

# Constitutional and Legislative Affairs Committee

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Meeting Venue:

**Committee Room 2 – Senedd**

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Meeting date:

**23 March 2015**

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Meeting time:

**13.30**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



For further information please contact:

**Gareth Williams**

Committee Clerk

0300 200 6565

[SeneddCLA@Assembly.Wales](mailto:SeneddCLA@Assembly.Wales)

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## Agenda

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**1 Introduction, apologies, substitutions and declarations of interest**

**2 Evidence in relation to the Inquiry into Making Laws in the Fourth Assembly** (Pages 1 – 77)

*(Indicative time 13.30)*

Rt.Hon Carwyn Jones AM, First Minister

Jeff Godfrey, Welsh Government

Dylan Hughes, First Legislative Counsel, Office of Legislative Counsel, Welsh Government

**CLA(4)–09–15 – Paper 1 – Written Evidence**

**CLA(4)–09–15 – Research Service Briefing**

**CLA(4)–09–15 – Briefing Annex A**

**CLA(4)–09–15 – Draft Transcript, 16 March 2015**

### **3 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3 (Pages 78 – 84)**

**CLA(4)–09–15 – Paper 2 – Statutory instruments with clear reports**

#### Negative Resolution Instruments

##### **CLA497 – The Education (Induction Arrangements for School Teachers) (Wales) Regulations 2015**

Negative procedure; Date made: 3 March 2015; Date laid: 5 March 2015; Coming into force date: 1 April 2015

##### **CLA499 – The Community Health Councils (Constitution, Membership and Procedures) (Wales) (Amendment) Regulations 2015**

Negative procedure; Date made: 3 March 2015; Date laid: 6 March 2015; Coming into force date: 1 April 2015

##### **CLA500 – The Community Health Councils (Establishment, Transfer of Functions and Abolition) (Wales) (Amendment) Order 2015**

Negative procedure; Date made: 3 March 2015; Date laid: 6 March 2015; Coming into force date: 1 April 2015

##### **CLA501 – The National Health Service (Dental Charges) (Wales) (Amendment) Regulations 2015**

Negative procedure; Date made: 3 March 2015; Date laid: 6 March 2015; Coming into force date: 1 April 2015

##### **CLA502 – The Non-Domestic Rating (Waterways) (Wales) Regulations 2015**

Negative procedure; Date made: 4 March 2015; Date laid: 6 March 2015; Coming into force date: 1 April 2015

##### **CLA504 – The Fire and Rescue Authorities (Performance Indicators) (Wales) Order 2015**

Negative procedure; Date made: 9 March 2015; Date laid: 10 March 2015; Coming into force date: 1 April 2015

**CLA505 – The National Health Service (Optical Charges and Payments) (Amendment) (Wales) Regulations 2015**

Negative procedure; Date Made: 7 March 2015; Date laid: 10 March 2015; Coming into force date: 1 April 2015

**CLA510 – National Health Service (Welfare Reform Consequential Amendments) (Wales) Regulations 2015**

Negative procedure; Date Made: 9 March 2015; Date laid: 10 March 2015; Coming into force date: 1 April 2015

**CLA511 – The Non-Domestic (Demand Notices) (Wales) (Amendment) Regulations 2015**

Negative procedure; Date Made: 9 March 2015; Date laid: 11 March 2015; Coming into force date: 1 April 2015

**CLA513 – The National Assistance (Sums for Personal Requirements) and Social Care Charges (Wales) (Miscellaneous Amendments) Regulations 2015**

Negative procedure; Date Made: 13 March 2015; Date laid: 16 March 2015; Coming into force date: 6 April 2015

Affirmative Resolution Instruments

**CLA506 – The Homelessness (Review Procedure) (Wales) Regulations 2015**

Affirmative procedure; Date Made: Not stated; Date laid: Not stated; Coming into force date: 27 April 2015

**CLA507 – The Homelessness (Suitability of Accommodation) (Wales) Order 2015**

Affirmative procedure; Date Made: Not stated; Date laid: Not stated; Coming into force date: 27 April 2015

**CLA509 – The Homelessness (Intentionality) (Specified Categories) (Wales)**

## **Regulations 2015**

Affirmative procedure; Date made: Not stated; Date laid: Not stated; Coming into force date: 27 April 2015

## **4 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3**

### Negative Resolution Instruments

**CLA508 – The Firefighters' Pension Scheme (Wales) Regulations 2015** (Pages 85 – 265)

Negative procedure; Date made: 9 March 2015; Date laid: 10 March 2015; Coming into force date: 9 April 2015

**CLA(4)–09–15 – Paper 3 – Report**

**CLA(4)–09–15 – Paper 4 – Regulations**

**CLA(4)–09–15 – Paper 5 – Explanatory Memorandum**

### Composite Negative Resolution Instruments

**CLA498 – The Control of Waste (Dealing with Seized Property) (England and Wales) Regulations 2015** (Pages 266 – 288)

Composite Negative procedure; Date made: 3 March 2015; Date laid: 5 March 2015; Coming into force date: 6 April 2015

**CLA(4)–09–15 – Paper 6 – Report**

**CLA(4)–09–15 – Paper 7 – Regulations**

**CLA(4)–09–15 – Paper 8 – Explanatory Memorandum**

**CLA503 – The Surface Waters and Water Resources (Miscellaneous Revocations) Regulations 2015** (Pages 289 – 295)

Composite Negative procedure; Date made: 3 March 2015; Date laid: 6 March 2015; Coming into force date: 6 April 2015

**CLA(4)–09–15 – Paper 9 – Report**

**CLA(4)–09–15 – Paper 10 – Regulations**

**CLA(4)–09–15 – Paper 11 – Explanatory Memorandum**

## Affirmative Resolution Instruments

**CLA496 – The Welsh Language Standards (No.1) Regulations 2015** (Pages 296 – 396)

Affirmative procedure; Date made: Not stated; Date laid: Not stated; Coming into force date: Not stated

**CLA(4)–09–15 – Paper 12 – Report**

**CLA(4)–09–15 – Paper 13 – Regulations**

**CLA(4)–09–15 – Paper 14 – Explanatory Memorandum**

### **5 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

(vi) the committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person;

**Scoping Paper** (Pages 397 – 402)

**CLA(4)–09–15 – Paper 15 – Scoping Paper: Powers for a Purpose: Towards a Lasting Devolution Settlement for Wales**

**Forward Work Programme** (Pages 403 – 404)

**CLA(4)–09–15 – Paper 16 – Forward Work Programme**

Ein cyf/Our ref: LF/FM/0609/14

**Llywodraeth Cymru**  
**Welsh Government**

David Melding AM  
Chair  
Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff

30<sup>th</sup> June 2014

Dear David

Thank you for your letter dated April 2014 inviting written evidence to the Constitutional and Legislative Affairs Committee Inquiry into making laws in the Fourth Assembly.

I attach a response on behalf of the Welsh Government which I trust you will find helpful.

Yours sincerely



**CARWYN JONES**

## **CONSTITUTIONAL AND LEGISLATIVE AFFAIRS COMMITTEE: MAKING LAWS IN THE FOURTH ASSEMBLY**

### **Response of the Welsh Government**

This is the Welsh Government's response to the invitation to submit written evidence to the Constitutional and Legislative Affairs Committee's inquiry into making laws in the Fourth Assembly.

The Welsh Government notes the terms of reference set out in the Committee's letter of April 2014 and welcomes this opportunity to contribute to the inquiry. We are committed to producing high quality bilingual legislation which:

- endures;
- does not require frequent amending;
- avoids the courts having to decide what it means;
- gives effect to government policies;
- reduces compliance costs for users; and
- limits the scope for avoidance.

The Welsh Government is proud of its achievements in promoting an ambitious Legislative Programme during the Fourth Assembly. Legislation passed by the National Assembly has, and will have considerable benefit for the people of Wales. This ranges from wholesale reform of social services in Wales to changes in organ donation systems that should save many lives. Most recently the Housing (Wales) Bill, which we hope will shortly be passed, will among other matters introduce a radical new system of regulating private sector rented housing and improve and recast the law on homelessness.

Although we are not quite comparing like with like, it is notable that so far in this Assembly the number of pages of primary legislation passed is approximately 700 pages (including the Housing Bill). By July 2010 the comparable figure (in relation to Measures) was 239. In general, and including the larger Measures passed later in the Third Assembly, on average the legislative output of the Government has doubled during this Assembly.

Developing law is something that is easier said than done, even for governments and legislatures with centuries of experience and an abundance of expertise. In Wales it is still something that is relatively new to both the Welsh Government as the promoter of the majority of legislation, and to the National Assembly as a fully fledged legislature. Despite the achievements to date, the Welsh Government's highest organisational priority is to ensure that it is able to deliver well thought-out and well drafted legislation that meets the policy aspirations of Ministers for consideration by the Assembly.

Our response is set out in 4 Parts and an Annex of accompanying notes, as follows:

**Part 1      Legislation development (general)**

**Part 2      Procedural matters and scrutiny**

**Part 3      Legislative drafting practices**

**Part 4      “Statute book” and accessibility**

**Annex**

**Document: Office of the Legislative Counsel, Legislative Drafting Guidelines**



## **PART 1**

### **Legislation development (general)**

#### *Policy development*

1. The Welsh Government recognises that before embarking on the process of developing legislation, it is important to have clearly defined policy objectives and a strong evidence base to underpin them. It is essential that all those involved in developing legislation understand in some detail, firstly, how existing systems (where relevant) operate both in law and in practice and, secondly, exactly what change is desired and for what purpose and outcome. Policy development benefits from the discipline of involving lawyers, legislative counsel and economic and financial experts to challenge the proposals in order to ensure that they are robust. Challenge is important not only when the legislation is scrutinised by the legislature, but also by Ministers, civil servants and members of the public.
2. An essential part of the process is identifying whether legislation is required at all. Legislation is not always the most effective or appropriate way to implement policy and the need for it should be tested thoroughly during the policy development cycle. Informed consideration of the options available to deal with an identified problem may lead to the conclusion that legislation is unnecessary perhaps because existing powers may be used or a different approach could be taken through enhanced enforcement or changes in guidance or codes of practice. Legislation is an option to be brought forward only after comprehensive consideration of all the available options. Part of this process involves identifying potential conflicts or inconsistencies with other policies or other pieces of legislation also being developed by the Welsh Government, or indeed other governments and legislatures, and should be done as early as possible.
3. The policy development cycle approach of the Welsh Government applies to all proposals for legislation. This involves a five stage process of (1) evaluating the current position, (2) considering the case for change, (3) identifying options for change, (4) choosing a preferred option and (5) implementing the change. It includes:
  - identifying the social, economic and environmental objectives of the policy and the outcomes;
  - using evidence to develop a series of options;
  - identifying the different impacts that the policy might have;
  - assessing whether the policy will result in benefits that are sustainable;
  - economic appraisal;
  - programme and project management; and
  - monitoring and evaluation.
4. The rigorous process involved in the development of effective policies, and where relevant supporting primary legislation should not be underestimated. This is one reason why the Welsh Government has developed a comprehensive legislative development training programme and adopted a flexible resourcing policy for key work areas.

## *Consultation*

5. The Welsh Government is committed to developing and implementing policy and legislation in an open way; a process assisted by engaging and consulting on a policy proposal both within Government and externally. This includes consultation with the UK Government, not least because of the complexity of the devolution settlement. The purpose of external engagement and consultation is to make information available to the public, listen to a wide range of interests, obtain more and better information from affected parties, and to be more responsive to what is heard. Consultation does not necessarily of course lead to consensus, but it is a process that permits a two-way flow of ideas and information between members of society and the Welsh Government. Experience suggests that formal consultations are always best complemented by more informal engagement, including discussions with stakeholders at meetings, seminars and workshops to ensure as wide a range of stakeholder views and opinions can be sought.
6. Such engagement and consultation not only improves understanding of a situation but can also assist to avoid piecemeal reform of one part of a system which may be interconnected with others.
7. The ultimate test for any piece of legislation is that it does what it was intended to do and benefits the people. Post-legislative scrutiny is an important matter for the Welsh Government which notes the recommendations of the Law Commission of England and Wales in a report published in October 2006:
  - the approach to post legislative scrutiny should be evolutionary (consistent with the way in which the system of government has developed);
  - it should build upon what is already in place; and
  - more systematic post-legislative scrutiny may take different forms.

## *Management of the legislative programme*

8. As First Minister I oversee decisions on the content and management of the Welsh Government's Legislative Programme, supported by the Legislative Programme Board (a group consisting of senior officials including the Permanent Secretary, Directors General, the Director of Governance, the Director of Legal Services and First Legislative Counsel). Day to day management of the Programme is undertaken by a dedicated team (the Legislative Programme Unit (LPU)), which produces detailed timetables for each phase of development and scrutiny of each bill in the Programme. These timetables are reviewed routinely by LPU, and by the Office of the Legislative Counsel (OLC), the office tasked with drafting the Government's legislation.
9. Timetabling the Legislative Programme takes into account a number of factors such as the size and complexity of a bill, its urgency, drafting legislation in both English and Welsh, and the time available for Assembly scrutiny both in committee and plenary. This is an art not a science and must be subject to regular review in order to ensure that the deadlines set are met. This is, however, a process that works well and brings discipline to the legislative development process.

10. Progress on individual bills is also monitored through governance arrangements involving project boards reporting to the Senior Responsible Officer (“SRO”) appointed for each bill. Project boards and SROs undertake assessments on progress and other risk factors and report regularly to the Legislative Programme Board. Additionally, Departments have internal governance arrangements for the purposes of reporting to the Minister in charge of a bill.

#### *Capacity to legislate*

11. Since receipt of primary legislative powers much has been done to improve the Government’s capacity to legislate. OLC, for example, has doubled in size over this period and is continuing to expand with further recruitment having commenced recently. The office has been restructured to enable recruitment of experienced Parliamentary Counsel. More generally, the Welsh civil service has placed considerable emphasis on developing the legislation skills of officials. The Legislative Programme Board has put in place an extensive legislative improvement programme and probably the most thorough legislation education programme in the United Kingdom.

12. A concern for the Welsh Government is the time available for Members to properly scrutinise bills, something that is in the best interests of all concerned. This is particularly the case in so far as Committee time is concerned, especially where bills are introduced shortly after one another and fall under the scrutiny remit of the same subject Committee. Effective and appropriate scrutiny by Members is a key part of the legislative process, providing the necessary challenge and consideration of changes in law.

13. The Government is mindful of Business Committee’s concerns on this point, and has increased the information provided on the introduction of current and future Bills to assist with that Committee’s planning. There is an effective working relationship between LPU and Assembly Commission officials which allows for forward planning to be undertaken, as much as is possible, and we are committed to working together wherever possible to ensure scrutiny outcomes are not compromised. However, it is not always appropriate for the Government to defer introduction of Bills to allow a Committee to conclude its considerations of an earlier Bill or another inquiry it is undertaking. This is an area Members may want to consider further.

#### *Non-government bills and amendments*

14. The role and place of Member Bills in the democratic process is an important one. But it is recognised that developing effective and workable legislation is an exacting process and can be particularly problematic for Members who do not have access to the machinery of government and its policy development, legal and drafting expertise. Policy expertise in particular is crucial because of the need to understand how proposals would work in practice and how they would impact on other areas of government. If there are problems in relation to either then the legislation could be difficult or impossible to implement.

15. There have been occasions where Bills have been developed independently of existing laws and systems, presumably as it can be a more straightforward way of setting out the policy the Member wishes to pursue. As a case in point the Government sought to make significant changes during the amending Stages to the Regulated Mobile Homes Sites Bill (later the Mobile Homes (Wales) Act 2013) mainly because it created a new system of regulation that seemed to be intended to sit alongside an existing system – something which could have created confusion and added bureaucracy. For similar reasons the Government engaged with the Member in Charge of the Bill relating to recovery of medical costs for asbestos diseases, so it was drafted using a different approach to that initially envisaged, prior to it being introduced. On other occasions Member Bills (and indeed Measures) have sought, in our view, to be overly prescriptive in the way they set out matters on the face of the Bill when they have not been subject to a comprehensive policy development phase and full consultation. Flexibility is required in such circumstances; the Playing Fields Measure was recast partly for this reason. Significant amendment was also required to the Domestic Fire Safety Measure for policy and drafting reasons.
16. To date no Member Bills have been passed without significant amendment (or replacement) by the Government. This is not a criticism. For the reasons set out above, the involvement of the Government of the day is in many respects unavoidable and producing a bill in isolation of the machinery of government will always be particularly difficult.
17. It remains to be seen how Committee Bills will be developed and brought forward, but the Government continues to see a role for itself in using the machinery of government to legislate on matters for which there is full cross party consensus and agreement that there is a need for legislative reform (the Public Audit (Wales) Act 2013 being such an example).
18. Further work is also required to consider what more (if anything) could be done to facilitate non-government amendments that are accepted by the Assembly. It is considerably more difficult for any person who has not been involved in the initial drafting of a bill to draft technically accurate amendments. Further consideration should also be given to reaching a common understanding so far as possible of the legislative competence basis for non-government provisions in Assembly Bills. The issue here is that once passed it is for the Counsel General to consider whether to refer a Bill to the Supreme Court under section 112 of the Government of Wales Act 2006 or to defend such a Bill if referred by a UK Government Law Officer. In addition the points made above about the machinery of government also apply here.

#### *Legislative drafting software*

19. OLC have experienced difficulties during this Assembly with the legislative drafting software procured jointly by the Welsh Government and the Assembly Commission in 2010. From OLC's perspective the legislative drafting software was intended to ease the burden of drafting and preparing legislation, but has, in so far as amendments are concerned, proved to have the opposite effect. Using the software in the amending stages is, for various reasons, time consuming and resource intensive.

Legislative Counsel have to spend extensive time ensuring that amendments are produced within a very specific electronic format at the expense of spending enough time ensuring that the content is technically accurate and well drafted.

## **PART 2**

### **Procedural matters and scrutiny**

#### *Scrutiny*

20. When considering the appropriate level of scrutiny for bills, while certain standards in relation to transparency and consultation must be followed in all cases, in the Government's view much depends on the specific circumstances of each bill proposal. There are undoubtedly circumstances in which it would be appropriate to publish a draft bill prior to introduction, or to allow for more time for Stage 1 scrutiny, or indeed to proceed to a Report Stage. This could be the case, for example, in circumstances where a bill is particularly complex, and has a more significant impact on the public, or where a bill makes extensive reform and is very lengthy. Conversely however, there will be occasions where time may be of the essence or where a bill's provisions are uncontroversial. In such circumstances further consultation or scrutiny would either be inappropriate, disproportionate or not possible.
21. The use of a Report stage is a matter for the Member in Charge of the Bill to propose and should be considered on a case by case basis. The Report Stage was particularly important during the passage of the Bill which became the Mobile Homes (Wales) Act 2013 due to the extensive recasting (and indeed expansion) of the Bill at Stage 2. The Report Stage afforded proper consideration of the large amount of amendments that had been tabled at Stages 2 and 3, which had essentially transformed the Bill as introduced and ensured there was a period of reflection on the Bill. It was also an essential stage of the passage of the Social Services and Well-being (Wales) Act 2014 given the size and complexity of the Bill and the number of amendments tabled.
22. The extent to which Bills may be expedited through scrutiny on the other hand is a matter first of all for section 111 of the Government of Wales Act 2006 and the National Assembly's Standing Orders. This Assembly's Standing Orders make clear provision for a 'fast track' procedure of curtailed scrutiny for bills where the need arises and Business Committee consider appropriate. The Government is of the view that there will be times when it will be appropriate or necessary for bills to be fast-tracked. The National Health Service (Finance) (Wales) Act 2014, for example, was required to be in force for the start of the next financial year (2014/15), to avoid up to a year's delay in commencement if that date was missed, as the Bill implemented the recommendations made in a report by the Wales Audit Office in July 2012. The fast track process was agreed by the National Assembly for Wales and enabled the Bill to go through the legislative process in the shortest possible time meaning that the very tight timescale for the Bill could be met. The Government considered that the policy within this Bill was one which had been extensively debated and considered by three Assembly committees prior to introduction. There had, therefore, been scrutiny and examination of the policy before the legislation was proposed. It is also worth noting that this Bill was on a single, very narrow, policy. Had this not been the case, we may not have proposed a curtailed scrutiny process.

23. Expediting bills through scrutiny, or 'fast-tracking', is different to the Government proposing a bill be considered by the Assembly as a Government Emergency Bill. In the case of the Agricultural Sector (Wales) Bill, the arguments to protect agricultural workers urgently against action taken by the UK Government were set out before the National Assembly in detail. Although this Bill progressed through the Assembly as an Emergency Bill it did so on a longer timetable than that provided for in Standing Orders and the Member in Charge did appear before the relevant committees. The Minister was able to provide evidence of the need for urgency and respond to questions in committee as well as Plenary.
24. Looking ahead, the Government envisages that it may also be appropriate to deal with certain financial or tax revenue issues through an alternative scrutiny process, and this should also be the case in order to facilitate consolidation and the development of a Welsh 'Statute Book'.

*The balance between what is included in primary and subordinate legislation.*

25. An issue that has been of considerable interest to Members while scrutinising bills is the balance between what is included on the face of a bill and what is appropriate to be brought forward as subordinate legislation. Assembly Members are rightly concerned to ensure that executive powers to make subordinate legislation are appropriately given in the first place and, where they are given, they should be properly scrutinised. The Welsh Government seeks to follow the standard approach adopted by Parliament and is mindful of the Committee's recommendations on the matter and the importance of moving away from framework bills.
26. There are a number of reasons why legislation is split between primary legislation and subordinate legislation. There is first of all merit in keeping bills as clear, simple and short as possible, in other words keeping them less cluttered by detail.
27. There is also significantly greater flexibility in making subordinate legislation as it is not subject to the same timetable constraints as Assembly Bills and it enables the law to be updated to match changing circumstances or for the law to be corrected or amended in the light of experience.
28. If this process works well, it would help the Assembly to focus on the essential points, policy and principle, in its scrutiny.
29. In response to the Assembly's previous concerns that the use of affirmative and negative Assembly procedures was not sufficiently transparent or evident, the Counsel General issued guidance in January 2012 (see Note 1 in the Annex) which set out the factors that the Government should take into account when proposing a procedure. These guidelines recognise that in each case there is a balance to be struck between scrutiny by the Assembly, consumption of Assembly (or Committee) time (something that will become increasingly important as time goes on), the significance of the provisions in question, and the making of legislation in the most efficacious manner. Although the guidance is clear about the circumstances under which the Government would use a particular procedure, Members still seek to influence the use of the procedures

and routinely object to the position the Government has taken (seeking the affirmative procedure when the Government proposes the negative procedure, and a 'super' affirmative procedure – even when it is unclear what this means in the particular context – when the Government proposes the affirmative procedure).

30. Generally speaking the Government considers that the correct balance has been struck during this Assembly, though remains conscious of the criticism it has received at times in this respect. During the course of the Social Services and Well-being (Wales) Act's passage through the National Assembly, the Government received criticism in relation to a power conferred on the Welsh Ministers to make regulations to determine whether a person is entitled to social services. It was suggested that the Government was somehow reducing Assembly Members' ability to influence such matters, but this was not correct. The Act in fact expanded the National Assembly's influence by providing for greater transparency and accountability in relation to such matters. Previously, an adult's entitlement to social services was dependent on various approvals and directions given by the Secretary of State in the exercise of his or her powers under the National Assistance Act 1948. Those approvals and directions (made in 1993) were not subject to any form of Parliamentary procedure, nor are they easily available to the public. A child's entitlement to social services, specifically, was dependent on discretionary decisions taken by local authorities in the exercise of their target duty under section 17 of the Children Act 1989. In exercising their discretion, local authorities had to have regard to guidance made by the Welsh Ministers. The guidance had not been subject to any form of Assembly procedure, nor was it easily accessible. The Social Services and Well-being (Wales) Act 2014 sweeps away these arrangements and replaces them with a system under which eligibility criteria will be published in regulations that will be subject to the 'super' affirmative procedure.
31. Similar points could be made about other provisions of the Act too. For example, the Welsh Ministers previously held a significant degree of influence over local authorities' exercise of their social services functions by means of general directions. Again those directions were not subject to any form of Assembly procedure. These provisions were replaced with a system under which this influence will be exercised by means of published Codes. The Act places a duty on the Welsh Ministers to consult on draft Codes before they must be laid before the National Assembly. If the Assembly resolves that they should not be made, the Welsh Ministers will not be able to issue those Codes. So, once again, the Act provides for greater control by the legislature over the executive.



## **PART 3**

### **Drafting practices**

#### *General*

32. The drafting accuracy and completeness of a bill upon introduction is reliant upon three factors. The first is the time available both to develop the policy which is to be reflected in the bill (including adequate time for comprehensive, quality policy and legal instructions to be prepared), and to complete the meticulous process of drafting accurate and accessible legislation in two languages. The second factor is the expertise of those involved, not only the drafters of the legislation but also other members of Bill Teams. The third factor is the procedures established to ensure there are sufficient quality assurance checks of legislation so as to ensure it is accurate and no mistakes have been made.
33. There will inevitably be tensions between the amount of time considered necessary to ensure that the quality of legislation is not compromised while meeting the political demands to progress legislation so that desired reform is implemented as soon as possible. However, the introduction of a bill is one step in a long process of development, challenge and scrutiny with consideration of the detail of bills continuing throughout that process. As the Welsh Government has previously stated, amendments to bills at Stages 2 and 3 of the scrutiny process should be regarded as a sign that the development process is working and that various issues continue to be taken into account until a bill is passed.
34. Expertise and quality assurance checks are essential. It requires specialist expertise and a system of checks involving those with such expertise. Within Government this primarily involves officials from central service departments: the Legal Services Department, OLC, the Office of the Counsel General, jurilinguists and the LPU. Each has different but complementary roles and responsibilities that are intended to ensure that the content of bills has been subject to robust challenge and is as well thought out and well drafted as possible. The system that has developed is based on best practice in other jurisdictions.
35. More generally there is much that can be learnt from the legislative development systems of other jurisdiction both within the UK and across the Commonwealth. Officials from the Welsh Government have been members of the Commonwealth Association of Legislative Counsel since the beginning of the Third Assembly and it was through contacts made in that organisation (and the assistance of the Foreign Office) that four days of valuable meetings were arranged for the Counsel General with politicians and officials from the New South Wales and New Zealand Governments in 2012.
36. The Counsel General has a statutory function under section 112 of the Government of Wales Act 2006 to consider whether to refer a bill to the Supreme Court to determine a question of legislative competence but also has a vital role to play in ensuring that Acts of the Assembly are accessible and comply with the rule of law.

