EXPLANATORY MEMORANDUM TO

THE FIREFIGHTERS' PENSION SCHEMES (ENGLAND) (AMENDMENT) ORDER 2023

2023 No. 986

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. Purpose of the instrument

2.1 This instrument makes amendments to the Firefighters' Pension Scheme (England) Order 2006 and the Firemen's Pension Scheme Order 1992. The purpose of this instrument is to extend the period during which persons who were employed in England as retained firefighters have access to a pension scheme.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

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

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

5. European Convention on Human Rights

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

6. Legislative Context

6.1 This Order amends legislation containing firefighters' pension schemes, in order to give effect to a 2018 ruling[1] by the Court of Justice of the European Union ('CJEU') in the context of long running employment tribunal litigation brought by retained firefighters. The Firefighters' Pension Scheme (England) (Amendment) Order 2014 (S.I. 2014/445) amended the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006 (S.I. 2006/3432), to provide those persons who were employed in England as retained firefighters during the period from 1 July 2000 to 5 April 2006 inclusive with access to a pension scheme for that period.

[1] moj-response-et-february_2019.pdf (publishing.service.gov.uk)

7. Policy background

What is being done and why?

7.1 Historically, retained firefighters did not have any entitlement to membership of the Firefighters' Pension Scheme 1992 (the '1992 Scheme'). Retained firefighters were first given access to a fire service occupational pension arrangement when the Firefighters' Pension Scheme 2006 (the '2006 Scheme') was introduced on 6 April 2006. The 2006 Scheme was established when the Firefighters' Pension Scheme (England) Order 2006 came into force.

7.2 A group of retained firefighters brought legal proceedings against the government in the case of "Matthews v. Kent and Medway Towns Fire Authority (2006)" ('the Matthews case') under the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 ('the PTWR'). The claims related to the exclusion from the 1992 Scheme, which was then provided solely to full-time regular firefighters.

7.3 Following the Employment Tribunal's determination that the denial of access to pension rights for retained firefighters constituted unfavourable treatment which could not be justified in the Matthews case, a new pension arrangement was introduced through the creation of a modified section in the 2006 Scheme (the 'modified scheme') on 1 April 2014.

7.4 The modified scheme currently provides preferential pension terms, similar to those provided by the 1992 Scheme, to retained firefighters who were employed between 1 July 2000 and 5 April 2006 inclusive. It also applies a backstop date, as only service accrued on or after 1 July 2000 can be considered for pension entitlement.

7.5 In March 2014, shortly before the modified scheme was introduced, the claimants in a related legal case, O'Brien v Ministry of Justice (the 'O'Brien case'), indicated that they were seeking to appeal to the Court of Appeal. Their aim was to ensure service accrued in the Judges' Pension Scheme prior to the PTWR coming into force would be included for the purposes of calculating pension entitlement for part-time judges. This prompted claimants in the Matthews case not to withdraw their claims after the introduction of the modified scheme. Instead, they successfully applied to the Employment Tribunal for a stay pending the outcome of the O'Brien case.

7.6 The relevant legal aspect of the O'Brien case was whether a part-time judge could include service from before 7 April 2000 for the purposes of calculating their pension entitlement. This legal point was referred to the CJEU for a decision.

7.7 On 7 November 2018, the CJEU gave its decision that claimants who were in service on 7 April 2000 and retired on or after that date should be able to include their full period of earlier service for pension entitlement.

7.8 At present, the modified scheme is restricted to service accrued by affected retained firefighters from 1 July 2000. The CJEU ruling effectively removes the backstop date for any retained firefighters employed on or beyond 7 April 2000. Further remedial policy ('the Matthews remedy') is required in respect of the Matthews case to reflect this CJEU ruling.

7.9 On 9 March 2022, the Home Office, the Local Government Association (LGA), Fire Brigades Union (FBU), and the Fire and Rescue Services Association (FRSA) signed a Memorandum of Understanding (MOU) relating to how the Matthews remedy will be delivered. The MOU set out that the remedy would take place through the offering of an 18-month long second options exercise ('the 2023 Options Exercise') and that

the scope and operation of this exercise would be subject to consultation and the making of secondary legislation.

7.10 Additionally, the Home Office has been made aware through stakeholder engagement, that some individuals who were entitled to join the modified scheme under the 2023 Options Exercise were not given a reasonable opportunity by their employing FRSA to join. The Home Office has agreed that it is only fair for affected individuals to be given an opportunity to join under the 2023 Options Exercise.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument makes limited amendments to the Firefighters' Pension Scheme (England) Order 2006 (S.I. 2006/3432) and the Firemen's Pension Scheme (England) Order 1992 (S.I. 1992/129) and this is not considered to be a suitable opportunity to consolidate these amendments with other amendments made to those instruments.

10. Consultation outcome

10.1 A public consultation on retained firefighters' pensions was carried out from 31 March to 9 June 2023 by the Home Office on these measures. As part of the consultation, the Home Office engaged with the Firefighters' Pension Scheme Advisory Board (England). Part of the role of this board is to provide advice to the Home Secretary on the desirability of making changes to the firefighters' pension schemes.

10.2 The consultation proposed amendments to the Firefighters' Pension Scheme (England) Order 2006 to extend the period during which persons who were employed in England as retained firefighters have access to a pension scheme. Home Office sought views on whether the proposed amendments achieve this policy intention for all eligible individuals.

10.3 Where respondents gave a view, the majority agreed that the correct categories of individuals had been identified as being eligible retained firefighters for the pension entitlement.

11. Guidance

11.1 No Home Office guidance is to be issued on this instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities, or voluntary bodies.

12.2 The impact on retained firefighters is relatively significant but, if the remedy were not being introduced, trying to rectify and settle all the subsequent Employment Tribunal claims that would be brought on the same basis would cost the sector much more in time and resources. The fire sector and the wider public sector have known for some time that this remedy will be implemented in October.

12.3 A full Impact Assessment has not been prepared for this instrument because the firefighters' pension scheme has little or no impact on businesses. Although there will

be impact across the public sector, as set out above this is unavoidable, the sector is aware and is prepared to implement this remedy.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 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, Home Office would review it.

14.2 The instrument does not include a statutory review clause.

15. Contact

15.1 Anthony Mooney at the Home Office; telephone 07504 737245 or email anthony.mooney@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Peter Spreadbury, Deputy Director for Police Workforce and Professionalism Unit, at the Home Office can confirm that this explanatory memorandum meets the required standard.

15.3 Minister Chris Philp at the Home Office can confirm that this explanatory memorandum meets the required standard.