



Philip Perry
By email to philip.perry@homeoffice.gsi.gov.uk

Dear Philip,

Consultation on amendments to survivors' benefits in the Firefighters' Pension Scheme 2006 and various amendments to the Firefighters' Pension Scheme 1992, the Firefighters' Pension Scheme 2006 and the Firefighters' Pension Scheme 2015

Thank you for the department's consultation document inviting comments on the above draft regulations.

Please find attached to this letter my response as the LGA Firefighters' Pension Adviser to the consultation on amendments to survivors' benefits in the Firefighters' Pension Scheme 2006 and various amendments to the Firefighters' Pension Scheme 1992, the Firefighters' Pension Scheme 2006 and the Firefighters' Pension Scheme 2015

If you have any questions, please let me know.

Yours sincerely

Clair

Clair Alcock
Firefighters' Pensions Adviser
Mobile: 07958 749056 Office: 020 7664 3189
Email: Clair.Alcock@local.gov.uk

Part 1 - Response to the consultation:

Consultation on amendments to survivors' benefits in the Firefighters' Pension Scheme 2006 and various amendments to the Firefighters' Pension Scheme 1992, the Firefighters' Pension Scheme 2006 and the Firefighters' Pension Scheme 2015.

Question 1

To what extent do you agree that the Department's draft regulations achieve the aim of removing the requirement for nomination forms whilst otherwise preserving the current principles relating to qualification for survivor benefits?

Response

I agree that the draft regulations remove the requirement for nomination forms and that the draft paragraph 5A(a) introduce a definition of cohabitating partner. However I would recommend that within the definition of 'long term relationship' in paragraph 5A(b), it should confirm the meaning of 'relationship' i.e someone that the firefighter has been living with **as if** a spouse or civil partner, but their relationship has not been formalised by marriage or civil partnership.

Whilst "Relationship" was not defined for the purposes of nomination, Rule 1(8), which under these amendments would be omitted, gave a good indication of the intended meaning –

"(8) A firefighter member, deferred member or pensioner member may not make a nomination under paragraph (6) if (under the law of England and Wales) he is prohibited from marrying or, as the case may be, becoming the civil partner of the person he wishes to nominate."

Question 2

Can you foresee any challenges to the administration of the pension schemes with regard to the proposed draft regulations?

Response

Please see the comments below with regards to each of the proposed draft regulations

39 – Increases to split pensions – 1992 Scheme – B5A

As currently worded regulation B5A, would continue to be a challenge to administer.

Paragraph 3A needs to

- Also apply to the first pension calculated under the formula set out in paragraph (4B)(a)
- Reference the commencement being the day after the date of the firefighter's last day of service at the higher rate of pay
- Clarify that it applies as if one of the qualifying conditions in Section 3 of the Pensions (Increase) Act 1971 is satisfied (so that it applies if retiring before age 55)
- Allow for a proportional adjustment between the last PI date before leaving and the date of retirement so as to make the application of Pensions Increase in the first year after retirement 'work' so that pension 1 effectively receives Full PI (or just the indexation element if they are not 55).

By use of the term 'equivalent' it is clear that the regulation amendment does not apply actual pension increases under the pension increase act, and therefore the payment is not subject to the Act's conditions for payment of increases. However, the SAB will consider issuing guidance to administrators and FRAs to confirm this when legislation is laid.

I have also taken the opportunity to identify further amendments to rule B5A, rather than just the drafted paragraph 3A. Please see Part 2, detailed response, for further comments.

The Home Office should also consider whether further guidance or amendments are needed to rule B5A to clarify how the two pension rule should be applied to transitional members, who suffered a drop in pay before transition to the 2015 scheme

40 – Commutation of small pension credits: 1992 scheme – IA2

As drafted this amendment does not make the regulation any more effective than currently drafted, and therefore will be difficult to administer, this is because it could potentially give FRAs the power to make unauthorised trivial commutation payments. Please see detailed comments in Part 2.

42 - Surviving cohabiting Partners

I do not foresee any administrative challenges by the amendment to remove the requirement to nominate, however the aforementioned comment with regards to making the interpretation of 'relationship' clear within the rules of the scheme will make this regulation easier to communicate for administrators.

Paragraph 3.2 of the consultation document makes clear that this does stop a member nominating, merely removes the requirement for them to do so.