37. In so far as the expertise of officials is concerned, a significant development during the Fourth Assembly has been the restructuring and expansion of OLC, the Government's specialist legislative drafting office. The UK Government's drafting office, the Office of the Parliamentary Counsel (OPC), has been in existence since 1869. The Office of the Legislative Counsel in Belfast was formed upon partition in 1920 and an Office of the Scottish Parliamentary Counsel also existed for many years under the guise of the, pre-devolution, Lord Advocate's Department. OLC in Wales, by contrast has been started from scratch, albeit with assistance from OPC. Whilst still in its infancy in comparison to other parts of the UK the work of OLC was commended in the report of the similar Committee inquiry into Assembly Measures and early in this Assembly it also received the praise of Supreme Court Judge Lord Hope who remarked during the Local Government Byelaws Bill case that the Bill was "very well drafted", and noted that the Welsh drafters were "using their own lines, but applying the same standards" as Parliamentary Counsel.
38. It had become clear, notwithstanding this, that a combination of increased demand due to the size of the Legislative Programme, and less support from OPC, meant that the office had to expand. This was not as straightforward as it may appear due to the specialist nature of legislative drafting and the very limited pool of experienced drafters available across the UK. The Office was, therefore, restructured primarily so as to enable recruitment of experienced Parliamentary Counsel. Although still a small office, OLC has now doubled in size and currently has three members with many years' experience of working at OPC and another who has been recruited from the Office of the Scottish Parliamentary Counsel. This has been added to the experience that had already been developed by 'home grown' drafters. OLC has also retained the services of a consultant legislative drafter with over 30 years of experience of drafting Westminster Bills for OPC. OLC strives to achieve the same standards as those set by OPC, an Office that has been highly respected both within government and globally for many years. There are arrangements in place for OLC to receive occasional technical assistance from OPC on a case-by-case basis, though this is now something that happens considerably less frequently.

*Bilingual legislation/deddfwriaeth ddwyieithog*

39. The fact that the National Assembly legislates in both the English and Welsh language is a huge achievement, and one which is generally under-appreciated. The implications that this has for the process of drafting and scrutinising legislation are not widely understood. Drafting legislation bilingually first of all means that all Assembly Bills are twice the size of an equivalent bill drafted in other jurisdictions (in the United Kingdom at least), and means that further checks and balances are required within the system to ensure that the drafting of both languages is accurate and equivalent. This is achieved through the joint efforts of Legislative Counsel and a specialist team of jurilinguists who produce the first draft of the text in the second language, before continuing to work with Legislative Counsel to perfect and edit the text and ensure that both texts have the same legal effect. The task of producing legislation that is drafted in a modern fashion and in plain language applies equally, of course, to both of these languages. Drafting legislation is a task that is famously complex, and drafting it in two languages is even more challenging.

There is considerable scope for error, in particular when drafting and amending large bills. The Social Services and Well-being (Wales) Act 2014 is 378 pages long in total (189 pages in each language). Producing bilingual primary legislation at that scale is a big task.

40. While the need to draft in both languages brings its risks, both in terms of the resource involved and the potential for discrepancies between languages, it also brings with it an unique opportunity to improve the standard of both languages. This is because in producing a second language text, bills are subject to an additional editorial process which has the potential to assist the clarity of the law. This is for a number of reasons but the most significant are that in producing a second text, the original text must be fully understood. Any ambiguity should therefore be identified as part of that process. In addition, due to the differing syntax of the English and Welsh languages the drafter who considers the structure and clarity of the text in the second language will often be able to re-visit and improve the text of the first language drafted. It also provides an opportunity for further thought to be given to the terminology used to describe key concepts.
41. The fact that Welsh legislation is bilingual should in itself also be an aid to accessibility; giving the reader the choice of reading the law in the language he or she is most comfortable. Readers of European legislation (for example) will be aware that the ability to read a complex provision in another language can sometimes aid the reader's understanding.

#### *Plain language*

42. Legislation should be drafted in modern standard Welsh and English and generally speaking should reflect ordinary usage. This means that a drafter of legislation should, in general:
- use simple and familiar words rather than complex expressions and unusual words;
  - avoid using foreign words;
  - avoid using archaic words;
  - avoid using jargon, especially governmental shorthand expressions and unexplained acronyms; and
  - avoid including too many different ideas in each sentence (see further Note 1 in the annex).
43. Sometimes it is not possible or sensible to express complex concepts in language that is easy for any person to understand. Technical expressions may be appropriate where such terms are well understood by the main audience of the legislation. This may also be the case if any attempt to render their meaning in everyday language would lead to long-winded provisions that are difficult to understand or uncertain in effect. In pursuing plain language drafting, it is essential however that there should not be any loss of precision or of any necessary detail. The Welsh Government endorses the New South Wales Parliamentary Counsel's Office's policy on plain language. That Office first of all makes clear that plain language is not simple language; plain language is clear,

intelligible English. It is not simplistic English. It does not involve any loss of precision.

44. The second point made by that Office is that their policy in relation to plain English is an on-going process and has its limitations:

*“it is recognised that the adoption of plain language is an ongoing process and that not every document will necessarily be a perfect embodiment of plain language. It should be appreciated that there are degrees of plain language, while the Office agrees that legislation should be expressed in as plain and formal language as possible, there are a number of on-going factors that contribute to complexity, including the following:*

- *policies that are to be implemented by legislation are often themselves very complex, although even complex policy can be presented in a clear and user-friendly way,*
- *the drafter has to keep in mind at least three audiences, each with different requirements: Parliament itself, the public or section of the public to whom the legislation is directed and the courts and the legal system,*
- *the complexity of the surrounding written and unwritten law on a particular subject makes it very difficult and time-consuming to introduce concepts in a different form,*
- *a plain language document generally takes longer to produce than a document that is not in plain language”.*

45. Judgements have to be made, therefore, as to how legislation should be drafted to ensure that the person who will be affected best understands it. A balance has to be struck between drafting provisions that are understandable for expert users and provisions that can be used and applied every day by persons with no legal training. This is ultimately a matter of judgement for the instructing officials and the drafter. The fact that legislation must be technically precise and effective should also of course always be kept in mind. Precision and effectiveness cannot be compromised in the interest of clarity; and over-simplification, therefore, can result in legislation failing to have its intended result.

#### Overview sections

46. In so far as overview sections are concerned OLC’s drafting guidelines provide that:

*“a section at the beginning of a Bill, or of a Part or a Chapter explaining what is to follow may help the reader to navigate the reader around a larger piece of legislation where the table of contents is too long to give a clear picture. An overview provision may be helpful in shorter pieces of legislation; for example if the substantive provisions are on an obscure topic or potentially difficult for all or part of the likely readership.*

*An overview is, typically, a brief summary of the content of an Act, Part, Chapter, group of sections or Schedule. It may also contain signposts to other relevant provisions. Its purpose is to assist the reader in navigating legislative material. An overview will generally have no*

*operative effect of its own, it may be contrasted with a purpose section intended to effect the interpretation of the provision.”*

47. Overview provisions are used by OLC routinely, though not in all bills. They have been used primarily as a tool for navigating larger bills or bills which contain a strong procedural element (something which is quite common) in order to assist the reader to inform an initial understanding of the effect of the legislation. So, for example, in the Food Hygiene Rating (Wales) Act 2013 the overview section at the beginning is intended to help the reader to overcome the fact that the Act contains a number of procedural provisions which are difficult to set out in order (in other words the chronology of the system itself does not always match the chronology of the key provisions in the legislation itself). Although the National Health Service Finance (Wales) Act 2014 was a very short Act, it was used here to explain the effect of a relatively complex textual amendment made to the National Health Service Act 2006 without requiring the reader to read the amendment in context (i.e. incorporated into the 2006 Act).
48. However, there are drawbacks to overview provisions. The first concerns the argument that as an overview is intended merely to have explanatory effect, it should be contained in the Explanatory Notes to an Act rather in the Act itself. The counter to the argument however, is that many would find it preferable to have a basic explanation incorporated into the main document i.e. the Act rather than having to look for this in a second document. The benefit is that it will assist clarity of the legislation in its own right. As developments in publication technology emerge, and the way in which people read legislation changes, this may in future not be necessary but at present the Welsh Government takes the view that some explanatory material in the main document is beneficial. Another danger is that the provision in the overview section could become inaccurate (or ‘toxic’) during amending stages either because it is overlooked or as a result of a late amendment during amending stages to a bill. There are also two other avoidable dangers when using overview sections. The first is that unless carefully worded the overview section could be confused with the substantive sections which follow, and the second is that overviews can become too long – which arguably defeats the object.
49. Ideally this would be remedied by reconsidering the use of long titles in legislation and the Welsh Government’s preference would be that an overview could replace the long title to a Bill and be incorporated without being part of the operative provisions themselves. This would enable amendments to be made to an overview section as a printing change after substantive amendments have been agreed (in a similar way as amendments are made to section headings).

#### *Drafting techniques*

50. The question of what constitutes good practice in drafting technique can be divisible into two parts: a process element and a technical element.
51. Within the Welsh Government, the process element involves ensuring that the drafting of a bill is built on good foundations and that those who are developing a bill understand the role and use of legislation. This means (among other things) avoiding unnecessary legislation, and allowing adequate time to fully explore the

policy issues underpinning a potential bill. This is influenced by both political and organisational matters.

52. Drafting legislation is (or should be) an inherently subjective process, to some extent at least. Drafters need a certain amount of freedom when they work; constraint can limit innovation and remove the flexibility needed to produce what the drafter might consider the best possible draft, in all the circumstances. However, some constraint is useful; adherence to agreed principles of good drafting, and the principle that there are areas where consistency/uniformity is a good thing. Following the recent structural changes in, and expansion of, OLC, the Office is increasingly instigating what might be regarded as best practice by the drafting community:

- the 'four-eyes' practice (at least two drafters looking at all provisions drafted);
- the availability of drafters with different backgrounds and levels of experience in order to solve problems, work collegiately, and deliver the drafting of the Legislative Programme;
- the creation of a body of drafting (and legislation-making) know-how;
- the training of non-drafters on areas within the Office's expertise;
- the development of the Office as one of the repositories of knowledge about previous bills.

53. The 'technical' element of legislative drafting is primarily a matter for OLC. Good practice in this respect involves:

- employing good drafting techniques for producing modern and accessible law;
- being guided by strong principles of good drafting (or 'good law');
- the implementation of a comprehensive and ongoing development programme for OLC and others with an interest in legislation;
- the ability to share knowledge with other drafting offices; and
- to contribute to the wider body of learning and debate on drafting matters.

54. OLC is also employing best practice in the sense that:

- it understands, and seeks to apply, the 'good law' principles that have been promoted by the Cabinet Office (see <https://www.gov.uk/good-law>);
- it is particularly aware of the drafting issues which are specific to Wales, and seek to address them in its work;
- where possible, bills are drafted with the long term aim of establishing a statute book for Wales (which in itself falls within one of the principles of 'good law');
- OLC receives and uses drafting techniques guidance provided by OPC, but is also developing its own drafting techniques based on its own specific needs, and its own views of best drafting practice (see Annex 2);
- OLC is instigating an internal development programme in anticipation of 3 less experienced lawyers joining the Office shortly; and
- OLC is engaging with the drafting community at large, in particular with the other UK drafting offices in the form of secondments, meetings, seminars,

and forums (since its inception OLC has also participated in each of the biennial conferences of the Commonwealth Association of Legislative Drafters).

## PART 4

### “Statute book” and accessibility

#### *Accessibility*

55. In seeking to make legislation understandable, as well as considering the accessibility of the language (considered above), the drafter must consider the coherence of the bill as a whole and ensure that the material is organised well:

- provisions should be arranged in a logical order;
- general provision should be followed by specific provisions and exceptions;
- provisions that relate to the same subject should be grouped together;
- provisions should be arranged in temporal sequence;
- provisions that are significant should come before provisions of lesser importance;
- sections should be limited in the number of sub-sections they contain;
- divisions into parts and the use of headings and sub-headings break up a long document and aids comprehension; and
- sections should be numbered.

#### *Consolidation*

56. A significant issue impacting greatly on the accessibility of Welsh legislation is the condition of the statute book as a whole. Improving access to legislation and developing a Welsh Statute Book is a longstanding concern. In the words of the Committee itself:

*“According to several submissions we received, it is sometimes difficult to establish what the law is that applies in Wales. Laws for Wales have been made by the UK Parliament and the National Assembly, and laws made each have been amended by the other, with statutory instruments sometimes amending primary legislation to complicate the picture further. It is important that law should be accessible to practitioners and citizens. We recommend that a mechanism be sought to ensure the expeditious publication of up-to-date law applying in Wales, and that a programme of consolidation of law should be undertaken. The Law Commission would have an important role in this process.”*

This is a UK wide problem that has a specific Welsh dimension. The number of statutes currently in force in the United Kingdom is vast, approximately 4,000 Acts as well as thousands of pieces of subordinate legislation. Resource considerations and the need to implement policy quickly can also lead to choices being taken to amend existing laws rather than consolidating: amending what is there rather than starting afresh. This means that as the Statute Book is continuously changed according to the policy priority of the day, it lacks a sensible order and provisions are scattered across Acts with little cohesion.



Little emphasis is given to consolidation and historically there has been very little of it in the United Kingdom.

57. Devolution, in particular to Wales, has potential to make the law yet more inaccessible. There is, it could be said, currently inherent complexity to the law applicable to Wales. There are a number of reasons for this.

- The first is that as well as needing to be compliant with overarching provisions such as EU law and Human Rights, legislation in a devolved area must often be read in conjunction with legislation in areas that are not.
- The second is that within the competence of the National Assembly for Wales, the vast majority of the existing legislation that applies to Wales actually applies to England and Wales. Most provisions apply equally to England and Wales and only some are separate. New and old Wales-only provisions can only be decoupled with concerted effort. On the other side of the coin, where such decoupling has occurred through Westminster Bills applying to England only, this has often left complex old UK or England and Wales text in place only for Wales.
- The third reason is the historic mechanism of conferring executive powers on the old Assembly, in part through transfer of functions orders and in part (post devolution) through Westminster Bills. This requires the reader to understand that the text on the face of the legislation does not reflect legal reality. References in Acts to powers conferred on the 'Secretary of State' are often in reality held by the Secretary of State in England while in Wales the power was held at first by the National Assembly for Wales and now by the Welsh Ministers. Similarly, following the coming into force the Government of Wales Act 2006, a number of powers conferred upon the National Assembly on the face of statutes enacted post 1999 are now held by the Welsh Ministers.

58. The Committee will be aware the Counsel General made a commitment early in this Assembly to restate provisions in Assembly Bill where appropriate in order to minimise the practice of amending existing legislation that applies to England and Wales or the United Kingdom as a whole. This (generally speaking) reduces complexity as it means the legislative provisions apply to Wales only. The effect of this also is to ensure that provisions that would have been made in English only (as the existing legislation would be in English only) are also made in Welsh. This has been achieved with few exceptions during this Assembly, and in the case of those exceptions there was little practical alternative (as they involved relatively small Welsh Acts making a relatively small number of amendments for a narrow purpose to large England and Wales Acts).

59. Of the Acts and Bills that have been developed to date in this Assembly only two of them, the Further and Higher Education (Governance and Information) (Wales) Act 2014 and the very short NHS Finance (Wales) Act 2014 are made up (for good reason) solely of amendments to existing Acts of Parliament that apply to Wales and England. In all other cases freestanding Welsh laws have been developed in accordance with the principles the Counsel General outlined to the Assembly two years ago, often restating provisions of existing law as well as reforming the law.

Examples of this practice include:

- the Schools Standards and Organisation (Wales) Act 2013;
- the Local Government (Democracy) (Wales) Act 2013;
- the Human Transplantation (Wales) Act 2013;
- the Social Service and Well-being (Wales) Act 2014;
- the Education (Wales) Act 2014; and
- the Mobile Homes (Wales) Act 2013.

60. This is a relatively obvious thing to do where policy proposals envisage a wholesale redesign of a system (for example, the Social Services and Well-being (Wales) Act 2014), but it is less obvious where the most straightforward and easiest thing to do is amend existing law.

61. As an example, from the perspective of the drafter, it would have been more straightforward had the Human Transplantation (Wales) Act 2013 amended a lengthy section of the Human Tissue Act 2004 (which applied to England, Wales and Northern Ireland) so as to provide for a deemed consent system in Wales. It was decided however, that in order to improve accessibility, the Assembly Bill should carve out the consent system provided in the 2004 Act, suitably amended so that it related only to transplantation and incorporated the necessary amendments to reflect the policy. It also enabled the substantive provisions to be produced bilingually, something which would not have been the case had we amended the 2004 Act. It should be noted however, that restating these provisions in the Assembly Act brought its own complexities, arising from the fact that the organ donation system is a UK wide one and from the fact that the Human Tissue Act 2004 (which sets out the legal framework for consent for the use of body parts) actually applies for 15 different organ use purposes, transplantation being only one of them. It was also complicated because certain provisions, for example in relation to coroners, were not devolved. Certain amendments to the 2004 Act were also unavoidable due to the fact that the existing system is overseen by the Human Tissue Authority, which is a UK body. Provisions related to guidance to be issued by that body, therefore, had to be incorporated into the 2004 Act.

62. The Mobile Homes (Wales) Act 2013, which was eventually 85 pages long, is notable as it consolidated 4 Acts of Parliament ranging back to the 1960s and separated all provisions in relation to residential mobile homes from those which had previously applied to England and Wales. The (Westminster) Mobile Homes Act 2013, which was also a Member Bill, on the other hand amended the earlier legislation and by contrast has left the law considerably less accessible than is the case in Wales.

63. The Welsh Government welcomes that the Committee consultation is also looking at the way in which a bill is structured as a possible measure of good practice in the drafting of bills and would expect to be involved in taking this work forward.

64. Although not outwardly evident, progress has been made through other initiatives designed to assist accessibility. Since 2012 officials from OLC have been working with the National Archive specifically on updating Welsh provisions on legislation.gov.uk (which is now available bilingually and is due to publish all primary legislation in its updates – i.e. amended – by 2015). In addition work is underway, in conjunction with Westlaw, to develop an online encyclopaedia of Welsh laws, which should be launched (as a work in progress) later this year. Discussions have also taken place with the Law Commission and we are hopeful that an announcement can be made shortly in relation to a Law Commission project considering the costs and benefits of consolidating laws and how best to achieve this by forming a more cohesive ‘Welsh statute book’.

*The impact of the Assembly’s conferred powers model of legislative competence on the drafting of Bills*

65. The “model” of legislative competence has little or no impact on the drafting of bills. However, the breadth of legislative competence, in other words the extent of the subject devolved, does indeed have an impact on the development and drafting of legislation. This is because there are occasions where not all aspects of the subject matter of a policy proposal are within legislative competence.

66. There is no doubt that the Welsh devolution settlement is a complex one and for those developing legislation the settlement can be confusing as it is not always clear where the boundaries lie. The problems lie with the fact that the extent of the subject areas devolved are narrow and subject to often complex exceptions, while also being constrained by existing functions of a Minister of the Crown. This all adds to the task of developing legislation in Wales.

*Documentation that accompanies bills*

67. The content and quality of Explanatory Memorandums vary significantly both within Wales and across the wider UK. Length, style and content can and should vary depending on context and the matters covered by the legislation but the key purpose of the Explanatory Memoranda is to explain and support the bill under consideration.

68. Explanatory Memorandums have an important role and provide an opportunity to set out in brief the context, the policy options considered, the reasons for their rejection or adoption, the consultation approaches taken and the direction of travel supported by the bill. The inclusion of the Regulatory Impact Assessment provisions within Explanatory Memorandums allows the financial impacts and consequences to be considered alongside the policy context and, increases the transparency of the legislative approach taken.

69. Explanatory Memorandums are equally important in areas where a bill is amending existing legislation. Primary legislation which amends existing legislation can be impenetrable to the uninitiated lay reader so the Explanatory Memoranda has an important role in helping the lay person to understand the purpose and effect of the legislation.

70. The same can be said for the Regulatory Impact Assessments and Explanatory Notes. The suite of documents which support the bill aids its understanding and have an important role in terms of potential future challenge to the bill. It is imperative that the policy purpose is clear within these documents and that this is within the purpose(s) for which the Assembly may legislate. It is also imperative that all supporting documents issued with the bill are precise and accurate as the Court will often refer to these documents – as it did, for example, in the reference of the Local Government Byelaws (Wales) Bill to the Supreme Court.
71. It is acknowledged that more could be done to assist the users of legislation by improving Explanatory Notes. This is both in terms of the textual content of the notes and the way in which the content of the notes can be read electronically, for example on the legislation.gov.uk website. Work has been undertaken recently by The National Archives and the Parliamentary Counsel Office in Whitehall, looking at this particular issue. As part of that process, the Welsh Government has received the results of research undertaken into the benefits of Explanatory Notes and how they can be improved. The Welsh Government has commenced its own project to consider what improvements can be made within a Welsh context.

## ANNEX

### Part 1

(none)

### Part 2

Note 1:

In so far as the issue of which procedure should apply to subordinate legislation made under Acts of the Assembly is concerned, there are certain factors that may, to a greater or lesser extent depending on the context, tend to suggest the application of the 'draft affirmative' procedure (or require particular justification if a procedure other than 'draft affirmative' procedure is applied). The factors referred to are:

- a) powers that enable provision to be made that may substantially affect provisions of Acts of Parliament, Assembly Measures or Acts of the Assembly (e.g. E.g. Henry VIII powers if wider than necessary for purely consequential amendments as a result of the Act or Measure);
- b) powers, the main purpose of which is, to enable the Welsh Ministers, the First Minister or the Counsel General to confer further significant powers on themselves;
- c) powers to apply in Wales provisions of, for example, Acts of Parliament that in England, Scotland or Northern Ireland are contained in the Act itself (whether with or without modifications);
- d) powers to impose or increase taxation or other significant financial burdens on the public;
- e) provision involving substantial government expenditure;
- f) powers to create unusual criminal provisions or unusual civil penalties;
- g) powers to confer unusual powers of entry, examination or inspection, or provide for collection of information under powers of compulsion;
- h) powers that impose onerous duties on the public (e.g. a requirement to lodge sums by way of security, or very short time limits to comply with an obligation).
- i) powers involving considerations of special importance not falling under the heads above (e.g. where only the purpose is fixed by the enabling Act and the principal substance of the legislative scheme will be set out in subordinate legislation made in exercise of the power).

Factors that may reasonably tend to suggest the application of the 'negative' procedure include, in particular:

- a) where the subject matter of the subordinate legislation is relatively minor detail in an overall legislative scheme or is technical;
- b) where it may be appropriate to update the subject matter of the subordinate legislation on a regular basis;
- c) where it may be appropriate to legislate swiftly (e.g. to avoid infraction proceedings or for the protection of human or animal health or of the environment where in some cases subordinate legislation made for these purposes is not subject to any procedure due to the recognised need to legislate urgently);

- d) where the discretion of the Welsh Government over the content of the subordinate legislation is limited (e.g. legislation that gives effect to some provisions of EU law); or
- e) where it would be appropriate to combine provision to be made under the power with provision that can be made under another power where the latter may be subject to negative procedure.

### **Part 3**

Note 1:

Plain language principles:

- Drafting should be as simple as possible. It should also be precise so that the document has its intended effect. The instrument must be workable but at the same time drafted in language and in a style that ensure that it can be readily understood by its readers. Clarity of drafting should encourage clarity and simplicity of policy.
- Sentences should be short and well structured.
- Sentences should not contain excessive embedded and relative clauses.
- The active rather than the passive voice should be used.
- Archaic language and expression should be avoided.
- Gender specific language should not be used, a practice that has been followed in Wales since the creation of the National Assembly and this being advocated by the (first) Legislation Committee (other UK jurisdictions shortly followed suit).
- The drafting should be consistent. Words should be used in the same sense. If the sense is changed, this should be made clear.
- Overuse of capitals should be avoided.
- Proposition should be expressed in positive rather than negative terms.
- Similar proposition should be expressed in similar language.
- Repetition and unnecessary words should be avoided.
- Excessive cross-references and qualifications should be avoided.
- Expressions in common or everyday use should be used wherever possible.
- Jargon should be avoided; however technical terms will be necessary in legislation that deals with technical subject matter.
- Paragraphs and sub-paragraphs can break up blocks of text but multiple paragraphs and sub-paragraphs, while having the appearance of clarity, can often involve several ideas or concepts and be difficult to understand.

### **Part 4**

(none)

Document is Restricted

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted



Document is Restricted

# Agenda Item 3

**Constitutional and Legislative Affairs Committee  
Statutory Instruments with Clear Reports  
23 March 2015**

**CLA497 – The Education (Induction Arrangements for School Teachers) (Wales) Regulations 2015**

**Procedure:** Negative

These Regulations revoke and replace the Education (Induction Arrangements for School Teachers) (Wales) Regulations 2005 (“the 2005 Regulations”), as amended. The provisions of the 2005 Regulations are re-enacted but the references to the General Teaching Council for Wales have been removed and replaced with references to the Education Workforce Council. It also revokes and replaces the Education (Induction Arrangements for School Teachers) (Wales) (Amendment) Regulations 2012 and Regulation 10 of the School Teachers’ Qualifications (Wales) Regulations 2012.

**CLA499 – The Community Health Councils (Constitution, Membership and Procedures) (Wales) (Amendment) Regulations 2015**

**Procedure:** Negative

These Regulations amend the Community Health Councils (Constitution, Membership and procedures) (Wales) Regulations 2010 in relation to the constitution, membership and procedures of Community Health Councils and the Community Health Councils Board. The amendments will provide for:–

- the CHC Board in Wales to set standards to which the seven CHCs must have regard;
- the appointment of the CHC Board Chair and two other CHC Board members through the public appointments process;
- a change of title for CHC Board Director;

- for the CHC Board to monitor and manage the performance of CHCs and their members.
- Welsh Ministers to be able to provide indemnity for CHCs and the CHC Board;
- Local authorities to have the option of appointing persons who are not their members to a CHC, provided that at least one appointment is from within its membership;
- Welsh Ministers to appoint co-opted members with voting rights to a CHC, on the advice of the CHC Board;
- each member and co-opted member of a CHC to give a written undertaking to observe a code of conduct;
- persons to be employed as officers of more than one CHC;
- a change to the appointment term of CHC Chairs from two years to three years.

#### **CLA500 – The Community Health Councils (Establishment, Transfer of Functions and Abolition) (Wales) Order 2015**

**Procedure:** Negative

This order provides for the dissolution of the Brecknock and Radnor and Montgomeryshire Community Health Councils (“the dissolved councils”) and establishes, with effect from 1 April 2015, a single Powys Community Health Council in their place.

It also provides for the transfer of the functions, rights and liabilities of the dissolved councils to the Powys Community Health Council.

#### **CLA501 – The National Health Service (Dental Charges) (Wales) (Amendment) Regulations 2015**

**Procedure:** Negative

These Regulations increase the current dental charge bands by 2.3% (rounded up to the nearest 50p) spread across Bands 1, 2 and 3 and an urgent course of treatment.

## **CLA502 – The Non–Domestic Rating (Waterways) (Wales) Regulations 2015**

**Procedure:** Negative

These Regulations provide that certain property occupied or, if unoccupied, owned, by Canal & River Trust is to be treated as a single hereditament for the purposes of non–domestic rating. It also provides that Canal & River Trust is to be treated as the occupier of the hereditament and that it is to be treated as situated in the area of Wrexham County Borough Council.

