

Explanatory Memorandum to ‘The Firefighters’ Pension Scheme (Wales) (Amendment) Regulations 2018’

This Explanatory Memorandum has been prepared by the Department for Education and Public Services and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary’s Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of **The Firefighters’ Pension Scheme (Wales) (Amendment) Regulations 2018..**

Alun Davies

Cabinet Secretary for Local Government and Public Services

10 May 2018

1. Description

The Firefighters' Pension Scheme (Wales) Regulations 2015 established a scheme for the payment of pensions and other benefits to firefighters in Wales from 1 April 2015 ("the 2015 Scheme"). A number of ambiguities and typographical errors have been identified within the provisions which The Firefighters' Pension Scheme (Wales) (Amendment) Regulations 2018 ("the Order") seek to amend.

The Regulations also amend The Firefighters' Pension Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015 which govern the transfer of members from the 1992 and 2006 schemes into the 2015 scheme.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee.

The provisions within The Firefighters' Pension Scheme (Wales) (Amendment) Regulations 2018 are retrospective and have effect from 1 April 2015, the date on which the 2015 Scheme came into force. Regulation 8(3) is an exception to this. In order to achieve more efficient administration, this regulation comes into force on 1 June 2018. The power to make retrospective provision in regulations is conferred by section 3(3)(b), subject to section 23, of the Public Service Pensions Act 2013.

3 Legislative background

The 2015 Scheme came into force on 1 April 2015 by means of the Firefighters' Pension Scheme (Wales) Regulations 2015 ("the 2015 Regulations", S.I. 2015/622 (W 50)). The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 1(1) and (2)(F)1, 2(1), 3(1) to (3), 18(5)(a) and (6) of Schedules 2 (paragraph 6(b)) and 3 (paragraphs (1) to (4)) to the Public Service Pensions Act 2013.

There are two further principal pension schemes for firefighters. These are governed by the Firemen's Pension Scheme Order 1992 (S.I. 1992 No 129), "the 1992 Scheme") and the Firefighters' Pension Scheme (Wales) Order 2007 (S.I. 2007/1072 (W 110), "the 2007 Scheme"). The 2007 Scheme was closed to new firefighters on 31 March 2015, and the 1992 Scheme had already closed to new firefighters in April 2006. Firefighters with membership of those schemes are subject to the transitional arrangements set out in Schedule 2 to the 2015 Regulations and the Firefighters' Pension Scheme (Wales)(Transitional and Consequential Provisions) Regulations 2015 ("the 2015 Transitional Provisions Regulations", SI 2015/1016 (W 71)).

The Order seeks to rectify minor errors and ambiguities within the 2015 Regulations, and the 2015 Transitional Provisions Regulations.

This instrument is subject to the negative resolution procedure.

4. Purpose & intended effect of the legislation

The Order amends the Firefighters' Pension Scheme (Wales) Regulations 2015 to rectify minor errors and ambiguities identified within the current provisions as follows :-

- **Regulations 3, 5, 6, 7 and 8(2)** make minor amendments to correct minor errors in regulations 30, 87, 103, 120, 128, 137 of and Part 3A of Schedule 2 to of the Firefighters' Pension Scheme (Wales) Regulations 2015.
- **Regulation 4** of the Order amends Regulation 80A of the 2015 Regulations (inserted by Schedule 1 to the 2015 Transitional Provisions Regulations), which provides for a member's entitlement to commute part of a pension into a lump sum. The amendments clarify how the lump sum should be calculated where a member is entitled to the immediate payment of an equivalent amount to the lower tier ill health pension in the Firefighters' Pension (Wales) Scheme 1992 and exercises the option to commute part of the pension for a lump sum.
- **Regulation 5** deals with survivors' benefits, making it clear that three months' service is sufficient to achieve qualification and stipulating, where applicable, that bereavement pension is for the benefit of eligible children.
- **Regulation 8(3)** amends Paragraphs 37 and 38 of Schedule 2 to the 2015 Regulations (inserted by Schedule 1 of the 2015 Transitional Provisions Regulations), which includes provisions that deal with the position of members who are being considered for ill-health retirement by an independent qualified medical practitioner at the time of their transition date, and who subsequently continue as active members of the 2015 Scheme. It was still necessary to provide for the transitional arrangements in the event that the authority decides to obtain the written opinion of an independent qualified medical practitioner before making a determination about a member's entitlement to an ill health award and the determination has not been made before the member's transition date. The amendments provide that members who are subsequently granted an ill health award remain in their existing pension scheme, avoiding the necessity for a minimal period of membership in the 2015 Scheme.

Regulation 9 corrects a minor error in the Firefighters' Pension Scheme (Wales) Transitional and Consequential Provisions) Regulations 2015.

The amendments made by the Regulations have effect from the 1 April 2015, except for those made by Regulation 8(3) which have effect from 1 June 2018.

5. Consultation

Section 21 of the Public Services Act 2013 requires the authority responsible for making the regulations to consult either those who are likely to be affected by them, or the representatives of those persons, before making any regulations. The Welsh Government conducted a 12 week consultation from the 27 September to 21 December 2017 inviting stakeholder views on proposed amendments to the Firefighters' Pension Scheme (Wales) Regulations 2015 and the Firefighters' Pension Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015. The consultation outlined amendments required in order to rectify minor errors which had been identified by the Home Office and National Assembly Lawyers.

The Welsh Government received three consultation responses from North Wales Fire and Rescue Authority, South Wales Fire and Rescue Authority and Mid and West Wales Fire and Rescue Authority. The FRAs expressed support for the proposed amendments and confirmed that they were in favour of scheme members who are granted an ill health award to remain within the terms of the original pension scheme, thus avoiding the condition for a minimal period membership under the 2015 scheme.

6. Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment has been considered, but has not been conducted in this instance as the Order will not introduce any additional costs to charities, and the private or third sector.

7. Equality Impact Assessment

An Equality Impact Assessment and Welsh Language Impact Assessment have been completed and can be accessed by request to fire@wales.gsi.gov.uk

8. Competition Assessment

Not Applicable

9. Post Implementation Review.

The Welsh Government will work with Fire and Rescue Authorities and employee representative bodies to ensure the impact of these regulatory amendments are fully understood.