EXPLANATORY MEMORANDUM TO

THE POLICE AND FIREFIGHTERS' PENSIONS (AMENDMENT) REGULATIONS 2018

2018 No. 997

1. Introduction

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

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations make amendments to various instruments relating to pensions payable in respect of police officers in England and Wales and firefighters in England.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Certain of the regulations make retrospective provision – these are set out in regulation 1(2). The following provisions in the enabling legislation permit regulations made under those provisions to have retrospective effect—

- section 12(2) of the Superannuation Act 1972, as applied by section 16(3) of that Act in relation to orders made under section 26 of the Fire Services Act 1947,
- section 1(5) of the Police Pensions Act 1976,
- section 34(3) of the Fire and Rescue Services Act 2004, and
- section 3(3)(b) of the Public Service Pensions Act 2013.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England and Wales for the police pension regulations and England only for the firefighters' schemes.

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 In relation to pensions for police officers these Regulations amend—

- the Police Pension Regulations 1987 ("the 1987 Regulations")
- the Police Pension Regulations 2006 ("the 2006 Regulations")
- the Police (Injury Benefit) Regulations 2006 ("the Injury Benefit Regulations")
- the Police Pension Fund Regulations 2007 ("the 2007 Regulations")
- the Police Pensions Regulations 2015 ("the 2015 Regulations").

6.2 In relation to pensions for firefighters these Regulations amend—

- the Firefighters' Pension Scheme Order 1992 ("the 1992 Order"),
- the Firefighters' Pension Scheme (England) Order 2006 ("the 2006 Order")
- the Firefighters' Pension Scheme (England) Regulations 2014 ("the 2014 Regulations").

6.3 The 1987 Regulations, the 2006 Regulations, the Injury Benefit Regulations and the 2007 Regulations are made under the Police Pensions Act 1976 (1976 Act). The 1992 Order is made under the Fire Services Act 1947. The 2006 Order is made under the Fire and Rescue Services Act 2004. The 2015 Regulations and the 2014 Regulations are made under the Public Service Pensions Act 2013.

6.4 The Home Office consulted the SI Registrar in accordance with paragraph 4.7.6 of the Statutory Instrument Practice and decided not to use the free issue procedure on the grounds that it would be disproportionate, given that the bulk of the instrument is not correcting errors.

7. Policy background

What is being done and why

Survivor Benefits in the Police Pension Schemes

7.1 This change is to eliminate certain requirements that the Supreme Court found to constitute unjustified discrimination giving rise to a breach of the European Convention on Human Rights. Following an application for Judicial Review by Denise Brewster in relation to the Local Government Pension Scheme (Northern Ireland), the Supreme Court found on 8 February 2017 ([2017] UKSC 8), that the nomination process for a surviving adult partner to receive survivor benefits, where they satisfied other underlying conditions, constituted unjustified discrimination and was therefore a breach of a pension scheme member's rights under the European Convention on Human Rights. The other underlying conditions in such schemes still have to be satisfied for a surviving partner to receive payment of survivor benefits.

7.2 The 2006 Regulations and the 2015 Regulations are being amended (regulations 4 and 33) to remove the requirement for a nomination form to have been completed, where other underlying conditions already exist and are met. Parallel amendments (regulations 5 and 34) require a death grant to be paid to a surviving cohabiting partner where the relevant conditions are met.

7.3 These amendments will be effective from 6 April 2006, when the 2006 Regulations came into force and 1 April 2015 for when the 2015 Regulations came into force. All

cases since these dates will need to be considered by scheme managers to determine if scheme members who meet the conditions are now eligible for a survivor's pension or a death grant payment. Where a death grant has already been paid to the deceased member's estate, a qualifying cohabiting partner may now be entitled to a payment of a second death grant. However, if the scheme manager is of the opinion that the cohabiting partner benefited from the original payment then any second payment can be apportioned accordingly. It will be for scheme managers to identify any eligible cohabitees where information permits them to come to that conclusion.

Other Amendments in Police Pension Schemes

7.4 One change is to permit certain members of police pension schemes to have the right to use a 'Voluntary Scheme Pays' arrangement where they are currently excluded from the 'Mandatory Scheme Pays' arrangements. This is particularly relevant for police pension scheme members whose annual allowance tax charge has accrued over more than one police pension scheme. This change will also benefit police pension scheme members who are subject to HMRC's new tapered annual allowance arrangements. The arrangements allow qualifying members to request the pension scheme to pay, from an entry threshold of £1000, any Annual Allowance tax charge on pension income accrued above that individual's HMRCs Annual Allowance limit. Corresponding deductions are then made from that individual's pension benefits.

