

Amendments to the Northern Ireland Firefighters' Pension Schemes

Survivors' Benefits and correction of
the Public Service Pensions
Revaluation Orders (NI) for 2021
and 2022

Consultation Response

23 May 2024

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1. Introduction

- 1.1. This document is the post-consultation report for the consultation paper ‘Amendments to the Northern Ireland Firefighters’ Pension Schemes – Survivors’ Benefits and correction of the Public Service Pensions Revaluation Orders (NI) for 2021 and 2022’ which was published on 14 February 2024 and closed to responses on 29 April 2024. This report details the outcome of the consultation exercise and how the policy/proposals consulted on have been further developed. The report can be found at:

<https://www.health-ni.gov.uk/consultations/consultation-firefighters-pension-schemes-and-compensation-scheme-amendment-regulations-northern>

- 1.2. If you have any questions about the consultation process, please email DoH Pensions Unit: firefighterspensions@health-ni.gov.uk

Alternatively write to:

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2. Executive Summary

- 2.1. The Department launched a consultation between 14 February 2024 and 29 April 2024 inclusive to set out a number of policy proposals in respect of suggested changes to the Firefighters' Pension Schemes. The consultation focused on the Department's commitment to make amendments to the provisions for Survivors' Benefits and provide remedy for an error relating to the Public Service Pensions Revaluation Orders (NI) for 2021 and 2022.
- 2.2. The consultation proposed amendments to the Firefighters' Pension Scheme Order (Northern Ireland) 2007 (FPS), the New Firefighters' Pension Scheme Order (Northern Ireland) 2007 (NFPS), the Firefighters' Compensation Scheme Order (Northern Ireland) 2007 (FCS) and the Firefighters' Pension Scheme Regulations (Northern Ireland) 2015 (2015 scheme) to achieve this outcome. The Department sought views on whether the proposed amendments achieve the policy intention for all eligible individuals.

3. Consultation Process

- 3.1. The proposals and draft regulations were subject to consultation which began on 14 February 2024 and closed on 29 April 2024. The consultation document is available on the Department's website.
- 3.2. As part of governance arrangements for the Firefighter's Pension Scheme, the consultation document was also provided to members of the Firefighters Pension Scheme Advisory Board (SAB). The SAB comprises of firefighters' employer representatives (NIFRS) and employee representatives (FBU), therefore the Department is confident that both views have been considered as part of the SAB.
- 3.3. The Department welcomed any comments or views on the proposals and draft regulations. The Department received two responses to the consultation from NIFRS and the FBU. Both respondents addressed all eight questions raised in the consultation. The Department considered both responses and identified the main points of support and challenges raised. The Department's response to these points is outlined in Section 4.

Policies consulted on

Survivors Benefits

- 3.4. **New marriage/civil partnership** - the Department has drafted regulations to provide that survivors of FPS firefighters killed on duty are able to keep their benefits when entering into a new marriage or civil partnership. These benefits will be retained for life, regardless of any future changes in relationship status. The benefitting survivors will be those whose FPS partners are killed:

Type A – as a result of injuries sustained performing their duties, or

Type B – as a result of injuries sustained during journeys necessary to report for duty or return home after duty.

- 3.5. The Department is not proposing to change the eligibility criteria for awards under the FCS but only to ensure that any awards under that scheme to which survivors of FPS firefighters (or firefighters eligible to join that scheme) are eligible are not withdrawn upon entering a subsequent marriage or civil partnership which takes place on or after 1 April 2015. This means that the survivor of a FPS member (or the survivor of someone eligible to have joined that scheme) will forgo their survivors' benefits upon entering a subsequent marriage or civil partnership before 1 April 2015, and in the event that this marriage or civil partnership subsequently dissolves, NIFRS continues to retain the discretion to pay the whole or any part of the benefit as they think fit.
- 3.6. It should be noted that this policy change does not introduce a new benefit to those qualifying, but extends a pre-existing benefit, to some individuals in certain circumstances.

