

**EXPLANATORY MEMORANDUM TO**  
**THE FIREFIGHTERS’ PENSIONS (REMEDIABLE SERVICE) REGULATIONS**  
**2023**

**2023 No. 843**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty

**2. Purpose of the instrument**

- 2.1 This instrument makes provision in respect of pensions payable to firefighters in England. The purpose is to remedy the discrimination that arose due to certain transitional arrangements put in place when public service pension schemes were reformed between 2014 and 2016. It enables the second phase of the firefighters’ retrospective remedy, set out in the Public Service Pensions and Judicial Offices Act 2022 (“PSPJO Act”).

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

**4. Extent and Territorial Application**

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

**5. European Convention on Human Rights**

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

**6. Legislative Context**

- 6.1 The PSPJO Act sets out the framework for remedying the unlawful age discrimination that was found to result from the transitional protections contained in the reformed public service pension schemes introduced in 2015, conferring powers to make scheme regulations.
- 6.2 This instrument, made under the powers in the PSPJO Act and in accordance with HM Treasury directions made under that Act, contains the “retrospective” element of the remedy in respect of the firefighters’ pension schemes.
- 6.3 The Police and Firefighters’ Pension Schemes (Amendment) Regulations 2022 (S.I. 336/2022) set out the “prospective” element of the remedy, closing the legacy firefighters’ pension schemes to the accrual of pension benefits on and after 1 April 2022.

## **7. Policy background**

### *What is being done and why?*

- 7.1 In 2010, Lord Hutton of Furness was invited to chair the Independent Public Service Pensions Commission. The Independent Public Service Pensions Commission was tasked with undertaking a fundamental structural review of public service pension provision. This led to reformed public service pension schemes being introduced by 1 April 2015 for workers in local government, teachers, the NHS, the armed forces, firefighters, the police, the judiciary and the civil service. As part of the 2015 reforms, those within 10 years of the normal pension age as at 31 March 2012 remained in their legacy pension schemes, while other, usually younger, members had to move into the new, reformed schemes.
- 7.2 In December 2018, the Court of Appeal<sup>1</sup> found that these transitional arrangements gave rise to unlawful age discrimination, as this transitional protection was only offered to older scheme members. The Government accepted that this age discrimination applied across all the public service pension schemes which had implemented similar transitional arrangements.
- 7.3 On 16 July 2020 the Government launched a [public service pension schemes consultation](#) on options to remedy the discrimination, and also measures to bring the ongoing discrimination to an end. The consultation set out two proposed options (immediate choice or deferred choice) for retrospectively removing the discrimination suffered by members who were not eligible for transitional protection due to their age and proposed that the legacy schemes would be closed to all members on 31 March 2022. The Government published its [response](#) to that consultation in February 2021 setting out that the deferred choice was more appropriate as members would be aware of their personal circumstances at this time and in a better position to make the decision.
- 7.4 The resulting PSPJO Act provides for the remedy set out above, which is designed to address the discrimination identified by the courts and ensure that all scheme members will be treated in the same manner for any future service accrued on or after 1 April 2022. The PSPJO Act closed all legacy public service pension schemes to future accrual from 1 April 2022.
- 7.5 The Home Office ran a formal consultation process between 28 February 2023 and 23 May 2023 seeking views on the changes being made to implement the retrospective remedy and draft version of the provisions to the regulations needed to enact the second phase of the remedy as set out in the PSPJO Act.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

## **9. Consolidation**

- 9.1 This is a free-standing instrument that makes provision to implement the remedy as set out above, so this is not considered to be a suitable opportunity to consolidate other amendments made to related instruments that govern firefighters' pensions.

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<sup>1</sup>McCloud & others v Lord Chancellor & another; Sargeant & others v London Fire and Emergency Planning Authority and others 2018 EWCA Civ 2844 ('McCloud')

## **10. Consultation outcome**

- 10.1 A [public consultation on the Firefighters' Pension Scheme retrospective remedy](#) was carried out from 28 February to 23 May 2023 by the Home Office on these measures. During the consultation period, the Home Office engaged with the Firefighters' Pension Scheme Advisory Board (England). Part of the role of this board is to provide advice to the Home Secretary on the desirability of making changes to the firefighters' pension schemes.
- 10.2 Where respondents gave a view, the majority agreed that the proposed provisions achieved the aim of ensuring that the eligible firefighters' pension scheme member gets their choice of remedy. Where those that disagreed gave an explanation, it was a disagreement with the policy in the PSPJO Act or the 2015 pension reforms, rather than with this instrument.
- 10.3 Many responses confirmed a disapproval with the changes introduced as part of the pension reforms in 2015. These issues are therefore not part of this set of regulations which ensure all eligible members (or their member representative) are able to make the choice.
- 10.4 In addition, there were concerns about issues that are not directly to do with this remedy and some respondents would have liked us to consider changes to the existing scheme regulations as part of these regulations. These included, for example, a consolidation exercise for the legacy pension schemes, a unified definition of pensionable pay across the pension schemes and concerns about the pension age of the 2015 scheme leading to more ill-health retirement. As these remedy regulations are not amending the existing scheme regulations and rely on the prescribed powers in the PSPJO Act, this is not a suitable opportunity to include other policy matters.
- 10.5 There were concerns that the regulations include too many "discretionary powers" for scheme managers that may lead to inconsistencies across the locally administered schemes and requests for the Home Office to provide guidance. The nature of the provisions these regulations are making, and the complexity of personal circumstances means that individual decisions will have to be made by scheme managers.

## **11. Guidance**

- 11.1 No Home Office guidance is to be issued on this instrument.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities, or voluntary bodies.
- 12.2 The impact on the public sector is relatively significant but, if the remedy were not being introduced, trying to rectify and settle all the subsequent employment tribunals that would be brought on the same basis would cost the sector much more in time and resources. Firefighters' Rescue Services and the wider public sector have known for some time that this remedy will be implemented in October.
- 12.3 A full Impact Assessment has not been prepared for this instrument because the firefighter' pension scheme has little or no impact on businesses. Although there will be some impact across the public sector, as set out above this is unavoidable, the sector is aware of it and implementing this remedy is not as onerous as managing virtually the whole of the workforce bringing an employment tribunal claim.

**13. Regulating small business**

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

**14. Monitoring & review**

14.1 There are no proposals to actively monitor or review the outcome of the changes made by this instrument. Nonetheless, if a stakeholder (for example, pensions administrators, fire authorities, the relevant scheme advisory board, local pension boards or unions) raised a particular issue with the Home Office on the operation of the regulations as a result of one of the provisions we would review.

14.2 The instrument does not include a statutory review clause.

**15. Contact**

15.1 Anthony Mooney (fire pensions issues) at the Home Office; telephone 07504 737245 or email [anthony.mooney@homeoffice.gov.uk](mailto:anthony.mooney@homeoffice.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Peter Spreadbury, Deputy Director for Police Workforce and Professionalism Unit, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister Chris Philp at the Home Office can confirm that this Explanatory Memorandum meets the required standard.