43 – Increases to split pensions: 2006 Scheme

I have made some minor draft amendments to this rule under Part 2 of this document, however I do not foresee any challenges to the administration of this rule, as it doesn't have the same problems with dual accrual as the 1992 scheme.

44 – Commutation of small pension credits: 2006 Scheme

As drafted this amendment does not make the regulation any more effective than currently drafted, and would therefore difficult to administer, this is because like the amendment to the 1992 scheme it could potentially give FRAs the power to make unauthorised trivial commutation payments. However, the current wording of the 2006 scheme also refers to the lump sum being a 'trivial commutation lump sum death benefit' and a 'trivial commutation lump sum' which is impossible. The draft amendment does not amend this wording.

However, I would recognise that the occurrence of commutation of small pensions for pension credit members is likely to be very limited.

45 – Amendments to paragraph 45 of schedule 2 of the 2014 regulations

I do not foresee any challenges with regards to this amendment.

Question 3

Are you aware of any equality issues not covered here?

Response

No I do not consider these draft amendments raise any equality issues.

Part 2 – Detailed Response

VSP in the Firefighter Schemes

Paragraph 3.5 of the consultation document lays out that it is the view of the Home Office to not legislate for Voluntary Scheme Pays in the firefighters' pension schemes. This is because fire and rescue authorities already have the discretion to exercise Voluntary Scheme Pays on behalf of scheme members.

The scheme advisory board have considered this issue, and have taken further legal advice to ensure that the ability to offer voluntary scheme pays does not change if a Fire Authority becomes a PFCC. Having considered this the Scheme Advisory Board are content that VSP will not be legislated for, and will issue guidance to FRAs with regards to their expectations for VSP to be used in specific circumstances.

Detailed comments on the draft amendments

Please see comments below on the draft amendments, including suggested changes where applicable.

39 – Increases to split pensions – 1992 Scheme – B5A

The comments below consider amendments to other paragraphs within rule B5A, not just paragraph 3a as drafted.

B5A Entitlement to two pensions

(1) A regular firefighter who—

(a) on taking up a different role; or

(b) becoming entitled to a different rate of pay in his existing role,

suffers a reduction in the amount of his pensionable pay such that the amount to be taken into account in the calculation of the pension to which he will be entitled at normal pension age is less than it would otherwise have been, is entitled to two pensions.

(2) Subject to paragraph (4A), the amounts of the pensions shall be those found by applying the formulae set out in paragraphs (3) and (4) but, where the aggregate of those amounts ~~exceeds that of~~ **is lower than** the single award to which the firefighter would be entitled under paragraph (6) if he were to give notice under that paragraph or under paragraph (7) if he were to make an election under rule G3, his entitlement shall be to an amount equal to the amount of that single award.

(3) The amount of the first pension is that found by applying the formula—

$$\frac{A \times B \times D}{C \times 60}$$

where—

- A is the firefighter's average pensionable pay for the year ending with his last day of service at the higher rate of pay;
- B is the firefighter's pensionable service up to that day;
- C is the firefighter's total pensionable service; and
- D is the total number of 60ths that would have been used in the calculation of his single award had he given the instruction referred to in paragraph (6).

(3A) The amount of the first pension determined under paragraph (3) **or (4B)(a)**, is increased for each year before the firefighter's last day of service by an amount equivalent to that which would apply if the first pension were a pension in payment commencing from the ~~date of~~ **day after** the firefighter's last day of service at the higher rate of pay, to which the Pensions (Increase) Act 1971(1) applied **and one of the qualifying conditions in Section 3 of that Act was satisfied**.

We consider that the regulation should also be drafted to allow for a proportional adjustment in the first year after retirement

(4) The amount of the second pension is that found by applying the formula—

$$\frac{E \times F \times D}{C \times 60}$$

where—

C and D have the same meanings as in paragraph (3);

E is the firefighter's average pensionable pay for the year ending with his last day of service; and

F is—

(a) where the aggregate of—

- (i) the pensionable service used to ascertain the value of B in his case for the purpose of the formula in paragraph (3); and
- (ii) his pensionable service for the period commencing with his first day of service at the lower rate of pay and ending with his last day of service,

exceeds 30, the difference between B and 30;

(1) 1971 c. 56.

(b) in any other case, his pensionable service for the period commencing with his first day of service at the lower rate of pay and ending with his last day of service.