Canal & River Trust is a company limited by guarantee formed and registered under the Companies Act 2006 (c. 46). The statutory functions of the British Waterways Board, exercisable in relation to England and Wales, were transferred to Canal & River Trust by the British Waterways Board (Transfer of Functions) Order 2012 (S.I. 2012/1659). Certain property, rights and liabilities of the British Waterways Board were transferred to Canal & River Trust by the British Waterways Board Transfer Scheme 2012 made under the Public Bodies Act 2011.

## **CLA504 – The Fire and Rescue Authorities (Performance Indicators) (Wales) Order 2015**

**Procedure:** Negative

This Order revokes the Fire and Rescue Authorities (Performance Indicators) (Wales) Order 2011 (S.I. 2011/558 (W. 80)) and specifies for Wales a new set of statutory performance indicators, by reference to which the performance of fire and rescue authorities in exercising their functions will be measured. The Order will have effect from 1 April 2015.

## **CLA505 – The National Health Service (Optical Charges and Payments) (Amendment) (Wales) Regulations 2015**

**Procedure:** Negative

These Regulations amend the National Health Service (Optical Charges and Payments) Regulations 1997 by uprating, with effect from 1 April 2015, the value of vouchers issued towards the cost sight tests and the supply and replacement of glasses and contact lenses, to increase the additional values for vouchers for prisms, tints, photochromic lenses and special categories of appliances and to increase the value of vouchers issued towards the cost of the repair and replacement of optical appliances.

## **CLA510 – The National Health Service (Welfare Reform Consequential Amendments) (Wales) Regulations 2015**

**Procedure:** Negative

These Regulations amend:-

- (1) the National Health Service (General Ophthalmic Services) Regulations 1986;
- (2) the National Health Service (Optical Charges and Payments) Regulations 1997;and
- (3) the National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007.

The effect of these amendments is to allow for Universal Credit (UC) to be accepted as a qualifying benefit for the purposes of full or part remission from NHS charges and passport all UC claimants for the period from 1 April 2014 to 31 March 2016.

This allows for those in receipt of Universal Credit to qualify for free NHS dental treatment, a free NHS sight test and help towards the cost of glasses and help with travel costs and to submit a claim under the NHS Low Income Scheme for help with health costs.

## **CLA511 – The Non–Domestic Rating (Demand Notices) (Wales) (Amendment) Regulations 2015**

**Procedure:** Negative

The Non–Domestic Rating (Demand Notices) (Wales) Regulations 1993 (“the 1993 Regulations”) provide for the contents of rate demand notices, which are issued by billing authorities (county councils and county borough councils) in Wales, and for the information to be supplied when such notices are served by them.

These Regulations, which apply in relation to Wales, amend the 1993 Regulations by replacing references to the Non–Domestic Rating (Small Business Relief) (Wales) Order 2008 with references to the Non–Domestic Rating (Small Business Relief) (Wales) Order 2015. These Regulations apply in relation to rates payable after 31 March 2015.

## **CLA513 – The National Assistance (Sums for Personal Requirements) (Assessment of Resources) and Social Care Charges (Wales) (Miscellaneous Amendments) Regulations 2015**

**Procedure:** Negative

The Regulations relate to the financial assessment of individuals for charging for both residential and non–residential care and will:–

### Residential Care and Support

- increase the weekly sum of money that local authorities must enable a resident in care to retain to spend on personal items from £25.00 to £25.50 per week;

### Non –residential Care and Support

- increase the maximum amount a local authority may determine to be a reasonable charge for the provision of a service or combination of care and support, and the maximum amount a local authority may determine to be a reasonable amount for a contribution or

reimbursement for receiving a direct payment, from £55.00 per week to £60.00 per week.

## **CLA506 – The Homelessness (Review Procedure) (Wales) Regulations 2015**

**Procedure:** Affirmative

The Regulations make provision about the procedure to be followed under section 85 of the Housing (Wales) Act 2014.

The Regulations make provision including about requests for a review and notification of review procedure (Regulation 2), officer making decision on review (Regulation 3), initial procedure where the original decision was made under the Decisions on Referral Order (Regulation 4), procedure on review (Regulation 5), notification of the decision on review (Regulation 6), and application of the Decision on Referrals Order (Regulation 7).

## **CLA507 – The Homelessness (Suitability of Accommodation) (Wales) Order 2015**

**Procedure:** Affirmative

When discharging a housing function to secure that accommodation is available for an applicant who is homeless, or threatened with homelessness under Part 2 of the Housing Act 2014 (the Act), a local housing authority must ensure that the accommodation is suitable.

Section 59 of the Act specifies certain matters to be taken into account when determining suitability for the purposes of Part 2 of the Act.

Under section 59(3) of the Act, the Welsh Ministers have power to specify the:-

- (i) circumstances in which accommodation is, or is not, to be regarded as suitable for a person; and
- (ii) matters an authority must take into account, or disregard, in determining whether accommodation is suitable.

## **CLA509 – The Homelessness (Intentionality) (Special Categories) (Wales) Regulations 2015**

**Procedure:** Affirmative

Section 78(2) of the Housing (Wales) Act 2014 provides that when assessing an applicant for help with homelessness, a local housing authority may not have regard to whether or not an applicant has become homeless intentionally for the purposes of sections 68 and 75, unless it has decided to have regard to one or more of the categories of applicants specified by the Welsh Ministers.

Section 78(1) places an obligation on Welsh Ministers to make regulations to specify such categories.

In these Regulations, the Welsh Ministers specify a list of categories of applicants for the purposes of section 78.



# Agenda Item 4.1

## Constitutional and Legislative Affairs Committee Draft Report CLA

### Title: The Firefighters' Pension Scheme (Wales) Regulations 2015

These Regulations establish a scheme for the payment of pensions and other benefits to firefighters in Wales from 1 April 2015 onwards made under powers given to the Welsh Ministers under the Public Service Pensions Act 2013. The scheme established is a career average revalued earnings scheme. Schedule 2 of the Regulations makes transitional provision.

**Procedure:** Negative

### Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3

(ii) in respect of this draft instrument – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

As Paragraph 2 of the Explanatory Memorandum refers:

*“When the Regulations were in the final stages of preparation, it came to the Welsh Government’s attention that the Parliamentary Joint Committee on Statutory Instruments (“the JCSI”) had published a report criticising the drafting of three provisions in the Firefighters’ Pension Scheme (England) Regulations 2014 (“the English 2015 Scheme Regulations”). The Regulations are substantially based on the English 2015 Scheme Regulations and include the three provisions the JCSI criticised. “*

Legal Services are satisfied with the explanations provided by the Welsh Government that the drafting of the three provisions are effective as set out in the Explanatory Memorandum and the additional clarification provided by Welsh Government lawyers.

Given the technical nature of the Regulations and above-mentioned comments from the JCSI, CLAC's attention is drawn to paragraph 4 of the Explanatory Memorandum.

*“Although the Welsh Government is content that the drafting of the provisions is effective, it will further reflect on the JCSI's concerns post-introduction of the Regulations and will consider whether it is appropriate to bring forward amending regulations in due course.”*

### **Legal Advisers**

Constitutional and Legislative Affairs Committee

March 2015

### **Government Response**

The Welsh Government notes the Committee's report on these Regulations. Although the Welsh Government is content that the drafting of the provisions to which the Parliamentary Joint Committee on Statutory Instruments' criticisms relate is effective, it will further reflect on the JCSI's concerns and the Committee's report and will consider whether it is appropriate to bring forward amending regulations in due course.

**2015 No. 622 (W. 50)**

**PUBLIC SERVICE PENSIONS,  
WALES**

**The Firefighters' Pension Scheme  
(Wales) Regulations 2015**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Part 1 of these Regulations establishes a scheme for the payment of pensions and other benefits to firefighters in Wales from 1 April 2015. The scheme so established is a career average revalued earnings scheme.

Part 2 contains provisions appointing fire and rescue authorities as “scheme managers” and permitting the delegation of the Welsh Ministers’ and the scheme managers’ functions under these Regulations. Part 2 also contains provisions in relation to the establishment, membership and operation of Local Pensions Boards and the Firefighters’ Scheme Advisory Board for Wales.

Part 3 provides for scheme membership. It sets out the key concepts of scheme employment and pensionable earnings. It contains eligibility and auto-enrolment provisions.

Part 4 provides for the establishment of a member’s pension accounts in relation to a continuous period of pensionable service under this scheme. It also provides for the establishment of a pension credit member’s account.

Part 5 provides for a member’s entitlement to payment of retirement benefits including partial retirement benefits and ill-health benefits. It also provides for the assignment of benefits. It sets out the key concept of qualifying service.

Part 6 provides for death benefits payable to surviving adults and eligible children and for payment of lump sum benefits.

Part 7 provides for benefits for pension credit members.

Part 8 provides for the payment of contributions by members and employers.

Part 9 provides for payments to be made into and out of the Firefighters' Pension Fund.

Part 10 provides for making and receiving transfer payments.

Part 11 provides for actuarial valuations and provides for an employer cost cap which is a percentage of the pensionable earnings of the members of the scheme.

Part 12 provides for the determinations of questions and appeals.

Part 13 contains supplementary provisions on payment of pensions, forfeiture and set off, payment and deduction of tax.

Schedule 1 makes provision for payments for added pension.

Schedule 2 makes transitional provision.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Fire and Armed Forces Branch, Welsh Government, Rhydycar, Merthyr Tydfil, CF48 1UZ or 0300 062 8221.

**2015 No. 622 (W. 50)**

**PUBLIC SERVICE PENSIONS,  
WALES**

**The Firefighters' Pension Scheme  
(Wales) Regulations 2015**

*Made* 9 March 2015

*Laid before the National Assembly for Wales*  
10 March 2015

*Coming into force* 1 April 2015

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The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 1(1) and (2)(f)(1), 2(1), 3(1), (2), (3)(a) and (c), 4(5) and (6) as

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(1) See also section 1(3) and Schedule 1.

read with section 4(1)(1), 7(2), 8(1)(a)(2), 12(6) and (7), and 18(5), (5A)(3), (6) and (7) of, and paragraph 6(b) of Schedule 2, Schedule 3 and paragraphs 20 and 21 of Schedule 5 to, the Public Service Pensions Act 2013(4).

In accordance with section 21 of that Act, the Welsh Ministers have consulted the representatives of such persons as appear to the Welsh Ministers likely to be affected by these Regulations.

## PART 1

### Preliminary

#### **Title and commencement**

**1.**—(1) The title of these Regulations is the Firefighters’ Pension Scheme (Wales) Regulations 2015.

(2) These Regulations come into force on 1 April 2015.

#### **Establishment of Firefighters’ Pension Scheme (Wales) 2015**

**2.**—(1) These Regulations establish a scheme for the payment of pensions and other benefits to or in respect of fire and rescue workers(5) who are firefighters in Wales.

(2) This scheme is to be known as the Firefighters’ Pension Scheme (Wales) 2015.

#### **Interpretation**

**3.** In these Regulations, unless the context otherwise requires—

“1992 Scheme” (“*Cynllun 1992*”) means the Firefighters’ Pension Scheme 1992 as set out in Schedule 2 to the Firemen’s Pension Scheme Order 1992(6) as it has effect in Wales;

“2013 Act” (“*Deddf 2013*”) means the Public Service Pensions Act 2013;

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- (1) Coming into force on 1 April 2015.  
(2) See also section 8(2)(a) and (4).  
(3) Subsection (5A) was inserted by the Pensions Act 2014 (c. 19), section 52.  
(4) 2013 c. 25.  
(5) See paragraph 6 of Schedule 1 to the Public Service Pensions Act 2013 for the definition of “fire and rescue workers”.  
(6) S.I. 1992/129. The name of the scheme was changed to the Firefighters’ Pension (Wales) Scheme by S.I. 2004/2918 (W. 257). Other amendments made are not relevant to these Regulations.

“FA 2004” (“DC 2004”) means the Finance Act 2004(1);

“NFPS” (“CPNDT”) means the New Firefighters’ Pension Scheme (Wales) as set out in Schedule 1 to the Firefighters’ Pension Scheme (Wales) Order 2007(2);

“PIA 1971” (“DPC 1971”) means the Pensions (Increase) Act 1971(3);

“PSA 1993” (“DCauP 1993”) means the Pension Schemes Act 1993(4);

“WRPA 1999” (“DDLPh 1999”) means the Welfare Reform and Pensions Act 1999(5);

“accrued added pension” (“*pensiwn ychwanegol cronedig*”) has the meaning given in regulation 32(4) (calculation of amount of accrued pension for purpose of deferment or retirement);

“accrued earned pension” (“*pensiwn enilledig cronedig*”) has the meaning given in regulation 32(3) (calculation of amount of accrued pension for purpose of deferment or retirement);

“active member” (“*aelod actif*”) has the meaning given in regulation 28 (active membership);

“active member’s account” (“*cyfrif aelod actif*”) means the account established under regulation 40 (establishment of active member’s account);

“actuarial guidance” (“*canllawiau actiwaraid*”) means actuarial guidance issued by the Welsh Ministers after consultation with the scheme actuary;

“added pension election” (“*dewisiad pensiwn ychwanegol*”) means the election to make added pension payments;

“added pension payments” (“*taliadau pensiwn ychwanegol*”) means periodical payments or a lump sum payment for added pension made to this scheme;

“additional adoption leave” (“*absenoldeb mabwysiadu ychwanegol*”) means leave under section 75B of the Employment Rights Act 1996(6);

“additional maternity leave” (“*absenoldeb mamolaeth ychwanegol*”) means leave under

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- (1) 2004 c. 12.
  - (2) S.I. 2007/1072 (W. 110); Schedule 1 is the subject of amendments not relevant to these Regulations.
  - (3) 1971 c. 56.
  - (4) 1993 c. 48.
  - (5) 1999 c. 30.
  - (6) 1996 c. 18; section 75B was inserted by the Employment Act 2002 (c. 22), section 3.



section 73 of the Employment Rights Act 1996<sup>(1)</sup>;  
“additional paternity leave” (“*absenoldeb tadolaeth ychwanegol*”) means leave under the Additional Paternity Leave Regulations 2010<sup>(2)</sup>;  
“age addition” (“*ychwanegiad oedran*”) has the meaning given in regulation 35 (determination of “the age addition”);  
“allocation amount” (“*swm y dyraniad*”) means the amount of the pension allocated as a result of making an allocation election;  
“allocation election” (“*dewisiad i ddyrannu*”) means an election under regulation 81 (allocation election);  
“amount of accrued added pension” (“*swm y pensiwn ychwanegol cronedig*”) has the meaning given in regulation 32(4) (calculation of amount of accrued pension for purpose of deferment or retirement);  
“amount of accrued earned pension” (“*swm y pensiwn enilledig cronedig*”) has the meaning given in regulation 32(3) (calculation of amount of accrued pension for purpose of deferment or retirement);  
“amount of added pension” (“*swm y pensiwn ychwanegol*”) means the amounts credited to the added pension account under paragraphs 11 or 14 of Schedule 1;  
“annual allowance” (“*lwfans blynyddol*”) has the meaning given in section 228 (annual allowance) of FA 2004<sup>(3)</sup>;  
“annual allowance charge” (“*tâl lwfans blynyddol*”) has the meaning given in section 227 (annual allowance charge) of FA 2004<sup>(4)</sup>;  
“assumed age addition” (“*ychwanegiad oedran tybiedig*”) has the meaning given in regulation 36 (determination of “the assumed age addition”);  
“assumed pensionable pay” (“*tâl pensiynadwy tybiedig*”) has the meaning given in regulation 27 (meaning of “assumed pensionable pay”);  
“authority” (“*awdurdod*”) means a fire and rescue authority for an area in Wales determined in accordance with section 1 of the Fire and Rescue Services Act 2004<sup>(5)</sup>;

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- (1) Section 73 was substituted by the Employment Relations Act 1999 (c. 26), section 7 and Schedule 4.
  - (2) S.I. 2010/1055.
  - (3) Section 228 was substituted by the Finance Act 2011 (c. 11), Schedule 17, paragraphs 1 and 4 and was amended by the Finance Act 2013 (c. 29), section 49.
  - (4) Section 227 was amended by Finance Act 2011, sections 65 and 66, Schedule 16, paragraph 45 and Schedule 17, paragraphs 1 and 3.
  - (5) 2004 c. 21.

“award” (“*dyfarniad*”) means an award of a benefit under these Regulations;

“beginning date” (“*dyddiad cychwyn*”), in relation to a pension not attributable (directly or indirectly) to a pension credit, means the date on which the pension is deemed to begin for the purpose of section 8(2) (meaning of “pension” and other supplementary provisions) of PIA 1971(1);

“child-related leave” (“*absenoldeb cysylltiedig â phlentyn*”) means—

- (a) ordinary adoption leave,
- (b) ordinary maternity leave,
- (c) additional maternity or adoption leave,
- (d) paternity leave,
- (e) additional paternity leave, or
- (f) a period of parental leave;

“closing date” (“*dyddiad cau*”), in relation to a transition member, has the meaning given in paragraph 1 of Schedule 2 (transitional provisions);

“club scheme” (“*cynllun clwb*”) means a registered occupational pension scheme (other than a connected scheme) that has agreed to make and receive club transfer value payments under the club transfer arrangements;

“club transfer” (“*trosglwyddiad clwb*”) means a transfer to or from this scheme under the club transfer arrangements;

“club transfer arrangements” (“*trefniadau trosglwyddiadau clwb*”) means arrangements approved by the Welsh Ministers as providing reciprocal arrangements between this scheme and other registered occupational pension schemes for making and receiving club transfer value payments;

“club transfer earned pension” (“*pensiwn enilledig trosglwyddiad clwb*”) means pension attributable to the receipt of a club transfer value payment;

“club transfer value” (“*gwerth trosglwyddiad clwb*”) has the meaning given in regulation 141 (interpretation in relation to Part 10);

“club transfer value payment” (“*taliad gwerth trosglwyddiad clwb*”) means payment of a club transfer value;

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(1) Section 8(2) was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), section 1(5) and the WRP 1999 (c. 30), section 39(1) and (4). Section 8(2) of PIA 1971 may be applied subject to such modifications, adaptations and exceptions as may be specified in regulations under section 5(3) of that Act.

“cohabiting partner” (“*partner sy’n cyd-fyw*”) has the meaning given in regulation 85 (meaning of “surviving partner”);

“the commutation amount” (“*swm y cymudiad*”), in relation to a pension, means the amount of the pension exchanged for a lump sum as a result of the exercise of the commutation option;

“commutation option” (“*opsiwn cymudo*”) means the option to exchange part of a pension for a lump sum—

- (a) exercisable under regulation 80 (option to commute part of pension) in relation to a retirement pension, or
- (b) exercisable under regulation 118 (commutation of part of pension) in relation to a pension credit member’s pension;

“connected scheme” (“*cynllun cysylltiedig*”) means another statutory pension scheme that is connected, within the meaning of section 4(6) of the 2013 Act, with this scheme;

“continuity of service” (“*parhad gwasanaeth*”), in relation to a transition member, has the meaning given in paragraph 2 of Schedule 2;

“continuous period of pensionable service” (“*cyfnod di-dor o wasanaeth pensiynadwy*”), in relation to this scheme, means a period of pensionable service under this scheme disregarding any gap in pensionable service not exceeding five years unless otherwise provided;

“death benefits” (“*buddion marwolaeth*”) means any of the following—

- (a) a surviving partner’s pension,
- (b) an eligible child’s pension, or
- (c) a lump sum death benefit;

“deferred member” (“*aelod gohiriedig*”) has the meaning given in regulation 29 (deferred membership);

“deferred member’s account” (“*cyfrif aelod gohiriedig*”) has the meaning given in regulation 53 (establishment of deferred member’s account);

“deferred pension age” (“*oedran pensiwn gohiriedig*”) is the same as a person’s state pension age, or 65 if that is higher;

“early payment reduction” (“*gostyngiad talu’n gynnar*”) has the meaning given in regulation 70 (early payment reduction);

“earned pension” (“*pensiwn enilledig*”) means earned pension payable without actuarial reduction at normal pension age;

“eligible child” (“*plentyn cymwys*”) has the meaning given in regulation 94 (meaning of “eligible child”);

“eligible child’s pension” (*“pensiwn plentyn cymwys”*) has the meaning given in regulation 93 (eligible child’s pension);

“eligible person” (*“person cymwys”*) has the meaning given in regulation 16 (eligible persons);

“financial year” (*“blwyddyn ariannol”*) means a period of one year beginning with 1 April and ending with 31 March;

“Firefighters’ Pensions Scheme Advisory Board for Wales” (*“Bwrdd Cynghori Cynllun Pensiwn y Diffoddwyr Tân ar gyfer Cymru”*) means a board established under regulation 10 (scheme advisory board: establishment);

“GMP age” (*“oedran LIPG”*) means 65 in the case of a man or 60 in the case of a woman;

“guaranteed minimum” (*“lleiafswm gwarantedig”*) means the guaranteed minimum as defined in sections 14(1) (earner’s guaranteed minimum) and 17(2) (minimum pensions for widows and widowers) of PSA 1993—

(a) as increased in accordance with the requirements of section 109(3) of that Act (annual increase of guaranteed minimum pensions), and

(b) if a reduction has been made under section 15A(4) of that Act (reduction of guaranteed minimum in consequence of pension debit), as reduced in accordance with that section;

“higher tier ill-health pension” (*“pensiwn afiechyd haen uchaf”*) means a higher tier ill-health pension payable under regulation 74(2) (entitlement to lower tier ill-health pension and higher tier ill-health pension);

“ill-health award” (*“dyfarniad afiechyd”*) means—

(a) a lower tier ill-health pension, and

(b) a higher tier ill-health pension where this has also been awarded;

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(1) Section 14 was amended by the Pensions Act 1995 (c. 26), Schedule 5, paragraph 27 and Schedule 7, Part 3; the Social Security Contributions (Transfer of Functions etc.) Act 1999 (c. 2), Schedule 1, paragraph 38; and the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1 and 22.

(2) Section 17 was amended by the Social Security Contributions (Transfer of Functions etc.) Act 1999 (c. 2), Schedule 1, paragraph 39; the Child Support, Pensions and Social Security Act 2000 (c. 19), Schedule 5, paragraph 1 and Schedule 9, Part 3; the Pensions Act 2004 (c. 35), section 284(2); the Pensions Act 2007 (c. 22), section 14(2); the Marriage (Same Sex Couples) Act 2013 (c. 30), Schedule 4, paragraphs 18 and 20; and S.I. 2005/2050 and 2014/560.

(3) Section 109 was amended by the Pensions Act 1995 (c. 26), section 55 and S.I. 2005/2050.

(4) Section 15A was inserted by the Welfare Reform and Pensions Act 1999 (c. 30), section 32(1) and (3).

“index adjustment” (*“addasiad mynegai”*) means—

- (a) in relation to the opening balance of earned pension for any scheme year, the change in earnings for the previous scheme year<sup>(1)</sup>, and
- (b) in relation to the opening balance of club transfer earned pension for any scheme year, the in-service revaluation index that the sending scheme would have applied to the transferred pension for that scheme year, had it not been transferred;

“in-service revaluation index” (*“mynegai ailbriso mewn-gwasanaeth”*), in relation to a pension scheme, means the percentage increase or decrease by which the pensionable earnings of a person, or a proportion of those earnings accrued as a pension, are revalued whilst the person is in pensionable service in that pension scheme;

“IQMP” (*“YMCA”*) means a medical practitioner holding a diploma in occupational medicine or an equivalent or higher qualification issued by a competent authority in an EEA State, or being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State; and for the purposes of this definition “a competent authority” has the meaning given in section 55(1) of the Medical Act 1983<sup>(2)</sup>;

“last active scheme year” (*“blwyddyn gynllun actif olaf”*) means the scheme year in which an active member of this scheme ceases to be in pensionable service under this scheme;

“last day of pensionable service” (*“diwrnod olaf o wasanaeth pensiynadwy”*) means the last day of a continuous period of pensionable service under this scheme;

“leaving year” (*“blwyddyn ymadael”*) means the scheme year in which the relevant last day falls;

“local pension board” (*“bwrdd pensiynau lleol”*) means a board established under regulation 5 (local pension boards: establishment);

“lower tier ill-health pension” (*“pensiwn afiechyd haen isaf”*) means a lower tier ill-health pension payable under regulation 74(1) (entitlement to lower tier ill-health pension and higher tier ill-health pension);

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(1) Under section 9 of the 2013 Act the change in earnings to be applied in a period is the percentage increase or decrease as a Treasury order under that section may specify in relation to the period.

(2) 1983 c. 54; the definition of “competent authority” was inserted by S.I. 2007/3101.

“member” (*“aelod”*), in relation to this scheme, means an active member, deferred member, or pensioner member of this scheme;

“member contributions” (*“cyfraniadau aelodau”*) has the meaning given in regulation 119(8) (member contributions);

“normal pension age” (*“oedran pensiwn arferol”*), in relation to this scheme, means 60 as required by section 10(2) of the 2013 Act;

“occupational pension scheme” (*“cynllun pensiwn galwedigaethol”*) has the meaning given in section 1 of PSA 1993(1);

“opening balance” (*“balans agoriadol”*), in relation to a description of pension for a scheme year other than added pension, has the meaning given in regulation 44 (opening balance, index adjustment and age addition) and in relation to added pension, has the meaning given in regulation 49 (account to specify opening balance and PIA index adjustment);

“ordinary adoption leave” (*“absenoldeb mabwysiadu arferol”*) means leave under section 75A of the Employment Rights Act 1996(2);

“ordinary maternity leave” (*“absenoldeb mamolaeth arferol”*) means leave under section 71 of the Employment Rights Act 1996(3);

“parental leave” (*“absenoldeb rhiant”*) has the meaning given in regulation 2(1) of the Maternity and Parental Leave etc. Regulations 1999(4);

“partial retirement option” (*“opsiwn o ran-ymddeoliad”*) means the option exercisable under regulation 72 (exercise of partial retirement option);

“paternity leave” (*“absenoldeb tadolaeth”*) means leave under regulation 4 or 8 of the Paternity and Adoption Leave Regulations 2002(5);

“pay period” (*“cyfnod tâl”*) means the period in respect of which a payment of pensionable pay is made;

“pension credit” (*“credyd pensiwn”*) means a credit under section 29(1)(b) of WRPA 1999;

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- (1) Relevant amendments were made to section 1 by the Pensions Act 2004 (c. 35), section 239 and by S.I. 2007/3014.
  - (2) Section 75A was inserted by the Employment Act 2002 (c. 22), section 3. It was amended by the Children and Families Act 2014 (c. 6), sections 118, 121 and 122 and the Work and Families Act 2006 (c. 18), Schedule 1, paragraph 33.
  - (3) Section 71 was substituted by the Employment Relations Act 1999. It was amended by section 118 of the Children and Families Act 2014 (c. 6), the Work and Families Act 2014 (c. 18), Schedule 1, paragraph 31 and the Employment Act 2002 (c. 22), section 17.
  - (4) S.I. 1999/3312 to which there are amendments not relevant to these Regulations.
  - (5) S.I. 2002/2788. Regulations 4 and 8 were amended by S.I. 2005/1114 and 2014/2112.

