EXPLANATORY MEMORANDUM TO

THE POLICE AND FIREFIGHTERS' (PENSIONS ETC.) (AMENDMENT) (ENGLAND AND WALES) REGULATIONS 2019

2019 No. 378

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. They also make provision for amendment to Police Federation Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Certain regulations make retrospective provision – these are set out in regulation 1(3) of this statutory instrument. The following provisions in the enabling legislation permit regulations made under those provisions to have retrospective effect—

- section 12(1) 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;
- 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 the Police Federation regulations; and England only for the firefighters' pension regulations.

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 benefits for firefighters these Regulations amend—

- the Firefighters' Pension Scheme Order 1992 ("the 1992 Order").
- the Firefighters' Compensation Scheme (England) Order 2006 ("the Compensation Order").

The 1992 Order is made under the Fire Services Act 1947. The Compensation Order is made under the Fire and Rescue Services Act 2004.

6.2 In relation to police pensions, maternity support leave allowance for police officers and the Police Federation regulations these Regulations amend—

- the Police Pension Regulations 1987 ('the 1987 Regulations').
- the Police Pensions Regulations 2006 ('the 2006 Regulations').
- the Police Pensions Regulations 2015 ('the 2015 Regulations').
- the Police (Injury Benefit) regulations 2006.
- the Police Federation (England and Wales) Regulations 2017 ('the 2017 Regulations').

7. Policy background

What is being done and why

Survivor benefits in the police and firefighter pension schemes

7.1 The policy areas affected are:

- Survivor Benefits in the police and firefighter pension schemes
- Police unpaid maternity support leave
- The Police Federation Regulations
- Entitlement to two pensions in the Firefighters' Pension Scheme
- Police employee contributions

7.2 The changes are to reflect the Supreme Court's ruling on 12 July 2017 in the Walker v Innospec case ([2017] UKSC 47) that the company's position had been incompatible with EU Directive 2000/78/EC on discrimination in the workplace. It was concluded that Mr Walker's male spouse should be entitled to a pension calculated on the basis of all the years of his service with Innospec, provided that at the time of Mr Walker's death they remained married. The Home Office was directed by HM Treasury in March 2018 to make amendments to the police and firefighter pension schemes. Consideration on how to implement directions into regulations has taken place. The amendments are fully retrospective, to count all past service for which male scheme members paid pension contributions.

7.3 Regarding the three firefighters' pension schemes, only the 1992 Order is being amended, and for police only the 1987 Regulations, because they are the only schemes that limit the service to be taken into account when calculating the survivor benefit for same-sex civil partners or spouses. The Compensation Order is being amended for the same reason. The amendments abolish the existing limitations under which only service since 1988 is taken into account.

7.4 In the 1987 police scheme, there is a further issue concerning mixed contribution rates before 1990 for female and male members, resulting in different entitlements to survivor benefits. The scheme was structured in a way to incorporate the roles of men and women at that time; that meant women could not leave a benefit for their survivor upon their death, whereas men could. However, women were not required to pay the same level of contribution as men. As female members were given the option to uprate their survivor benefits in the past, it would not be fair to allow those who paid a lower level of pension contributions, before 1990, to access the same survivor benefits as male counterparts without a commensurate level of contribution. In order to address this issue, the Home Office will now allow female members a further opportunity to uprate their survivor benefits. This will mean female members will receive the same benefits as male members, should they choose.

Police unpaid maternity support leave

7.5 The police unpaid maternity support leave eligibility start date is being amended from 1 September 2014 to 3 April 2011 as a result of representations from a stakeholder. There is a very small cost to employers, which would apply when officers retire, of allowing them to do this.

Amendment to Police Federation Regulations

7.6 The amendment to regulation 9 of the Police Federation Regulations 2017 specifies the date by which the Metropolitan Police Branch will determine the number of officers in the force for the purposes of electing branch representatives. In order to maintain consistency in the Federation's election process, this date shall be the same as the date set for all other 'Branch Councils' (as per regulation 8(3)) and branch boards (as per regulation 10(4)) which is defined as the "31st March in the year that was two years before that in which the election is held".

Entitlement to two pensions in the Firefighters' Pension Scheme

7.7 This relates to circumstances where a scheme member had had a higher level of salary earlier in their career and then changed role, resulting in a salary reduction. In certain circumstances this results in an entitlement to two separate pensions in the Firefighters' Pension Scheme 1992. The amendment to rule B5A clarifies that two pensions should only be awarded in cases where the member's resulting overall level of benefit would be higher than if a single pension were to be awarded.

Police employee contributions

7.8 The existing 2015 police pension scheme employee contributions provisions expires on 1 April 2019 under section 170 of the 2015 regulations. In order for employee contributions to continue to be collected lawfully, the date must be amended or removed. An enhanced consultation, with a regulatory requirement to reach an agreement, took place over 12 weeks which is a longer period than other consultations on usual regulation changes that are typically carried out over a 6 week period. This longer consultation is required to amend a protected element of pensions under section 22 of the Public Service Pensions Act 2013. It took place between 8 November 2018 - 13 February 2019 and resulted in a one year extension to the existing employee contribution rates, until 31 March 2020, as an interim measure until the valuation process resumes. This approach has been replicated in other public sector pension schemes.

