EXPLANATORY MEMORANDUM TO

THE FIREFIGHTERS' PENSION SCHEME (ENGLAND) (AMENDMENT) REGULATIONS 2024

2024 No. 170

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Minister Chris Philp at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

2.2 Peter Spreadbury, Deputy Director for Police Workforce and Professionalism Unit, at the Home Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Simon Primmer, at the Home Office; Telephone: 07825 208857 or email: simon.primmer@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument makes amendments to the Firefighters' Pension Scheme (England) Regulations 2014. The purpose of this instrument is to make provision for unpaid carer's leave to be included in calculating pensionable service, and to remedy an error in the Treasury Revaluation Orders for 2021 and 2022.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

5.1 The Carer's Leave Act 2023 comes into force on 1st April 2024. It amends the Employment Rights Act 1996 to provide for an entitlement for employees to take unpaid leave to care for a dependent. Regulation 18(2)(e) of the Firefighters' Pension Scheme (England) Regulations 2014 provides for certain periods of unpaid leave to be treated as pensionable service, but not unpaid leave to care for a dependent. Regulation 18(2)(f) permits the scheme manager discretion to allow for this entitlement, however, the policy intention is that this should be an absolute entitlement, and not discretionary. This amendment provides an entitlement for employees in this scenario.

5.2 This Order also remedies an error in the HM Treasury Revaluation Orders for 2021 and 2022. The orders specified an Average Weekly Earnings (AWE) figure based on provisional ONS figures, rather than revised ONS figures, which had been used in previous Treasury Revaluation Orders from 2015 to 2020. Although the legislation setting out the revaluation of Public Sector Pensions Schemes does not specify a figure of AWE growth to be used for the purposes of revaluation, it is the Government's view that the previous practice of using revised ONS estimates should have been maintained in 2021 and 2022.

5.3 HM Treasury instructed affected schemes to correct the position affecting those members currently active, deferred and pensioner members who were in active service at any point between 1 April 2020 and 31 March 2022, through scheme regulations under section 3(2)(a) of the Public Service Pensions Act 2013. Further details can be found in the Written Ministerial Statement (WMS) published by HM Treasury on 6 July 2023[1].

5.4 Regulation 24 of the Firefighters' Pension Scheme (England) Regulations 2014[2] provides for a retirement index adjustment in order for an employee's pension entitlement to be revalued in line with the WMS and achieving the correct the financial position for effected members.

6. Legislative and Legal Context

6.1 This Order amends the Firefighters' Pension Scheme (England) Regulations 2014 ("the 2014 Regulations") in order to provide for unpaid carer's leave to be included in calculating pensionable service. Discretion currently exists under regulation 18(2)(f) of the 2014 Regulations which could be used but the Carer's Leave Act 2023 provides for an absolute entitlement, so it is considered preferable not to leave this to scheme administrators' discretion.

6.2 This Order also amends the Firefighters' Pension Scheme (England) Regulations 2014 to remedy an error in the Treasury Revaluation Orders for 2021 and 2022 noting an error with the 2021 and 2022 AWE growth published by the Office of National Statistics (ONS) in the WMS published on 6 July 2023.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Home Office carried out a closed technical consultation with the Firefighters' Pensions Scheme Advisory Board (England) on these proposals to meet statutory obligations between 27 November 2023 and to 17 December 2023.

7.2 The consultation proposed amendments to the Firefighters' Pension Scheme (England) Regulations 2014 to make provision for unpaid carer's leave to be included in calculating pensionable service, and to remedy the error in the Public Service Pensions Revaluation Orders for 2021 and 2022.

7.3 The Scheme Advisory Board agreed that this Statutory Instrument was the only legislative route to achieve the desired outcomes as set out in the WMS.

[1] Written statements - Written questions, answers and statements - UK Parliament

[2] Regulation 24 of The Firefighters' Pension Scheme (England) Regulations 2014 (legislation.gov.uk).
The Explanatory Memorandum for The Firefighters' Pensions Scheme (England) can be found here.

8. Applicable Guidance

8.1 Guidance has already been issued to Scheme Managers, providing instructions for the sector to implement the changes required to the scheme revaluation rates for 2021 and 2022. HM Treasury published a Written Ministerial Statement on 6 July 2023 confirming the error and the correction required.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the firefighters' pension scheme has little or no impact on businesses. There will be a limited impact to public sector pension schemes for those members who were members of the Firefighters' Pension Scheme and impacted by the error in the 2021 and 2022 revaluation orders to ensure their position is corrected.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the legislation does not apply to them.

9.3 The legislation does not impact small or micro businesses.

9.4 The impact on the public sector is relatively small to firefighters. The amendments will ensure that those employees who wish to take unpaid carer's leave and continue to contribute to the pension scheme, will be protected from any reduction to pension scheme service for this period of unpaid leave as well as ensuring those employees impacted by the AWE error identified by HM Treasury are put back into their correct position.

10. Monitoring and review

10.1 There are no proposals to actively monitor or review the outcome of the changes made by this instrument. Nonetheless, if a stakeholder (for example, pensions administrators, fire authorities, the relevant scheme advisory board, local pension boards or unions) raised a particular issue with the Home Office on the operation of the regulations as a result of one of the amendments, the Home Office would review it.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").