

Firefighters' Pension Scheme

Technical Note: The Police and Firefighters' Pensions (Amendment) Regulations 2018 – [SI 2018/997](#)

Background

The government opened a [consultation](#) on proposed amendments to the Firefighters Pension Scheme on 16 April 2018. This closed on 14 May 2018 and a copy of the LGA response to the consultation can be found [here](#).

The amendment order is a shared amendment order between the Firefighter and Police Pension Schemes. [Part 3](#) of the order refers specifically to the amendments of the Firefighters Pension Scheme and it is these amendments to which this note refers.

Amendment order [2018/997](#) has now been laid by the house on 13 September 2018, bringing the amendments into force from 8 October 2018.

- [SI 2018/997](#)

Part 3 of this amendment order makes minor amendments to

- The two pension rule in both the 1992 and 2006 scheme to ensure that indexation is applied as *if* it was pension increases.
 - Survivors benefits in the 2006 scheme to remove the requirement to nominate a co-habiting partner.
 - The commutation of small pensions for pension credit members to remove a reference to out-dated legislation.
 - Club transfer value payments rule 45 in the 2015 scheme to clarify that a border transfer of 1992 scheme benefits should not be paid into the 2006 scheme.
- Voluntary Scheme Pays (VSP)

Those with an interest in both the Firefighter and Police Pension Schemes may note that unlike the amendments to the Police Scheme, Part 3 of the amendment order does not contain any amendments to legislate for Voluntary Scheme Pays (VSP) in the firefighters' pension schemes

This is referred to in paragraph 3.5 of the [consultation document](#) and lays out that it is the view of the Home Office to not legislate for VSP in the firefighters' pension schemes, because unlike

Police, Fire and Rescue authorities already have the discretion to exercise VSP on behalf of scheme members.

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

Details

1992 Scheme Amendments (Part 3, Chapter 1 of SI 2018/997)

- Rule B5A is [amended](#) to confirm that indexation on two pensions should apply *as if* it were PIA. This should not change any practice of applying indexation, as per [Guidance issued in 2010](#).

It is important to note that the regulation does not apply actual pension increases under the pension increase, rather it instructs the pension to be indexed by an 'equivalent' to PI. This is important because it means the payment is not subject to the Act's qualifying conditions.

Account is taken of a pension's beginning date when the increases are applied. The beginning date is the first day after the last day of service at the higher rate of pay.

When the pension is calculated at retirement age the first pension based on the higher rate of pay would be increased by the pension increase order, for example, a firefighter has entitlement to two pensions where the drop in pay occurred eight years before retirement, the value of the first pension would be increased by reference to all the Pensions Increase Orders that had effect in the previous eight years.

The second pension is calculated based on the pensionable pay on retirement. The two pensions would then be added together in order to compare against the alternative single pension, and the higher pension put into payment.

Please note that whilst the value of Part 1 of the pension at retirement will include the equivalent PI amount, there will be no further increases under the pensions act until age 55 unless retirement is on ill health grounds.

The [archived commentary](#) is a useful reference on applying the indexation.

To see a full consolidated version of this rule with the amendments of SI 2018/997 please click [here](#)

- Rule IA2 is [amended](#) to remove the reference to an ineffective regulation 3(2)(b) of the *Pension Sharing (Pension Credit Benefit) Regulations 2000* (commutation of pension credit benefit: small pensions). This had the effect of allowing commutation of the whole pension for pension credit members on all grounds (i.e. serious ill-health) and not just trivial commutation.

This is a minor amendment to correct the regulations and there should be no need for any change to normal practice.

To see a full consolidated version of this rule with the amendments of SI 2018/997 please click [here](#)

2006 Scheme Amendments (Part 3 Chapter 2 of SI 2018/997)

- Surviving Partners Pension

Widely referred to as the ['Brewster judgment'](#), this judgment considered the need for a partner qualifying as a cohabiting partner to have been nominated by the member to receive the surviving partner's pension was unlawful. As a consequence the requirement to nominate has been removed from the regulation and substituted with 'cohabiting partner'.

The regulations have been [amended](#) in the following parts in order to comply with over-riding case law, by substituting 'nominated' with 'cohabiting' partners

- Table of contents and chapter headings
- Part 1, rule 2 paragraph 1 'Interpretations' – amends the definition of 'child' and 'child's pension' and removes the definition of 'nominated partner'
- Part 2, rule 1 is amended to provide a definition of cohabiting partner, by amending sub paragraph 5b, removing paragraphs 6 to 9 and inserting new paragraph 12.
- Part 3, rule 11, paragraph 2a
- Part 4, Chapter 1, rules 1 to 5
- Part 7, Rule 3

However, while the legal requirement to complete a nomination form in order to pay the surviving partners pension has been removed, it is still considered best practice to complete nomination forms, as this helps the Fire Authority exercise its discretion quickly in order to pay the survivors pension.

