to be payable if the widow, widower or civil partner remarries or forms a civil partnership. Survivor benefits can be reinstated, at the discretion of the fire and rescue authority responsible for administering the survivor benefit, if the remarriage or civil partnership subsequently ceases.
- 7.2 In November 2014, the Government announced its decision to remove the restrictions placed on survivor members of the Armed Forces Pensions Scheme 1975 and the War Pensions Scheme, under which pensions ended upon remarriage or cohabitation. In the Budget of 18 March 2015, it was announced that widows, widowers, and surviving civil partners of firefighters and police officers who died or die on duty in England and Wales would no longer lose their survivor benefits if they remarry or form a civil partnership. On 12 October 2015, the Home Secretary announced in the House of Commons that, in respect of police pensions, such changes would be applied retrospectively to marriages, remarriages and civil partnerships entered into on or after 1 April 2015. The current reforms regarding firefighters are consistent with that approach.
- 7.3 The changes will apply to awards under the Compensation Scheme to all widows, widowers and civil partners of firefighters who die or have died as the result of an injury received without their own default in the execution of their duty or, so far as awards under rules C1, C4, C5, C6 or C8 of the 1992 Pension Scheme are concerned, on a related journey. Deaths on duty are rare and the anticipated costs associated with this policy amendment are expected to be low for fire and rescue authorities and taxpayers.
- 7.4 This Order also makes unrelated amendments to the 1992 and 2006 orders. These include an amendment to Part 2A of Schedule 2 to the 1992 Order in order to correct a minor error made in the Firefighters' Pension Scheme (England) (Transitional and Consequential Provisions) Regulations 2015 (S.I. 2015/589). This amendment gives

the correct formula for calculating the continuous service pension of a member who transitions from the 1992 Scheme to the 2015 Scheme.

- 7.5 Minor necessary amendments are also being made to the Firefighters' Pension Scheme (Amendment and Transitional Provisions) (England) Order 2016. These ensure that, following the implementation of that Order, firefighters continue to pay contributions in relation to additional pension benefit as appropriate, and that fire and rescue authorities pay the appropriate level of employer contributions.

Consolidation

- 7.6 The Home Office does not intend to consolidate the new legislation.

8. Consultation outcome

- 8.1 Section 34(5) of the Fire and Rescue Services Act 2004 requires the Secretary of State responsible for making the regulations to consult either those who are likely to be affected by them, or the representatives of those persons, before making any amendments. The reforms were subject to one statutory consultation beginning on 18 March 2016 and concluding on 13 May 2016, which received ten responses.
- 8.2 The Fire Brigades Union, the Fire Officers' Association, the National Association of Retired Firefighters and Hertfordshire County Council all argued, to a greater or lesser extent, that no survivor benefit should cease on remarriage.
- 8.3 The Home Office's position is that the Government continues to have a duty to ensure that public service pensions are affordable, sustainable and fair, both for the members of those schemes and for other taxpayers. The Home Office confirm that survivor benefits will not be reinstated for all surviving spouses and civil partners who have already ceased to receive survivor benefits due to remarriage or formation of a civil partnership, remaining fully in line with the Budget announcement. Accordingly, survivor benefit will only be reinstated in the appropriate cases where remarriage or formation of a civil partnership took place on or after 1 April 2015.
- 8.4 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-amendments>

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 Home Office 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 as a whole. The Home Office also encourages employers to implement a communications programme with prospective members.
- 9.2 The Firefighters' Pension Scheme Advisory Board (made up of employer and employee representatives), which advises the Home Secretary, is also undertaking communications work to ensure employers and employees are abreast of firefighters' pensions matters. The Home Office are engaging with that Board on the laying of these regulations as appropriate.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The Government Actuary's Department's reasonable estimated capital cost to the public sector for the survivors' benefits reform is £2m. These costs will be met through a combination of the Firefighters' Pension Scheme AME payments and local pension budgets over the lifetime of the 1992 Scheme. There are no substantive costs associated with the other amendments, as all of the alterations fall within the previously agreed cost envelope.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 These regulations will be monitored by the Home Office in the context of its stewardship responsibilities for the firefighters' pension schemes as a whole.

13. Contact

- 13.1 Philip Perry, at the Home Office, telephone 020-7035-3447 or e-mail philip.perry@homeoffice.gsi.gov.uk, can answer any queries regarding the instrument.