POLICY NOTE

THE FIREFIGHTERS' PENSION SCHEMES (SCOTLAND) AMENDMENT ORDER 2024

SSI 2024/26

The above instrument was made in exercise of the powers conferred by section 26 (1), (2) and (5) of the Fire Services Act 1947 and section 34 (1), (2) and (4) of the Fire and Rescue Services Act 2004. The instrument is subject to *negative procedure.*

Summary Box

These provisions deliver further amendments to the New Firefighters' Pension Scheme (Scotland) set out in the Firefighters' Pensions Scheme (Scotland) Order 2007. The Order is amended to provide a cohort of retained firefighters with further options to purchase historic pensionable service. This mirrors changes being made to the equivalent firefighter schemes in the rest of the UK, as a result of case law.

Policy Objectives

In the employment tribunal case *Matthews v Kent and Medway Towns Fire Authority & others http://www.bailii.org/uk/cases/UKHL/2006/8.html*, the judgement reached held that firefighters employed on the Retained Duty System between 1 July 2000 and 5 April 2006 were permitted access to pension provisions with retrospective effect to 1 July 2000, in line with requirements of Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (PTWR). In response, in 2014 the UK Government (and Scottish and Welsh Ministers in the equivalent devolved schemes) made changes to the relevant New Firefighters' Pension Schemes (NFPS) to introduce a category of "special membership" to allow eligible serving or former retained firefighters to purchase pensionable service for this period during an Options Exercise.

In Scotland, this exercise was undertaken by the Scottish Fire and Rescue Service with support from the Scottish Public Pensions Agency (SPPA). Special membership largely replicates the terms of the earlier Firefighters Pension Scheme 1992, from which this cohort had been historically excluded.

Subsequently, in a similar and long-running case brought by a fee-paid judge seeking equal treatment in the Judicial Pension Scheme, the European Court of Justice ruled in *O'Brien v Ministry of Justice* that equal treatment should extend beyond the date of the Part-time Workers Directive (which led to the PTWR) on 7 April 2000. This ruling has a read across to the *Matthews* case and the NFPS, and means a second options exercise should be conducted. To deliver this, a Memorandum of Understanding (MoU) was drawn up in England in 2022 between the Home Office, the Local Government Association (representing English fire and rescue authorities) and the Fire Brigades Union. This MoU sets out the cohort that is in scope for the second options exercise, chiefly those retained firefighters who were in active service before or on 7 April 2000 with continuous service before and after that date. Neither Scottish Ministers nor the SFRS were party to the MoU, however following the precedent set in 2014 it is considered that introducing similar changes in Scotland is appropriate.

EU Alignment Consideration
This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation
To comply with the requirements of section 34(5) of the Fire and Rescue Services Act 2004, a consultation took place from 20 September 2023 to 6 November 2023.

In particular representatives of Firefighters' employers and employees other Scottish Government interests and UK Government departments were consulted. Three responses were received and on the basis of these responses the proposed amendments will be adopted.

A full list of those consulted and who agreed to the release of this information is attached to the consultation report which will be published on the Scottish Public Pensions Agency's website:
https://pensions.gov.scot/firefighters/scheme-governance-and-legislation/consultations

Impact Assessments

An equality impact summary statement has been produced rather than a full EQIA as the instrument is removing historical discrimination and equalising treatment as far as possible to retained firefighters, in comparison to regular firefighters. There was limited data from the first options exercise with the only protected characteristic available for comparison being age.

Financial Effects

The *Minister for Community Wealth & Public Finance* confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Scottish Public Pensions Agency
January 2024