



Philip Perry  
By email to [philip.perry@homeoffice.gsi.gov.uk](mailto:philip.perry@homeoffice.gsi.gov.uk)

Dear Philip,

Consultation on amendments to benefits in the Firefighters' Pension Scheme 1992 and the Firefighters' Compensation Scheme 2006

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 the Firefighters' Pension Scheme 1992 and the Firefighters' Compensation Scheme 2006.

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](mailto:Clair.Alcock@local.gov.uk)

## **Part 1 - Response to the consultation:**

Consultation on amendments to benefits in the Firefighters' Pension Scheme 1992 and the Firefighters' Compensation Scheme 2006.

### **Question 1**

To what extent do you agree that the Department's draft regulations achieve the aim of equalising survivor benefits from civil partnerships and same-sex marriages?

### **Response**

I agree that the draft regulations remove the limitation on service used in the calculation of award for a surviving civil partner. Which has the effect of ensuring that pensions for surviving civil partners are calculated on the same basis as surviving spouses, and therefore equalising the benefits paid.

However to clarify a point made in paragraph 2.1 of the [consultation](#) that the changes made in 2004 to introduce civil partner survivor pensions replicated widowers benefits of opposite sex marriages, this is not a correct statement in respect of FPS 1992.

Widowers' pensions under FPS 1992 have always been assessed on all pensionable service. No distinction was made between female firefighters and male firefighters for purposes of assessing the length of service upon which the pension for a surviving spouse would be assessed.

Surviving spouse" has always been defined, in [FPS 1992 Schedule 1 Part 1](#), as "a widow or widower".

### **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

### **Paragraph 3. Amendment to rule B5A**

I do not foresee any administrative challenges by the amendment to this regulation for clarity.

However if the regulations are being amended to improve clarity then the following amendments should also be made

- Paragraph 6 should be amended so that it references rule B1A
- Paragraph 9 should be amended to change the reference from paragraph 3 to 4

See part 2 for full suggested amendments

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

### **Paragraphs 4 to 11 - Equalising survivor benefits from civil partnerships and same-sex marriages**

As the amendments are retrospective, some additional work may need to be carried out by the Fire Authority in order to identify members affected by the amendments, this could include;

- Identifying members of the scheme who may be affected by the changes
- Identifying deaths and making retrospective payments that may be due to the estate
- Identifying whether qualifying members have transferred out benefits and whether further retrospective payments are due.

The extent of this work may vary per Fire Authority, and depending on circumstances could be challenging to identify affected members.

For clarity and consistency interpreting the regulations, we would recommend the following amendments;

- A definition of “civil partner” and “surviving civil partner” should be added to Schedule 1, Part 1 of the 1992 regulations and Part 1, Rule 2 of the Compensation Scheme Regulations
- The definition of “surviving spouse” in the 1992 scheme and the compensation scheme should be amended to clarify that this also applies for same-sex marriage.
- In the proposed amendments, the use of “surviving” before “civil partner” where it follows “surviving spouse” is not consistent with earlier amendments made by SI 2005/3228, which added the expression “civil partner” rather than “surviving civil partner”.

**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 not covered by the regulations.

## Part 2 – Detailed Response

### Detailed comments on the draft amendments

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

### 3 – Amendment to Part B (personal awards)

**The comments below consider amendments to other paragraphs within rule B5A, not just paragraph 2 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 **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—

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

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 day after the firefighter's last day of service at the higher rate of pay, to which the Pensions (Increase) Act 1971 applied.

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

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

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;

(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” .

### **Paragraphs 4 to 11 - Equalising survivor benefits from civil partnerships and same-sex marriages**

Minor comments for consistency and clarity

- The draft amendment order inserts the word ‘surviving civil partner’ where appropriate, however the Firefighters’ Pension Scheme (Civil Partnership Amendments) (England and Scotland) Order 2005 SI 2005/3228 inserted the word ‘civil partner’. It is not clear whether there is intended to be a difference between the two uses of the word.
- There is no definition of either ‘surviving civil partner’ or ‘civil partner’ in schedule 1, part 1 ‘glossary of expressions’
- It would be helpful to extend the definition of ‘surviving spouse’ to clarify that this rule applies to same sex marriages.