To see the consolidated versions of Part 2, Rule 1; Part 3, Rule 11; Part 4, Rules 1 to 5 and Part 7, Rule 3 with the amendments of SI 2018/997 please click [here](#)

- Part 3, rule 7 is [amended](#) to confirm that indexation on two pensions should apply *as if* it were PIA. This should not change any practice of applying indexation, as per [Guidance issued in 2010](#).

It is important to note that the regulation does not apply actual pension increases under the pension increase, rather it instructs the pension to be indexed by an 'equivalent' to PI. This is important because it means the payment is not subject to the Act's qualifying conditions.

Account is taken of a pension's beginning date when the increases are applied. The beginning date is the first day after the last day of service at the higher rate of pay.

When the pension is calculated at retirement age the first pension based on the higher rate of pay would be increased by the pension increase order, for example, a firefighter has entitlement to two pensions where the drop in pay occurred eight years before retirement, the value of the first pension would be increased by reference to all the Pensions Increase Orders that had effect in the previous eight years.

The second pension is calculated based on the pensionable pay on retirement. The two pensions would then be added together in order to compare against the alternative single pension, and the higher pension put into payment.

The retirement age of the 2006 scheme is age 60 with the ability to retire from age 55 with early retirement factors applied, therefore when the pension is put into payment pensions increase can apply.

The [archived commentary](#) is a useful reference on applying the indexation.

To see a full consolidated version of this rule with the amendments of SI 2018/997 please click [here](#)

- Rule 2 of Part 6 is [amended](#) to remove the reference to an ineffective regulation 3(2)(b) of the *Pension Sharing (Pension Credit Benefit) Regulations 2000* (commutation of pension credit benefit: small pensions). This had the effect of allowing commutation of the whole pension for pension credit members on all grounds (i.e. serious ill-health) and not just trivial commutation.

This is a minor amendment to correct the regulations and there should be no need for any change to normal practice.

To see a full consolidated version of this rule with the amendments of SI 2018/997 please click [here](#)

2015 Scheme Amendments (Part 3, Chapter 3 of SI 2018/997)

- Schedule 2, para 45 of Part 3D transfer of final salary benefits is [amended](#) to clarify that for a border transfer into England, (i.e. a firefighter with 1992 scheme benefits moving from Northern Ireland, Wales or Scotland) would not have those benefits transferred into the 2006 scheme.

To see a full consolidated version of this rule with the amendments of SI 2018/997 please click [here](#)

Voluntary Scheme Pays (VSP)

- While the Home Office and the Scheme Advisory Board agree that there is not a requirement to legislate for VSP as Fire and Rescue Authorities already have the discretion to exercise VSP, they nevertheless feel it is appropriate that a Fire Authority *should* offer VSP under the following circumstances
 - (i) transitional members with pension growth of over £40,000 across both schemes (HMRC AA limit) and a corresponding tax charge of £2,000 or more.
 - (ii) members subject to a tapered AA, and a corresponding tax charge of £2,000 or more.

LGA bluelight guidance on VSP can be found on the following links

[VSP Guidance issued January 2018](#)

[Scheme member VSP election form](#)

[Scheme Manager VSP decision form](#)

[Guidance on proportioning scheme pays debit where the tax charge has built up across two schemes](#)

[VSP legal advice issued May 2017](#)

Actions for Fire Authorities and Local Pension Boards

1. Need to ensure they are aware of the indexation to two pensions and this is properly applied.
2. Need to ensure a policy is in place for exercising VSP and that Firefighters are aware of how they would request the Fire Authority to pay any tax charge arising under the VSP policy.
3. Need to ensure that members in the 2006 scheme are communicated to, to let them know the scheme has been changed to remove the requirement to nominate. You may wish to consider whether as an authority / administrator you would still wish to encourage nominations as good practice, albeit not required under legislation

Relevant links

- SI 2018/997 - <http://www.legislation.gov.uk/ukxi/2018/997/contents/made>
- Explanatory Memorandum to SI 2018/997 - http://www.legislation.gov.uk/ukxi/2018/997/pdfs/ukxiem_20180997_en.pdf
- Government response to consultation - <https://www.gov.uk/government/publications/firefighters-pension-schemes-government-response>

Consolidated Rules

- **1992 Scheme**

Rule	With tracked SI amendments	Current version
B5A	Two Pensions	Two pensions
IA2	Commutation of pension credit benefits	Commutation of pension credit benefits

- **2006 Scheme**

Rule	With tracked SI amendments	Current version
Part 2, Rule 1	Scheme membership	Scheme membership
Part 3, Rule 11	Allocation of pension	Allocation of pension
Part 4, Chapter 1	Surviving spouses, civil partners and cohabiting partners	Surviving spouses, civil partners and cohabiting partners
Part 7, Rule 3	Awards on death or permanent disablement	Awards on death or permanent disablement
Part 3, rule 7	Two pensions	Two pensions
Part 6, rule 2	Commutation of pension credit benefits	Commutation of pension credit benefits

- **2015 Scheme**

Rule	Current version
Schedule 2, Para 45	Acceptance of club transfer balance payments

Version

Version number	Date Published
1	14 September 2018

Distribution

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