

SL(6)381 – The Firefighters' Pensions (Remediable Service) (Wales) Regulations 2023

Background and Purpose

The Public Service Pensions and Judicial Offices Act 2022 (the “2022 Act”) makes provision to address age based discrimination in public service pension schemes. The 2022 Act was made following a finding in the case of the *Secretary of State for the Home Department & the Welsh Ministers v Sargeant & Others* [2018] EWC Civ 2844 that transitional protections in reformed firefighters’ pension schemes were unlawfully discriminatory on the basis of age. In relation to Wales, those provisions were set out in the Firefighters Pension Scheme (Wales) Regulations 2015.

The first phase of the remedy set out in the 2022 Act was implemented by the Firefighters’ Pension Scheme (Wales) (Amendment) Regulations 2022 (SI 2022/343 (W.85)).

These regulations make provision to implement the second phase of the remedy set out in the 2022 Act.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In the Welsh text of regulation 23(2)(b), it appears that “a’r swm amgen” should read “ac mae’r swm amgen”.

The Welsh and English texts of regulation 29(1)(a) appear to be different – it appears that the Welsh text is correct by expressly referring to A’s divorce **or** annulment.

In the Welsh text of regulation 39(2), it appears that “pe bai’r hawliau hynny” should read “pe bai’r hawliau hynny wedi bod”.

In the Welsh text of regulation 41(4), it appears that “adran 89(1)” should read “adran 86(1)”.



The Welsh and English texts of regulation 46 appear to be different. At the end of the regulation, the Welsh text refers to the condition that the relevant date is not later than 1 October 2024, while the English text refers to the condition that the relevant date is later than 1 October 2024.

In the Welsh text of regulation 65(4), it appears that "gwasanaeth adferadwy" should read "gwasanaeth rhwymediol".

2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

The term "end of the section 6 election period" is defined by reference to the 2022 Act in a footnote to regulation 10(5). However the term "end of the section 6 election period" is first used in regulation 4(4)(a), with no signpost for the reader as to the location of the definition.

The Welsh Government is asked to explain why the footnote containing the definition is not included in regulation 4(4)(a) to accompany the first reference to "end of the section 6 election period".

3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

In regulation 22(2), the closing words of the definition of "legacy scheme amount" refer to "section 29(2)" but it is not clear which legislation is being referred to.

4. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Regulation 32 makes provision for remedial arrangements to pay voluntary contributions. A remedy member may enter into an agreement to pay voluntary contributions to the member's legacy scheme for added benefits (see regulation 32(2)). Regulation 32(3)(b) states that the member may only enter into such an agreement if (amongst other matters):

"the scheme manager is satisfied that it is more likely than not that, but for a relevant breach of a non-discrimination rule, M would, during the period of M's remedial service, have entered into the same or similar arrangement,"

It is unclear from the provision how the scheme manager is to be satisfied that this is the case, and what matters may tend to satisfy a scheme manager as to the position. We note the requirement in regulation 32(4)(b) to provide any information the scheme manager reasonably requires to be provided to them. However, this does not explain the circumstances that would allow the scheme manager to make this decision, just that the information to allow that to happen will be required.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.



5. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd

These Regulations come into force on 1 October 2023. However, they make retrospective provision. The Explanatory Memorandum at paragraph 2.2 states as follows:

“2.2 These Regulations ... make retrospective provision in consequence of the retrospective reversion to legacy pension schemes for firefighters’ remediable service under section 2(1) of the [2022 Act]. Retrospective provision in these Regulations is made in accordance with section 3(3)(b) of the Public Service Pensions Act 2013...”

6. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd

These Regulations make complex technical provision relating to firefighter pensions. It is noted that more could have been done to make these Regulations accessible to the reader.

For example, Part 4 of the Regulations makes many references to “WRPA 1999”. A footnote to the first use of this term informs the reader that, in accordance with section 110(1) of the 2022 Act, “WRPA 1999” means the Welfare Reform and Pensions Act 1999. As this Act appears to be central to the interpretation of Part 4 of these Regulations, it would be more accessible if “WRPA 1999” had been defined within the Regulations themselves.

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

19 September 2023

