POLICY NOTE

THE FIREFIGHTERS' PENSION SCHEME (SCOTLAND) AMENDMENT REGULATIONS 2022

SSI 2022/103

The above instrument was made in exercise of the powers conferred by section 1(1), (2)(f) 2 and 3 of, and Schedule 3 to, the Public Service Pensions Act 2013 ("the 2013 Act"). It is subject to negative procedure.

The Regulations implement reforms to the Firefighters' Pension Schemes under the Public Service Pensions and Judicial Offices Act ("the 2022 Act") in respect of pensions for firefighters in Scotland.

Policy Objectives

Occupational pensions policy is reserved to the UK Government. The 2013 Act introduced reforms to public service pension schemes including those in devolved nations. The aim of the reforms was to implement the recommendations of the Independent Public Service Pensions Commission: Final Report, to make public service pensions, which due to increased workforce longevity had increasingly been paid for by taxpayers, more affordable and sustainable. New pension schemes were introduced from 1 April 2015, characterised through a higher normal pension age (NPA) for all scheme members, calculating benefits on a career average revalued earnings (CARE) basis rather than through final salary, and the introduction of a cost control mechanism.

Transitional protection provided for some scheme members, dependent on proximity to their NPA on 31 March 2012, to be either "fully protected" or "taper protected". Members in these categories were allowed to remain in their legacy scheme permanently, or for a set period before transitioning to the reformed CARE scheme before 31 March 2022.

In 2018, following a successful challenge by members of the judicial and firefighters' pension schemes, the transitional protections were found to be discriminatory against younger members by the Court of Appeal, as protection was only offered to older scheme members. The UK government accepted this ruling had implications for all public service schemes that contained similar transitional protection arrangements and introduced legislation through the 2022 Act to remedy the discrimination caused by these transitional protections.

The purpose of the amendments in this instrument, in implementation of the 2022 Act, is to ensure that the pension schemes governed by the Firemen's Pension Scheme Order 1992 ("the 1992 Scheme") and the Firefighters' Pension Scheme (Scotland) Order 2007 ("NFPS") will, except for limited purposes, be closed to the accrual of pension benefits with effect from 1st April 2022. Any members currently in pensionable service under those pension schemes will, on that date, begin to accrue benefits in the scheme established by the 2015 Regulations.

A further instrument is being prepared that will complete the statutory arrangements as set out in the 2022 Act.

The Amendments

This instrument achieves the purposes of closing the legacy scheme at 31 March 2022, moving all active members to the 2015 Scheme on 1 April 2022 and ensuring that rules around additional pension elections and transfers in to the existing scheme for transitional members are applied consistently to those previously classed as full protection members.

Regulation 1 establishes the title of the Regulations and the commencement date is set at 1 April 2022.

Regulation 2 addresses the need to ensure that, where members of the 1992 Scheme are awaiting a decision on whether they are entitled to an ill-health award when they join the 2015 Scheme on 1 April 2022, the criteria used to determine entitlement to such an award reflect the criteria in the 1992 Scheme. This ensures that members in this position are treated fairly.

Regulation 3 ensures that the policy intention to close the legacy schemes is attained by amending schedule 2 of the 2015 Regulations as follows:

a) the definitions of "closing date" and "transition date" in paragraph 1 are amended to insert dates in respect of those terms that apply to full protection members so that provisions which refer to those terms operate as intended in respect of such members;

b) paragraph 3(3) is amended so that a scheme manager may only set a tapered protection closing date under that paragraph if such date is before 1 April 2022;

c) paragraph 9(2) is amended so that protection ceases for a full protection member on the earlier of the day on which they leave pensionable service under the existing scheme, or 31 March 2022;

d) paragraph 31(2) is amended so that no new elections to purchase additional service under the NFPS may be made after 31 March 2022;

e) paragraphs 37 and 38 are omitted so that members who are awaiting a decision on whether they are entitled to an ill-health award under an existing scheme on 1 April 2022 transition to the 2015 Scheme on that date.

Consultation

To comply with the requirements of section 21 of the 2013 Act, a public consultation was undertaken from 24 November 2021 and closed on 18 January 2022. Those consulted were Firefighters' pension scheme members, employers, related trade unions and relevant Scottish and UK Government Departments. Consultation responses showed a general agreement with the purpose and nature of the amendments. Three responses were received to the consultation and a summary of the consultation responses will be made available on the Scottish Public Pensions Agency's website www.sppa.gov.uk.

Impact Assessments

An initial Equality Impact Assessment has been completed and was included with the public consultation. This assessment will continue to be reviewed and updated and a full assessment will be published with the second and final instrument.

A fairer Scotland duty assessment was not carried out. The policy set out in this SSI is technical in nature and implements reserved UK legal changes. Accordingly, the Fairer Scotland Duty Assessment is not considered to be applicable here.

Financial Effects

This policy introduces further reform to the pension scheme for firefighters in Scotland, following court judgment and public consultation. 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.

Scottish Public Pensions Agency
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17 March 2022