7.5 Another change is of a technical nature, to ensure that officers who join the police pension scheme established by the 2015 Regulations ("the 2015 scheme") have the same access to benefits provided through the Injury Benefit Regulations as are available to officers who are members of earlier pension schemes. The Injury Benefit Regulations make provision for payments to officers, who through no fault or negligence of their own, are permanently disabled as a result of an injury received in the execution of their duty, or, where death results from such an injury, to surviving dependents.

7.6 Regulations 7 to 22 amend the Injury Benefit Regulations to refer, in the main, to the 2015 Regulations for those who are members of that scheme. This includes a reduction in the amount of injury pension paid if a pension is also payable under the relevant police pension scheme. The changes have retrospective effect from 1 April 2015. The intention to make these amendments and to do so retrospectively was signified in Home Office Circular 014/2015 published on 21 May 2015.

7.7 The 2007 Regulations provide for transfers between the relevant police fund and police pension fund. The 2007 Regulations are amended by regulations 24 to 29 to insert references to the 2015 Regulations to ensure that pension contributions received from, and pension benefits paid to, police officers under those regulations are properly accounted for.

7.8 There are a number of amendments to the 2015 Regulations to improve the operation of the pension scheme established by those Regulations. All are backdated to 1 April 2015. These are described in the following four paragraphs.

7.9 Regulation 31 ensures that the opening balances held in pension accounts are revalued according to the changes in prices in the year previous to the date of the opening balance.

7.10 Regulation 32 allows certain members to count towards their membership of the police pension scheme any periods with the National Crime Agency served whilst

based in Northern Ireland. The backdating given effect here arises because the 2015 Regulations were made and laid before a change came into force that allows relevant members of the National Crime Agency to be based in Northern Ireland.

7.11 Members on certain types of unpaid leave are able to pay extra contributions to be able to make the period of unpaid leave pensionable. Regulation 36 provides that the reference pay on which a member can pay contributions during an 'absence on unpaid leave' is the pay that member received immediately before that leave began.

7.12 There are many members who moved to the 2015 scheme on or after 1 April 2015, who necessarily have linked service in one of the two prior final salary pension schemes. That linking means that the service built up prior to moving to the 2015 scheme still enjoys a final salary link and other protections. However, for the 1987 Regulations, further analysis showed that it was possible, albeit very rare, for the protections to give a lower pension than the rights accrued at 1 April 2015. Regulation 38 ensures that deferred members of the 2015 scheme who also have linked benefits under the 1987 Regulations cannot suffer any detriment when the entitlement to benefit is calculated.

Survivor Benefits in the Firefighters' Pension Schemes

7.13 As a consequence of the Supreme Court decision outlined at paragraph 7.1, pension schemes should no longer impose a requirement for members to have completed a nomination form in respect of their cohabiting partner in order for survivor's pension to be paid. Of the firefighters' pension schemes, only the 2006 Scheme has such a requirement. Regulation 43 removes this requirement and will be effective from 6 April 2006, when the 2006 Order came into force.

Other Amendments in the Firefighters' Pension Schemes

7.14 1992 and 2006 Scheme members are permitted to 'split' their pension in certain cases where they have a reduction in salary. Regulations 40 and 44 clarify that, where a firefighter has an entitlement to two pensions following such a split, the amount of the first pension is up-rated annually from the date that the firefighter ceased to earn the higher rate of pay.

7.15 Divorcing partners of scheme members may be granted pension credit, which they may subsequently be permitted to commute for a lump sum. Regulations 41 and 45 update an out of date statutory reference in the 1992 and 2006 Orders to such commutation of pension credit.

7.16 Under the Firefighters' Pension Scheme (England) (Transitional and Consequential Provisions) Regulations 2015, protected members of the 1992 Scheme transferring to England from Scotland, Wales and Northern Ireland are not permitted to remain as 1992 Scheme members. Regulation 45 clarifies that such members are not included in the general prohibition on new joiners to the 1992 Scheme, maintaining the position that existed prior to 1 April 2015.

8. European Union (Withdrawal) Act / Withdrawal of the Union Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union**.**

9. Consolidation

9.1 This instrument makes reasonably limited amendments to the orders and regulations listed at paragraph 6 above and this is not considered to be a suitable opportunity to consolidate these amendments with all other amendments made to those orders and regulations.

