



Home Office

## **Firefighters' Pension Schemes**

Consultation on amendments to survivors' benefits in the 2006 Scheme and other minor amendments to the firefighters' pension schemes

Consultation response

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# The consultation

- 1.1 This paper sets out the Government's response to the consultation which ran from 16 April to 14 May 2018 dealing with amendments to the provisions for survivors' benefit in the Firefighters' Pension Scheme 2006, and with various unrelated amendments to that scheme and to the Firefighters' Pension Scheme 1992. It outlines the main representations made by respondents under each consultation question and attempts to capture the range of views expressed.
- 1.2 The related draft statutory instrument set out:
- amendments to the Firefighters' Pension Scheme 2006 ("the 2006 scheme"), which had included a compulsory prior nomination process in respect of survivor benefit to be paid to unmarried partners;
  - various unrelated amendments to the Firefighters' Pension Scheme 1992 ("the 1992 scheme") and to the 2006 scheme and
  - amendments to the Police Pension Scheme, both on the nomination process for survivor benefit and on other unrelated aspects of the scheme.
- 1.3 This paper deals only with matters related to the firefighters' pension scheme.

## Background to the consultation

- 1.4 On 8 February 2017, in the matter of an application by Denise Brewster for Judicial Review [2017] UKSC 8 in relation to the Local Government Pension Scheme (Northern Ireland), the Supreme Court held that the nomination process for a surviving adult partner to be nominated in order to be entitled to payment of survivor benefits, where they satisfied the other underlying scheme conditions, should be disapplied. The Supreme Court found that such requirements constituted unjustified discrimination against Ms Brewster and was therefore a breach of her rights under the European Convention on Human Rights. The other underlying conditions in the schemes will still have to be satisfied for a surviving partner to be entitled to receive payment of survivor benefits. The firefighters' pension scheme is one of a number of public service pension schemes being reformed in response to this judgment. However, of the three main firefighters' schemes, only the 2006 scheme needs to be amended, because that is the only one to include a nomination process for survivor benefit.
- 1.5 As part of its duty of care to the firefighters' pension scheme, the Home Office periodically makes amendments to ensure that the scheme is fully up to date. In addition to the above amendment on survivor benefit, the opportunity is being taken to make three other unrelated amendments.

## Summary of proposals

- 1.6 The consultation, published on 16 April 2018, sought responses on the proposals set out in a paper and in a draft statutory instrument.
- 1.7 The policy aim was that as many aspects as possible of the current provisions on survivor benefit should remain in place, whilst removing the necessity for a nomination process. The new term “cohabiting partner” (previously used only in the Firefighters’ Pension Scheme 2015) is being used to replace the term “nominated partner”.
- 1.8 If a member expressly wishes to make their intentions relating to survivor benefits known, the scheme manager can continue to accept a nomination form to enable them to do so, even though there will be no such express provision in the rules.
- 1.9 The other provisions are for the firefighters’ pension schemes to be amended as follows:
- (a) Members of the final-salary pension schemes are permitted to split their pension in the eventuality of a reduction in salary, so as to preserve the value of pension which has already been accrued. It is clear from our records and from conversations with administrators that it has always been the intention that the first part of a split pension in the 1992 and 2006 schemes should be subject to indexation. However, the rules concerned have not specifically provided for this. Equivalent amendments are therefore being made to rule B5A in the 1992 Order and Part 3 Rule 7 of the 2006 Order. The pensions concerned would be up-rated, as if subject to the Pension Increase Act 1971, from the time of the reduction in pay until retirement.
- (b) On divorce from a pension scheme member, under pension sharing provisions, spouses or civil partners of scheme members can be awarded part of their pension as a credit. It has been drawn to the Department’s attention that scheme rules have not taken account of changes to the related legislation on pension sharing. Amendments are therefore being made to both the 1992 and 2006 schemes, so as to ensure that pension credit members can continue to commute their benefit as permitted by the overarching legislation.
- (c) Since 2006, the 1992 scheme has been closed to new membership. For this reason, the Firefighters’ Pension Scheme (England) (Transitional and Consequential Provisions) Regulations 2015 made it clear, in amending Schedule 2 to the 2015 scheme, that club transfer payments from other public service final salary pension schemes should be paid into the 2006 scheme and not into the 1992 scheme. The Home Office accepts, however, that it would be inequitable if existing members of the 1992 firefighters’ schemes in Scotland, Wales and Northern Ireland were not to be permitted to join the English 1992 scheme on transferring to a fire and rescue authority in England. An amendment is therefore being made to permit such scheme transfers to take place.

1.10 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 achieve the aim of removing the requirement for nomination forms whilst otherwise preserving the current principles relating to qualification for survivor benefit?

**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 equality issues not covered here?

## Summary of responses received

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

1	<b>Firefighters' Pensions Scheme Advisory Board</b>
2	<b>Fire Officers' Association</b>
3	<b>National Association of Retired Firefighters</b>
4	<b>West Midlands Fire Service</b>
5	<b>Capita</b>
6	<b>Eunice Heaney (Independent Consultant)</b>
7	<b>Fire Leaders' Association</b>
8	<b>Steven Moseley (on secondment to LGA)</b>
9	<b>Local Government Association</b>

## The responses in detail, including the Government's response

**Q1. To what extent do you agree that the Department's draft regulations achieve the aim of removing the requirement for nomination forms whilst otherwise preserving the current principles relating to qualification for survivor benefit?**

3.1 The Home Office received six responses to this question.

3.2 Four responses argued that the definition of "cohabiting partner" should be made more precise. The Home Office accepts this view and has added the requirement that the cohabiting partner has to be in a position whereby they could enter into a marriage or civil partnership with the scheme member.

3.3 The other two responses agreed that the draft regulations achieved their aim.

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

3.4 Five responses were received.

3.5 Three responses dealt with the indexation of split pension, arguing that increase should be applied from the day after the member's last day of service at the higher rate of pay. One of these responses also said that the amendment should be specifically applied to cases of ill-health by referencing rule B5A(4B)(a). Both of these points are now reflected in the made instrument.

3.6 Two respondents argued that the amendments dealing with the commutation of small pension credits did not work as originally drafted. Following further legal considerations and discussions with the Local Government Association, the statutory references have been re-drafted.

## **Q3. Are you aware of any equality issues not covered here?**

3.7 There were four responses to this question, all of which said that they were not aware of any equality issues not covered in the consultation document. The Home Office is accordingly satisfied that it has discharged its equality responsibilities.

## **Other responses not covered by the consultation questions**

3.8 There were also some helpful comments made with regard to rule / paragraph numbering. These are reflected in the made instrument. However, other comments received did not relate to the core proposals and the Home Office is unable to consider taking them forward at this time.

3.9 It was made clear in the consultation document that the Home Office did not intend to legislate with regard to Voluntary Scheme Pays (VSP), as fire and rescue authorities already had the discretion to exercise VSP on behalf of scheme members. The Scheme Advisory Board have confirmed that they accept this position and will issue guidance to fire authorities with regard to their expectations for VSP to be used in specific circumstances.