- 3.7. The proposed changes will have effect from 1 April 2015. This date follows the March 2015 Budget announcement that all widows, widowers or civil partners of firefighters who are killed on duty will no longer lose their pension if they enter a subsequent marriage or civil partnership.
- 3.8. **Removal of requirement to nominate for co-habiting partners** - of the three firefighter's pension schemes, only the NFPS requires an amendment, as that is the only one to require that unmarried partners should be nominated by the member. This necessitates that a number of rules be amended and, in particular, the insertion of a new definition for the term "cohabiting partner" to replace the term "nominated partner". The new definition retains as many elements as possible of the previous term, whilst making it clear that there is no longer a need for a nomination to be made. It is proposed that the term "cohabiting partner" be used, as that is the term already used in the 2015 Scheme.
- 3.9. If a member expressly wishes to make their intentions relating to survivor benefits known, the scheme manager can continue to accept a nomination form to enable them to do so, even though there will be no such express provision in the rules.
- 3.10. The Department is satisfied that it has discharged its equality responsibilities in making this amendment. All qualifying cohabiting partners are being given the equivalent rights as spouses/civil partners.
- 3.11. **Same sex relationships** - The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (NI) 2019 Regulations, which were introduced through Westminster, implemented the Walker amendments for the NI Public Service pension schemes. They equalised same-sex survivors, either spouses or civil partners, with widows of opposite-sex marriages but made survivor benefits of male survivors of opposite-sex civil partnerships the same as for widowers of opposite-sex marriages. In practice in the firefighters' schemes, all surviving spouses were always treated equally. These amendments were only introduced from 13 January 2020, unlike in the Firefighters Pension Scheme in England where these amendments were made retrospective to the introduction of civil partnerships and same sex marriage respectively. To ensure the equality of treatment regardless of gender or sexual orientation, provisions have been included in the FPS, NFPS and the 2015 Scheme to provide retrospective effect for the firefighters' pension schemes in NI back to 5 December 2005.
- 3.12. In common with other public sector schemes, the amendments will be introduced with retrospective effect. However, this does not mean that only scheme membership from those dates will be taken into account, the intention of the amendments is that there should no longer be any limit on service. Of the three firefighter's pension schemes, only the FPS requires an amendment, as only this scheme has the 1988 limit on membership to be taken into account. A number of rules in the FCS also need to be amended for the same reason.

Revaluation error in the Public Service Pensions Revaluation Orders (NI) for 2021 and 2022

- 3.13. To correct the error the Department proposes amendments to the 2015 Scheme to provide for an increase to the pension entitlement for those members affected by the error in the 2021 and 2022 Orders. This increase to entitlement will be referred to as ‘the index supplement’.
- 3.14. The index supplement will be included in the definition of any entitlement. Regulation 3 of the 2015 Regulations currently defines “earned pension” as earned pension payable with actuarial reduction at normal pension age. The Department feels that defining the index supplement as an amount of “earned pension” delivers this in the most straightforward way.
- 3.15. We are proposing to introduce a new ‘index supplement’ provision which is defined as an amount of earned pension equal to the value of the index adjustment where the change in earnings for 2021 is increased by 0.2% and for 2022 by 0.4% to the amounts specified in the Public Service Pensions Revaluation Orders (NI) for those years. The outcome of this amendment will mean that affected members will have the correct revaluation rates applied to their pensions for the years 2021 and 2022.

Other amendments in the Firefighters’ Pension Schemes

- 3.16. These Regulations also make minor amendments to the FPS, NFPS and 2015 Scheme to ensure that all of the firefighters’ pension schemes work as intended. The areas that require amendments are limited and are detailed below.
- 3.17. Regulations 79 of the 2015 Scheme is amended to correct a minor drafting error relating to lump sum commutation.
- 3.18. Regulation 79A of the 2015 Scheme deals with transition members’ entitlement to commute part of any lower tier ill-health pension that they may be awarded into a lump sum. As currently framed, the regulation sets out certain provisions relating to the commutation of a lump sum for members who have transitioned from the NFPS to the 2015 Scheme. The proposed amendment completes the legal provisions for members who have transitioned from the FPS.
- 3.19. Regulations 86 and 100 of the 2015 Scheme are amended to make it clear that three months’ service is sufficient to achieve qualification for benefits and stipulating, where applicable, that bereavement pension is for the benefit of eligible children.
- 3.20. Article 13A(3) of the FPS is being amended to clarify the age for calculation of continuous service provision. Part IIA of Schedule 2 is also being amended to give the correct formula for calculating the continuous service pension of a member who transitions from the FPS to the 2015 Scheme so that the cap is set at 30 years’ pensionable service.
- 3.21. Members of the final-salary pension schemes are permitted to split their pension in the eventuality of a reduction in salary, so as to preserve the value of pension which has already been accrued. It is our understanding that the first part of a

split pension in the FPS and NFPS should be subject to indexation. However, the rules concerned do not specifically provide for this. We are therefore proposing equivalent amendments to article 16A in the FPS and article 17 in the NFPS. The pensions concerned would be up-rated, as if subject to the Pensions (Increase) Act (Northern Ireland) 1971, from the time of the reduction in pay until retirement.

