POLICY NOTE

THE FIREFIGHTERS' PENSION AND COMPENSATION SCHEMES (AMENDMENT) (SCOTLAND) ORDER 2019

SSI 2019/382

The above instrument was made in exercise of the powers conferred by section 26(1) to (5) of the Fire Services Act 1947(**1**), section 12 of the Superannuation Act 1972(**2**), section 34(1) to (5) and (8) and 60(2) of the Fire and Rescue Services Act 2004(**3**). The instrument is subject to negative procedure.

The purpose of this instrument is to:

a) in calculating entitlement to survivors of civil partnerships and same sex marriages align the member's service used with benefits paid female survivors of opposite sex marriages.

b) ensure that a firefighter is not disadvantaged by the provision which allows for two pensions to be calculated and awarded separately to reflect a reduction in pay during the firefighters pensionable employment.

c) allow the Scottish Fire and Rescue Service discretion to allow and pay for the difference in a lump sum based on two and a quarter times the members pension where the scheme provides for a lower restricted lump sum.

Policy Objectives

The changes to survivor benefits are to reflect the Supreme Court's ruling on 12 July 2017 in the Walker v Innospec case ([2017] UKSC 47) that the company's position had been incompatible with EU Directive 2000/78/EC on discrimination in the workplace. It was concluded that Mr Walker's male spouse should be entitled to a pension calculated on the basis of all the years of his service with Innospec, provided that at the time of Mr Walker's

(**1**) 1947 c.41. Section 26 was repealed by sections 52 and 54 and schedule 2 of the Fire and Rescue Services Act 2004 (c.21). Subsections (1) to (5) of section 26 continue to have effect for the purposes of the Firefighters' Pension Scheme, in relation to Scotland by virtue of S.I. 2004/2306. The name of the scheme was changed to the Firefighters' Pension Scheme by S.I. 2004/2306. Section 26 was amended by section 42 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c.65), section 29 and Schedule 8 of the Superannuation Act 1972 (c.11), section 1 of the Police and Firemen's Pensions Act 1997 (c.52), section 256 of, and Schedule 25 to, the Civil Partnership Act 2004 (c.33), and S.I. 1976/551. The Secretary of State's functions under section 26, in so far as they were exercisable in relation to Scotland, were devolved to Scottish Ministers by S.I. 1999/1750 and S.I. 2006/304.

(**2**) 1972 c.11. Section 16 applies section 12 with the necessary modifications to orders under section 26 of the Fire Services Act 1947. Section 16 is repealed by section 52 and schedule 2 of the Fire and Rescue Services Act 2004, but continues to have certain effect by virtue of S.I. 2004/2306.

(**3**) 2004 c.21. The functions of the Secretary of State in respect of section 34(1) to (5) and (8) and 60(2) as regards Scotland were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 S.I. 2005/849.

death they remained married. The amendments are fully retrospective and remove the current restriction on using only service from April 1988 for benefits paid to survivors of civil partnerships and same sex marriages.

Only the 1992 Order is being amended for this amendment because this is the only scheme that limits the service to be taken into account when calculating the survivor benefit for same-sex civil partners or spouses. The Compensation Order is being amended for the same reason.

Entitlement to two pensions in the Firefighters' Pension Scheme relates to circumstances where a scheme member received a higher level of salary earlier in their career and then changed role, resulting in a salary reduction. In certain circumstances this results in an entitlement to two separate pensions in the Firefighters' Pension Scheme 1992. The amendment to rule B5A clarifies that two pensions should only be awarded in cases where the member's resulting overall level of benefit would be higher than if a single pension were to be awarded.

The order makes provision for the limit on the amount of pension that may be commuted for a lump sum to be increased up to a quarter of the pension at the discretion of the authority. Any additional costs will be met by the authority.

Consultation

A formal consultation was undertaken from 26 August to 30 September 2019. The consultation was issued to representatives of firefighters and employers and relevant Scottish and UK Government departments.

Impact Assessments

This policy does not impose any additional costs or reduce existing costs for business, third or public sector organisations and on that basis no Business and Regulatory Impact Assessment is required for these Regulations.

Financial Effects

The changes provided by this instrument will not have a material impact on the costs of the scheme.

Scottish Public Pensions Agency

An Agency of the Scottish Government

29 October 2019