



Home Office

## **Firefighters' Pension Scheme**

Consultation on amendments to survivors' benefits in the Firefighters' Pension Scheme 2006 and various amendments to the Firefighters' Pension Scheme 1992, the Firefighters' Pension Scheme 2006 and the Firefighters' Pension Scheme 2015

# Contents

<b>1. Scope of the consultation</b>	<b>3</b>
<b>2. The case for change</b>	<b>7</b>
<b>3. Proposals for consultation</b>	<b>8</b>
<b>4. Consultation Questions</b>	<b>10</b>

# 1. Scope of the consultation

<p><b>Topic of this consultation:</b></p>	<p>Amendments to :</p> <ul style="list-style-type: none"> <li>- the Firemen’s Pension Scheme Order 1992 (S.I. 1992 No. 129) which sets out the Firefighters’ Pension Scheme 1992 (“the 1992 Fire Scheme”);</li> <li>- the Firefighters’ Pension Scheme Order 2006 (S.I. 2006 No. 3432) which sets out the Firefighters’ Pension Scheme 2006 (“the 2006 Fire Scheme” or “the NFPS”);</li> <li>- the Firefighters’ Pension Scheme (England) Regulations 2014 (S.I. 2014 No. 2848) (“the 2014 Regulations”) which sets out the Firefighters’ Pension Scheme 2015 (“the 2015 Fire Scheme”).</li> </ul>
<p><b>Scope of this consultation:</b></p>	<p>This consultation seeks responses from interested parties on proposals detailed in the attached draft regulations.</p> <p>In particular, the consultation covers:</p> <ul style="list-style-type: none"> <li>• changes to survivors’ benefit arrangements in the 2006 fire scheme</li> <li>• unrelated changes to all three firefighters’ schemes.</li> </ul> <p>The draft statutory instrument also covers equivalent amendments to survivors’ benefit regulations in the police pension schemes, as well as other unrelated amendments to those schemes. The Police Pension Scheme Advisory Board is being consulted on these amendments in the usual way. We are not expecting fire stakeholders to comment on the police amendments.</p>
<p><b>Geographical scope:</b></p>	<p>This consultation applies to England only.</p>
<p><b>Impact Assessment:</b></p>	<p>Since there is no impact on private businesses, the Home Office does not intend to produce an Impact Assessment in relation to this consultation.</p>
<p><b>Equality Policy:</b></p>	<p>Equality issues have been given proper consideration, as indicated at paragraph 3.3 below.</p>

## Basic information

<b>To:</b>	This consultation is primarily aimed at fire and rescue authorities, members of the firefighters' pension schemes, and key employer and employee representative bodies.
<b>Body responsible for the consultation:</b>	The Home Office ("the Department").
<b>Duration:</b>	This consultation will run for 4 weeks, from 16 April 2018 to 14 May 2018.
<b>Enquiries:</b>	<p>For any enquiries, please contact Philip Perry : <a href="mailto:philip.perry@homeoffice.gsi.gov.uk">philip.perry@homeoffice.gsi.gov.uk</a> (020 7035 3447)</p> <p>If you have a complaint or comment about the Home Office's approach to this consultation, you should contact the Home Office Consultation Coordinator at the e-mail address: <a href="mailto:HOConsultations@homeoffice.gsi.gov.uk">HOConsultations@homeoffice.gsi.gov.uk</a></p> <p>Alternatively you can write to them at: Consultation Co-ordinator Better Regulation Unit Home Office 3rd Floor, Peel Building 2 Marsham Street London SW1P 4DF</p>
<b>How to respond:</b>	<p>This is a statutory consultation on draft regulations, which are attached at Annex A. Please respond by email to: <a href="mailto:philip.perry@homeoffice.gsi.gov.uk">philip.perry@homeoffice.gsi.gov.uk</a></p> <p>Alternatively, please send postal responses to: Philip Perry, PWPU, 6<sup>th</sup> Floor Fry Building 2 Marsham Street London SW1P 4DF</p> <p>Responses should be received by 14 May 2018.</p>