## **4 – Amendments to Part C (awards on death –spouses)**

### **Rule C1 Spouse’s ordinary pension**

- There is no definition of ‘civil partner’ as used in paragraph 1, Rule C1
- There is no definition of ‘surviving civil partner’ as used in paragraph 2, Rule C1
- Consistency over the use of ‘surviving civil partner’ and ‘civil partner’. For example; the amendment order instructions the insertion of ‘surviving civil partner’ into paragraph 2. However it is not consistent with earlier amendments made by [SI 2005/3228](#), which added the expression “civil partner” to paragraph 1.
- It would be helpful to extend the definition of ‘surviving spouse’ as used in paragraph 1 & 2 to clarify that this rule applies to same sex marriages

### **Rule C4 Spouse’s accrued pension**

- There is no definition of ‘civil partner’ as used in paragraph 1, Rule C4
- There is no definition of ‘surviving civil partner’ as used in paragraph 3, Rule C4
- Consistency over the use of ‘surviving civil partner’ and ‘civil partner’. For example; the amendment order instructions the insertion of ‘surviving civil partner’ into paragraph 3. However it is not consistent with earlier amendments made by [SI 2005/3228](#), which added the expression “civil partner” to paragraph 1.
- It would be helpful to extend the definition of ‘surviving spouse’ as used in paragraph 1 & 3 to clarify that this rule applies to same sex marriages

### **Rule C5 Limitation on award to spouse or civil partner by reference to date of marriage or formation of partnership**

- There is no definition of ‘civil partner’ as used in paragraph 1, Rule C5
- There is no definition of ‘surviving civil partner’ as used in paragraph 2, Rule C5
- Consistency over the use of ‘surviving civil partner’ and ‘civil partner’. For example; the amendment order instructions the insertion of ‘surviving civil partner’ into paragraph 2. However it is not consistent with earlier amendments made by [SI 2005/3228](#), which added the expression “civil partner” to paragraph 1.
- It would be helpful to extend the definition of ‘surviving spouse’ as used in paragraph 1 & 2 to clarify that this rule applies to same sex marriages



## **Rule C6 Spouse or civil partner's requisite benefit and temporary pension**

- It would be helpful to extend the definition of 'surviving spouse' as used in paragraph 1 & 2 to clarify that this rule applies to same sex marriages

## **Rule C8 Limitation where spouses living apart**

- It would be helpful to extend the definition of 'surviving spouse' as used in paragraph 1, 2, 3 & 7 to clarify that this rule applies to same sex marriages

## **5 – Amendments to Part J (special cases)**

Minor comments for consistency and clarity

- It would be helpful to extend the definition of 'surviving spouse' to clarify that this rule applies to same sex marriages.

## **J1 Guaranteed Minimum pensions**

- Amends rule J1, paragraph 2b to substitute "in the case of a person who dies at any time and leaves a widow, a surviving same-sex spouse or surviving civil partner, that person is entitled to a pension of a weekly rate equal to half the deceased person's guaranteed minimum, and"
- 'Surviving same-sex spouse' either needs a definition or clarity within the definition of 'surviving spouse'

## **6 – Amendments to Schedule 1 to the scheme**

- No comments

## **7 – Amendments to Schedule 3 to the scheme**

Minor comments for consistency and clarity

- There is no definition of either 'surviving civil partner' or 'civil partner' in schedule 1, part 1 'glossary of expressions'
- It would be helpful to extend the definition of 'surviving spouse' to clarify that this rule applies to same sex marriages.

## **Schedule 3 (awards on death – spouses) to the Firefighters’ Pension Scheme (In schedule 2 to the order)**

### **Part 1**

- There is no definition of ‘surviving civil partner’ as used in paragraph 2 & 3, Part 3
- It would be helpful to extend the definition of ‘surviving spouse’ to clarify that this rule applies to same sex marriages

### **Part 2**

- There is no definition of ‘surviving civil partner’ as used in paragraph 1 & 2(1), Part 4
- It would be helpful to extend the definition of ‘surviving spouse’ to clarify that this rule applies to same sex marriages

## **8 – 11 – Amendments to the Firefighters’ Compensation Scheme (England) Order 2006**

Minor comments for consistency and clarity

- There is no definition of either ‘surviving civil partner’ or ‘civil partner’ in Part 1, Rule 2 ‘Interpretation’
- It would be helpful to extend the definition of ‘surviving spouse’ to clarify that this rule applies to same sex marriages.

### **Part 3 Awards on Death: Spouses and Civil Partners**

#### **Rule 1 – Special Award for spouse or civil partner**

- There is no definition of ‘surviving civil partner’ as used in paragraph 3a, rule 1, part 3
- It would be helpful to extend the definition of ‘surviving spouse’ to clarify that this rule applies to same sex marriages

#### **Rule 3 – Limitation on award to spouse or civil partner by reference to date of marriage or formation of partnership**

- There is no definition of ‘surviving civil partner’ as used in paragraph 2, rule 3, part 3
- It would be helpful to extend the definition of ‘surviving spouse’ to clarify that this rule applies to same sex marriages

#### **Rule 4 – Limitation where spouse or civil partner is living apart.**

- There is no definition of 'surviving civil partner' as used in paragraph 2a, rule 4, part 3
- It would be helpful to extend the definition of 'surviving spouse' to clarify that this rule applies to same sex marriages

**Clair Alcock**  
**Firefighters Pension Adviser**  
**Local Government Association**  
**29 January 2019**