



Home Office

Firefighters' Pension Scheme

Consultation on amendments to survivors' benefits in the Firefighters' Pension Scheme 1992 and the Firefighters' Compensation Scheme (England) 2006, and minor amendments to the Firefighters' Pension Scheme 2015

Consultation response

Contents

The consultation	3
Background to the consultation	3
Summary of proposals	4
Summary of responses received	6
The responses in detail and the Government's response	7
Outcome	11

The consultation

1.1 This paper sets out the Government's response to the consultation which ran from 18 March to 15 May 2016 dealing with amendments to the provisions for survivors' benefit in the Firefighters' Pension Scheme 1992 and the Firefighters' Compensation Scheme 2006, and with various unrelated amendments to the Firefighters' Pension Scheme 2015. It outlines the main representations made by respondents under each consultation question and attempts to capture the range of views expressed.

1.2 The consultation set out:

- amendments to the Firefighters' Pension Scheme 1992 ("the 1992 Scheme"), which provide that survivors of firefighters who are killed on duty ("Type A") or as a result of injuries sustained on journeys necessary for duty ("Type B") will be allowed to retain their survivors' benefits upon remarriage or entering into a new civil partnership;
- equivalent amendments to update the Firefighters' Compensation Scheme 2006 ("the Compensation Scheme"); and
- various unrelated amendments to the Firefighters' Pension Scheme 2015 ("the 2015 Scheme").

Background to the consultation

1.3 Surviving spouses and civil partners ('survivors') of firefighters in the 1992 Scheme are currently required to forgo their survivors' benefits upon remarriage or entering into a new civil partnership. Similar provisions exist in the Compensation Scheme. As part of the March 2015 Budget, the Chancellor announced that survivors of firefighters who are killed on duty would be allowed to retain their survivors' benefits upon remarriage or entering into a new civil partnership. The proposed amendments to the 1992 Scheme and the Compensation Scheme enact this change.

1.4 In 2015, the Department for Communities and Local Government ("DCLG") completed a major reform of the firefighters' pensions provisions, introducing the 2015 Scheme. The Home Office have since assumed policy responsibility for firefighters' pensions. A number of minor amendments are now required to ensure that certain limited aspects of the scheme work as originally intended.

1.5 Following the Budget announcement, the Home Office produced draft legislation to amend the 1992 Scheme and the Compensation Scheme to allow survivors of qualifying firefighters to keep their benefits should they remarry or enter into a new civil partnership. Similar changes have been made to certain police pension and compensation schemes, following related changes to survivors' benefits already introduced for the armed forces. The changes to survivors' benefits for the uniformed services

(firefighters, police and the armed forces) reflect the high risks faced as an everyday part of these jobs.

1.6 In the months since 1 April 2015, DCLG and the Home Office have become aware of a number of necessary minor amendments, as detailed below, in relation to the Firefighters' Pension Scheme Regulations 2014, which contain the 2015 Scheme, and the provisions governing the transfer of members from the 1992 Scheme and the Firefighters' Pension Scheme 2006 ("the 2006 Scheme") to the 2015 Scheme. The Firefighters' Pension Scheme (England) (Transitional and Consequential Provisions) Regulations 2015 (S.I. 2015/589) ("the transitional regulations"), in addition to other matters, amended Schedule 2 of the 2014 Regulations with transitional provisions detailing the transfer of members from one fire pension scheme to another – such members are identified as "transition members".

Summary of proposals

1.7 The consultation, published on 18 March 2016, sought responses from interested parties on two separate statutory instruments. The first instrument covers survivors' benefits and also an unrelated amendment giving the correct formula governing the double rate of accrual in the 1992 Scheme for transition members. The second comprises various unrelated amendments to the 2015 Scheme.

1.8 Following the Budget announcement, the Home Office has drafted regulations to provide that beneficiaries of "special awards" - where their partner has been killed as a result of firefighter duty - are able to keep their benefits when remarrying or entering into a new civil partnership. These benefits will be retained for life, regardless of any future changes in relationship status. In addition, other recipients of survivors' benefit will be able to retain that benefit where their partners had been killed as a result of injuries sustained performing firefighter duties or as a result of injuries sustained during journeys necessary to report for duty or to return home after duty.

1.9 This policy recognises the high risk of harm that firefighters face, and, in some cases, the ultimate sacrifice made by firefighters. Survivors of qualifying firefighters will therefore no longer be faced with the prospect of losing their pension in the event of remarrying or entering into a new civil partnership.

1.10 The Home Office is not proposing to change the eligibility criteria for awards under the Compensation Scheme, but only to ensure that any awards under that scheme, to which survivors of firefighters are eligible, are not withdrawn upon a remarriage or entering into a new civil partnership if they take place on or after 1 April 2015. This means that the survivor of a 1992 Scheme member (or the survivor of someone eligible to have joined that scheme) forgoes their survivors' benefits upon remarriage

or entering into a new civil partnership taking place before 1 April 2015, and in the event that this marriage or civil partnership subsequently dissolves, the fire and rescue authority continues to retain the discretion to pay the whole or any part of the benefit as they think fit.