<p><b>Confidentiality and data protection</b></p>	<p>Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Regulations 2004).</p> <p>If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act 2000, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, in itself, be regarded as binding on the department.</p> <p>The Department will process your personal data in accordance with the Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.</p>
<p><b>Additional ways to become involved:</b></p>	<p>During the consultation period, the Department is willing to consider requests for meetings from key interest groups, including fire and rescue authorities and relevant unions.</p>
<p><b>Compliance with the Consultation Principles guidance:</b></p>	<p>The consultation complies with the Consultation Principles guidance.</p>

## Background

<b>Getting to this stage:</b>	<p>In the event of a member's death, the firefighters' pension schemes provide for the payment of certain benefits and awards to a member's partner ('survivors' benefits'), but as regards qualification for benefit, there are different regulations relating to the required status of that partner, according to which particular pension scheme the member belonged.</p> <p>A recent Supreme Court case relating to the entitlements of a public service pension scheme member's partner has led the Government to give fresh consideration to this matter for all public service pension schemes, including those for firefighters.</p> <p>In addition, a number of unrelated minor amendments are required to ensure that certain limited aspects of the schemes work as originally intended.</p> <p>This consultation seeks the views of interested parties on draft legislation to enact these changes.</p>
<b>Previous engagement:</b>	None.

## 2. The case for change

### Survivors' Benefits

- 2.1 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.
- 2.2 Currently scheme managers are being advised to rely on section 3 of the Human Rights Act 1998 (the "HRA 1998") as the legal basis for their not requiring that a surviving adult partner be nominated in order to receive payment of survivor benefits in the light of the judgment in Brewster. This section of the HRA 1998 provides that, as far as possible, regulations must be read and given effect in a way which is compatible with the European Convention on Human Rights.
- 2.3 Whilst the Home Office is not aware of any problems arising from the above approach, nevertheless, it is now important to formalise the position by amending pension scheme regulations as necessary.

### Other amendments

- 2.4 The Department is also taking this opportunity to continue its work of ensuring that all of the firefighter pension schemes work as intended. The areas which currently require amendment are very limited, as detailed in Section 3.

# 3. Proposals for consultation

## Survivors' Benefits

3.1 Of the three firefighter's pension schemes, only the 2006 scheme requires amendment, as that is the only one to require that unmarried partners should be nominated by the member. This necessitates that a number of rules be amended and, in particular, the insertion of a new Part 2 rule 1(5A) to give a definition of the term "cohabiting partner" to replace the term "nominated partner". The new definition retains as many elements as possible of the previous term, whilst making it clear that there is no longer a need for a nomination to be made. It is proposed that the term "cohabiting partner" be used, as that is the term already used in the 2015 Fire Scheme.

3.2 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.

3.3 The Home Office is satisfied that it has discharged its equality responsibilities in making this amendment. All qualifying cohabiting partners are being given the equivalent rights as spouses. In common with other public sector schemes being reformed, the amendment is being backdated to the inception of the scheme.

## 2015 Firefighters' Pension Scheme consequential amendments

3.4 The other proposals 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 do not specifically provide for this. We are therefore proposing equivalent amendments 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 proposed 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 Fire 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 Fire Scheme and not into the 1992 Fire 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 Fire Scheme on transferring to a fire and rescue authority in England. The proposed amendment would permit such scheme transfers to take place.



## Voluntary Scheme Pays

3.5 It is the view of the Home Office, shared by the Scheme Advisory Board (SAB), that in the appropriate circumstances fire and rescue authorities already have the discretion to exercise Voluntary Scheme Pays on behalf of scheme members. The SAB's Bulletin 4 refers – see <http://www.fpsboard.org/index.php/board-publications/bulletins> . Accordingly, the Home Office does not intend to legislate with regard to Voluntary Scheme Pays in the firefighters' pension schemes.

## 4. Consultation 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 ?