- 3.22. Article 16A in the FPS also sets out a formula by which these two pensions should be calculated. The intention of paragraph (2) of article 16A is clearly to indicate that if, after such calculations have been made, it becomes clear that the member would, after all, be better off with a conventional single pension calculated in the normal way, then that is the pension to which they should be entitled. However, the wording incorrectly states that this should happen if the total of the two pensions “exceeds” that of the single pension. This amendment makes it clear that the two pensions should not be awarded if their total “is lower than” the single pension.
- 3.23. On divorce from a pension scheme member, under pension sharing provisions, spouses or civil partners of scheme members can be awarded part of their pension as a credit. It has been identified that scheme rules have not taken account of changes to the related legislation on pension sharing. Amendments are therefore proposed to article 75(1) of the FPS and article 38 of the NFPS, so as to ensure that pension credit members can continue to commute their benefit as permitted by the overarching legislation.

4. Summary of responses

- 4.1. **Question 1** - To what extent do you agree that the Department's draft regulations are an accurate interpretation of the Budget statement on survivors' benefits regarding new marriages/civil partnerships?

Consultation Findings

NIFRS expressed the view that the draft amendments appear to align to the Budget Statement but have indicated that this alignment could give rise to potential discrimination and future risk of litigation.

The respondent has commented on a number of areas for concern. They have noted that the amendments only remove the cessation of survivors' pension if the deceased died as a result of the injuries sustained performing their duties or as a result of injuries sustained during journeys to or from duty and if the marriage/civil partnership took place after 01 April 2015. From their perspective the circumstances of death are not relevant and they have asserted that these amendments should be used as an opportunity to remove this provision and create parity across the schemes in this respect.

NIFRS have stated that under the FPS and FCS a survivor who forms a new relationship and co-habits with a new partner is not penalised. They have expressed the viewpoint that these amendments create a discrimination with regard to a protected status which should be avoided through consistent treatment across all scenarios of marital status.

In addition, the respondent has noted there were no similar restrictions when the NFPS came into operation on 30 March 2007 but had effect from 6 April 2006. Their view is that as a minimum, these amendments should be retrospective to align to 6 April 2006.

The respondent has indicated that it was their understanding that the original provisions to cease the survivor benefit on remarriage was in place to reflect aged societal culture. Their view is that this is not reflective of modern societal norms and these provisions should be removed and the removal should be treated as retrospective.

Furthermore, NIFRS have intimated that these amendments could possibly cause age discrimination as in their view a remarriage is more likely to occur for those survivors who are widowed at a young age.

It was the opinion of the FBU that the Department's draft regulations may reflect the Budget Statement, but indicated they preserve an irrational position for most cases where a widow/er or civil partner wishes to enter into a new formal relationship. The FBU is of the belief that the residual application of the rule terminating survivors' benefits where the member died before 1 April 2015 or where the cause of death was not service-related, may be unlawful discrimination. They have indicated that this must be fully retrospective and applicable whatever the circumstances of the member's death.

The respondent has also commented that the logical position is to treat the formal relationship of marriage or civil partnership and so-called “common law marriage” in the same way and do not terminate the pension in any of these cases.

The FBU have noted that the restrictions in relation to Survivor’s Benefits do not apply in the NFPS nor the 2015 Scheme and therefore a simple resolution would be to remove these provisions.

Additionally, the respondent has commented on how the current rule is discriminatory in two respects. Firstly they have stated that the rule only penalises widow/ers or civil partners who have a religious or ethical reason for taking the view that living in relationship akin to marriage but without going through the formality of a religious or civil ceremony is not acceptable. Secondly the respondent has cited that the rule discriminates on the grounds of age and have indicated that in their view younger widow/ers or civil partners are significantly more likely to want to remarry or form a civil partnership than older widow/ers or civil partners.