- 1.11 The formula at Schedule 2, Part 2A in the 1992 Scheme for calculation of “continuous service pension” is being corrected so that the cap is set at 30 years’ pensionable service.
- 1.12 The second instrument draws together several minor regulatory amendments which will help to ensure that the 2015 Scheme runs efficiently.
- 1.13 Regulation 71A of the 2014 Regulations deals with transition members’ entitlement to commute part of any lower tier ill-health pension that they may be awarded into a lump sum. As currently framed, the regulation sets out certain provisions relating to the commutation of a lump sum for members who have transitioned from the 2006 Scheme to the 2015 Scheme. The new amendment completes the legal provisions for members who have transitioned from the 1992 Scheme.
- 1.14 Paragraphs 37 and 38 of Schedule 2 to the 2014 Regulations include provisions that deal with the position of members who are being considered for ill-health retirement by an independent qualified medical practitioner at the time of their transition date, and who subsequently continue as active members of the 2015 Scheme. Such members join the 2015 Scheme at the time specified under these provisions. The position of members who are being considered for ill-health retirement by an independent qualified medical practitioner at the time of their transition date, who are subsequently granted an ill-health award and consequently retire requires amendment. Under the current amendments to paragraphs 37 and 38, such members would remain in their existing pension scheme, avoiding the necessity for a minimal period of membership of the 2015 Scheme.
- 1.15 The consultation sought respondents’ views on the proposals and, where possible, whether the draft regulations reflected the policy set out. In particular, interested parties were asked to address the following questions:

Question 1

To what extent do you agree that the Department’s draft regulations are an accurate interpretation of the Budget statement on survivors’ benefits?

Question 2

Can you foresee any challenges to the administration of the pension schemes with regard to the proposed draft regulations?

Question 3

Are you aware of any Public Sector Equality Duty issues not covered in the Department's draft Policy Equality Statement?

Summary of responses received

2.1 10 responses to the consultation were received in total. A full list of respondents is reproduced below:

1	Manchester Fire Service
2	Cleveland Fire Authority
3	Hertfordshire County Council
4	West Sussex County Council
5	Staffordshire County Council
6	National Association of Retired Firefighters
7	Fire Officers' Association
8	Fire Brigades Union
9	Local Government Association (two responses)

The responses in detail, including the Government's response

Q1. To what extent do you agree that the Department's draft regulations are an accurate interpretation of the Budget statement on survivors' benefits?

- 3.1 The Home Office received seven responses to this question. Six of these agreed or broadly agreed that the Regulations meet the original policy commitments, whilst the remaining response indicated that the draft regulations did not appear to be an accurate interpretation of the Budget statement and questioned whether the amendments gave effect to the policy intention. We have subsequently reviewed the position and, although we were content that the draft regulations were consistent with the Budget statement, the drafting of Regulation 2 has nevertheless been improved.
- 3.2 These drafting improvements relate to three areas :
- (a) Sub-paragraph B1A(3)(b) of the 1992 Order is completely re-drafted for improved clarity;
 - (b) There is greater distinction between "special" and "ordinary" awards. The latter are only reformed in cases where the firefighter had died in the line of duty, travelling to work for duty or in returning home;
 - (c) Authorities' discretion to recommence benefit in cases where a further marriage or civil partnership has ended is more clearly preserved.
- 3.3 Of those that broadly agreed with the question, one argued that the regulations should be extended so that all withdrawn survivors' benefits were reinstated. One noted that they had not expected that the reforms would apply only where the firefighter had died on duty or on a journey to work or returning home. One argued that, although the proposals reflected the Budget statement, they nevertheless gave rise to an overall position that could be perceived as irrational. The Home Office do not accept this view, as explained at paragraphs 3.15 and 3.16 below.

Q2. Can you foresee any challenges to the administration of the pension schemes with regard to the proposed draft regulations?

- 3.4 Six responses were received to this question.
- 3.5 Three respondents confirmed that there should be no administrative challenges.
- 3.6 One respondent said that there was an element of challenge, but agreed that the miscellaneous amendments were necessary in order to ensure that the 2015 Scheme works as originally intended.
- 3.7 One respondent suggested that in certain circumstances it may be difficult to identify the firefighters whose spouses would benefit from the reforms, particularly in the case of those who had died whilst travelling to or from work. The Home Office recognises that in certain cases it will be necessary for authority administrators to work with survivors in order to identify the exact circumstances of the firefighter's death.
- 3.8 One respondent argued that the wording of the amendments on survivors' benefits would give rise to considerable challenges. The Home Office position is explained at paragraph 3.24 below.

Q3. Are you aware of any Public Sector Equality Duty issues not covered in the Department's draft Policy Equality Statements?