8. European Union (Withdrawal) Act/Withdrawal of the United 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 5 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

Police

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 of Northern Ireland. Under S.21 of the Public Services Pensions Act 2013, the Home Office is required to consult those who it considers relevant and affected – this is achieved through consulting the PABEW.

10.2 Consultees raised technical drafting issues on the proposed regulations, which the Home Office considered and where necessary made the appropriate change. For example, one consultee questioned the drafting on the regulation for female members having option to uprate their survivor benefits. The Home Office considered the comments made but decided that no further amendments were needed.

10.3 On a more substantive issue, a consultee asked for further amendments to be made in respect of same-sex survivor benefits to be extended to female survivors of female officers. The Home Office considered the request, and has chosen not to make the amendment; the proposal would allow this group access to benefits without payment of commensurate contributions. On a further issue, a consultee believed new inequalities would be created by the proposed amendments as female officers had never been given the opportunity to uprate pre-1988 service, and would have liked retired female police officers to receive the option to uprate their survivor benefits. However, female officers have been given an option to buy back pre-1990 service and once a pension comes into payment retirees are not given opportunities to make additional contributions to improve their benefits. In addition, no previous options exercise has been open to retirees. For these reasons, the Government has not adopted this proposal.

10.4 Under s22 of the Public Service Pensions Act 2013, when amendments are made to employee contribution rates under s170 of the 2015 Regulations, the Home Office is obliged to carry out an enhanced consultation. This means that the Home Office is required to consult the persons, or representatives of those persons, likely to be affected by the amendments and reach an agreement with them. The Home Office did this through consultation with PABEW. The decision making process will be set out in a report to be laid before Parliament on the 28 February 2019, which is required.

10.5 Relevant to the consultation, and the options proposed, was that on 30 January 2019, in response to the legal case on transitional protections in public service pension

schemes, HM Treasury announced the suspension of the valuation process. The valuation process provides a monetary figure of the scheme's value, taking into account future cost liabilities of retiring police officers.

10.6 However, the date in the regulations needed to be changed, as without this employee contributions could not be lawfully collected. A 12 week consultation period ran from 8 November 2018 to 11 February 2019, with the Police Pensions Scheme Advisory Board (SAB), a sub-committee of PABEW. This consists of employer and staff associations that - according to the 2016 valuation data – representing approximately 75,000 police officers contributing to the 2015 police pension scheme and who are affected by changes to employee contribution rate changes.

10.7 One consultee preferred a 6-month extension to the existing employee contribution rate change. The Home Office then put forward options: (i) remove the 31 March 2019 date by which the contributions can be collected by members; (ii) extend the date by one year to 31 March 2020; or (iii) extend the date by four years to 31 March 2023.

10.8 Some consultees argued that the changes in employee contribution rates should be aligned with the four yearly valuation process. But as the four year term for employee contributions is linked to the HMT valuation process, an interim measure is needed until that resumes. The Home Office made a further proposal to SAB on 7 February 2019, following consideration of these consultation responses. The Home Office has also held conversations with the Police Federation of England and Wales and the Superintendents' Association with a view to reaching agreement. The SAB has subsequently confirmed its consensus view, to extend the date from 31 March 2019 for one year to 31 March 2020, to ensure employee contributions can continue to be lawfully collected.

Fire

10.9 Section 21 of the Public Service Pensions Act requires the Home Office to consult either those who are likely to be affected, or the representatives of those persons, before making any regulations on firefighters' pensions. The regulations were subject to consultation with the Fire and Rescue Authorities, trade unions, pension software providers and the Scheme Advisory Board; consultation commenced on 18 December 2018 and ended on 29 January 2019. Nine responses were received.

10.10 There was strong support for the proposals to amend survivor benefits. Four responses suggested that changing benefits could result in additional administrative work for pension authorities. The Home Office recognises this possibility, but the need to implement changes arising from a legal judgement is paramount.

10.11 It was further suggested that two additional cross-references should be inserted into rule B5A dealing with the provision for two pensions. This suggestion has been accepted and incorporated into the final statutory instrument.

11. Guidance

11.1 No Home Office guidance is to be issued on this instrument. The Local Government Association will be giving informal guidance to police and fire pension administrators and fire authorities.

12. Impact

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

12.2 There is no, or no significant, impact on the private sector.

12.3 An Impact Assessment has not been prepared for this instrument, as it relates only to the police and fire pension schemes 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 monitor actively or review the outcome of the changes made by 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, the Police Federation) raised a particular issue with the Home Office on the operation of the regulations, as a result of one of the amendments, it would investigate.

14.2 The regulation does not include a statutory review clause.

15. Contact

15.1 Simon Glenville (police pensions issues) at the Home Office; telephone 020 7035 5345 or email simon.glenville@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Philip Perry (fire 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.