

EXPLANATORY MEMORANDUM TO
THE LONDON GOVERNMENT (LONDON FIRE COMMISSIONER AND
POLICING) (AMENDMENT) REGULATIONS 2018

2018 No. 269

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument makes various legislative amendments to governance arrangements in London for fire and policing. In particular amendments are made in connection with the arrangements for a new London Fire Commissioner including to allow any person who holds the office of the London Fire Commissioner (LFC) and exercises operational responsibility to access the firefighters' pension scheme in England and the firefighters' compensation scheme in England.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 These Regulations amend the Firefighters' Pension Scheme 1992 (set out in Schedule 2 to the Firefighters' Pension Scheme Order 1992 (S.I 1992/129)) as it has effect in England; the New Firefighters' Pension Scheme (England) (set out in Schedule 1 to the Firefighters' Pension Scheme (England) Order 2006 (S.I 2006/3432)); the Firefighters' Pension Scheme (England) Regulations 2014 (S.I. 2014/2848); and the Firefighters' Compensation Scheme (England) Order 2006 (S.I 2006/1811) Schedule 1 of which sets out the Firefighters' Compensation Scheme (England) 2006.
- 4.2 The purpose of the amendments is to enable a person who is appointed to the office of the London Fire Commissioner as an operational role to have access to the arrangements for firefighter pensions and compensation on the same basis as any other operational firefighter.
- 4.3 These Regulations also amend other enactments in consequence of the commencement of the London Fire Commissioner provisions and the abolition of the existing fire and rescue authority for London, the London Fire and Emergency Planning Authority. The Regulations make a consequential amendment to the Local Government Officers (Political Restrictions) Regulations 1990 (S.I. 1990/851) following the amendment by section 123 of the Policing and Crime Act 2017 of the

political restrictions applying to the Deputy Mayor for Policing and Crime under section 1 of the Local Government and Housing Act 1989.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England only.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The Policing and Crime Act 2017 (2017 Act) brings forward new governance arrangements for fire and rescue in London, strengthening democratic accountability by giving the Mayor, as the elected office holder, greater responsibility, abolishing the London Fire and Emergency Planning Authority (LFEPA) and creating a new statutory London Fire Commissioner (LFC) which will be the fire and rescue authority for Greater London.
- 7.2 The Act provides that the LFC is to be paid a pension in accordance with their terms and conditions of appointment. However, as the LFC is appointed as an office holder they are currently unable to join or remain a member of the firefighters' pension scheme.
- 7.3 This is contrary to other Chief Fire Officers in England, who, as employees of a fire and rescue authority, are eligible to join the firefighters' pension scheme. The Home Office consider it inconsistent that an LFC, taking on the operational role and functions of a Chief Fire Officer, is not able to have access to the same pension arrangements as their peers
- 7.4 In order to promote consistency any person who holds the office of LFC and exercises operational responsibility is now being granted access to the firefighters' pension scheme in England and the firefighters' compensation scheme in England.
- 7.5 Key features for the changes are: The LFC should be treated as an employee for pension purposes. The LFC duties must include resolving operational incidents in order to qualify for membership of the scheme. The same principles are being applied to all 3 firefighters' pension schemes (1992, 2006 and 2015) as well as the firefighters' compensation scheme. The changes also clarify that the LFC is not eligible for "authority- initiated early retirement". Under this provision the employer has the discretion to waive the actuarial reduction which would otherwise be imposed.
- 7.6 These changes will be limited in nature and have no impact on other current or future members or on fire and rescue authorities.
- 7.7 An amendment is being made to ensure that the political restrictions applying to the Deputy Mayor of Policing and Crime do not prevent a person holding that post from being or becoming a member of a local authority. This arises from a commitment made in committee in the House of Lords during the passage of the Policing and Crime Bill. The regulations also make consequential amendments removing the

reference to the “London Fire and Emergency Planning Authority” from regulations which apply to certain local authorities which have members.

Consolidation

7.8 The Home Office does not intend to consolidate the new legislation.

8. Consultation outcome

8.1 Section 34(5) of the Fire and Rescue Services Act 2004 requires the Secretary of State responsible for making the regulations to consult such persons that the Secretary of State considers appropriate in relation to changes to the 2006 pension and compensation schemes. Section 21 of the Public Services Pensions Act 2013 requires the Secretary of State to consult the representatives of persons who the Secretary of State considers likely to be affected by them, before making any amendments to the Scheme set out in S.I 2014/2848. The reforms were subject to one statutory consultation beginning on 20 November 2017 and concluding on 8 December 2017 which received three responses

8.2 We received responses from the Greater London Authority (GLA), London Fire Brigade and the Local Government Association who were all supportive of the changes. A small amendment was made to the draft regulations in response to a comment from the GLA, who asked us to clarify that the Fire and Rescue Authority for the purpose of these regulations would be the London Fire Commissioner.

9. Guidance

9.1 There are a number of detailed resources available to prospective scheme members and employers, including pension calculators, frequently asked questions and guidance to calculate certain other pension benefits. The Home Office will continue to work with employers and the Local Government Association to provide detailed information and supportive resources to prospective scheme members on the application of the regulations as a whole. The Home Office also encourages employers to implement a communications programme with prospective members.

9.2 The Firefighters’ Pension Scheme Advisory Board (made up of employer and employee representatives), which advises the Home Secretary, is also undertaking communications work to ensure employers and employees are abreast of firefighters’ pensions matters. The Home Office are engaging with that Board on the laying of these regulations as appropriate.

9.3 No guidance is needed for the other consequential amendments.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 An Impact Assessment has not been prepared for this instrument

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses

12. Monitoring & review

- 12.1 These regulations will be monitored by the Home Office in the context of its stewardship responsibilities for the firefighters' pension schemes as a whole.

13. Contact

- 13.1 Brian Nash, at the Home Office, telephone 020-7035-3301 or e-mail brian.nash@homeoffice.gsi.gov.uk, can answer any queries regarding the instrument.