“pension credit member” (“*aelod â chredyd pensiwn*”) has the meaning given by regulation 30 (pension credit member);

“pension credit member’s account” (“*cyfrif aelod â chredyd pensiwn*”) has the meaning given in regulation 63 (establishment of pension credit member’s account);

“pension credit member’s pension” (“*pensiwn aelod â chredyd pensiwn*”) means a pension payable under regulation 114 (entitlement to pension credit member’s pension);

“pension credit rights” (“*hawliau credyd pensiwn*”) has the meaning given in section 124(1) of the Pensions Act 1995(1);

“pension debit member” (“*aelod â debyd pensiwn*”), in relation to this scheme, means a person who is a member of this scheme whose benefits or future benefits under this scheme have been reduced under section 31 of WRPA 1999 (reduction of benefit under pension sharing order);

“pensionable pay” (“*tâl pensiynadwy*”) has the meaning given in regulation 26 (pensionable pay);

“pensionable public service” (“*gwasanaeth cyhoeddus pensiynadwy*”) means pensionable service under an existing scheme(2) or an existing public body pension scheme as defined in paragraph 1 of Schedule 2;

“pensioner member” (“*aelod-bensiynwr*”), in relation to this scheme, means a person who is entitled to the immediate payment of a retirement pension under this scheme;

“pension sharing order” (“*gorchymyn rhannu pensiwn*”) means any provision or order specified in section 28 of WRPA 1999(3);

“personal pension scheme” (“*cynllun pensiwn arferol*”) means a personal pension scheme as defined in section 1 of PSA 1993 that is a registered pension scheme;

“PIA index adjustment” (“*addasiad mynegai DPC*”), in relation to the opening balance of added pension for any scheme year, means the amount by which the annual rate of a pension of an amount equal to the opening balance would have been increased in that year under PIA 1971 if—

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- (1) 1995 c. 26. There are amendments to section 124(1) of that Act which are not relevant to these Regulations.
  - (2) See section 18(2) of the 2013 Act for the meaning of “existing scheme”.
  - (3) Section 28 was amended by the Civil Partnerships Act 2004 (c. 33), Schedule 27, paragraph 159 and Schedule 30, paragraph 1; the Children and Families Act 2014 (c. 6), section 18 and the Pensions Act 2008 (c. 30), section 128.

(a) that pension were eligible to be so increased, and

(b) the beginning date for that pension were the first day of the previous financial year;

“protected member” (“*aelod a ddiogelir*”), in relation to the 1992 Scheme or the NFPS, has the meaning given in Schedule 2;

“provisional amount of deferred pension” (“*swm dros dro o bensiwn gohiriedig*”) has the meaning given in regulation 54 (provisional amount of deferred pension);

“qualifying service” (“*gwasanaeth cymwys*”) has the meaning given in regulation 66 (qualifying service);

“reference pay” (“*tâl cyfeirio*”), in relation to the pay of a retained or volunteer firefighter for any period, means the whole-time equivalent pensionable pay for that period of a regular firefighter employed in a similar role and with equivalent qualifying service;

“registered” (“*cofrestredig*”), in relation to a pension scheme, means registered under Chapter 2 of Part 4 (registration of pension schemes) of FA 2004;

“regular employment” (“*cyflogaeth reolaidd*”) means employment for at least 30 hours a week on average over a period of not less than 12 consecutive months beginning with the date on which the issue of the person’s capacity for employment arises;

“regular firefighter” (“*diffoddwr tân rheolaidd*”) means a person (P) employed (whether whole-time or part-time) by an authority—

(a) as a firefighter, but not as a retained or volunteer firefighter,

(b) on terms under which P is, or may be, required to engage in fire-fighting or, without a break in continuity of such employment, may be required to perform other duties appropriate to P’s role as a firefighter (whether instead of, or in addition to, engaging in fire-fighting), and

(c) otherwise than in a temporary capacity;

“the relevant last day” (“*y diwrnod olaf perthnasol*”) means—

(a) for a partially retired member, the day on which the partial retirement option was exercised, and

(b) otherwise, the member’s last day of pensionable service;



“reserve forces” (*“lluoedd wrth gefn”*) has the meaning given in section 1(2) of the Reserve Forces Act 1996<sup>(1)</sup>;

“reserve forces service leave” (*“absenoldeb gwasanaeth lluoedd wrth gefn”*) means absence from duty because of being called out or recalled for permanent service in Her Majesty’s armed forces pursuant to a call-out notice served, or a call-out or recall order made, under the Reserve Forces Act 1996 or absence during training required under section 22 or permitted under section 27 of that Act<sup>(2)</sup>;

“retained firefighter” (*“diffoddwr tân wrth gefn”*) means a person (P) employed by an authority—

- (a) as a firefighter, but not as a regular firefighter or a volunteer firefighter,
- (b) on terms under which P is, or may be, required to engage in fire-fighting or, without a break in continuity of such employment, may be required to perform other duties appropriate to P’s role as a firefighter (whether instead of, or in addition to, engaging in fire-fighting),
- (c) otherwise than in a temporary capacity, and
- (d) who is obliged to attend at such times as the officer in charge considers necessary and in accordance with the orders that P receives;

“retirement account” (*“cyfrif ymddeol”*) has the meaning given in regulation 59 (establishment of retirement account and other adjustments);

“retirement added pension” (*“pensiwn ychwanegol ymddeol”*) has the meaning given in regulation 60(3) (account to specify amount of retirement pension (active members));

“retirement amount of deferred pension” (*“swm y pensiwn gohiriedig ymddeol”*) has the meaning given in regulation 55(3) (retirement amount of deferred pension);

“retirement benefits” (*“buddion ymddeol”*) means benefits payable under Part 5 (retirement benefits);

“retirement earned pension” (*“pensiwn enilledig ymddeol”*) has the meaning given in regulation 60(2) (account to specify amount of retirement pension (active members));

“retirement index adjustment” (*“addasiad mynegai ymddeol”*), in relation to an amount of accrued pension, has the meaning given in regulation 33 (calculation of “retirement index adjustment”);

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(1) 1996 c. 14.

(2) Section 27 was amended by the Armed Forces Act 2006 (c. 52), Schedule 17, paragraph 1.

“retirement pension” (“*pensiwn ymddeol*”) means—

- (a) in relation to a pensioner member who was an active member at the time of claiming a retirement pension, a retirement earned pension and a retirement added pension (if any);
- (b) in relation to a pensioner member who was a deferred member at the time of claiming a retirement pension, the retirement amount of deferred pension;

“retirement PIA index adjustment” (“*addasiad mynegai DPC ymddeol*”), in relation to an amount of accrued pension, has the meaning given in regulation 34 (calculation of “retirement PIA index adjustment”);

“role” (“*rôl*”), in relation to a firefighter, means the role in which the firefighter is for the time being employed, being a role set out in “Fire and Rescue Services Rolemaps” issued by the National Joint Council for Local Authority Fire and Rescue Services in August 2005<sup>(1)</sup>;

“this scheme” (“*y cynllun hwn*”) means the scheme established by these Regulations;

“scheme actuary” (“*actiwari’r cynllun*”) means the actuary appointed by the Welsh Ministers under regulation 159 (appointment of scheme actuary and actuarial valuations);

“scheme employer” (“*cyflogwr cynllun*”) has the meaning given in regulation 15 (scheme employment);

“scheme employment” (“*cyflogaeth gynllun*”) has the meaning given in regulation 15 (scheme employment);

“scheme manager” (“*rheolwr cynllun*”), except where the context otherwise requires, has the meaning given in regulation 4 (scheme manager);

“scheme year” (“*blwyddyn gynllun*”) means a period of one year beginning with 1 April and ending with 31 March;

“sending scheme” (“*cynllun sy’n anfon*”) means a club scheme which pays a club transfer value;

“specified proportion” (“*cyfran benodedig*”) has the meaning given in regulation 98 (specified proportion);

“statutory pay” (“*tâl statudol*”) means—

- (a) statutory adoption pay within the meaning of section 171ZL(1) (entitlement) of the Social

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(1) A copy is available at [http://www.local.gov.uk/c/document\\_library/get\\_file?uuid=326723e9-8192-4798-89bb-d152fb05fa5f&groupId=10180](http://www.local.gov.uk/c/document_library/get_file?uuid=326723e9-8192-4798-89bb-d152fb05fa5f&groupId=10180).

Security Contributions and Benefits Act 1992(1),

- (b) statutory maternity pay within the meaning of section 164(1) (statutory maternity pay - entitlement and liability to pay) of the Social Security Contributions and Benefits Act 1992(2),
- (c) ordinary statutory paternity pay within the meaning of section 171ZA(1) (entitlement: birth) or 171ZB(1) (entitlement: adoption) of the Social Security Contributions and Benefits Act 1992(3), or
- (d) additional statutory paternity pay within the meaning of section 171ZEA(1) (entitlement to additional statutory paternity pay: birth) or 171ZEB(1) (entitlement to additional statutory paternity pay: adoption) of the Social Security Contributions and Benefits Act 1992(4);

“survivor member” (*“aelod-oroeswr”*) has the meaning given in regulation 61 (establishment of survivor member’s account);

“surviving partner” (*“partner sy’n goroesi”*) has the meaning given in regulation 85 (meaning of “surviving partner”);

“surviving partner’s pension” (*“pensiwn partner sy’n goroesi”*) means a pension payable to a surviving partner under regulation 87 (surviving partner’s pension payable on death of active member), regulation 88 (surviving partner’s pension payable on death of deferred member), or regulation 89 (surviving partner’s pension payable on death of pensioner member);

“tax year” (*“blwyddyn dreth”*) means a period of one year which is the period of assessment for income tax purposes;

“total allocation amount” (*“cyfanswm y dyraniad”*), in relation to an amount of retirement pension, means the total amount of that pension allocated under Chapter 6 of Part 5 (retirement benefits);

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(1) 1992 c. 4. Section 171ZL was inserted by the Employment Act 2002 (c.22), section 4 and was amended by the Children and Families Act 2014 (c. 6), section 21 and by S.I. 2006/2012.

(2) Section 164 was amended by the Employment Act 2002 (c. 22), section 20(b), Schedule 8, paragraph 1 and Schedule 7, paragraph 6 and the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Schedule 1, paragraph 12.

(3) Sections 171ZA and 171ZB were inserted by the Employment Act 2002, section 2. Subsections (1) of those sections were amended by the Work and Families Act 2006 (c. 18), Schedule 1, paragraphs 12 and 13.

(4) Sections 171ZEA and 171ZEB were inserted by the Work and Families Act 2006 (c. 18), sections 6 and 7.

“trade dispute” (“*anghydfod undebol*”) has the meaning given in section 218 of the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(1)</sup>;

“transfer payment” (“*taliad trosglwyddo*”) means a transfer value payment or a club transfer value payment;

“transfer value” (“*gwerth trosglwyddiad*”, “*gwerth trosglwyddo*”) has the meaning given in regulation 141 (interpretation in relation to Part 10);

“transfer value payment” (“*taliad gwerth trosglwyddiad*”) means payment of a transfer value;

“transferred pension” (“*pensiwn trosglwyddedig*”) means pension attributable to receipt of a transfer value payment;

“transition member” (“*aelod trosiannol*”) has the meaning given in paragraph 1 of Schedule 2;

“volunteer firefighter” (“*diffoddwr tân gwirfoddol*”) means a person (P) who carries out operational fire-fighting for an authority—

- (a) as a firefighter, but not as a regular firefighter or a retained firefighter,
- (b) on terms under which P is, or may be, required to engage in fire-fighting or may be required to perform other duties appropriate to P’s role as a firefighter (whether instead of, or in addition to, engaging in fire-fighting),
- (c) otherwise than in a temporary capacity, and
- (d) who is obliged to attend at such times as the officer in charge considers necessary and in accordance with the orders that P receives;

“weekly rate” (“*cyfradd wythnosol*”), in relation to a guaranteed minimum pension, has the meaning given in regulation 55(2) of the Occupational Pension Scheme (Contracting-out) Regulations 1996<sup>(2)</sup>.

## PART 2

### Governance

#### Scheme manager

4.—(1) An authority is responsible for managing and administering this scheme and any statutory scheme that is connected with it<sup>(3)</sup> in relation to any person for

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(1) 1992 c. 52.

(2) S.I. 1996/1172. Regulation 55(2) was amended by S.I. 2014/560.

(3) See section 4(6) of the 2013 Act which sets out when statutory pension schemes are “connected”.

which it is the appropriate authority under these Regulations.

(2) The appropriate authority in relation to a person who—

- (a) is or has been a member of this scheme; or
- (b) is entitled to any benefit in respect of a person who is or has been a member of this scheme,

is the authority by whom the member was last employed whilst an active member of this scheme.

(3) The appropriate authority in relation to a pension credit member is the authority responsible for the pension debit member's pension account at the effective date of the pension sharing order.

(4) The appropriate authority is referred to in this scheme as the scheme manager.

### **Local pension boards: establishment**

**5.**—(1) Each scheme manager must establish a pension board (“a local pension board”) responsible for assisting it—

- (a) to secure compliance with—
  - (i) these Regulations;
  - (ii) any other legislation relating to the governance and administration of this scheme and any connected scheme and to the provision of benefits under this scheme;
  - (iii) any requirements imposed by the Pensions Regulator in relation to this scheme and any connected scheme;
- (b) to ensure the effective and efficient local governance and administration of this scheme and any connected scheme.

(2) A scheme manager may determine the procedures applicable to a local pension board, including as to voting rights, the establishment of sub-committees and payment of expenses.

(3) A local pension board has the power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.

### **Local pensions board: membership**

**6.**—(1) Subject to paragraphs (2) and (3) each scheme manager must determine—

- (a) the membership of the local pension board;
- (b) the manner in which members of the local pension board may be appointed and removed;

(c) the terms of appointment of members of the local pension board, including the duration of their appointment.

(2) A local pension board must include an equal number, which is no less than 4, of employer representatives and member representatives<sup>(1)</sup> and for these purposes the scheme manager must be satisfied that a person to be appointed as—

(a) an employer representative has the capacity to represent employers on the local pension board;

(b) a member representative has the capacity to represent members on the local pension board.

(3) Throughout the period of appointment of a person appointed as a member of a local pension board to represent employers or members, as the case may be, a scheme manager must be satisfied that the member continues to have the capacity to represent employers or members, as the case may be, on a local pension board.

(4) A person who is to be appointed as a member of a local pension board by a scheme manager to represent employers or members, as the case may be, must provide the scheme manager with such information as the scheme manager reasonably requires for the purposes of paragraph (2).

(5) A person who is a member of a local pension board appointed to represent employers or members, as the case may be, must provide the scheme manager which made the appointment with such information as the scheme manager reasonably requires for the purposes of paragraph (3).

(6) The scheme manager may appoint persons who are not members of the local pension board to be non-voting advisory members of the local pension board, who may, by invitation, attend meetings of the local pension board and any sub-committee of the local pension board.

(7) The number of non-voting advisory members of the local pension board must be less than each of the number of employer representatives and the number of member representatives.

(8) An advisory member of the local pension board is to hold and vacate office in accordance with the terms of that member's appointment.

(9) No member or officer of an authority responsible for the discharge of any function under these Regulations (apart from any function relating to a local pension board or the Firefighters' Pension Scheme

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(1) See section 5(6) of the Public Service Pensions Act 2013 for definitions of these terms.

Advisory Board for Wales) may be a member of a local pension board.

**Local pension boards: conflict of interest**

7.—(1) Each scheme manager must be satisfied that any person to be appointed as a member of a local pension board does not have a conflict of interest<sup>(1)</sup>.

(2) A scheme manager must be satisfied from time to time that none of the members of a local pension board has a conflict of interest.

(3) A person who is to be appointed as a member of a local pension board by a scheme manager must provide that authority with such information as the authority reasonably requires for the purposes of paragraph (1).

(4) A person who is a member of a local pension board must provide the scheme manager which made the appointment with such information as that authority reasonably requires for the purposes of paragraph (2).

**Local pension boards: guidance and advice**

8. A scheme manager must have regard to—

- (a) guidance issued by the Welsh Ministers in relation to local pension boards;
- (b) advice given by the Firefighters’ Pension Scheme Advisory Board for Wales in relation to the effective and efficient administration and management of the scheme; and
- (c) codes of practice issued by the Pensions Regulator under section 90A (codes of practice: public service pensions schemes) of the Pensions Act 2004<sup>(2)</sup>.

**Local pension boards: publication of information**

9.—(1) A scheme manager must publish the following information relating to its local pension board—

- (a) who the members of the board are;
- (b) representation on the board of members of the scheme; and
- (c) the matters falling within the board’s responsibility.

(2) A scheme manager must keep information published under paragraph (1) up-to-date.

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(1) See section 5(5) of the Public Service Pensions Act 2013 for the meaning of “conflict of interest”.

(2) 2004 c. 35. Section 90A was inserted by the Public Service Pensions Act 2013, Schedule 4, paragraph 14.

### **Scheme advisory board: establishment**

**10.**—(1) There is to be a scheme advisory board (“the Firefighters’ Pension Scheme Advisory Board for Wales”).

(2) The Firefighters’ Pension Scheme Advisory Board for Wales is responsible for providing advice, in response to a request from the Welsh Ministers, on—

- (a) the desirability of making changes to this scheme and any connected scheme; and
- (b) any other matter it considers relevant to the effective and efficient operation of this scheme.

(3) The Firefighters’ Pension Scheme Advisory Board for Wales is also responsible for providing advice to scheme managers and local pension boards in relation to the effective and efficient administration and management of this scheme and any connected scheme.

(4) Subject to these Regulations, the Firefighters’ Pension Scheme Advisory Board for Wales may determine its own procedures including as to voting rights, the establishment of sub-committees, the payment of reasonable attendance allowances and any reasonable expenses in connection with the discharge of its functions as the Board considers necessary.

### **Scheme advisory board: membership**

**11.**—(1) The Firefighters’ Pension Scheme Advisory Board for Wales is to consist of a chair and at least two, and no more than 12, persons to be appointed by the Welsh Ministers.

(2) When deciding whether to make an appointment under paragraph (1), the Welsh Ministers must have regard to the desirability of there being equal representation of persons representing the interests of scheme employers and persons representing the interests of members.

(3) A member of the Firefighters’ Pension Scheme Advisory Board for Wales is to hold and vacate office in accordance with the terms of that member’s appointment.

(4) The chair of the Firefighters’ Pension Scheme Advisory Board for Wales may, with the agreement of the Board, appoint persons who are not members of the Board to be non-voting advisory members of the Board, who may, by invitation, attend meetings of the Board and any sub-committee of the Board.

(5) An advisory member of the Firefighters’ Pension Scheme Advisory Board for Wales is to hold and vacate office in accordance with the terms of that member’s appointment.



(6) The chair of the Firefighters' Pension Scheme Advisory Board for Wales may, with the agreement of the Board, appoint persons who are not members of the Board to be members of sub-committees of the Board.

(7) A member of a sub-committee of the Firefighters' Pension Scheme Advisory Board for Wales is to hold and vacate office in accordance with the terms of that member's appointment.

#### **Scheme advisory board: conflict of interest**

**12.**—(1) Before appointing any person to be a member of the Firefighters' Pension Scheme Advisory Board for Wales, the Welsh Ministers must be satisfied that the person does not have a conflict of interest<sup>(1)</sup>.

(2) The Welsh Ministers must be satisfied from time to time that none of the members of the Firefighters' Pension Scheme Advisory Board for Wales has a conflict of interest.

(3) A person who is to be appointed as a member of the Firefighters' Pension Scheme Advisory Board for Wales must provide the Welsh Ministers with such information as the Welsh Ministers reasonably require for the purposes of paragraph (1).

(4) A person who is a member of the Firefighters' Pension Scheme Advisory Board for Wales must provide the Welsh Ministers with such information as the Welsh Ministers reasonably require for the purposes of paragraph (2).

#### **The Firefighters' Pension Scheme Advisory Board for Wales: guidance**

**13.** The Firefighters' Pension Scheme Advisory Board for Wales must have regard to guidance issued by the Welsh Ministers in relation to the exercise by the Board of its functions under these Regulations.

#### **Delegation**

**14.**—(1) The Welsh Ministers may delegate any functions under these Regulations, including this power to delegate.

(2) The scheme manager may delegate any functions under these Regulations, including this power to delegate, to such persons or employees of such person as may be authorised in that behalf by the scheme manager.

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(1) See section 7(5) of the Public Service Pensions Act 2013 for the meaning of "conflict of interest".

## PART 3

### Scheme membership

#### CHAPTER 1

##### Eligibility for active membership

###### **Scheme employment**

**15.**—(1) For the purposes of these Regulations, a person is in scheme employment if that person is employed as a firefighter by an authority and satisfies the requirement in paragraph (2) or paragraph (3).

(2) A person who took up employment on or after 1 April 2015 satisfies the requirement in this paragraph where that person's role on taking up employment includes—

- (a) resolving operational incidents; or
- (b) leading and supporting others in the resolution of operational incidents.

(3) A person who is a transition member satisfies the requirement in this paragraph.

(4) The employer of a person in scheme employment is referred to in these Regulations as the “scheme employer”.

###### **Eligible persons**

**16.**—(1) For the purpose of this Part, an eligible person is a person who is eligible to be an active member of this scheme.

(2) A person who is in service in a scheme employment (P) is an eligible person in relation to that employment unless in relation to service in that employment—

- (a) P is a protected member of the 1992 Scheme or the NFPS; or
- (b) P is a member of any other pension scheme and the authority employing P pays contributions to that scheme in respect of P.

(3) P remains an eligible person whilst on reserve forces service leave.

###### **Service in two or more scheme employments**

**17.** If a person is in service in two or more scheme employments, regulation 16 (eligible persons) applies separately in relation to each employment (whether or not the employment is with the same authority).

## CHAPTER 2

### Pensionable service

#### Application of Chapter

**18.**—(1) This Chapter applies in relation to a continuous period of service in a scheme employment.

(2) If a person is in service in two or more scheme employments at the same time, this Chapter applies separately in relation to each of the employments (whether or not the employment is with the same authority).

#### Interpretation of Chapter

**19.** In this Chapter—

“automatic re-enrolment date” (*“dyddiad ailgofrestru awtomatig”*), in relation to a person in service in a scheme employment, means a date determined under regulation 12 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010<sup>(1)</sup>;

“continuous period of service” (*“cyfnod di-dor o wasanaeth”*), in relation to scheme employment, means a period of service in scheme employment disregarding any gap in service not exceeding five years;

“first eligible day of service” (*“diwrnod cymwys cyntaf o wasanaeth”*) means the day on which a person becomes an eligible person in relation to that service.

#### Automatic enrolment

**20.**—(1) Where a person (P) who is in pensionable service<sup>(2)</sup> under the scheme moves from one scheme employer to another but remains in scheme employment, P continues in pensionable service under the scheme.

(2) A person (P) who is not in pensionable service under the scheme immediately before P’s first eligible day of service in a scheme employment begins pensionable service under this scheme on P’s first eligible day of service in that employment unless—

- (a) regulation 24 (opting out before the end of the first three months) applies; or
- (b) P is a transition member with continuity of service and paragraph (3) applies.

(3) This paragraph applies if—

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<sup>(1)</sup> S.I. 2010/772. Regulation 12 was amended by S.I. 2012/215.

<sup>(2)</sup> See section 37 of the 2013 Act for the meaning of “pensionable service”.

- (a) P's first eligible day of service in the scheme employment is the day after P's closing date; and
- (b) on P's closing date—
  - (i) P was in service in the same employment, and
  - (ii) P had opted out of the 1992 Scheme or the NFPS, as the case may be, in relation to that service.

### **Opting into this scheme**

**21.**—(1) A person (P) who, in relation to a scheme employment, is an eligible person but is not in pensionable service under this scheme may opt to become an active member of this scheme in relation to service in that employment.

(2) The option under this regulation may only be exercised by notice to the scheme manager in a form required by the scheme manager (“opt-in notice”).

(3) A person who exercises the option under this regulation in relation to service in a scheme employment opts into this scheme in relation to service in that employment with effect from the date on which the opt-in notice is received by the scheme manager.

(4) The option under this regulation is taken to be exercised on that date.

(5) If P opts into this scheme in relation to an employment, P becomes an active member of this scheme in relation to that employment at the beginning of the first pay period beginning after the date on which the option is exercised or at such other time as the scheme manager considers appropriate.

### **Automatic re-enrolment**

**22.**—(1) This regulation applies if, on the automatic re-enrolment date, an eligible person (P) in relation to service in a scheme employment is not in pensionable service under this scheme in relation to service in that employment.

(2) On the automatic re-enrolment date, the scheme manager must enrol P in this scheme in relation to service in that employment if the employer is required under section 5 of the Pensions Act 2008<sup>(1)</sup> (automatic re-enrolment) to make arrangements for P to be an active member of a pension scheme.

### **Opting out of this scheme**

**23.**—(1) A person (P) opts out of this scheme in relation to service in a scheme employment if P opts

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(1) 2008 c. 30.

not to be an active member of this scheme in relation to that service.

(2) P may only exercise the option by notice to the scheme manager in a form required by the scheme manager (“opt-out notice”).

(3) The option is taken to be exercised on the date on which the opt-out notice is received by the scheme manager.

#### **Opting out before the end of the first three months**

**24.**—(1) This regulation applies if a person (P) opts out of this scheme in relation to a continuous period of service in scheme employment before the end of three months after—

- (a) P’s first day of a continuous period of service in scheme employment; or
- (b) the automatic re-enrolment date.

(2) If paragraph (1)(a) applies, P is taken never to have been in pensionable service under this scheme in relation to that continuous period of service in scheme employment.

(3) If paragraph (1)(b) applies, P is taken not to have been in pensionable service under this scheme in relation to that period of service during the period referred to in paragraph (1)(b).

(4) This regulation does not require the scheme manager to pay P any additional amount which becomes payable by P in respect of national insurance contributions because P has not after all been an active member of this scheme during any period.

#### **Opting out after the first three months**

**25.**—(1) This regulation applies if a person (P) opts out of this scheme in relation to a continuous period of service in scheme employment three months or more after P’s—

- (a) first day of a continuous period of service in scheme employment; or
- (b) automatic re-enrolment date.

(2) If P exercises the option under paragraph (1)(a) or (b), P ceases to be in pensionable service under this scheme in relation to that continuous period of service in scheme employment—

- (a) on the first day of the first pay period beginning on or after the date on which the option is exercised; or
- (b) if the scheme manager considers that day inappropriate, on the first day of any later pay period which the scheme manager considers appropriate.