10. Consultation outcome

10.1 Under section 1(1) of the 1976 Act, the Home Office is required to consult the Police Advisory Board of England and Wales (PABEW)before making these regulations and under section 1(1ZB) of the 1976 Act must invite the views of the Northern Ireland Policing Board and the Police Association for Northern Ireland. Under S.21 of the Public Service Pensions Act 2013 the Home Office is required to consult those who we consider relevant and affected – this is achieved through consulting the PABEW.

10.2 The Home Office consulted the PABEW. This body has representatives from the staff associations and police employers and includes representatives from Northern Ireland in the process. The consultation period ran from 16 April 2018, concluding on the 14 May 2018. The consultation responses had a material effect on the proposed regulations, as summarised below.

10.3 **Voluntary Scheme Pays (VSP) – Police**:- All consultees raised an issue with how the provisions had been drafted and that it was not clear the wording permitted for pension growth over more than one scheme. The Police Federation raised a number of other points such as the requirement to be contributing to the scheme as a condition to use VSP. Such a condition may exclude deferred pensioners and those on unpaid leave, who could potentially receive an annual allowance charge, from using VSP. This requirement has been removed from the provisions. A further comment was for an express provision to deal with debiting the annual allowance tax charge over two schemes rather than relying on an existing HMRC regulation. Such wording has now been inserted into the regulations. NPCC wanted clarity in the provisions to confirm VSP would come out of the pension fund account. It was decided that this was not necessary; as Mandatory Scheme Pays is not mentioned as a payment from the pension fund regulations, then such a provision is not needed for VSP.

10.4 **Surviving cohabiting partners**:- The Police Federation wanted to know what the Home Office would be doing to identify surviving cohabiting partners who may now be entitled to a survivor pension or death grant but did not claim as they previously needed a form and given that the effective date of these changes is from 6 April 2006. As the Home Office does not hold information on the scheme members then it will be for scheme managers to identify any eligible cohabitees where information permits them to come to that conclusion.

10.5 **Injury benefits:-** The Police Federation raised a number of issues about whether the amendments would operate to give the desired outcome. Their concerns centred around the eligibility of police officers, the relevant pay definitions and how part-time officers were catered for. We have revised the drafting that led to those issues.

10.6 **Other Police Amendments:**- The Police Federation's and other stakeholders' comments on these amendments were mainly technical drafting points which have been reflected in the draft. The one substantive point was whether an underpin for transitional members actually worked as intended – we have reconsidered and revised accordingly.

10.7 **Section 34(5) of the Fire and Rescue Services Act requires the Secretary of State responsible for making the regulations to consult either those who are likely to be affected by them, or the representatives of those persons, before making any amendments.** The reforms were subject to one statutory consultation of employers, including fire and rescue authorities, administrators and software providers, and representatives of the workforce, beginning on 16 April and concluding on 14 May 2018 Nine responses were received.

10.8 Four responses indicated that the definition of "cohabiting partner" should be made more precise. As a consequence the statutory instrument now makes it clear that the cohabiting partner has to be in a position whereby they could enter into a marriage or civil partnership with the scheme member.

10.9 There were also some detailed comments dealing with references to statute and to paragraph numbering, which are reflected in the final instrument.

10.10 In respect of the firefighters' schemes, copies of the consultation and the Government's response are available on the Government's website: https://www.gov.uk/government/publications/firefighters-pension-schemes-government-response

11. Guidance

11.1 No Home Office guidance is given on this instrument. Guidance has already been provided on Police Injury Benefits as mentioned in paragraph 7.6 above. No guidance is given on the collection of small technical amendments to the 2015 Regulations as they are self-explanatory within the context of the 2015 regulations. On police VSP, no guidance is needed as police forces are aware how it works. The Local Government Association will be giving informal guidance to fire authorities and administrators.

12. Impact

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

12.2 There is no impact on the private sector.

12.3 An Impact Assessment has not been prepared for this instrument, as it relates to the police and fire pension schemes alone and no significant impact on business, charities or voluntary bodies is foreseen.

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 to this Statutory Instrument. Nonetheless, if a stakeholder (for example, pensions administrators, police forces, police pension authorities, fire authorities, the relevant scheme advisory board, local pension boards) raised a particular issue with the Home Office on the operation of the regulations as a result of one of the amendments we would investigate.

15. Contact

15.1 Sara Alderman (*police pensions issues)* at the Home Office Telephone: 020 7035 1920 or email: sara.alderman@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Philip Perry (*firefighters' pensions issues)* at the Home Office Telephone 020 7035 3447 or email philip.perry@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.3 Rachel Watson, Deputy Director for the Police Workforce and Professionalism Unit, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.4 Nick Hurd, Minister of State for Police and the Fire Service, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.