(4A) Where a firefighter is entitled to—

- (a) a lower tier ill-health pension where rule B3(3) applies,
- (b) a higher tier ill-health pension where rule B3(4) applies, or
- (c) a deferred pension under rule B5,

the amount of the first and second pension shall be calculated in accordance with Part 3 or Part 6 (as the case may be) of Schedule 2 with the formula in paragraph (4B).

(4B) For the purpose of the calculation in paragraph (4A)—

(a) the amount of the first pension is that found by applying the formula—

$$\left(\frac{A}{E}\right) \times \left(\frac{B}{C}\right) \times G$$

(b) the amount of the second pension is that found by applying the formula—

$$\left(\frac{F}{C}\right) \times G$$

(c) in sub-paragraphs (a) and (b) A, B, and C have the same meaning as in paragraph (3), E and F have the same meaning as in paragraph (4) and G is the amount of the single pension that the firefighter would otherwise have been awarded.

(5) Subject to paragraph (6), the pensions become payable on the date on which a pension would have become payable to the firefighter in whichever of the circumstances referred to in rules B1, B2, B3 and B5 applies in his case.

(6) A firefighter who is entitled to two pensions under this rule may, before leaving the employment of the fire and rescue authority by which he is employed, by written notice instruct the authority to make a single award which shall be calculated in accordance with whichever of rules B1, B1A, B2, B3 and B5 is applicable in his case.

(7) Where a firefighter who would be entitled to two pensions under paragraph (1) makes an election under rule G3, he shall be entitled instead to a single pension, calculated as if it were a deferred pension to which he was entitled under rule B5.

(8) In paragraph (1), “role”, in relation to a firefighter, means the role in which he is for the time being employed, being a role set out in “Fire and Rescue Services Rolemaps” issued by the National Joint Council for Local Authority Fire and Rescue Services in August 2005.

(9) Where a person to whom this rule applies is a person to whom paragraph (10) of rule G1 applies, in paragraph (34) for “E is the firefighters' average pensionable pay for the year ending with his last day of service” substitute “E is the firefighters' average pensionable pay as modified by paragraph (10) of rule G1 for the year ending with his last day of service in the 2015 Scheme” .

40 – Commutation of small pension credits: 1992 scheme – IA2

“Where the amount of pension payable under rule IA1 does not exceed the commutation limit for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (lump sum rule).”

This draft amendment is potentially too narrow with regards to commutation limit and too wide with reference to Part 1 of schedule 29 and could potentially give FRAs the power to make unauthorised trivial commutation payments. The regulation should be re-drafted to ensure that commutation in these circumstances should be referenced to paragraph 7, and should be an authorised payment under section 166.

Wording such as LGPS regulations reg.34 of [SI 2013/2356](#) would allow pension credit members to commute on a trivial pension basis and avoid the potential problems outlined.

42 - Surviving cohabiting Partners

Whilst amending Part 2, rule 1, paragraph 5b, perhaps the Home Office will consider amending paragraph 5 from “A person is a dependent member of this Scheme if he is” to “A person is a dependent member of this Scheme if they are”

As mentioned, in the draft rule 5A(b) the term relationship should be defined within the definition as being **as if** being married or civil partnered.

43 – Increases to split pensions: 2006 Scheme

There are no significant problems with the draft amendment to these rules, because “from the date that paragraph (1) first applied to the member” would presumably be the first day of the reduced level of pensionable pay, however a minor amendment similar to the 1992 rule could be implemented to provide clarity.

(3A) The amount of the first pension determined under paragraph (3), is increased for each year before the firefighter’s last day of service by an amount equivalent to that which would apply if the first pension were a pension in payment commencing from **the day after** the date that paragraph (1) first applied to the member, to which the Pensions (Increase) Act 1971 applied **and one of the qualifying conditions in Section 3 of that Act was satisfied.**

44 – Commutation of small pension credits: 2006 Scheme

As drafted this amendment does not make the regulation any more effective than currently drafted, this is because it could potentially give FRAs the power to make unauthorised trivial commutation payments. Also it doesn’t make any amendment to the current anomaly of this rule which refers to the lump sum being a ‘trivial commutation lump sum death benefit’ and a ‘trivial commutation lump sum’ which is impossible.

Wording such as LGPS regulations reg.34 of [SI 2013/2356](#) would allow pension credit members to commute on a trivial pension basis and avoid the potential problems outlined.

45 – Amendments to paragraph 45 of schedule 2 of the 2014 regulations

I have no comments to make on this draft regulation

Clair Alcock
14 May 2018