## CHAPTER 3

### Pensionable pay

#### **Pensionable pay**

**26.**—(1) For the purpose of calculating a member's pension or other benefits under this scheme, the member's pensionable pay is—

- (a) the member's pay received for the performance of the duties of the member's role except any allowance or emoluments paid to that member on a temporary basis;
- (b) the member's permanent emoluments (including, in the case of a retained firefighter, any retaining allowance);
- (c) the amount foregone where a member has agreed to surrender the right to receive any part of that member's pensionable pay in exchange for the provision by the employer of any non-cash benefit; and
- (d) the amount paid to the member for continued professional development which the scheme manager determines is pensionable.

(2) The payments in paragraph (1) do not include any payment made by an employer to a member who is on reserve forces service leave.

#### **Meaning of “assumed pensionable pay”**

**27.**—(1) For any period in which the circumstances specified in paragraph (2) apply to an active member of this scheme, the member is treated as receiving pensionable pay (“assumed pensionable pay”) equal to the pensionable pay that the member would have received if those circumstances had not applied.

(2) The circumstances are that the member is—

- (a) on secondment to a different employer under an arrangement providing for the member to continue to be an active member of this scheme in respect of the member's service although the member is paid for that member's service by the other employer;
- (b) on sick leave or injury leave on reduced pay or, where the member has paid the contributions required by regulation 120(2) (contributions during absence from work due to illness or injury), is not receiving pay;
- (c) receiving pay or statutory pay whilst on adoption leave, additional adoption leave, additional maternity leave, parental leave or additional paternity leave;
- (d) on ordinary adoption leave, ordinary maternity leave or paternity leave;

- (e) not receiving pay or statutory pay during part or all of the duration of the period of additional adoption leave, additional maternity leave or additional paternity leave and has paid member contributions in respect of that period;
- (f) on unpaid leave for a period that does not exceed five years, in circumstances that the scheme manager has agreed can count for the purposes of this paragraph, and has paid contributions required by regulation 120(4) (contributions during absence from work due to authorised absence);
- (g) absent on reserve forces service leave; or
- (h) absent due to a trade dispute and has paid contributions required by regulation 120(3) (contributions during absence from work due to trade dispute).

(3) Paragraph (2)(g) does not apply in respect of any period of service which qualifies the member for benefits under any occupational pension scheme in respect of that service.

(4) Where the circumstances in paragraph (2) apply to a member (P) who was employed as a retained firefighter or volunteer firefighter immediately before those circumstances applied and P's pensionable service for that period was 365 days or more, the amount of P's assumed pensionable pay is calculated by dividing the total amount of P's pensionable pay received for that service during the period of 365 days ending with the last day of continuous pensionable service before those circumstances applied, by 365 and multiplying by the number of days in which the circumstances in paragraph (2) applied.

(5) Where the circumstances in paragraph (2) apply to a member (P) who was employed as a retained firefighter or volunteer firefighter immediately before those circumstances applied and P's pensionable service for that period was less than 365 days, the amount of P's assumed pensionable pay is calculated by dividing the total amount of P's pensionable pay received for that service during that period of continuous pensionable service before those circumstances applied, by the number of days of that service and multiplying by the number of days in which the circumstances in paragraph (2) applied.

## CHAPTER 4

### Membership

#### **Active membership**

**28.** A person (P) is an active member of this scheme if—

- (a) P is in pensionable service under this scheme;

- (b) P is not in pensionable service whilst on unpaid sick leave or on unpaid child-related leave or on a trade dispute where P had been an active member immediately before that leave or trade dispute began;
- (c) P is on unpaid authorised absence and the scheme manager permits P to be treated as an active member; or
- (d) P is on reserve forces service leave and P was an active member immediately before that leave began.

### **Deferred membership**

**29.** A person (P) is a deferred member of this scheme in relation to a continuous period of pensionable service if P—

- (a) ceases to be an active member of this scheme in relation to that period of service before P claims a pension under this scheme in respect of that period of pensionable service;
- (b) is not a pensioner member of this scheme in relation to that period of service; and
- (c) has at least three months qualifying service or a transfer value payment otherwise than from another occupational pension scheme has been accepted by this scheme in relation to P.

### **Pension credit member**

**30.** A person is a pension credit member of this scheme if that person has been given a pension credit in the scheme as a consequence of a pension debit created under section 29 of the WPRA 1999 in relation to a member of this scheme.

## **PART 4**

### **Pension accounts**

#### **CHAPTER 1**

##### **Preliminary**

### **Description of pension**

**31.** For the purpose of this Part, “description of pension” (“*disgrifiad o bensiwn*”) means any of the following—

- (a) earned pension;
- (b) transferred pension;
- (c) club transfer earned pension;
- (d) added pension.



## CHAPTER 2

### Calculation of accrued pension

#### **Calculation of amount of accrued pension for purpose of deferment or retirement**

**32.**—(1) For the purpose of a retirement account of an active member who retires or partially retires, the amount of accrued pension is the sum of the amount of accrued earned pension calculated in accordance with paragraph (3) and the amount of accrued added pension calculated in accordance with paragraph (4).

(2) For the purpose of a deferred member's account, the amount of accrued earned pension is calculated in accordance with paragraph (3).

(3) The amount of accrued earned pension is the sum of the following amounts specified in the active member's account as at the end of the last day of pensionable service—

- (a) the sum of the opening balance of earned pension for the last active scheme year and the index adjustment for that opening balance;
- (b) the amount of earned pension accrued in the last active scheme year;
- (c) the sum of the opening balance of transferred pension (if any) for the last active scheme year and the index adjustment for that opening balance;
- (d) the amount of transferred pension (if any) for the last active scheme year;
- (e) the sum of the opening balance of club transfer earned pension (if any) for the last active scheme year and the index adjustment for that opening balance; and
- (f) the amount of club transfer earned pension (if any) for the last active scheme year.

(4) The amount of accrued added pension is the sum of the following amounts specified in the added pension account as at the end of the last day of pensionable service—

- (a) the sum of the opening balance of added pension for the last active scheme year and the PIA index adjustment (if any) for that opening balance; and
- (b) the amount of accrued added pension for the last active scheme year.

## CHAPTER 3

### Calculation of adjustments

#### Calculation of “retirement index adjustment”

33.—(1) The retirement index adjustment for an amount of accrued earned pension is—

**Amount of accrued pension × retirement index  
percentage**

where “retirement index percentage” (“*canran mynegai ymddeol*”) means the retirement index percentage calculated under paragraph (2) for accrued earned pension.

(2) The retirement index percentage is—

$$A \times \frac{B}{12}$$

where—

A means—

- (i) for accrued club transfer earned pension, the in-service revaluation index that applies in relation to this scheme for the leaving year,
- (ii) for accrued earned pension other than club transfer earned pension, the index adjustment that applies in relation to this scheme for the leaving year,

B is the number of complete months in the period between the beginning of the leaving year and the end of the relevant last day.

(3) For the purposes of this regulation, “complete month” (“*mis cyflawn*”) includes an incomplete month that consists of at least 16 days.

#### Calculation of “retirement PIA index adjustment”

34.—(1) The retirement PIA index adjustment for an amount of accrued added pension is calculated in accordance with paragraph (2).

(2) The retirement PIA index adjustment is the amount by which the annual rate of a pension of an amount equal to the amount of accrued added pension would have been increased in the leaving year under PIA 1971 if—

- (a) that pension were eligible to be so increased; and
- (b) the beginning date for that pension were the day after the relevant last day.

### **Determination of “the age addition”**

**35.**—(1) This regulation applies in relation to every scheme year in which an active member’s account and an active member’s added pension account, if any, is open that is subsequent to the scheme year in which the member reaches normal pension age under this scheme, and that is not the scheme year in which the account is established under this Part.

(2) At the beginning of the scheme year, for each description of pension, the scheme manager, having regard to actuarial guidance, must determine the age addition to be awarded for that scheme year by reference to the opening balance of that description of pension for the previous scheme year.

(3) In these Regulations, “the age addition” (“*yr ychwanegiad oedran*”) means an additional amount of pension determined by reference to the proportion of the previous scheme year for which a member had reached normal pension age under this scheme.

### **Determination of “the assumed age addition”**

**36.**—(1) This regulation applies on the establishment of a deferred member’s account or retirement account in respect of a member who does not have an active member’s account in connection with another scheme employment.

(2) The scheme manager, having regard to actuarial guidance, must determine the assumed age addition for the amount of accrued earned pension and accrued added pension (if any) specified in that account.

(3) In these Regulations “the assumed age addition” (“*yr ychwanegiad oedran tybiedig*”) means—

- (a) for an amount of accrued earned pension not attributable to a transferred pension, the age addition that would have been awarded for accrued earned pension if the member had not left pensionable service or exercised the option to partially retire in the leaving year, determined by reference to the proportion of the leaving year for which the member was an active member of this scheme who had reached normal pension age under this scheme;
- (b) for an amount of accrued earned pension attributable to a transferred pension, the age addition that would have been awarded for transferred pension if the member had not left pensionable service or exercised the option to partially retire in the leaving year, determined by reference to the proportion of the leaving year for which the member was an active member of this scheme who had reached normal pension age under this scheme;

- (c) for an amount of accrued added pension, the age addition that would have been awarded for added pension if the member had not left pensionable service or exercised the option to partially retire in the leaving year, determined by reference to the proportion of the leaving year for which the member was an active member of this scheme who had reached normal pension age under this scheme.

## CHAPTER 4

### Pension accounts: general

#### **Establishment of pension accounts: general**

**37.**—(1) The scheme manager must establish and maintain one or more pension accounts for each member of this scheme in accordance with this Part.

(2) A pension account—

- (a) may be kept in any form which the scheme manager considers appropriate; and
- (b) must specify the details required by these Regulations.

(3) References in these Regulations to any amount specified in a pension account are references to the amount that is required by these Regulations to be so specified and not, if different, to the amount actually so specified.

#### **Closure and adjustment of pension accounts on transfer out or repayment of balance of contributions**

**38.**—(1) Except as otherwise provided in this regulation, the scheme manager must close all pension accounts relating to a member of this scheme if—

- (a) a transfer payment is made in respect of the member's accrued rights under this scheme; or
- (b) all member contributions are refunded to the member under regulation 125 (refund of all member contributions and payments for added pension made by member).

(2) Paragraph (1) does not require the scheme manager to close an account that includes amounts to which the transfer payment does not relate or is not attributable.

(3) An account that is not closed because of paragraph (2) must be adjusted in such manner as the scheme manager considers appropriate to reflect the extinguishment of rights under this scheme<sup>(1)</sup>.

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(1) Regulation 125 provides for extinguishment of rights following the refund of all member contributions and payments for added

(4) Paragraph (1)(a) does not require the scheme manager to close a pension credit member's account if the transfer payment is made in respect of a member who is both—

- (a) a pension credit member of this scheme; and
- (b) an active member, deferred member or pensioner member of this scheme.

## CHAPTER 5

### Active member's account

#### **Application of Chapter**

**39.**—(1) This Chapter applies in relation to a continuous period of pensionable service under this scheme.

(2) For a person who is an active member of this scheme in relation to two or more continuous periods of pensionable service at the same time, this Chapter applies separately in relation to each of those periods of service.

#### **Establishment of active member's account**

**40.**—(1) The scheme manager must establish a pension account for a member who is in pensionable service from the day on which the member begins pensionable service.

(2) For the purposes of these Regulations, an account established under paragraph (1) is called an active member's account.

#### **Receipt of a transfer value payment**

**41.**—(1) This regulation applies if a transfer value payment is received from another pension scheme (other than a connected scheme) in relation to an active member of this scheme.

(2) On receiving the transfer value payment, the scheme manager must credit the active member's account with the amount of transferred pension calculated under regulation 152(2) (amount of transferred pension).

#### **Receipt of a club transfer value payment**

**42.**—(1) This regulation applies if a club transfer value payment is received from another club scheme in relation to an active member of this scheme.

(2) On receiving the club transfer value payment, the scheme manager must credit the active member's

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pension made by the member. Regulation 147 (effect of transfers-out) provides for extinguishment of rights following the making of a transfer payment.

account with an amount of club transfer earned pension calculated under regulation 154(2) (amount of club transfer earned pension).

#### **Amount of pension for a scheme year**

**43.**—(1) This regulation applies in relation to every scheme year in which an active member's account is open.

(2) The active member's account must specify the amount of—

- (a) earned pension (if any) for the scheme year;
- (b) transferred pension (if any) for the scheme year; and
- (c) club transfer earned pension (if any) from each sending scheme for the scheme year.

(3) The amount is—

- (a) for earned pension, 1/61.4th of the member's pensionable pay received for that year for the scheme employment in respect of which that member's account is established;
- (b) for earned pension, 1/61.4th of the member's assumed pensionable pay for the scheme year where the member pays the contributions required by—
  - (i) paragraphs (3) and (4) of regulation 120 (contributions during absence from work due to trade dispute or authorised unpaid absence),
  - (ii) paragraph (1) of regulation 121 (contributions during absence from work on reserve forces service leave), or
  - (iii) paragraph (3) of regulation 122 (contributions during child-related leave);
- (c) for earned pension, 1/61.4th of the member's assumed pensionable pay during the member's absence due to illness or injury for the period in respect of which the member pays the contributions required by paragraph (2) of regulation 120 (contributions during absence from work due to illness or injury);
- (d) for earned pension, 1/61.4th of the member's assumed pensionable pay whilst the member is absent on ordinary adoption leave, ordinary maternity leave or paternity leave;
- (e) for transferred pension, the amount which the member is entitled to count under regulation 152(2) (amount of transferred pension) for that year; and
- (f) for club transfer earned pension, the amount of all club transfer values received in relation to the member in that year as calculated under

regulation 154(2) (amount of club transfer earned pension).

### **Opening balance, index adjustment and age addition**

**44.**—(1) This regulation applies in relation to every scheme year in which an active member's account is open other than the scheme year in which that account is established.

(2) The active member's account must specify —

- (a) the opening balance of earned pension for the scheme year and the index adjustment for that opening balance, and if applicable, the age addition awarded at the beginning of the scheme year;
- (b) the opening balance of club transfer earned pension (if any) for the scheme year and the index adjustment for that opening balance and if applicable, the age addition awarded at the beginning of the scheme year;
- (c) the opening balance of transferred pension (if any) for the scheme year and the index adjustment for that opening balance and if applicable, the age addition awarded at the beginning of the scheme year.

(3) In these Regulations—

“opening balance” (“*balans agoriadol*”) in relation to a description of pension, other than added pension—

- (a) for the scheme year immediately following the scheme year in which the active member's account is established, means the amount of that pension for the previous scheme year as at the end of that scheme year; and
- (b) for any subsequent scheme year, means the sum of the following amounts—
  - (i) the opening balance of that pension for the previous scheme year and the index adjustment for that opening balance,
  - (ii) the amount of that pension for the previous scheme year as at the end of the previous scheme year, and
  - (iii) if applicable, the age addition awarded at the beginning of the previous scheme year.

### **Ill-health award ceases to be payable**

**45.**—(1) This regulation applies when an ill-health award ceases to be payable to a person under regulation 78 (consequences of review) and the pensioner member re-enters pensionable service.

- (2) The scheme manager must—
- (a) close the retirement account;
  - (b) re-establish the active member's account and credit it with an amount equal to the annual rate of lower tier ill-health pension payable when the ill-health award was first made; and
  - (c) make entries in the active member's account as if, during the gap in pensionable service, the member—
    - (i) was in pensionable service under this scheme, but
    - (ii) received no pensionable pay.

**Closure and re-establishment of active member's account**

46.—(1) The scheme manager must close an active member's account in relation to a period of service when the scheme manager establishes in relation to that period of service—

- (a) a deferred member's account under Chapter 7 (deferred member's account); or
- (b) a retirement account under Chapter 8 (retirement account).

(2) The scheme manager must re-establish an active member's account under this Chapter if the scheme manager closes a deferred member's account under Chapter 7.

(3) Where an active member has more than one active member's account and ceases to be in pensionable service in respect of service in one scheme employment without having qualifying service for a period of three months in respect of that account, the active member's account for that employment must be closed and the benefits in that account must be aggregated with the other active member's account.

(4) If the active member has more than one active member's account after the account mentioned in paragraph (3) has been closed, the member may choose the active member's account with which the benefits from the closed account are to be aggregated.

(5) If the active member fails to make the selection mentioned in paragraph (4), the scheme manager may choose the active member's account with which the benefits from the closed account are to be aggregated.

CHAPTER 6

Added pension account

**Establishment of added pension account**

47.—(1) A pension account must be established for each active member (P) who makes an added pension election.



(2) If P is an active member in relation to more than one scheme employment, only one added pension account is to be opened.

(3) For the purpose of these Regulations, an account established under paragraph (1) is called an added pension account.

#### **Account to specify amount of added pension**

**48.**—(1) This regulation applies in relation to every scheme year in which an added pension election has effect.

(2) The added pension account must specify in relation to any added pension payments made in that scheme year the amount of added pension determined by the scheme manager under paragraph 11 or under paragraph 14 of Schedule 1 (payments for added pension) to be credited in respect of that scheme year.

#### **Account to specify opening balance and PIA index adjustment**

**49.**—(1) This regulation applies in relation to every scheme year in which an added pension account is open other than the scheme year in which the account is established.

(2) The account must specify—

- (a) the opening balance of added pension for the scheme year and the PIA index adjustment for that opening balance;
- (b) if applicable, the age addition awarded at the beginning of the scheme year.

(3) The “opening balance” (“*balans agoriadol*”) of added pension—

- (a) for the scheme year immediately following the scheme year in which the added pension account is established, means the amount of added pension specified in the account as at the end of the previous scheme year; and
- (b) for any subsequent scheme year, means the sum of the following amounts—
  - (i) the opening balance of added pension for the previous scheme year,
  - (ii) the PIA index adjustment (if any) for that opening balance,
  - (iii) if applicable, the age addition awarded at the beginning of the previous scheme year, and
  - (iv) the amount of added pension for the previous scheme year as at the end of the previous scheme year.

### **Closure and transfer of added pension account**

**50.**—(1) Where an active member (P) has an added pension account, the added pension account must remain open until—

- (a) P has claimed a retirement pension and the amount of added pension is transferred to the retirement account or the deferred member's account; or
- (b) a transfer value payment is made in respect of P's rights to the accrued added pension; or
- (c) where a transfer of entries referred to in paragraph (2) has been completed.

(2) Where a scheme manager has provided a certificate under regulation 155 (requirement for scheme manager to provide a certificate) in respect of an added pension account, the new scheme manager must establish an added pension account and transfer the entries from that certificate to that account.

### **Ill-health pension ceases to be payable**

**51.**—(1) This regulation applies if—

- (a) an added pension is payable with an ill-health award; and
- (b) the ill-health award ceases to be payable under regulation 78 (consequences of review).

(2) The added pension account must be re-established and credited with an amount equal to the annual rate of added pension paid to the pensioner member in the last scheme year before the payment of the ill-health award to the member ceased.

## **CHAPTER 7**

### **Deferred member's account**

#### **Application of Chapter**

**52.**—(1) This Chapter applies in relation to a continuous period of pensionable service under this scheme.

(2) For a person who is a deferred member of this scheme in relation to two or more continuous periods of pensionable service, this Chapter applies separately in relation to each of those periods of service.

#### **Establishment of deferred member's account**

**53.**—(1) This regulation applies when an active member of this scheme becomes a deferred member of this scheme.

(2) The scheme manager must—

- (a) close the active member's account for that period of service; and

- (b) establish a pension account for the deferred member for that period of service.

(3) For the purpose of these Regulations, an account established under paragraph (2)(b) is called a deferred member's account.

#### **Provisional amount of deferred pension**

**54.**—(1) The deferred member's account must specify the provisional amount of deferred pension.

(2) The provisional amount of deferred pension is the sum of—

- (a) the amount of accrued earned pension calculated under regulation 32(3) (calculation of amount of accrued pension for purposes of deferment or retirement) (“accrued amount”);
- (b) the retirement index adjustment for the accrued amount; and
- (c) the assumed age addition (if any) for the accrued amount.

(3) The retirement index adjustment is not applied in relation to the amount of accrued earned pension if a transfer payment in respect of the member's rights to that accrued earned pension was made before the end of the last active scheme year.

(4) The assumed age addition applies in relation to a member who reaches normal pension age under this scheme not less than one month before the last day of pensionable service.

#### **Retirement amount of deferred pension**

**55.**—(1) This regulation applies when a deferred member of this scheme becomes entitled to the immediate payment of a retirement pension for a period of service.

(2) The deferred member's account must specify the retirement amount of deferred pension.

(3) The retirement amount of deferred pension is the sum of—

- (a) the amount of any accrued added pension transferred to the deferred member's account,
- (b) the retirement PIA index adjustment for the accrued added pension,
- (c) the assumed age addition (if any) for the accrued added pension, and
- (d) the provisional amount of deferred pension.

(4) For the retirement amount of deferred pension, the deferred member's account must specify—

- (a) the early payment reduction (if any);
- (b) the commutation amount (if any); and
- (c) the total allocation amount (if any).

**Adjustment of account after early payment of deferred pension ceases**

**56.** When a deferred member who has received the early payment of a deferred pension under regulation 76 (early payment of retirement pension to deferred member) ceases to be entitled to the early payment of the deferred pension under regulation 78(7) (consequences of review), the scheme manager must make the necessary adjustments to the deferred member's account.

**Account established after ill-health award ceases to be payable**

**57.** If a lower tier ill-health pension ceases to be payable to a person (P) under regulation 78 (consequences of review) and P does not re-enter pensionable service—

- (a) a deferred member's account must be established; and
- (b) that account must be credited with an amount equal to the annual rate of the lower tier ill-health pension payable immediately before the lower tier ill-health pension ceased to be payable.

**Closure of deferred member's account after gap in pensionable service not exceeding five years**

**58.—(1)** This regulation applies when a deferred member of this scheme re-enters pensionable service under this scheme after a gap in pensionable service not exceeding five years.

(2) The scheme manager must—

- (a) close the deferred member's account in relation to that period of service and treat the deferred member's account as if it were never established;
- (b) re-establish the active member's account under Chapter 5 in relation to that period of service; and
- (c) make entries in the active member's account as if, during the gap in pensionable service, the member—
  - (i) was in pensionable service under this scheme, but
  - (ii) received no pensionable pay.

(3) Where a deferred member had more than one deferred member's account which has been opened within five years of the date in paragraph (1) the member may within three months of the date of re-entering scheme employment select which deferred member's account is to be closed.

(4) If the deferred member fails to make the selection mentioned in paragraph (3), the scheme manager must select which deferred member's account is to be closed.

## CHAPTER 8

### Retirement account

#### **Establishment of retirement account and other adjustments**

**59.**—(1) This regulation applies in relation to a continuous period of pensionable service under this scheme.

(2) When an active member of this scheme becomes entitled to the immediate payment of a retirement pension or an ill-health award, the scheme manager must—

- (a) close all the active member's accounts for that member and any added pension account; and
- (b) establish an account for the pensioner member for that period of service.

(3) When an active member of this scheme exercises the partial retirement option and becomes entitled under regulation 67(1) (entitlement to retirement pension) to the immediate payment of a retirement pension, the scheme manager must—

- (a) close the active member's account for the period of earlier service;
- (b) establish an account for the pensioner member for that period of earlier service;
- (c) close any added pension account and transfer the amount of accrued added pension to the retirement account; and
- (d) establish a new active member's account under Chapter 5 for the member's continuing service as if the first day of pensionable service in the scheme employment is the day after the option date.

(4) When a deferred member becomes entitled to the immediate payment of a retirement pension, the scheme manager must—

- (a) close any added pension account; and
- (b) transfer the amount of accrued added pension (if any) to the deferred member's account.

(5) For the purpose of these Regulations, an account established for a pensioner member under paragraph (2)(b) or (3)(b) is called a retirement account.

(6) In this regulation—

“continuing service” (“*gwasanaeth parhaus*”) means pensionable service that continues following the exercise of the partial retirement

option in regulation 72 (exercise of partial retirement option) after the option date;

“option date” (“*dyddiad opsiwn*”) means the date on which the partial retirement option is exercised and the member becomes entitled to the immediate payment of a retirement pension;

“period of earlier service” (“*cyfnod o wasanaeth cynharach*”) means the continuous period of pensionable service ending on the option date.

**Account to specify amount of retirement pension (active members)**

**60.**—(1) The retirement account must specify, for accrued earned pension and accrued added pension, the amount of that retirement pension.

(2) The amount of retirement earned pension is the sum of—

- (a) the amount of the accrued earned pension calculated under regulation 32(3) (calculation of amount of accrued pension for purpose of deferment or retirement) (“accrued amount”);
- (b) the retirement index adjustment for the accrued amount; and
- (c) the assumed age addition (if any) for the accrued amount.

(3) The amount of any retirement added pension is the sum of—

- (a) the amount of the accrued added pension calculated under regulation 32(4) (calculation of amount of accrued pension for purpose of deferment or retirement);
- (b) the retirement PIA index adjustment for the accrued added pension; and
- (c) the assumed age addition (if any) for the accrued added pension.

(4) For the amount of retirement earned pension and the amount of retirement added pension, the retirement account must specify—

- (a) the early payment reduction (if any);
- (b) the commutation amount (if any); and
- (c) the total allocation amount (if any).

(5) The assumed age addition applies in relation to a member who reaches normal pension age under this scheme at least one month before the last day of pensionable service.

## CHAPTER 9

### Pension accounts for survivor members

#### **Establishment of survivor member's account**

**61.**—(1) The scheme manager must establish a pension account for each person who is entitled to a pension under this scheme as a surviving partner or eligible child following the death of an active member, deferred member or pensioner member.

(2) The scheme manager must—

- (a) close the active member's account or the deferred member's account or the retirement account (as the case may be) and the added pension account (if any); and
- (b) establish a pension account for each survivor member.

(3) For the purpose of these Regulations—

- (a) a person entitled to a pension in the circumstances mentioned in paragraph (1) is called a survivor member; and
- (b) an account established under paragraph (2)(b) is called a survivor member's account.

#### **Amount of pension payable to survivor member**

**62.** The survivor member's account must be credited with an amount equal to the annual rate of pension payable to the survivor member calculated in accordance with the appropriate regulation in Chapter 2 (pensions for surviving partners) or Chapter 3 (pensions for eligible children) of Part 6 (death benefits), as the case may be, which confers the pension on the survivor member.

## CHAPTER 10

### Pension accounts for pension credit members

#### **Establishment of pension credit member's account**

**63.**—(1) The scheme manager must establish a pension account for each pension credit member of this scheme.

(2) If a pension credit member has more than one pension credit derived from two or more pension debit members, the scheme manager must establish a pension credit member's account in relation to each pension debit member.

(3) The pension credit member's account must specify the amount of credited pension, and for that amount, the commutation amount (if any).

(4) On the establishment of the pension credit member's account, the accounts established under this

Part for the pension debit member must be reduced by the relevant amount.

(5) For the purpose of these Regulations, an account established for a pension credit member under paragraph (1) is called a pension credit member's account.