Department’s Response

Public service pensions must be affordable, sustainable and fair, both for the members of those schemes and for other taxpayers. In recognition of the high risks faced as an everyday part of firefighters’ duties, the Department believes that it is justified to limit these changes to surviving spouses and civil partners of firefighters who die or have died as the result of an injury received without the firefighter’s own default in the execution of their duty.

The Firefighters Pension Scheme was costed on the basis of the benefits which it offered. The New Firefighters Pension Scheme, when introduced, proposed reforms including improvements to survivor benefits. Members had the option to transfer to this scheme if they wished to do so.

- 4.2. **Question 2** - 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 for cohabiting partners?

Consultation Findings

Both NIFRS and the FBU 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 for cohabiting partners.

Department’s Response

After considering the response to the consultation, the Department is content that the draft regulations will achieve the policy intention.

- 4.3. **Question 3** - To what extent do you agree that the Department's draft regulations achieve the aim of equalising survivor benefit for survivors from civil partnerships and same-sex marriages with other survivors?

Consultation Findings

Both NIFRS and FBU have confirmed that the Department's draft regulations achieve the aim of equalising survivor benefit for survivors from civil partnerships and same-sex marriage with other survivors.

Department's Response

After considering the response to the consultation, the Department is content that the draft regulations will achieve the policy intention.

- 4.4. **Question 4** - Do the proposed changes to the regulations ensure that affected scheme members have the correct revaluation rates applied to their pension benefits for 2021 and 2022?

Consultation Findings

Both NIFRS and FBU have confirmed that the proposed changes to the regulations ensure that the affected scheme members have the correct revaluation rates applied to their pension benefits for 2021 and 2022.

Department's Response

After considering the response to the consultation, the Department is content that the draft regulations will achieve the policy intention.

- 4.5. **Question 5** - Do the proposed changes ensure any receiving the scheme as a club transfer includes the index supplement when relevant?

Consultation Findings

Both NIFRS and the FBU have confirmed the proposed changes ensure that any receiving the scheme as a club transfer includes the index supplement when relevant.

Department's response

After considering the response to the consultation, the Department is content that the draft regulations will achieve the policy intention.

- 4.6. **Question 6** – Are there any affected members that the proposed changes to the 2015 Scheme will not provide remedy to address the error in 2021 and 2022 Orders?

Consultation Findings

Both NIFRS and the FBU have confirmed they are not aware of any affected members that the proposed changes to the 2015 Scheme will not provide remedy to address the error in the 2021 and 2022 Orders.

Department's Response

After considering the response to the consultation, the Department is content that the draft regulations will achieve the policy intention.

- 4.7. **Question 7** - Can you foresee any challenges to the administration of the pension schemes with regard to the proposed draft regulations?

Consultation Findings

Both NIFRS and the FBU have expressed concerns that the proposals in respect of survivor benefits and the effect of remarriage may be deemed discriminatory. The FBU have indicated that they will be seeking further advice on these proposals.

Department's Response

Successive governments have been clear that we have a general presumption against making retrospective change to public service pension schemes. The changes to Survivors' Benefits in the Police, Firefighters and Armed Forces Pension Schemes have a common implementation date and it is not possible to reinstate the pensions of those who have married before this time.

The Department notes that a large proportion of younger firefighters would have been in the NFPS or 2015 Schemes, neither of which have any obstacle to the remarriage of surviving partners. It is also noted that no evidence has been presented to indicate that younger surviving partners are more likely to wish to remarry or to form a new civil partnership than, say, middle-aged survivors.

- 4.8. **Question 8** - Are you aware of any equality issues not covered here?

Consultation Findings

Both NIFRS and FBU are of the opinion that there is a potential risk of equality issues. The FBU have noted that these proposals raise a range of equality issues that remain unresolved and preserve arrangements which may be unlawful.

Department's Response

The equality issues raised in relation to survivor benefits has been dealt with in the responses above. No other equality issues have been raised.

5. Conclusion and Next Steps

- 5.1. The Department is grateful for the responses received to this consultation and will proceed to make the necessary legislative amendments to enact these changes.
- 5.2. Firefighters Pensions' have, in line with other public sector pensions schemes in Northern Ireland, operated on the basis of parity with their counterparts in England, Scotland and Wales. These changes will align NI with similar changes which have been introduced to Firefighters Pensions in GB.