EXECUTIVE NOTE

THE FIREFIGHTERS' PENSION SCHEME AMENDMENT (INCREASED PENSION ENTITLEMENT) (SCOTLAND) ORDER 2009
SSI/2009/184

The above instrument is made in exercise of the powers conferred by section 26(10 to (5) of the Fire Services Act 1947 and sections 12 and 16 of the Superannuation Act 1972. Functions under those Acts as regards Scotland have been executively devolved to the Scottish Ministers. The instrument is subject to negative resolution procedure. The amendments include retrospective effect which is permitted by section 12 of the Superannuation Act 1972. The instrument applies only to Scotland.

The instrument makes amendments to the following orders. The Firefighters' Pension Scheme Order 1992, (SI 1992/129) which provide for the Firefighters' Pension Scheme for firefighters recruited before 6 April 2006 and the Firefighters' Compensation Scheme (Scotland)) Order 2006(SSI 2006/338) which provide benefits for all firefighters who become permanently disabled or die as a result of an injury received whilst on duty.

Policy Objectives

A small minority of pensioners who worked in the public sector which includes the fire service have been getting a larger than expected increase in their pensions year on year. This is because of the way that some annual pension increases have been calculated. This issue affects all public sector schemes and not just those in Scotland.

The annual pension increase for occupational pensions is adjusted to reflect a person's entitlement to a Guaranteed Minimum Pension (GMP). A GMP is the minimum pension which an occupational pension scheme must provide where the scheme contracted out of the State Earnings Related Pension Scheme from 1978. All public service schemes are contracted out. People who were members of a contracted out pension scheme between 1978 and 1997 may be eligible for a GMP element within their occupational pension. It is a notional benefit which is only paid if the occupational pension is less than the guarantee element and is not a separate benefit to be paid in addition to their occupational pension.

Public service pensions have been increased each year in line with the Retail Prices Index (RPI). The occupational scheme pays the increase on the whole pension, including the GMP element, until pensioners begin to receive their state pension. Thereafter the GMP element is shared between the scheme and the Department for Work and Pensions (DWP)

The 1971 Pensions Increase Act provides for the annual increase that can be applied to public sector pensions. In addition the Act also directs any reductions that should be made from the increase being applied. In the case of GMP any annual pensions increase due on a GMP accrued during the period up to 1988 should not be made by the pension scheme administrator. In addition the pension scheme administrator should only increase the first 3% on any annual pension increase for GMP entitlement accrued after 1988. The pensions increase due in these cases is paid by the DWP with the individuals State pension.

A proportion of public service pensioners did not have a GMP entitlement shown on their pension record and as a consequence the correct reduction for GMP was not made which meant they have received the increase twice: once with their occupational scheme and again with their State pension. The result of this is that they have been overpaid.

Although this has affected public sector pensions on a UK wide basis Scottish Ministers have chosen to take a different approach on dealing with the overpayment going forwards from April 2009. Scottish Ministers have chosen to preserve the affected pensioner's income by converting the overpayment being paid from 6 April 2009 into a new Increased Pension Entitlement (IPE) payable from that date. This option has been applied to those schemes where the Scottish Ministers have the necessary devolved power to introduce this change which they do have for the Firefighters' Pensions Scheme.

The instrument ensures that affected pensioners will not see a loss of pensionable income and also provides the necessary authority for the overpayments paid up to 5 April 2009. These overpayments in line with all the other UK public sector schemes will be written off and the affected pensioners will not be required to repay any of the overpayments.

The amendments made to the 1992 Firefighters' Pension Scheme Order introduce the IPE and outlines how it is calculated. The IPE will be payable for life but with the exception of the short term pension payable to a qualifying surviving dependant will not be included in any other dependants benefits. The principle for the IPE is that it ensures that the member does not see a reduction in their pensionable income as a result of a GMP related overpayment.

Finally amendments to the Firefighters' Compensation Scheme (Scotland)) Order are also necessary to ensure that when calculating an entitlement to an injury award an IPE is taken into account as part of the specified deductions of other pensions payable to the member. In those cases where an injury award is already in payment the GMP related overpayment paid on the member's pension will already have been included in the deduction made. This amendment ensures that the IPE simply replaces the overpayment resulting in no change to the level of injury award due.

Sensitivity

The Regulations may be seen as contentious because it has not been possible to apply the Scottish Ministers preferred solution to affected Scottish NHS and Teachers pensioners. This is because to make similar legislative changes to those schemes would require the consent of HM Treasury. HM Treasury refused to provide its consent as The Westminster Government have chosen to correct affected pensions going forward from 6 April 2009. Similar consent is not required for changes to the Police, Firefighters' and Local Government Pension schemes in Scotland. As a result the level of public interest in the introduction of these amendments is anticipated to be high particularly from those affected pensioners in the Scottish NHS and Teachers schemes who have seen their pensions reduced from 6 April 2009. This instrument includes part retrospective effect to allow for the GMP related payments that will have accrued from 12 November 1979 to 5 April 2009

Consultation

The amendments have been the subject of consultation with Scottish stakeholders. It has also been the subject of consultation with other Government departments.

Financial implications

Similar changes are being introduced to the Local Government and Police pensions schemes. The final number of cases affected and the total overpayments involved for all three schemes are still to be finalised by the local authorities concerned. However it is estimated, based on a comparison of known similar cases in the Scottish NHS and Teachers pension schemes, that at this stage approximately 3.5% of pensioners could be affected. On that basis it is estimated that the additional costs to the three pensions schemes could be in the region of £3m over 5 years and £6m over 10 years. The overall costs of introducing the IPE will be reflected in scheme valuations that cover these periods.

Regulatory Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it has no adverse impact on business, charities or voluntary bodies.

Scottish Public Pensions Agency

May 2009