(6) In this regulation—

“amount of credited pension” (“*swm y pensiwn a gredydwyd*”) means an amount equal to the pension credit calculated in accordance with regulations made under paragraph 5(b) of Schedule 5 (pension credits: mode of discharge) to WRPA 1999;

“relevant amount” (“*swm perthnasol*”) means the amount that the scheme manager, after consultation with the scheme actuary, considers appropriate, having regard to—

- (a) the cash equivalent that would have been payable under Chapter 2 of Part 4A (requirements relating to pension credit benefit: transfer values) of PSA 1993(1) in respect of the pension credit member's right to benefits under this scheme attributable (directly or indirectly) to the pension credit; and
- (b) the provisions of sections 29 (creation of pension credits and debits) and 31 (reduction of benefit) of WRPA 1999.

### **Other pension accounts**

**64.** If a pension credit member of this scheme is also an active member, deferred member, pensioner member or survivor member of this scheme, the scheme manager must establish a pension credit member's account in addition to any other account established for the member under this Part.

## **PART 5**

### **Retirement benefits**

#### **CHAPTER 1**

##### **Interpretation**

### **Application of Part**

**65.** This Part applies in relation to retirement benefits payable in respect of a continuous period of pensionable service under this scheme.

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(1) Part 4A was inserted by the Welfare Reform and Pensions Act 1999 (c. 30), section 37.



## Qualifying service

**66.**—(1) In these Regulations, in relation to a member's pension account, "qualifying service" ("*gwasanaeth cymwys*") means the total of—

- (a) any pensionable service under this scheme in relation to the same pension account;
- (b) if a transfer value payment has been accepted under Part 10 (transfers) in respect of a member's accrued rights under another occupational pension scheme, the member's period of pensionable service under that scheme; and
- (c) for a transition member with continuity of service, subject to paragraphs (2), (3), (4) and (5), the member's pensionable service reckonable under rule F1(1) (reckoning of and certificates as to pensionable service) of the 1992 Scheme (if any) and the member's qualifying service under the NFPS (if any).

(2) Where a transition member has more than one active member's account and was a member of the 1992 Scheme, the pensionable service reckonable under rule F1 of the 1992 Scheme must be added to the pensionable service for the active member's account in respect of which the scheme employment is the most similar to the employment which was pensionable under the 1992 Scheme.

(3) Where a transition member has more active member's accounts than the number of contracts of employment in respect of which that member was a member of the NFPS, the qualifying service under the NFPS must be added to the pensionable service for the active member's account in respect of which the scheme employment is most similar to the employment which was pensionable under the NFPS.

(4) Where a transition member was a member of the 1992 Scheme and the NFPS or had two or more contracts of employment in respect of which that member was a member of the NFPS, the pensionable service reckonable under rule F1 of the 1992 Scheme or the qualifying service under the NFPS, as the case may be, must be added to the pensionable service for the active member's account in respect of which the scheme employment is most similar to the employment which was pensionable under the 1992 Scheme or the NFPS.

(5) If the scheme manager is not certain which service pensionable under the 1992 Scheme or qualifying service under the NFPS is the most similar to the scheme employment for a particular pension

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(1) Rule F1 of the 1992 Scheme as it has effect in Wales has been amended by S.I. 2006/1672 (W. 160), 2007/1074 (W. 112) and 2014/3242 (W. 329).

account, the member may decide which pensionable service under the 1992 Scheme or qualifying service under the NFPS is to be added to the pensionable service in relation to a member's pension account and notify the scheme manager by written notice, in a form required by the scheme manager.

(6) None of the following counts as qualifying service—

- (a) any pensionable service under this scheme in respect of which a person's rights under this scheme are extinguished;
- (b) any pensionable service under the 1992 Scheme or the NFPS in respect of which a person's rights under that scheme are extinguished;
- (c) any unauthorised absence from scheme employment.

## CHAPTER 2

### Retirement benefits

#### **Entitlement to retirement pension**

**67.**—(1) Subject to paragraph (2), a member of this scheme (P) is entitled to the immediate payment of a retirement earned pension under this scheme if—

- (a) P—
  - (i) has reached the age of 55,
  - (ii) has at least three months qualifying service,
  - (iii) has claimed payment of a retirement pension, and
  - (iv) is no longer employed in a scheme employment and so is not entitled to be an active member of this scheme; or
- (b) P has exercised the partial retirement option.

(2) Where a member is entitled to an ill-health award, the requirement in paragraph (1)(a)(i) does not apply to that member.

(3) On becoming entitled to the immediate payment of a retirement earned pension, P is entitled to immediate payment of a retirement added pension if P had an added pension account in this scheme before becoming so entitled.

(4) The claim for payment of a retirement pension must be made by notice to the scheme manager in a form required by the scheme manager and must be given before the date on which the first payment of the retirement pension is paid.

**Annual rate of retirement pension (active members)**

**68.**—(1) This regulation applies when an active member of this scheme becomes entitled to the immediate payment of a retirement pension.

(2) The annual rate of a retirement pension payable on the day following the last day of pensionable service to a member to whom this regulation applies is calculated by adding the total of sub-paragraphs (a), (b) and (c)—

- (a) the amount derived by—
  - (i) taking the amount of retirement earned pension specified in the member's retirement account,
  - (ii) subtracting the early payment reduction (if any), specified in that account in relation to that amount,
  - (iii) subtracting the commutation amount (if any) specified in that account in relation to that amount, and
  - (iv) subtracting the total allocation amount (if any) specified in that account in relation to that amount;
- (b) the amount derived by—
  - (i) taking the amount of retirement added pension (if any) specified in the member's retirement account,
  - (ii) subtracting the early payment reduction (if any), specified in that account in relation to that amount,
  - (iii) subtracting the commutation amount (if any) specified in that account in relation to that amount, and
  - (iv) subtracting the total allocation amount (if any) specified in that account in relation to that amount;
- (c) the amount of the higher tier ill-health pension (if any) awarded to the member under regulation 74(2)(entitlement to lower tier ill-health pension and higher tier ill-health pension).

**Annual rate of retirement pension (deferred members)**

**69.**—(1) This regulation applies when a deferred member of this scheme becomes entitled to the immediate payment of a retirement pension.

(2) The annual rate of a retirement pension payable to a member to whom this regulation applies is calculated by subtracting from the retirement amount

of deferred pension specified in the deferred member's account—

- (a) the early payment reduction (if any), specified in that account in relation to that amount;
- (b) the commutation amount (if any) specified in that account in relation to that amount;
- (c) the total allocation amount (if any) specified in that account in relation to that amount.

### **Early payment reduction**

**70.**—(1) This regulation applies when an actuarial reduction is to be applied when calculating the annual rate of pension to be payable to an active member who has not reached normal pension age or to a deferred member who has not reached deferred pension age.

(2) An active member (A) may claim a retirement pension to be paid after A has reached the age of 55 and before A has reached normal pension age.

(3) The actuarial reduction to be applied in a case falling in paragraph (2) is calculated in accordance with actuarial guidance which reduces the pension on the basis that A had not reached normal pension age. The actuarial guidance must have regard to actuarial neutrality compared to the present value of a pension payable at normal pension age, with future increases between the date of A's early retirement and normal pension age being in line with increases under the index adjustment.

(4) A deferred member (D) may claim a retirement pension to be paid after D has reached the age of 55 and before D has reached deferred pension age.

(5) The actuarial reduction to be applied in a case falling in paragraph (4) is in accordance with actuarial guidance which reduces the pension on the basis that D had not reached deferred pension age. The actuarial guidance must have regard to actuarial neutrality compared to the present value of a pension payable at deferred pension age, with future increases between the date of D's early retirement and deferred pension age being in line with increases under PIA 1971.

### **Employer initiated retirement**

**71.**—(1) Where an active member who has attained the age of 55 or over but has not attained normal pension age is dismissed by an employer from a scheme employment by reason of business efficiency or whose employment is terminated by mutual consent on the grounds of business efficiency and the employer makes the determination in paragraph (2), that member's pension is calculated in accordance with regulation 68 (annual rate of retirement pension (active members)) without the early payment reduction.

(2) An employer may only pay a retirement pension of the amount mentioned in paragraph (1) in the circumstances mentioned in that paragraph where the employer determines that a retirement pension awarded on that basis would assist the economical, effective and efficient management of its functions having taken account of the costs likely to be incurred in the particular case.

### CHAPTER 3

#### Partial retirement benefits

##### **Exercise of partial retirement option**

**72.**—(1) This regulation applies to an active member of this scheme (P) in relation to a continuous period of pensionable service who—

- (a) is aged at least 55; and
- (b) would be entitled to the immediate payment of a retirement pension in relation to that period of service if P left pensionable service and claimed payment of the pension.

(2) P may opt to continue in pensionable service under this scheme but claim payment of the whole of P's accrued pension in relation to the pensionable service rendered before the exercise of the partial retirement option.

(3) Where P has more than one active member's account, the partial retirement option may be exercised in respect of some or all of P's active member's accounts.

(4) The partial retirement option may only be exercised by notice to the scheme manager ("option notice") in a form required by the scheme manager and must be given before the date on which the first payment of the retirement pension is claimed.

(5) For the purpose of these Regulations, the partial retirement option is taken to be exercised on such date as the member and the scheme manager agree.

(6) An option notice must specify that P claims the whole of P's pension accrued in respect of P's active member's account in respect of the earlier service of that scheme employment.

##### **Annual rate of retirement pension after exercise of partial retirement option**

**73.**—(1) An active member of this scheme (P) who exercises the partial retirement option is entitled to the immediate payment of a retirement pension.

(2) The annual rate of a retirement pension is calculated under regulation 68 (annual rate of retirement pension (active members)) by reference to the amount of that description of retirement earned

pension and retirement added pension (if any) specified in the member's retirement account.

(3) For the purposes of this Part, where a member exercises the partial retirement option, that member's last day of pensionable service in relation to the pensionable service in respect of which the partial retirement option is exercised is the day on which the member exercised the partial retirement option.

#### CHAPTER 4

##### Ill-health benefits

#### **Entitlement to lower tier ill-health pension and higher tier ill-health pension**

**74.**—(1) An active member who has not reached normal pension age is entitled to immediate payment of a lower tier ill-health pension if the following conditions are satisfied—

- (a) in the opinion of an IQMP, the member is incapable of performing any of the duties of the role in which the member was last employed because of incapacity of mind or body and this incapacity will continue until normal pension age;
- (b) the member has at least three months of qualifying service;
- (c) consequent on the incapacity in sub-paragraph (a), the member has been dismissed or retired from scheme employment; and
- (d) the scheme manager has determined that the member is entitled to a lower tier ill-health pension.

(2) An active member is entitled to immediate payment of a higher tier ill-health pension in addition to the lower tier ill-health pension if the following conditions are satisfied—

- (a) in the opinion of an IQMP, the member is incapable of undertaking regular employment because of incapacity of mind or body and this incapacity will continue until normal pension age;
- (b) the member has at least five years of qualifying service;
- (c) the member is entitled to a lower tier ill-health pension; and
- (d) the scheme manager has determined that the member is entitled to a higher tier ill-health pension.

(3) In these Regulations, an "ill-health award" (*"dyfarniad afiechyd"*) means the entitlement to the payment of a lower tier ill-health pension, and in cases where the member is also entitled to a higher tier ill-

health pension, the payment of a higher tier ill-health pension.

#### **Annual rate of ill-health awards**

**75.**—(1) The annual rate of a lower tier ill-health pension and of a higher tier ill-health pension is calculated as follows.

(2) The annual rate of a lower tier ill-health pension is calculated in accordance with paragraphs (2)(a) and (2)(b) of regulation 68 (annual rate of retirement pension (active members)), but without subtracting the early payment reduction.

(3) The annual rate of a higher tier ill-health pension is calculated by multiplying the annual amount of the adjusted lower tier ill-health pension by the member's assumed period of pensionable service and by 2%.

(4) In this regulation—

“the adjusted lower tier ill-health pension” (“*y pensiwn addasedig afiechyd haen isaf*”) means the lower tier ill-health pension payable under paragraph (2) calculated—

- (a) excluding an amount equal to the amount of any added pension which had been included in the calculation of the lower tier ill-health pension, and
- (b) without the deduction for any commuted portion of the pension;

“the member's assumed period of pensionable service” (“*cyfnod tybiedig gwasanaeth pensiynadwy yr aelod*”) means the period expressed in years—

- (a) beginning with the day after the member's continuous period of pensionable service ceased, and
- (b) ending with the day before the day on which the member would reach normal pension age.

#### **Early payment of retirement pension to deferred member**

**76.** A deferred member who has not reached deferred pension age is entitled to immediate payment of a retirement pension calculated under regulation 69 (annual rate of retirement pension (deferred members)) without subtracting the early payment reduction if the following conditions are satisfied—

- (a) the member has given written notice to the scheme manager requesting payment of the pension before deferred pension age;
- (b) in the opinion of the IQMP, the member is incapable of undertaking regular employment because of infirmity of mind or body and this

incapacity will continue until deferred pension age; and

- (c) the scheme manager has determined that the member is entitled to the early payment of the retirement pension.

### **Review of ill-health award or early payment of retirement pension**

**77.**—(1) Where a member (P) has been in receipt of an ill-health award under regulation 74 (entitlement to lower tier ill-health pension and higher tier ill-health pension) for less than 10 years and is under deferred pension age, the scheme manager must consider, at such intervals as it considers appropriate, whether P has become capable—

- (a) of performing any duty appropriate to the role from which P retired on grounds of ill-health; and
- (b) of undertaking regular employment.

(2) The scheme manager must consider, at such intervals as it considers appropriate before the member reaches deferred pension age, in relation to a pensioner member who was a deferred member and whose pension is being paid early by virtue of regulation 76 (early payment of retirement pension to a deferred member), whether the member has become capable of undertaking regular employment.

### **Consequences of review**

**78.**—(1) If, on such consideration as is mentioned in regulation 77(1) (review of ill-health award or early payment of retirement pension), the scheme manager determines<sup>(1)</sup> that a member (H) who is in receipt of a higher tier ill-health pension has become capable of undertaking regular employment, H's entitlement to that pension must cease with immediate effect.

(2) Subject to paragraph (3), a lower tier ill-health pension must continue to be paid to a member who ceases to be entitled to a higher tier ill-health pension.

(3) If—

- (a) on such consideration as is mentioned in regulation 77(1) (review of ill-health award or early payment of retirement pension), the scheme manager determines that a member (L) who is in receipt of a lower tier ill-health pension has become capable of performing the duties appropriate to the role from which L retired on grounds of ill-health; and

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(1) Regulation 162 (role of IQMP in determinations by the scheme manager) requires the scheme manager to obtain the opinion of the IQMP in certain circumstances.



- (b) the employer makes L an offer of employment in that role (“a paragraph (3)(b) offer”),

L’s entitlement to a lower tier ill-health pension must cease whether L accepts or declines the offer.

(4) The employer must by written notice when making a paragraph (3)(b) offer specify a date by which, if the member has not accepted the offer, the member will be taken to have declined it.

(5) A lower tier ill-health pension ceases to be payable on the earlier of the following dates—

- (a) the date on which a member re-enters scheme employment pursuant to a paragraph (3)(b) offer;
- (b) such date after the paragraph (3)(b) offer is made as the employer specifies by notice under paragraph (4).

(6) Where a member declines a paragraph (3)(b) offer, a deferred member’s account must be established under regulation 57 (account established after ill-health award ceases to be payable) from the date on which that member’s ill-health award ceases to be payable in accordance with paragraph (5).

(7) If, on such consideration as is mentioned in regulation 77(2) (review of ill-health award or early payment of retirement pension), the scheme manager has obtained the IQMP’s opinion which states that a deferred member (P) whose deferred pension is being paid early has become capable of undertaking regular employment, P’s entitlement to early payment of the pension must cease with immediate effect and P’s deferred member’s account must be adjusted under regulation 56 (adjustment of account after early payment of deferred pension ceases).

## CHAPTER 5

### Payment of retirement benefits

#### **Commencement of pensions**

**79.**—(1) The first period for which any retirement pension is payable immediately on a member leaving scheme employment begins with the day after the date on which the employment ends where the member has made a claim for payment of that pension before that date.

(2) Where an active member has not claimed payment of the retirement pension before the date on which that member retires, the pension will be payable from a date after the claim is made as notified to the member by the scheme manager.

(3) Where the employer of an active member has determined to pay that member a retirement pension before the member reaches normal pension age in exercise of the powers in regulation 71 (employer

initiated retirement), the first period for which the pension is payable begins on the day after the member's scheme employment ends.

(4) In the case of an active member who exercises the partial retirement option, the first period for which any retirement pension is payable begins on the day after the date on which the partial retirement option is exercised.

(5) In the case of a deferred member, the first period for which payment of a retirement pension is to be payable begins on the date on which the member attains deferred pension age where a deferred member has claimed payment of a retirement pension unless that member gives written notice to the scheme manager before the member reaches deferred pension age requesting—

- (a) to defer payment by notice given to the scheme manager more than three months before the member reaches deferred pension age and any such deferral must not extend beyond the day before the member's 75th birthday;
- (b) payment of the retirement pension before deferred pension age after the deduction of the early payment reduction; or
- (c) early payment of the retirement pension under regulation 76 (early payment of retirement pension to deferred member) on grounds of incapacity to undertake regular employment.

(6) Where an active member is entitled to a lower tier ill-health pension or a higher tier ill-health pension under regulation 74 (entitlement to lower tier ill-health pension and higher tier ill-health pension), the first period for which a retirement pension is payable begins on the day after the date on which the member's scheme employment is terminated.

(7) Where a deferred member has made a request referred to in paragraph (5)(c) and is entitled to the early payment of a retirement pension, the first period for which the pension is payable begins on the date on which the deferred member became incapable of undertaking regular employment because of infirmity of body or mind or, if that date cannot be ascertained, from the date of the member's request to the scheme manager for early payment.

(8) Where a deferred member has made a request referred to in paragraph (5)(a) or (b), the pension will be payable from a date after the claim for it is made which is notified to the member by the scheme manager.

#### **Option to commute part of pension**

**80.**—(1) A member who becomes entitled to the immediate payment of a retirement pension may opt

under this regulation to exchange part of the pension for a lump sum.

(2) The option may only be exercised—

- (a) by written notice to the scheme manager which sets out the amount to be commuted; and
- (b) before the first payment of the pension is made.

(3) If a member exercises the option, for every £1 by which the amount of the member's annual rate of pension is reduced, the member must be paid a lump sum of £12.

(4) A member may not exchange for a lump sum under this regulation more than the lesser of—

- (a) 25% of the pension; and
- (b) the proportion of the pension to the extent that it would result in a scheme chargeable payment<sup>(1)</sup> for the purposes of Part 4 of FA 2004.

(5) This regulation does not apply to a pension derived from pension credit rights if the pension debit member from whose rights the pension is derived has received a lump sum under this regulation before the date on which the pension sharing order takes effect.

(6) This regulation does not apply to a higher tier ill-health pension.

## CHAPTER 6

### Allocation of part of pension

#### **Allocation election**

**81.**—(1) This regulation applies in relation to a retirement earned pension payable in respect of a member's pensionable service under this scheme.

(2) An active member or deferred member may elect to allocate up to a third of the amount of the annual rate of any of the member's retirement pensions under this scheme to a beneficiary ("allocation election").

(3) The beneficiary of an allocation election must be a person who, when the allocation election is made, is—

- (a) the spouse, civil partner or cohabiting partner of the active member or the deferred member; or
- (b) with the consent of the scheme manager, any other person who is substantially dependent on the active member or deferred member and

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(1) See section 241 of the Finance Act 2004. That section was amended by the Finance Act 2011 (c. 11), Schedule 16, paragraph 74 and the Finance Act 2006 (c. 25), Schedule 21, paragraph 9.

would have been a dependant of the member for the purposes of paragraph 15(2) or (3) of Schedule 28 to FA 2004 if the member had died when the election was made<sup>(1)</sup>.

(4) The scheme manager may withhold consent under paragraph (3)(b) if the scheme manager is not satisfied that the person is substantially dependent on the active member or deferred member.

(5) If a member wishes to allocate pension to more than one beneficiary, a separate election must be made in respect of each beneficiary.

(6) Where more than one portion of a particular pension is allocated, the total of the allocated portions of that pension must not exceed the portion of that pension retained by the active or deferred member.

(7) If paragraph (8) applies, the member may elect to allocate only so much of the pension (after subtracting the commutation amount, if any) that exceeds the guaranteed minimum, multiplied by such factor as is indicated for a person of the member's description in tables provided by the scheme manager having regard to actuarial guidance.

(8) This paragraph applies if the member has a guaranteed minimum under section 14 (earner's guaranteed minimum) of PSA 1993 in relation to the whole or part of a pension as a result of receipt by this scheme of a transfer payment from another pension scheme in respect of which the member had such a guaranteed minimum.

### **Making an allocation election**

**82.**—(1) When an active or deferred member intends to make an allocation election, that member must—

- (a) satisfy the scheme manager that that member is in good health and has a normal life expectancy; and
- (b) give the scheme manager written notice of an allocation election (a "notice of allocation") specifying—
  - (i) the portion,
  - (ii) the name and address of the beneficiary,
  - (iii) the sex of the beneficiary, and
  - (iv) the date of birth of the beneficiary.

(2) The notice of allocation, which may be sent by post, must be given not earlier than two months before the pension comes into payment.

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(1) Paragraph 15(2) was amended by the Finance Act 2005 (c. 7), Schedule 10, paragraph 26 and S.I. 2005/3229.

(3) Where the requirements in paragraphs (1) and (2) have been satisfied, the scheme manager must notify the member that it has accepted the allocation election.

(4) An election has no effect if the member or the beneficiary dies before the notice of allocation takes effect.

### **Effect of allocation**

**83.**—(1) If an allocation election takes effect, the member's retirement pension is reduced accordingly.

(2) If a notice of allocation takes effect, it does so on the day on which the retirement pension comes into payment.

(3) Where a notice of allocation has taken effect, and the beneficiary survives the pensioner, the scheme manager must, from the date of the pensioner's death, pay the beneficiary a pension for life ("allocated pension") of an amount determined by the scheme manager in accordance with actuarial guidance in force when the notice of allocation takes effect, having regard to—

- (a) the amount of retirement pension allocated under the election; and
- (b) the age of the pensioner and beneficiary at the date when the notice of allocation was given.

(4) Where more than one portion of a member's retirement pension has been allocated, a separate calculation must be made under paragraph (3) in respect of each allocation.

(5) Where—

- (a) a notice of allocation has taken effect; and
- (b) the beneficiary pre-deceases the pensioner,

the scheme manager must pay to the pensioner (distinguishing it from any other pension payable to that pensioner) the portion of pension that had been allocated ("the failed allocation pension").

(6) Where paragraph (5) applies, the pensioner is not entitled to recover from the scheme manager the amount of any deduction made in respect of the failed allocation pension.

(7) An allocation ceases to have effect for the purposes of this regulation if it would result in a pension being paid under this regulation to a beneficiary who is neither—

- (a) the member's spouse, civil partner or cohabiting partner on—
  - (i) the date on which the member becomes entitled to the pension, or
  - (ii) when the member dies; nor

- (b) a dependant of the member for the purposes of paragraph 15(2) or (3) of Schedule 28 to FA 2004 when the member dies.

#### **Adjustment of allocated benefit**

**84.**—(1) The amount of allocated pension payable to the beneficiary of an allocation election may be adjusted in a manner determined by the scheme manager if—

- (a) the member who made the allocation election dies after reaching the age of 75; and
- (b) on the death of the member, the amount of allocated pension payable to the beneficiary does not qualify as a dependants' scheme pension under section 167 (the pension death benefit rules) of FA 2004(1).

(2) In this regulation, “allocated pension” (“*pensiwn dyranedig*”) has the same meaning as that given in regulation 83(3) (effect of allocation).

## **PART 6**

### **Death benefits**

#### **CHAPTER 1**

##### **Interpretation**

#### **Meaning of “surviving partner”**

**85.**—(1) For the purposes of these Regulations, a person is a surviving partner in relation to a member if, at the date of the member's death, that person is—

- (a) the spouse or civil partner of the member;
- (b) cohabiting with the member and—
  - (i) is not married or in a civil partnership with that member,
  - (ii) is not the spouse or civil partner of any other person,
  - (iii) could enter into a marriage or civil partnership with the member under the law of England and Wales but has not done so,
  - (iv) is financially dependent on the scheme member or is, with the scheme member, in a state of mutual financial dependency, and

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(1) Section 167 was amended by the Finance Act 2007 (c. 11), Schedule 20, paragraph 22; the Finance Act 2011 (c. 11), Schedule 16, paragraph 11 and the Finance Act 2014 (c.26), section 41(2). See also Part 2 of Schedule 28 to the Finance Act 2011 for the meaning of expressions used in section 167.

(v) is in a long-term relationship with the scheme member.

(2) In paragraph (1), “long-term relationship” (“*perthynas hirdymor*”) means a relationship that has continued for a period of at least two years ending with the date on which the question of the person’s status in relation to the member falls to be considered, or such shorter period as the scheme manager may in any particular case think fit.

(3) In these Regulations, “cohabiting partner” (“*partner sy’n cyd-fyw*”) means a person who satisfies the requirements in paragraph (1)(b).

### **Meaning of “initial period”**

**86.** For the purposes of this Part, the “initial period” (“*cyfnod dechreuol*”) is the period of 13 weeks commencing on the day after the death of the member during which a bereavement pension may be payable to any surviving partner or eligible child.

## **CHAPTER 2**

### **Pensions for surviving partners**

#### **Surviving partner’s pension payable on death of active member**

**87.**—(1) This regulation applies in relation to the surviving partner of a member who dies if, at the date of death, the member is an active member and has qualifying service of more than three months.

(2) A surviving partner to whom this regulation applies is entitled to a surviving partner’s pension.

(3) Subject to regulation 91 (reduction in pensions in cases of wide age disparity), the annual rate of the surviving partner’s pension is an amount equal to half the pension which the member would have been entitled to draw if the member had retired on the grounds of ill-health with the award of a higher tier ill-health pension on the date of the member’s death.

#### **Surviving partner’s pension payable on death of deferred member**

**88.**—(1) This regulation applies in relation to the surviving partner of a member who at the date of death is a deferred member.

(2) A surviving partner to whom this regulation applies is entitled to a surviving partner’s pension.

(3) Subject to regulation 91 (reduction in pensions in cases of wide age disparity), the annual rate of surviving partner’s pension is an amount equal to half of the sum of the provisional amount of deferred pension specified in the deferred member’s account

and the amount of the added pension (if any) specified in the added pension account.

### **Surviving partner's pension payable on death of pensioner member**

**89.**—(1) This regulation applies in relation to the surviving partner of a member (P) who at the date of death is a pensioner member.

(2) A surviving partner to whom this regulation applies is entitled to a surviving partner's pension.

(3) Subject to regulation 91 (reduction in pensions in cases of wide age disparity), the annual rate of the surviving partner's pension is equal to half the amount of the annual rate of the retirement pension payable to P immediately before P's death.

