EXPLANATORY MEMORANDUM TO

The New Firefighters' Pension Scheme (Amendment) Order (Northern Ireland) 2015

SR 2015 No. 9

The Firefighters' Pension Scheme (Amendment) Order (Northern Ireland) 2015

SR 2015 No. 8

The Firefighters' Compensation Scheme (Amendment) Order (Northern Ireland) 2015

SR 2015 No. 7

1. Introduction

1.1. This combined Explanatory Memorandum has been prepared by the Department of Health, Social Services and Public Safety to accompany the Statutory Rules (details above) which are laid before the Northern Ireland Assembly.

1.2. The Statutory Rules are made under powers conferred by Article 10(1), (3), (4) and (5) of the Fire Services (Northern Ireland) Order 1984 and is subject to the negative resolution procedure.

2. Purpose

2.1. These Orders make provision for access to a pension scheme for retained firefighters employed by the Northern Ireland Fire and Rescue Service (NIFRS) between 1st July 2000 and 5th April 2006 inclusive. They also provide for the pension contribution rates payable by members of the Firefighters' Pension Scheme (FPS) and the New Firefighters' Pension Scheme (NFPS) from 1st April 2014.

3. Policy Background

3.1. Retained firefighters are different from regular firefighters in that they only attend a fire station when they receive an emergency call-out or other activities. They have historically been precluded from membership of the FPS but have been entitled to join the NFPS since 6th April 2006.

3.2. Following the introduction of the Part-time workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000 ("the Part Time Workers Regulations") retained firefighters, supported by the Fire Brigades Union (FBU), made a claim for equal treatment with whole time regular firefighters on their terms and conditions of service, including pension benefits.

3.3. The case was heard in the Employment Tribunal in 2002, and the Tribunal found certain similarities, and a number of differences, between the

contractual terms and work of retained and regular firefighters. The Tribunal concluded that retained firefighters could not compare themselves with regular firefighters under the Part-Time Workers Regulations. This decision was upheld by the Employment Appeal Tribunal on appeal.

3.4. The case was then appealed to the Court of Appeal which, in July 2004 stated retained firefighters are employed under the same type of contract of employment as their full-time colleagues.

3.5. The claimants appealed to the House of Lords. The House of Lords judgement was delivered on 1 March 2006, and by a three to two majority, the Law Lords found in favour of the claimants.

3.6. The rationale for the decision of the majority was twofold. They held that (i) retained firefighters were employed under the same type of contract as a regular firefighter, and (ii) that the Tribunal had misdirected itself on the legal approach. Their Lordships remitted the case back to the Tribunal for reconsideration of whether the retained and regular firefighters were engaged in the same or broadly similar work.

3.7. On its re-hearing, the Employment Tribunal decided that the claimants were engaged in broadly similar work as their whole time comparators and had established unfavourable treatment in their terms and conditions of service, including the denial of access to pension rights, which could not be justified. Negotiations then commenced between the Fire Brigades Union and Department for Communities and Local Government (DCLG) to deliver an outcome that provided the necessary comparable pension rights.

3.8. This legislation makes amendments to the FPS and the NFPS as well as the Compensation Scheme in order to provide retained firefighters, employed by NIFRS between 1st July 2000 and 5th April 2006 inclusive, with access to a modified section (the "modified scheme") of the NFPS. This provides similar, albeit not identical, pension benefits as those provided under the FPS. DCLG and the FBU agreed that it would be more appropriate to provide access through a 'modified' section of the NFPS. The NFPS already makes provision for retained firefighters, including mechanisms and formulas for calculating a retained member's pension. In addition to this, the NFPS is the more modern scheme with provision for nominated partners.

4. Summary of main proposals

4.1. The legislation makes the amendments to implement the terms of the Settlement that was agreed with the FBU. The main terms of the modified scheme are:

- a uniform accrual rate of 1/45th;
- a Normal Pension Age of 55 years;
- a deferred pension age of 60 years;
- fixed commutation factors to reflect the commutation rates in the FPS that are applicable on the day before the amending legislation is made;

- the contribution rate payable will be calculated at the rate applicable to the FPS in respect of the period of service being purchased (i.e. for service before 1 April 2012 the contribution rate will be 11% of pay; for service from 1 April 2012, it will be the relevant tiered contribution rate in force for the FPS at the relevant point);
- a death grant of two times pensionable pay;
- a time limited retrospective death grant of 2.5 times pensionable pay in respect of those who would have been eligible to be members if they had not died before 6 April 2006;
- an opportunity for eligible members to purchase additional pensionable service in 1/45ths;
- the ability for eligible members to convert existing NFPS service to the proposed new pension arrangements;
- the transfer of external pension benefits into the proposed new pension arrangements will be in accordance with the terms of the NFPS;
- ill-health pension arrangements, lower and higher tier, will be in accordance with the terms of the NFPS;
- the abatement of a member's pension will be in accordance with the terms of the NFPS;
- any member who subsequently opts out of the modified scheme will not be permitted to rejoin that scheme.

5. Consultation

5.1. The proposals, including the draft Orders, were available for public consultation from 1 July 2014 until 22 September 2014.

5.2. One response was received from Northern Ireland Fire & Rescue Service (NIFRS).

6. Equality Impact

6.1. The Order will have no adverse differential impact on equality of opportunity.

7. Regulatory Impact

7.1. As the Order will impose no additional costs on businesses, charities or the voluntary sector a full Regulatory Impact Assessment has not been completed.

8. Financial Implications

8.1. Estimated cost is approximately £17.5 million.

9. Section 24 of the Northern Ireland Act 1998

9.1. It is the view of the Department that this Order is compatible with section 24 of the Northern Ireland Act 1998.

10. EU Implications

10.1. Not applicable

11. Parity or Replicatory Measure

11.1. This Order will ensure Northern Ireland maintains parity with their counterparts in England, Scotland and Wales.

12. Additional Information

12.1. Not applicable