- 3.9 Of the five responses to this question, three indicated that there were no equality issues with regard to groups with protected characteristics. However, one of these argued that the reform should be extended to all surviving partners. This point is dealt with at paragraphs 3.15 – 3.17.
- 3.10 One argued that, under the proposals, arrangements will be preserved that could be perceived as unlawful. Paragraph 3.13 below refers.
- 3.11 One respondent highlighted that the use of the word "partner" should be made explicit and that the reform should cover volunteer and retained firefighters. The final draft of the SI has been modified to make clear which forms of partnership are covered by the reforms. The general term "firefighter" covers regular, retained and volunteer firefighters.

Other responses relating to the Regulations but not covered by the consultation questions

Survivors' benefits – broadening the consultation proposals

- 3.12 The National Association of Retired Firefighters (NARF) contended that under no circumstances should survivors' benefit cease on re-marriage. They argued that this would mean that members of all three pension schemes would be treated equally and that the cost of achieving this would be minimal.
- 3.13 The Fire Brigades Union (FBU) argued that the arrangements whereby survivors' benefit is withdrawn on remarriage is essentially a relic of a bygone age when men were always seen as providing for their spouses. The FBU contended that such arrangements were discriminating against those who choose to enter formally into marriage and, in particular, against younger survivors who would generally be more likely to wish to remarry or enter into a new civil partnership.
- 3.14 The Fire Officers' Association (FOA) also contended that there should no longer be any disincentive to remarriage. They argued against any provision under which survivors' benefit would cease, meaning that Rule C9 of the 1992 Order should be revoked, and suggested that the cost of doing so would be minimal.
- 3.15 The Government's clear position is that public service pensions must be affordable, sustainable and fair, both for the members of those schemes and for other taxpayers. In recognition of the high risks faced as an everyday part of firefighters' duties, the Home Office believes that it is justified to apply these changes to surviving spouses and civil partners of firefighters who die or have died as the result of an injury received without the firefighter's own default in the execution of their duty.
- 3.16 In response to the above, the Home Office confirm that survivors' benefits will not always be reinstated for those surviving spouses and civil partners who have already ceased to receive these survivors' benefits due to remarriage or formation of a civil partnership, remaining fully in line with the Budget announcement and with the recent reforms to police pensions. Therefore, whilst survivors' benefit will be reinstated in the appropriate cases where remarriage or formation of a civil partnership took place *on or after 1 April 2015*, benefit will not be reinstated in cases where they occurred before that date. The amendments to the Compensation Scheme have accordingly been re-drafted to make it completely clear that they only

apply to marriages and civil partnerships that take place from 1 April 2015 onward. Article 4 of the final instrument refers.

3.17 On the specific comment that the current measures discriminate against younger people who remarried prior to 1 April 2015, the Home Office notes that a large proportion of younger firefighters would have been in the 2006 or 2015 Schemes, neither of which have any obstacle to the remarriage of surviving partners. It is also noted that no evidence has been presented to indicate that younger surviving partners are more likely to wish to remarry or to form a new civil partnership than, say, middle-aged survivors.

General drafting comments

3.18 The consultation responses highlighted a number of minor drafting changes, as reflected in the final regulations.

3.19 The Local Government Association (“LGA”) and Staffordshire County Council, (“Staffordshire”), indicated that the amendment at paragraph 10(2) of the miscellaneous amendments should refer to sub-paragraph (4), as well as sub-paragraph (3) in paragraph 3(2) of Part 1, Schedule 2. This is accepted and the addition is reflected in the final SI.

3.20 The LGA also highlighted the need for some additional amendments to correct the references to paragraphs 32 – 34 of Schedule 2 to the Firefighters’ Pension Scheme Regulations 2014. The necessary amendments have been added to the Firefighters’ Pension Schemes and Compensation Scheme (Amendment)(England) Order 2017.

3.21 Staffordshire pointed out that the heading of rule 2 of Part 3 in the 2006 Scheme, “award on ill-health retirement”, is singular rather than plural. This modification is reflected in the final SI.

3.22 Staffordshire questioned the correct heading which should be used for Rule H2 of the 1992 Scheme. As a result, the wording for this heading has been changed to say “appeal against opinion on a medical issue”.

3.23 Staffordshire questioned the correct wording for Rule B1A(3)(b) of the 1992 Order. This has been corrected in the final draft of the SI.

3.24 Staffordshire suggest that the consultation draft of the SI relating to survivors’ benefits introduces a new form of benefit. This is not the case – as previously stated, the reforms consist purely of amendments to existing benefits. In the final draft of the SI, paragraphs (3) and (4) of Rule C9 have been completely re-worded to make this clearer. In this Rule, “injury” is now given in the singular, rather than plural, in order to reflect the established wording.

4. Outcome

4.1 As noted above, the responses to the consultation prompted a number of constructive changes to the original proposed amendments. Some small changes have also been made in the interests of clarity and legal accuracy. Further details are given in the explanatory memoranda.

4.2 The two statutory instruments were laid on 11 September 2017 and come into force on 6 October 2017. The instruments and the accompanying explanatory memoranda are available online at <http://www.legislation.gov.uk/id/uksi/2017/892> and <http://www.legislation.gov.uk/id/uksi/2017/888>.