(4) Where an early payment reduction had been made on P's retirement, the amount in paragraph (2) is half of the amount of retirement pension that would have been payable to P if that reduction had not been made.

### **Bereavement pension: surviving partner**

**90.**—(1) Subject to paragraph (2), the surviving partner of an active member, or a pensioner member, is entitled to a bereavement pension for the initial period.

(2) The surviving partner of an active member is only entitled to a bereavement pension if the active member had at least three months qualifying service.

(3) If the member was an active member at the date of the member's death, the weekly amount of the bereavement pension payable under paragraph (1) is equal to the difference between the weekly amount of pensionable pay which the member was paid at the date of the member's death or, where the member was treated as receiving assumed pensionable pay, the weekly amount of assumed pensionable pay, and the weekly amount of the surviving partner's pension.

(4) If the member was a pensioner member at the date of the member's death, the weekly amount of the bereavement pension payable under paragraph (1) is equal to the difference between the weekly amount of the pension to which the member was entitled at the date of the member's death and the weekly amount of the surviving partner's pension.

### **Reduction in pensions in cases of wide age disparity**

**91.**—(1) This regulation applies if, on the death of a member of this scheme, a surviving partner's pension is payable to a person who is more than 12 years younger than the member.

(2) The annual rate of that pension is reduced by the lower of—



- (a) 50% of the amount of the annual rate of the pension so calculated; or
- (b)  $2.5 \times (N - 12)\%$  of that amount,

where N is the number of whole years by which the surviving partner is younger than the member.

**Survivor’s guaranteed minimum pensions**

**92.**—(1) If a person who is the surviving spouse or civil partner of a deceased active, deferred or pensioner member has a guaranteed minimum under section 17(1) of PSA 1993 in relation to benefits in respect of the deceased member under this scheme—

- (a) nothing in these Regulations permits or requires anything that would cause requirements made by or under that Act in relation to such a person and such a person’s rights under a scheme not to be met in the case of the person;
- (b) nothing in these Regulations prevents anything from being done which is necessary or expedient for the purposes of meeting such requirements in the case of the person.

(2) Paragraphs (3) and (4) are without prejudice to the generality of paragraph (1).

(3) This paragraph applies if apart from this regulation—

- (a) no pension would be payable to the surviving partner under this Part; or
- (b) the weekly rate of the pensions payable would be less than the guaranteed minimum.

(4) If paragraph (3) applies—

- (a) a pension the weekly rate of which is equal to the guaranteed minimum is payable to the surviving partner for life or, as the case may be, pensions the aggregate weekly rate of which is equal to the guaranteed minimum are so payable; or
- (b) if paragraph (3)(b) applies, the pensions payable are increased to the amount specified in sub-paragraph (a).

(5) Paragraph (4) does not apply to a pension—

- (a) that is forfeited—
  - (i) as a result of a conviction for treason, or

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(1) Section 17 was amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Schedule 1, paragraph 39; the Child Support, Pensions and Social Security Act 2000 (c. 19), Schedule 5, paragraph 1 and Schedule 9, Part 3; the Pensions Act 2004 (c. 35), section 284(2); the Pensions Act 2007 (c. 22), section 14(2); the Marriage (Same Sex Couples) Act 2013 (c. 30), Schedule 4, paragraphs 18 and 20; and S.I. 2005/2050 and 2014/560.

- (ii) in a case where the relevant offence under regulation 181 (forfeiture: offences committed by members, surviving partners or eligible children) falls under paragraph (b) of the definition in that regulation of “relevant offence” (Official Secrets Acts offences); or
- (b) where that pension is commuted under regulation 177 (commutation of small pensions) where the conditions in regulation 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996<sup>(1)</sup> are met.

### CHAPTER 3

#### Pensions for eligible children

##### **Eligible child’s pension**

**93.**—(1) If a member, who has at least three months qualifying service, dies leaving an eligible child, an eligible child’s pension and, depending on the deceased member’s circumstances, a bereavement pension is payable in respect of the child.

(2) An eligible child’s pension is not payable in respect of any period before a child’s birth.

(3) If the child ceases to be an eligible child after the date of the member’s death, the pension ceases to be payable unless and until the child becomes an eligible child again, but, if the child does not cease to be an eligible child, the pension is payable for life.

##### **Meaning of “eligible child”**

**94.**—(1) In these Regulations, , in relation to a deceased member, “child” (“*plentyn*”) means—

- (a) a natural child, step-child or adopted child of the member; or
- (b) the natural child, step-child or adopted child of the member’s spouse, civil partner or cohabiting partner; or
- (c) any natural child of the member who was born after the member’s death and with whom the child’s mother was pregnant at the date of the member’s death.

(2) A child of the deceased member is an “eligible child” (“*plentyn cymwys*”) if—

- (a) the child was at the date of the deceased member’s death financially dependent on the deceased member;

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(1) S.I. 1996/1172. Regulation 60 was substituted by S.I. 2006/744 and amended by S.I.2006/1337, 2009/2930 and 2010/499.

- (b) the child is not married or in a civil partnership; and
- (c) the child satisfies any of the conditions A to C.

(3) Condition A is that the person is under the age of 18.

(4) Condition B is that the person is in full-time education or on a course of at least one year's duration and has not reached the age of 23.

(5) Condition C is that the person is dependent on the deceased member at the date of the deceased member's death by reason of permanent incapacity of mind or body.

#### **Eligible child's pension on death of active member**

**95.**—(1) This regulation applies in relation to an eligible child of a member who dies if, at the date of death, the member is an active member and has qualifying service of more than three months.

(2) The annual rate of an eligible child's pension to which this regulation applies is an amount equal to the specified proportion of the pension which the member would have been entitled to draw if the member had retired on the grounds of ill-health with the award of a higher tier ill-health pension on the date of the member's death.

#### **Eligible child's pension payable on death of deferred member**

**96.**—(1) This regulation applies in relation to an eligible child of a member who dies if, at the date of death, the member is a deferred member.

(2) The annual rate of an eligible child's pension is an amount equal to the specified proportion of the sum of the provisional amount of deferred pension specified in the deferred member's account and the amount of the added pension (if any) specified in the added pension account.

#### **Eligible child's pension payable on death of pensioner member**

**97.**—(1) This regulation applies in relation to an eligible child of a member who dies if, at the date of death, the member is a pensioner member (P).

(2) Subject to paragraph (3), the annual rate of an eligible child's pension is an amount equal to the specified proportion of the amount of retirement pension payable to P immediately before P's death.

(3) Where an early payment reduction had been made on P's retirement, the amount in paragraph (2) is the specified proportion of the amount of retirement

pension that would have been payable if that reduction had not been made.

### **Specified proportion**

**98.**—(1) The specified proportion is one quarter where there is one eligible child at the date of the member's death.

(2) If there is more than one eligible child at the date of the member's death the specified proportion is half of the pension mentioned in regulations 95 (eligible child's pension on death of active member), 96 (eligible child's pension payable on death of deferred member) and 97 (eligible child's pension payable on death of pensioner member) divided by the number of eligible children so that each eligible child receives an equal share.

(3) If a person ceases to be an eligible child, that person's pension must cease to be paid and where there is still more than one eligible child, the amount of that pension must be distributed equally between the remaining eligible children (if any).

### **Increase in eligible child's pension where there is no surviving partner**

**99.**—(1) This regulation applies if, at the date of the member's death, there was no person who was entitled to a surviving partner's pension.

(2) If this regulation applies and there is an eligible child, that child is also entitled to the amount of pension in accordance with paragraphs (3) or (4) which the surviving partner would have received—

- (a) under regulation 87 (surviving partner's pension payable on death of active member) if the member (P) was an active member at the date of P's death;
- (b) under regulation 88 (surviving partner's pension payable on death of deferred member) if P was a deferred member at the date of P's death;
- (c) under regulation 89 (surviving partner's pension payable on death of pensioner member) if P was a pensioner member at the date of P's death.

(3) If there is only one eligible child, that child receives an additional amount equal to the amount ascertained in accordance with paragraph (2).

(4) If there is more than one eligible child at the date of P's death, the amount ascertained in accordance with paragraph (2) is divided between the number of eligible children so that each eligible child receives an equal share.

(5) If a person ceases to be an eligible child, that person's share of the amount ascertained in accordance with paragraph (2) must cease to be paid and the share must be distributed equally between the remaining eligible children (if any).

**Increase in eligible child's pension where member was pension debit member**

**100.** If the member's benefits were at the date of death subject to a reduction under section 31 of WRPA 1999, any eligible child's pension must be calculated as though that reduction had not been made.

**Bereavement pension: eligible child**

**101.**—(1) If a surviving partner's pension is not payable on the death of the member, a bereavement pension is payable to an eligible child who is entitled to an eligible child's pension on the death of an active member or a pensioner member.

(2) If the surviving partner dies before the end of the initial period and a bereavement pension was payable to the surviving partner, a bereavement pension is payable to any eligible child for the remaining part of the initial period or, if earlier, until the child ceases to be eligible for an eligible child's pension.

(3) If the member was an active member at the date of the member's death, the weekly amount of the bereavement pension payable under paragraphs (1) or (2) is equal to the difference between the weekly amount of pensionable pay which the member was paid at the date of the member's death or, where the member was treated as receiving assumed pensionable pay, the weekly amount of assumed pensionable pay, and the weekly amount of the surviving partner's pension.

(4) If the member was a pensioner member, the weekly amount of the bereavement pension payable under paragraphs (1) or (2) is equal to the difference between the weekly amount of the pension to which the member was entitled at the date of the member's death and the weekly amount of the surviving partner's pension.

(5) If there is more than one eligible child, the weekly amount of the bereavement pension payable under paragraphs (1) or (2) is divided by the number of eligible children so that each receives an equal share.

(6) If a person ceases to be an eligible child before the end of the initial period, that person's share of the bereavement pension must cease to be paid and the share must be distributed equally between the remaining eligible children (if any).

## CHAPTER 4

### Lump sum death benefits

#### Meaning of “final pay”

**102.**—(1) In this Chapter, “final pay” (“*tâl terfynol*”) means the greater of the following—

- (a) the amount of the member’s pensionable pay during the member’s continuous period of pensionable service in the period of 365 days ending with the last day of pensionable service; and
- (b) the amount of the member’s pensionable pay during the member’s continuous period of pensionable service in the period of three years ending with the last day of pensionable service, divided by three.

(2) If the member’s continuous period of pensionable service was less than 365 days, the amount in paragraph (1)(a) is an amount equal to the member’s annualised final pay.

(3) For the purpose of determining which of the amounts mentioned in paragraph (1) is the greater—

- (a) if the member’s continuous period of pensionable service was less than three years, the amount in paragraph (1)(b) is the total pensionable pay received for that service divided by the number of years in pensionable service calculated in accordance with regulation 192 (calculation of periods of membership and service); and
- (b) if a member is treated as receiving assumed pensionable pay for any period included in paragraph (1)(a) or (1)(b), pensionable pay in this regulation includes that assumed pensionable pay.

(4) But if the continuous period of pensionable service includes the day 29 February, paragraphs (1)(a) and (2) have effect with the substitution for “365” of “366”.

#### Meaning of “annualised final pay”

**103.**—(1) For the purpose of this Chapter, a member’s annualised final pay is  $FP \times 365/N$  where—

- (a) FP is the member’s pensionable pay during the member’s continuous period of pensionable service; and
- (b) N is the number of days in that period.

(2) But if the continuous period of pensionable service includes the day 29 February, paragraph (1) has effect with the substitution for “365” of “366”.

### **Person to whom lump sum death benefit payable**

**104.** The scheme manager may, at its absolute discretion, pay any lump sum death benefit payable under this Chapter to or for the benefit of the member's nominee, personal representatives or any person appearing to the scheme manager to have been a relative or dependant of the member.

### **Lump sum payable on death of active member**

**105.**—(1) If an active member dies, the scheme manager must pay a lump sum death benefit.

(2) The amount of the lump sum death benefit is an amount equal to three times the amount of the member's final pay.

(3) Where an active member has more than one active member's account, a lump sum death benefit is payable in respect of each of those accounts.

### **Lump sum payable on death of pensioner member**

**106.**—(1) This regulation applies if a pensioner member dies within five years of the pension coming into payment.

(2) If this regulation applies, the scheme manager must pay a lump sum death benefit.

(3) The amount of the lump sum death benefit is equal to—

- (a) the total annual amount of the member's pensions, multiplied by five; less
- (b) the total amount of any pension payments made to the member under this scheme.

(4) In paragraph (3)(a), "total annual amount of the member's pensions" ("*cyfanswm blynnyddol pensiynau'r aelod*") means the total of the annual rate of the retirement pension shown in the member's pension accounts calculated as if the beginning date for that pension were the date of the member's death.

(5) For the purpose of this regulation any amounts paid or payable to or in respect of the member in the capacity of a pension credit member are disregarded.

### **Lump sum payable on death in certain cases**

**107.** Where a person (P) at the time of P's death was a pensioner member of this scheme and an active member of this scheme, the amount of the lump sum death benefit payable is the greater of the amount of lump sum death benefit payable under regulation 105 (lump sum payable on the death of active member) and the amount of the lump sum death benefit payable under regulation 106 (lump sum payable on the death of a pensioner member).

### **Lump sum payable on death of pension credit member**

**108.**—(1) If a pension credit member dies before any benefits derived from a pension credit have become payable to the member, the scheme manager must pay a lump sum death benefit in accordance with paragraph (2).

(2) The amount of the lump sum death benefit is equal to the product of 2.25 and the annual rate of the pension credit member's pension to which that member would have been entitled if that member had been entitled to the immediate payment of the pension at the date of death.

(3) If a pension credit member dies within five years of the pension credit member's pension becoming payable and before attaining the age of 75, the scheme manager must pay a lump sum death benefit in accordance with paragraph (4).

(4) The amount of the lump sum death benefit is the difference between—

- (a) the amount that is five times the amount of the pension credit member's pension; and
- (b) the instalments of pension that have been paid.

(5) In paragraph (4), "amount of the pension credit member's pension" ("*swm pensiwn yr aelod â chredyd pensiwn*") means the annual amount of that pension at the date the pension credit member's pension came into payment.

(6) If the deceased member was a pension credit member entitled to two or more pension credits, the lump sum death benefits under this scheme are payable in respect of the member as if the member were two or more members, each being entitled to one of the pension credits.

## CHAPTER 5

### Payment of death benefits

#### **Payment of pensions under this Part**

**109.**—(1) A surviving partner's pension or eligible child's pension is payable from the day after the date of the member's death.

(2) An eligible child's pension payable in respect of an eligible child aged under 18 must be paid to such other person as the scheme manager determines and the scheme manager must require the person to apply it for the eligible child's benefit in accordance with the scheme manager's directions.



### **Surviving partner's pensions and eligible child's pensions: suspension and recovery**

**110.**—(1) This regulation applies if—

- (a) on a member's death a pension has been awarded and paid under this Part; and
- (b) it later appears to the scheme manager that the member or the person to whom the pension has been paid made a false declaration or deliberately suppressed a material fact in connection with the award.

(2) If this regulation applies, the scheme manager may—

- (a) cease paying the pension; and
- (b) recover any payment made under the award.

(3) Paragraph (2) does not affect the scheme manager's right to recover a payment or overpayment under any other provision where the scheme manager considers it appropriate to do so.

### **Provisional awards of eligible child's pensions: later adjustments**

**111.**—(1) This regulation applies where after the death of an active member, deferred member or pensioner member—

- (a) a pension is paid in respect of one or more persons under this Part on the basis that they were eligible children as at the date of the member's death and that there were then no other eligible children; and
- (b) subsequently it appears—
  - (i) that a person in respect of whom such a pension has been paid was not an eligible child on the date of death,
  - (ii) that a further person was an eligible child, or
  - (iii) that a child who was born after the member's death is an eligible child.

(2) The scheme manager may make such adjustments in the amount of the pensions payable in respect of the children in question as are required in view of the facts as they subsequently appear and these adjustments may apply retrospectively.

(3) Paragraph (2) does not affect the scheme manager's right to recover a payment or overpayment in any case where the scheme manager considers it appropriate to do so.

### **Adjustment of eligible child's awards consequent on re-instatement of pension benefits**

**112.**—(1) This regulation applies where a person (P) who would be eligible to receive benefits as a surviving partner or eligible child following the death of an active member, deferred member or pensioner member, has been convicted of the murder or manslaughter of that member and that conviction has subsequently been quashed on appeal.

(2) If P is then eligible to receive a surviving partner's pension, any increase in an eligible child's pension under regulation 99 (increase in eligible child's pension where there is no surviving partner) ceases to be payable from the date on which the conviction is quashed.

(3) If P is then eligible to receive an eligible child's pension, and if more than one person is receiving an eligible child's pension on the day before the conviction is quashed, the amount of each eligible child's pension is reduced from the date on which the conviction is quashed to an amount of the eligible child's pension determined according to the specified proportion which would have applied to that number of eligible children.

### **Adjustment of benefits to comply with FA 2004 where members die over 75**

**113.**—(1) This regulation applies if—

- (a) a member dies after reaching the age of 75; and
- (b) apart from this regulation, any part of a pension to which any person becomes entitled under this Part on the death would not qualify as a dependants' scheme pension for the purposes of section 167 of FA 2004 (the pension death benefit rules).

(2) The benefit payable to the person may be adjusted in such manner as is determined by the scheme manager so that it qualifies as a dependants' scheme pension for the purposes of section 167 of FA 2004.

## **PART 7**

### **Benefits for pension credit members**

#### **Entitlement to pension credit members' pension**

**114.**—(1) A pension credit member (P) of this scheme is entitled to the immediate payment of a pension credit member's pension under this scheme if—

- (a) P has reached deferred pension age;

(b) the pension sharing order under which P is entitled to the pension credit has taken effect; and

(c) P has claimed payment of the pension.

(2) If P is entitled to two or more pension credits, P is entitled to a pension credit member's pension in respect of each pension credit.

#### **Annual rate of pension credit member's pension**

**115.** The annual rate of a pension credit member's pension is calculated by—

(a) taking the amount of credited pension specified in the pension credit member's account; and

(b) subtracting the commutation amount (if any) specified in that account in relation to that amount.

#### **Reduction in pension debit member's benefits**

**116.** The benefits to which a pension debit member is entitled under these Regulations are subject to the reduction of the relevant amount calculated in accordance with regulation 63 (establishment of pension credit member's account).

#### **Pension credit member's rights**

**117.** Benefits that are attributable (directly or indirectly) to a pension credit may not be aggregated with any other benefit to which the pension credit member is entitled under this scheme.

#### **Commutation of part of pension**

**118.—**(1) A pension credit member who becomes entitled to payment of a pension credit member's pension under this scheme may opt to exchange part of the pension for a lump sum.

(2) The option may only be exercised by notice—

(a) to the scheme manager not earlier than four months before the later of—

(i) the date on which the pension sharing order comes into effect, and

(ii) the date on which the person attains deferred pension age;

(b) in such form as the scheme manager requires; and

(c) given before the first payment of the pension is made.

(3) If a pension credit member exercises the option under this regulation, for every £1 by which the

amount of the member's annual rate of pension is reduced, the member is to be paid a lump sum of £12.

(4) The commuted portion must not exceed one quarter of the amount of the pension credit member's pension.

(5) A pension credit member may not exchange pension for a lump sum under this regulation to the extent that it would result in a scheme chargeable payment for the purposes of Part 4 (pension scheme etc.) of FA 2004 (see section 241 of that Act).

(6) This regulation does not apply if the pension debit member from whose rights the pension is derived received a lump sum under Part 5 (retirement benefits) before the date on which the pension sharing order takes effect.

## PART 8

### Contributions

#### CHAPTER 1

##### Member contributions

##### **Member contributions**

**119.**—(1) Subject to regulations 120 to 122 (contributions during absences), an active member of this scheme must pay contributions to the scheme in respect of a scheme employment at the contribution rate applicable to the annual pensionable pay which that member is receiving in the pay period in which 1 April falls for that employment (or, in the case of an active member whose membership commences after 1 April in any year, to the annual pensionable pay the member receives at the commencement of that membership).

(2) The contribution rate applicable to a scheme employment is as specified in the following table, with the contribution rate specified in the appropriate column for the year to be considered applicable to the range of pensionable pay specified in the first column into which the active member's annual pensionable pay, rounded down to the nearest whole pound, falls:

<i>Pensionable pay range for an employment</i>	<i>Contribution rate</i> <i>1 April 2015-31 March 2016</i>
Up to £27,000	10.0%
£27,001 to £50,000	12.2%
£50,001 to £142,500	13.5%
£142,501 or more	14.5%

<i>Pensionable pay range for an employment</i>	<i>Contribution rate</i> <i>1 April 2016 – 31</i>
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<i>March 2017</i>	
Up to £27,270	10.0%
£27,271 to £50,500	12.5%
£50,501 to £142,500	13.5%
£142,501 or more	14.5%

<i>Pensionable pay range for an employment</i>	<i>Contribution rate 1 April 2017 – 31 March 2018</i>
Up to £27,543	10.5%
£27,544 to £51,005	12.7%
£51,006 to £142,500	13.5%
£142,501 or more	14.5%

<i>Pensionable pay range for an employment</i>	<i>Contribution rate from 1 April 2018</i>
Up to £27,818	11.0%
£27,819 to £51,515	12.9%
£51,516 to £142,500	13.5%
£142,501 or more	14.5%

(3) The amount of pensionable pay of a retained or volunteer firefighter for the purpose of the first column of the table must be that firefighter's reference pay.

(4) The amount of pensionable pay of a part-time regular firefighter for the purpose of the first column of the table must be the amount of pensionable pay of a whole-time regular firefighter of equivalent role and length of service.

(5) Where there is a change in scheme employment, or a material change which affects the member's pensionable pay in the course of a financial year and the revised amount of the pensionable pay falls into a different contribution rate range, the scheme manager must determine that this rate must be applied and the scheme manager must inform the member of the contribution rate applicable and the date from which it is to be applied.

(6) Where the scheme manager has determined under paragraph (5) that a different contribution rate applies, the member must pay contributions at that rate on the pensionable pay which that member is receiving at that time.

(7) For the purposes of identifying which is the applicable contribution rate under this regulation, any reduction in pensionable pay which arises as a consequence of any of the following circumstances is to be disregarded—

- (a) the actual or assumed enjoyment by the member of any statutory entitlement during any period away from work;
- (b) child-related leave;
- (c) leave of absence with permission;

- (d) sick leave;
- (e) leave due to injury;
- (f) reserve forces service leave;
- (g) absence due to a trade dispute; or
- (h) circumstances specified by the scheme manager in a particular case.

(8) In these Regulations, “member contributions” (“*cyfraniadau aelod*”) means contributions which an active member pays under this regulation, and regulations 120 to 122 (contributions during absences from work).

### **Contributions during absence from work due to illness, injury, trade dispute or authorised absence**

**120.**—(1) An active member who is absent from scheme employment by reason of illness or injury must pay contributions at the contribution rate ascertained in accordance with regulation 119 (member contributions) multiplied by the amount of any pensionable pay received, including statutory pay.

(2) If an active member is absent from scheme employment by reason of illness or injury and is not entitled to receive pensionable pay (including statutory pay) for any period, that member may pay contributions at the contribution rate ascertained in accordance with regulation 119 (member contributions) multiplied by the amount of pensionable pay received immediately before the cessation of pay and if required by the scheme employer, must pay the amount of employer contribution which the scheme employer would otherwise be required to pay by regulation 126(3) (employer contributions).

(3) If an active member is absent on a trade dispute, the member may elect to pay the contributions at the contribution rate ascertained in accordance with regulation 119 (member contributions) multiplied by the assumed pensionable pay that member is treated as receiving and, if required by the scheme employer, must pay the amount of employer contribution which the scheme employer would otherwise be required to pay by regulation 126(3) (employer contributions).

(4) If an active member is away from work during a period of authorised unpaid absence, the member may elect to pay contributions at the contribution rate ascertained in accordance with regulation 119 (member contributions) multiplied by the assumed pensionable pay that member is treated as receiving and, if required by the scheme employer, must pay the amount of employer contributions which the scheme employer would otherwise be required to pay by regulation 126(3) (employer contributions).

(5) Where paragraph (2), (3) or (4) applies, the contributions must be paid before the end of the period

of six months starting with the date on which the member is treated as receiving assumed pensionable pay.

**Contributions during absence from work on reserve forces service leave**

**121.**—(1) An active member who is on reserve forces service leave and who is treated as receiving assumed pensionable pay must pay contributions at the contribution rate ascertained in accordance with regulation 119 (member contributions).

(2) The amount of the contributions to be paid is calculated by multiplying the contribution rate by the lesser of the following amounts—

- (a) assumed pensionable pay;
- (b) the total of the actual pay received and any additional payment made by the scheme employer.

**Contributions during child-related leave**

**122.**—(1) An active member on child-related leave must pay contributions at the contribution rate ascertained in accordance with regulation 119 (member contributions) multiplied by any pensionable pay received, including statutory pay, but that pay does not include any amount that reduces the member's actual pensionable pay on account of possible entitlement to statutory pay.

(2) If an active member is on ordinary maternity leave, paternity leave or ordinary adoption leave and is not entitled to receive pensionable pay (including statutory pay) for any of that period, that member is treated for the purposes of these Regulations as if that member had paid contributions for that unpaid period under paragraph (1).

(3) An active member on additional maternity leave, additional paternity leave, additional adoption leave or parental leave who is not entitled to receive any pensionable pay (including statutory pay) for any of the period of child-related leave may elect to pay contributions at the contribution rate ascertained in accordance with regulation 119 (member contributions) multiplied by the assumed pensionable pay which that member is treated as receiving.

(4) An election to pay contributions may only be made before the end of the period of 30 days starting with the date on which that member returns to work after the period of child-related leave, or if the member does not return to work, the day on which the member ceases to be employed by the employer.

## **Deduction and payment of contributions**

**123.**—(1) The contributions required to be paid under regulation 119 (member contributions) may be deducted by the scheme employer from each instalment of pensionable pay as it becomes due unless another method of payment has been agreed between the scheme manager and the member.

(2) Contributions required to be paid under regulation 121(1) (contributions during absence from work on reserve forces service leave) may be deducted from any payment made under Part 5 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951<sup>(1)</sup> to the extent that they are payable in respect of the same period.

(3) Contributions which the member has elected to pay, or is required to pay, under regulations 120 (contributions during absence from work due to illness, injury, trade dispute or authorised absence) and 122 (contributions during child-related leave) may be paid by a lump sum or by deduction from instalments of pensionable pay as agreed between the scheme manager and the member.

## **Schedule 1 (payments for added pension)**

**124.** Schedule 1 has effect (including as to deduction of payments for added pension).

### **CHAPTER 2**

#### **Refund of member contributions**

## **Refund of all member contributions and payments for added pension made by member**

**125.**—(1) This regulation applies in relation to a continuous period of pensionable service under the scheme.

(2) All member contributions and payments resulting from the election to make additional pension contributions under Schedule 1 are refundable if—

- (a) regulation 24 (opting out before the end of the first three months) applies; or
- (b) the member ceases to be in pensionable service under this scheme and—
  - (i) the member has less than three months qualifying service,
  - (ii) if a transfer payment has been received by this scheme in relation to the member, it was from another occupational pension scheme, and

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(1) 1951 c. 65.



(iii) the member has not reached GMP age under this scheme.

(3) If paragraph (2)(b) applies, the member is entitled to be paid an amount equal to the sum of any member contributions and payments for added pension made by the member, less an amount equal to the income tax payable under section 205 of FA 2004 (short service refund lump sum charge) as a result of a refund of those contributions and payments<sup>(1)</sup>.

(4) If all member contributions and payments for added pension made by the member are refunded under this regulation, the member's rights under this scheme in relation to the period of pensionable service are extinguished.

### CHAPTER 3

#### Employer contributions

##### **Employer contributions**

**126.**—(1) The Welsh Ministers must, after consultation with the scheme actuary, determine the employer contribution rate.

(2) The employer of an active member of this scheme must pay contributions to the scheme at the employer contribution rate on that member's pensionable earnings.

(3) The employer of an active member who is treated under regulation 27 (meaning of "assumed pensionable pay") as receiving assumed pensionable pay must pay contributions at the employer contribution rate on the assumed pensionable pay that the member is treated as receiving.

(4) The Welsh Ministers must notify the scheme manager of the employer contribution rate and the date from which it will take effect.

(5) In these Regulations, "employer contribution" ("*cyfraniad cyflogwr*") means the contributions payable under paragraph (2) or (3) of this regulation.

##### **Employer additional contribution: ill-health award**

**127.**—(1) Where a member (H) has retired with an entitlement to the immediate payment of a higher tier ill-health pension and a lower tier ill-health pension under regulation 74(2) (entitlement to lower tier ill-health pension and higher tier ill-health pension), H's employer must pay a higher tier ill-health additional contribution.

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(1) Section 205 was amended by the Finance Act 2013 (c. 29) Schedule 46, paragraph 121 and S.I. 2010/536.

(2) The amount of the higher tier ill-health additional contribution is the amount determined and notified to H's employer by the Welsh Ministers.

(3) Where a member (L) has retired with an entitlement to the immediate payment of a lower tier ill-health pension and without any entitlement to a higher tier ill-health pension, L's employer must pay a lower tier ill-health additional contribution.

(4) The amount of the lower tier ill-health additional contribution is the amount determined and notified to L's employer by the Welsh Ministers.

(5) The employer must pay the higher tier ill health additional contribution or the lower tier ill health additional contribution, as the case may be, in equal instalments due on:

- (a) the date on which the member retires;
- (b) 1 April of the financial year following the financial year in which the first instalment was paid; and
- (c) 1 April of the financial year following the financial year in which the second instalment was paid.

**Refund of employer additional contribution for ill health award following review**

**128.**—(1) Subject to paragraph (2), where the scheme manager has considered the entitlement of a member (P) to an ill-health award under regulation 77 (review of ill-health award or early payment of retirement pension) and as a consequence of that review the entitlement of P to either a higher tier ill-health pension or a lower tier ill-health pension has ceased, or the entitlement of P to both pensions has ceased, the scheme manager must pay the amount specified in paragraph (3) or (5), as the case may be, to the employer.

(2) Where the employer has paid all the instalments of higher tier ill-health additional contributions required by regulation 127 (employer additional contribution: ill-health award), the scheme manager is not required to pay the employer the amount mentioned in paragraph (3).

(3) Where P, as a result of a review under regulation 77 (review of ill-health award or early payment of retirement pension), ceases to be entitled to a higher tier ill-health pension and remains entitled to a lower tier ill-health pension, the scheme manager must pay to the employer an amount equal to the difference between the instalments of higher tier ill-health additional contribution which have been paid under regulation 127(1) (employer additional contribution: ill-health award) and the instalments of the lower tier ill-health additional contribution which would have been required to be paid under regulation 127(3)

(employer additional contribution: ill-health award) if only the lower tier ill-health pension had been payable (“the notional payment”).

(4) The scheme manager must determine the amount of the notional payment payable under paragraph (3).

(5) Where P, as a result of a review under regulation 77 (review of ill-health award or early payment of retirement pension), ceases to be entitled to a higher tier ill health pension and to a lower tier ill-health pension or to a lower tier ill-health pension, as the case may be, and the employer has not paid all the instalments of higher tier ill-health additional contribution or lower tier ill-health additional contribution as required by regulation 127 (employer additional contribution: ill-health award), the scheme manager must repay to the employer any instalments of higher tier ill-health additional contribution or lower tier ill-health additional contribution, as the case may be, which have been paid in respect of P and no further instalments will be due in respect of P.

**Employer additional contribution: employer initiated retirement**

**129.**—(1) Where an employer has made a determination under regulation 71 (employer initiated retirement) to pay an active member who has not attained normal pension age a pension calculated in accordance with regulation 68 (annual rate of retirement pension (active members)) without making the early payment reduction, the employer must pay to the scheme the employer initiated retirement additional contribution.

(2) The amount of the employer initiated retirement additional contribution is calculated in accordance with actuarial guidance and that actuarial guidance must have regard to the difference between the pension that is payable under regulation 71 (employer initiated retirement) and the pension payable under regulation 68 (annual rate of retirement pension (active members)) reduced in accordance with regulation 70(3) (early payment reduction).

## PART 9

### Firefighters’ Pension Fund

**Interpretation of Part**

**130.** In this Part—

“the audited information” (“*yr wybodaeth archwiliedig*”) means—

(a) the audited accounts referred to in regulation 134(1)(d),

- (b) any report by the auditor in relation to those accounts, and
- (c) if the scheme manager revises the information referred to in regulation 134(1)(e) and (f), that revised information;

“FPF” (“*CBDT*”) has the meaning given in regulation 131 (establishment of Firefighters’ Pension Fund);

“estimate” (“*amcangyfrif*”) means the information referred to in regulation 134(1)(a) and (b) (information to be provided to the Welsh Ministers);

“relevant financial year” (“*blwyddyn ariannol berthnasol*”) means a financial year ending on or after 31 March 2016 in respect of which the scheme manager is required by regulation 134(1) to provide information to the Welsh Ministers; and

“revised estimate” (“*amcangyfrif diwygiedig*”) means the revised information referred to in regulation 134(4);

“the un-audited information” (“*yr wybodaeth nas archwiliwyd*”) means the information referred to in regulation 134(1)(c), (e) and (f).

#### **Establishment of Firefighters’ Pension Fund**

**131.** The Firefighters’ Pension Fund established and maintained by the scheme manager for the purposes of the 1992 Scheme, and used by the scheme manager for payments and receipts required or authorised to be made under the NFPS, must also be used for the purpose of payments and receipts required or authorised to be made under these Regulations.

#### **Payments into the Firefighters’ Pension Fund**

**132.** The scheme manager must pay into the FPF—

- (a) any employer contribution paid by the employer which is required by regulation 126 (employer contributions);
- (b) any employer additional contribution paid by the employer in respect of a higher tier ill health pension which is required by regulation 127(1) (employer additional contribution: ill-health award);
- (c) any employer additional contribution paid by the employer in respect of a lower tier ill health pension which is required by regulation 127(3) (employer additional contribution: ill-health award);
- (d) any employer additional contribution paid by the employer in respect of an employer initiated retirement which is required by

- regulation 129(1) (employer additional contribution: employer initiated retirement);
- (e) any member contributions paid under regulation 119 (member contributions), regulation 120 (contributions during absence from work due to illness, injury, trade dispute or authorised absence), regulation 121 (contributions during absence from work on reserve forces service leave) or regulation 122 (contributions during child-related leave);
  - (f) any member contributions for added pension paid under Schedule 1 (payments for added pension);
  - (g) any club transfer value payment received; and
  - (h) any transfer value payment received.

### **Payments to be made from the Firefighters' Pension Fund**

**133.** The scheme manager must make payments out of the FPF in respect of the following—

- (a) any repayment of a member's contributions and payments required by regulation 125 (refund of all member contributions and payments for additional pension made by member);
- (b) any refund of the amount of the employer additional contribution for an ill-health award under regulation 128 (refund of employer additional contribution for ill-health award following review);
- (c) any pension or award payable under this scheme;
- (d) any club transfer value payment to be paid in respect of a member's accrued benefits in this scheme; and
- (e) any transfer value payment required to be paid in respect of a member's accrued benefits in this scheme.

### **Information to be provided to the Welsh Ministers**

**134.—(1)** The scheme manager must for each financial year ending on or after 31 March 2016 (“relevant financial year”) send the following information in writing to the Welsh Ministers—

- (a) the total amount that the scheme manager estimates will be payable out of the FPF in that financial year;
- (b) the total amount that the scheme manager estimates will be credited to the FPF in that financial year;

- (c) the un-audited accounts relating to the FPF for that financial year;
- (d) the audited accounts relating to the FPF for that financial year;
- (e) the total amount paid out of the FPF in that financial year; and
- (f) the total amount paid into the FPF in that financial year.

(2) The information in paragraph (1) must be sent in the form specified in writing by the Welsh Ministers.

(3) Subject to paragraph (7), the scheme manager must send the estimate for each relevant financial year to the Welsh Ministers by such date before the start of the relevant financial year as the Welsh Ministers, may, in writing, specify.

(4) If the scheme manager revises any of the information sent in the estimate, the scheme manager must send the revised information (“the revised estimate”) to the Welsh Ministers by such date during the relevant financial year as the Welsh Ministers may, in writing, specify.

(5) The scheme manager must send the un-audited information to the Welsh Ministers by such date after the end of the relevant financial year as the Welsh Ministers may, in writing, specify.

(6) The scheme manager must send the audited information to the Welsh Ministers by such date after the end of the financial year as the Welsh Ministers may, in writing, specify.

(7) In relation to the relevant financial year ending on 31 March 2016 the scheme manager must send the estimate to the Welsh Ministers as soon as reasonably practicable after the start of that financial year.

**Estimated deficits**

**135.**—(1) Where, having taken into account the estimate and any other relevant information, it appears to the Welsh Ministers that the total amount likely to be payable out of the FPF in the relevant financial year will exceed the total amount likely to be payable into that FPF in that year, the Welsh Ministers must pay an amount to the scheme manager equal to 80% of the likely deficit.

(2) Where, having taken into account any revised estimate and any other relevant information, it appears to the Welsh Ministers that—

- (a) the total amount likely to be payable out of the FPF in the relevant financial year will exceed the total amount likely to be paid into the FPF in that year; and
- (b) 80% of the likely deficit is more than—

(i) the amount paid or payable by the Welsh Ministers to the scheme manager under paragraph (1) in relation to the relevant financial year, or

(ii) where no such amount was paid or payable by the Welsh Ministers, zero,

the Welsh Ministers may pay to the scheme manager such amount as the Welsh Ministers think fit.

(3) Where the Welsh Ministers have paid an amount to a scheme manager under paragraphs (1) and (2), the total of these amounts must not exceed 80% of the likely deficit of the FPF for that year.

(4) Where the Welsh Ministers pay an amount to a scheme manager under paragraph (2), any amount paid or payable by the scheme manager to the Welsh Ministers in relation to the relevant financial year under regulation 136(1) (estimated surpluses) must not be paid or, if paid, the Welsh Ministers must repay it.

(5) The Welsh Ministers must make the payment to the scheme manager under paragraph (1) before the end of July of the relevant financial year or as soon as reasonably practicable thereafter.

(6) Where the Welsh Ministers make a payment under paragraph (2) or a repayment under paragraph (4), the payment or repayment must be made before the end of the relevant financial year or as soon as reasonably practicable thereafter.

### **Estimated surpluses**

**136.**—(1) Where, having taken into account the estimate and any other relevant information, it appears to the Welsh Ministers that the total amount likely to be paid into the FPF in the relevant financial year will exceed the total amount likely to be payable out of the FPF in that year, the Welsh Ministers must require the scheme manager to pay to the Welsh Ministers an amount equal to 80% of the likely surplus.

(2) Where, having taken into account any revised estimate and any other relevant information, it appears to the Welsh Ministers that—

(a) the total amount likely to be paid into the FPF in the relevant financial year will exceed the total amount likely to be payable out of the FPF in that year; and

(b) 80% of the likely surplus is more than—

(i) the amount paid or payable by the scheme manager to the Welsh Ministers under paragraph (1) in relation to the relevant financial year, or

(ii) where no such amount was paid or payable by the scheme manager, zero,

the Welsh Ministers may require the scheme manager to pay to the Welsh Ministers such amount as the Welsh Ministers may by notice in writing specify.

(3) Where the scheme manager has paid an amount to the Welsh Ministers under paragraphs (1) and (2), the total of these amounts must not exceed 80% of the likely surplus of the FPF for that year.

(4) Where the Welsh Ministers require the scheme manager to pay an amount under paragraph (2), any amount paid or payable by the Welsh Ministers to the scheme manager in relation to the relevant financial year under regulation 135(1) (estimated deficits) must not be paid or, if paid, the scheme manager must repay it.

(5) The Welsh Ministers must give to the scheme manager, on or before 3 March of the relevant financial year, written notice of the amount of any payment or repayment that the Welsh Ministers require the scheme manager to make under paragraph (1), (2) or (4).

(6) Where the scheme manager is required to make a payment under paragraphs (1) or (2) or to make a repayment under paragraph (4), the payment or repayment must be made before the end of the relevant financial year or as soon as reasonably practicable thereafter.

#### **Actual deficits**

**137.**—(1) Where, having taken into account the un-audited information and any other relevant information, it appears to the Welsh Ministers that the total amount likely to be payable out of the FPF in the relevant financial year exceeds the total amount likely to be paid or payable into the FPF in that year—

- (a) where the likely deficit (“the un-audited deficit”) exceeds the total of any amount paid or payable to the scheme manager in relation to that year under regulation 135(1) or (2) (estimated deficits) (“the regulation 135 total”), the Welsh Ministers must pay to the scheme manager the amount of the un-audited deficit less the regulation 135 total;
- (b) where the un-audited deficit is less than the regulation 135 total, the amount of the regulation 135 total less the un-audited deficit is not payable under regulation 135 (1) or (2) and, if already paid, the scheme manager must repay that amount to the Welsh Ministers;
- (c) where no amount was paid or payable by the Welsh Ministers to the scheme manager in relation to the relevant financial year under regulation 135(1) or (2), the Welsh Ministers must pay to the scheme manager the amount of the un-audited deficit; and



- (d) any amount paid or payable to the Welsh Ministers in relation to that year under regulation 136(1) or (2) is not payable and, if already paid, the Welsh Ministers must repay it to the scheme manager.

(2) Where, having taken into account the audited information and any other relevant information, it appears to the Welsh Ministers that the total amount paid or payable out of the FPF in the relevant year exceeds the total amount paid or payable into the FPF in that year—

- (a) where the difference between those total amounts (“the audited deficit”) exceeds the total of any amounts paid (but not repaid or repayable) or payable to the scheme manager in relation to that year under paragraph (1)(a) or (c) or regulation 135(1) or (2) (“the un-audited total”), the Welsh Ministers must pay to the scheme manager the amount of the audited deficit less the un-audited total;
- (b) where the audited deficit is less than the un-audited total, the amount of the un-audited total less the audited deficit is not payable under paragraphs (1)(a) or (c) or regulation 135(1) or (2) and, if already paid, the scheme manager must repay it the Welsh Ministers;
- (c) where no amount was paid or payable by the Welsh Ministers to the scheme manager in relation to the relevant financial year under paragraphs (1)(a) or (c) or regulation 135(1) or (2), the Welsh Ministers must pay to the scheme manager the amount of the audited deficit; and
- (d) any amount paid or payable to the Welsh Ministers in relation to the relevant financial year under regulation 136(1) or (2) or regulation 138(1)(a) or (c) is not payable and, if already paid, the Welsh Ministers must repay it to the scheme manager.

(3) Where the Welsh Ministers, or the scheme manager, as the case maybe, are required to make a payment or repayment under paragraph (1), it must be made before the end of July in the financial year following the relevant financial year (“the second year”) or as soon as reasonably practicable thereafter.

(4) Where the Welsh Ministers or the scheme manager, as the case maybe, are required to make a payment or repayment under paragraph (2), it must be made before the end of July in the financial year following the second year or as soon as reasonably practicable thereafter.

### Actual surpluses

**138.**—(1) Where, having taken into account the un-audited information and any other relevant information, it appears to the Welsh Ministers that the total amount paid into the FPF in the relevant financial year exceeds the total amount paid out of that FPF in that year—

- (a) where the difference between those total amounts (“the un-audited surplus”) exceeds the total of any amounts paid or payable to the Welsh Ministers by the scheme manager in relation to that year under regulation 136(1) or (2) (“the regulation 136 total”), the Welsh Ministers must require the scheme manager to pay to the Welsh Ministers the amount of the un-audited surplus less the regulation 136 total;
- (b) where the un-audited surplus is less than the regulation 136 total, the amount of the regulation 136 total less the un-audited surplus is not payable under regulation 136(1) or (2) and, if already paid, the Welsh Ministers must repay it to the scheme manager;
- (c) where no amount was paid or payable to the Welsh Ministers by the scheme manager in relation to the relevant financial year under regulation 136(1) or (2), the Welsh Ministers must require the scheme manager to pay to Welsh Ministers the amount of the un-audited surplus; and
- (d) any amount paid or payable by the Welsh Ministers to the scheme manager in relation to that year under regulation 135(1) or (2) is not payable and, if already paid, the scheme manager must repay it to the Welsh Ministers.

(2) Where, having taken into account the audited information and any other relevant information, it appears to the Welsh Ministers that the total amount paid into the FPF in the relevant financial year exceeds the total amount payable out of that FPF in that year—

- (a) where the difference between those total amounts (“the audited surplus”) exceeds the total of any amounts paid (but not repaid or repayable) or payable to the Welsh Ministers by the scheme manager in relation to that year under paragraph (1)(a) or (c) or regulation 136(1) or (2) (“the un-audited regulation 136 total”), the Welsh Ministers must require the scheme manager to pay to the Welsh Ministers out of the FPF the amount of the audited surplus less the un-audited regulation 136 total;

- (b) where the audited surplus is less than the un-audited regulation 136 total, the amount of the un-audited regulation 136 total less the audited surplus is not payable under paragraphs (1)(a) or (c) or regulation 136(1) or (2) and, if already paid, the Welsh Ministers must repay it to the scheme manager;
- (c) where no amount was paid or payable to the Welsh Ministers by the scheme manager in relation to the relevant financial year under paragraphs (1)(a) or (c) or regulation 136(1) or (2), the Welsh Ministers must require the scheme manager to pay to the Welsh Ministers the amount of the audited surplus; and
- (d) any amount paid or payable by the Welsh Ministers to the scheme manager in relation to that year under regulation 135(1) or (2) or regulation 137(1)(a) or (c) is not payable and, if already paid, the scheme manager must repay it to the Welsh Ministers.

(3) The Welsh Ministers must give to the scheme manager, on or before 3 July in the financial year after the relevant financial year (“the second year”), written notice of the amount of the payment that the Welsh Ministers require the scheme manager to make under paragraph (1)(a) or (c).

(4) Where the Welsh Ministers or the scheme manager, as the case maybe, are required to make a payment or repayment under paragraph (1), it must be made before the end of July in the second year or as soon as reasonably practicable thereafter.

(5) The Welsh Ministers must give to the scheme manager, on or before 3 July in the financial year that is the second financial year after the relevant financial year (“the third year”), written notice of the amount of any payment that the Welsh Ministers require the scheme manager to make under paragraph (2)(a) or (c).

(6) Where the Welsh Ministers or the scheme manager, as the case may be, are required to make a payment or repayment under paragraph (2) of this regulation, it must be made before the end of July in the third year or as soon as reasonably practicable thereafter.

### **Duty to provide information**

**139.**—(1) The scheme manager must provide the Welsh Ministers with such information relevant to the exercise of the Welsh Ministers’ functions under this Part as the Welsh Ministers may, by written notice, require.

(2) The scheme manager must provide the information required within the period of time

specified by the Welsh Ministers in that notice or within such additional period as may be allowed by the Welsh Ministers.

## PART 10

### Transfers

#### CHAPTER 1

##### Preliminary

#### Application of this Part

**140.** This Part—

- (a) supplements the rights conferred by or under Chapter 4 of Part 4 of PSA 1993 (transfer values) and is without prejudice to that Chapter; and
- (b) supplements the rights conferred by or under Chapter 5 of that Part (early leavers: cash transfer sums and contribution refunds)<sup>(1)</sup> and is without prejudice to that Chapter.

#### Interpretation in relation to this Part

**141.** In this Part—

“cash equivalent” (“*cyfwerth ariannol*”) means an amount calculated in accordance with regulations made under section 97 of PSA 1993;

“club transfer value” (“*gwerth trosglwyddiad clwb*”), in relation to an amount of accrued earned pension under this scheme or under another club scheme, means an amount calculated by the scheme manager—

- (a) in accordance with the club transfer arrangements, and
- (b) by reference to the guidance and tables provided by the Government Actuary for this purpose that are in use on the date used for the calculation;

“guarantee date” (“*dyddiad gwarant*”) has the meaning given in regulation 144 (statement of entitlement);

“guaranteed cash equivalent” (“*cyfwerth ariannol gwarantedig*”), in relation to calculating the transfer value of accrued rights to benefits under this scheme, means the cash equivalent of those benefits as at the guarantee date, as specified in a statement of entitlement;

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(1) Chapter 5 of Part 4 of PSA 1993 was inserted by section 264 of the Pensions Act 2004 (c. 35).

“statement of entitlement” (*“datganiad o hawlogaeth”*), in relation to an active or deferred member’s accrued rights to benefits under this scheme, means a statement by the scheme manager of the cash equivalent or club transfer value of those benefits as at the guarantee date; and

“transfer value” (*“gwerth trosglwyddiad”*) means, for accrued rights to benefits other than accrued earned pension which are the subject of a club transfer—

- (a) for accrued rights to benefits under this scheme, an amount equal to—
  - (i) the guaranteed cash equivalent of those benefits, or
  - (ii) the guaranteed cash equivalent together with any increase payable under regulation 146 (calculating amount of a transfer value or club transfer value), and
- (b) for accrued rights to benefits under another pension scheme, an amount—
  - (i) determined by the scheme actuary of that scheme, and
  - (ii) specified in a statement of accrued rights provided by the scheme manager of that scheme.

## CHAPTER 2

### Transfers out

#### **Transfer payments made to other schemes or pension arrangements**

**142.**—(1) A transfer payment may only be made in respect of the accrued rights to benefits of an active or deferred member of this scheme.

(2) A transfer payment may only be made to—

- (a) a registered pension scheme that is not a connected scheme; or
- (b) a pension arrangement that is a qualifying recognised overseas pension scheme for the purposes of Part 4 of FA 2004 (see section 169(2) of that Act)(1).

(3) A transfer payment may not be made in respect of rights that are attributable (directly or indirectly) to a pension credit.

(4) A member may only require the scheme manager to use a transfer payment in a way specified in section 95(2) of PSA 1993(2).

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(1) Section 169(2) was amended by the Finance Act 2013 (c. 29), section 53(3).

(2) Section 95(2) was amended by S.I. 2001/3649.

(5) A member may only require the scheme manager to make a club transfer value payment during the period of 12 months beginning with the day on which the member becomes eligible to be an active member of the scheme to which the payment is to be made.

(6) The whole of the transfer payment must be made in accordance with the provisions of this regulation.

(7) If section 96(2) of PSA 1993 (trustees or managers of certain receiving schemes or arrangements able and willing to accept a transfer payment only in respect of the member's other rights) applies<sup>(1)</sup>, benefits attributable to the following may be excluded from the transfer payment—

- (a) the member's accrued rights to a guaranteed minimum pension; and
- (b) the member's accrued rights attributable to service in contracted-out employment, within the meaning of Part 3 of PSA 1993, on or after 6 April 1997.

#### **Application for a statement of entitlement**

**143.**—(1) This regulation applies in relation to an active or deferred member of this scheme (P) who requires a transfer payment to be made in respect of P's accrued rights to benefits under this scheme.

(2) Before requesting a transfer payment, P must apply for a statement of entitlement by written notice to the scheme manager.

(3) P may withdraw the application by written notice to the scheme manager at any time before the statement is provided.

(4) P may make a second application in the period of 12 months beginning with the date of the first application.

#### **Statement of entitlement**

**144.**—(1) The scheme manager must specify in the statement of entitlement the date by reference to which the cash equivalent or club transfer value is calculated ("the guarantee date").

(2) Unless paragraph (4) applies, the guarantee date must fall within both the following periods—

- (a) the three months beginning with the date of the member's application for the statement of entitlement ("the three month period"); and

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(1) Section 96(2) was amended by the Pensions Act 2007 (c. 22), Schedule 7, paragraph 1; the Welfare Reform and Pensions Act 1999 (c. 30), Schedule 13, paragraph 1; the Pensions Act 1995 (c. 26), Schedule 5, paragraph 63(a) and S.I. 2011/1730.

(b) the 10 days ending with the date on which the member is provided with that statement (“the 10 day period”).

(3) In counting the 10 day period, Saturdays, Sundays, Christmas Day, New Year’s Day and Good Friday are excluded.

(4) The scheme manager may specify in the statement of entitlement a guarantee date that falls within the six months beginning with the date of the member’s application for the statement of entitlement if—

(a) for reasons beyond the control of the scheme manager, the information needed to calculate the amount of the cash equivalent or club transfer value cannot be obtained before the end of the three month period; and

(b) the scheme manager considers it reasonable to specify a guarantee date that falls outside the three month period.

#### **Request for transfer payment to be made**

**145.**—(1) An active or a deferred member of this scheme who is provided with a statement of entitlement may request a transfer payment to be made in respect of the member’s accrued rights to benefits under this scheme.

(2) The request for transfer payment must be made by written notice to the scheme manager and specify the pension scheme or other pension arrangement to which the transfer payment is to be made.

(3) A deferred member must exercise the right to apply for the payment of a club transfer value on or before the earlier of the day before the deferred member attains the deferred pension age and the end of the period of 12 months beginning with the date on which the deferred member ceased to be an active member of the scheme.

(4) A deferred member must exercise the right to apply for the payment of a transfer value on or before the day before the deferred member attains the deferred pension age.

(5) Subject to paragraph (6), the member by written notice to the scheme manager may withdraw the request at any time before the transfer payment is made.

(6) The member may not withdraw the request if an agreement for the use of the whole or part of the transfer payment has already been entered into with a third party.

### **Calculating the amount of a transfer value or club transfer value**

**146.**—(1) Subject to paragraphs (2) and (3), the amount of the transfer value is to be calculated in accordance with actuarial guidance as at the guarantee date.

(2) If a transfer value is paid later than six months after the guarantee date, the amount of the guaranteed cash equivalent must be increased in accordance with regulations made under section 97 (calculation of cash equivalents) of PSA 1993<sup>(1)</sup>.

(3) If a club transfer value is paid later than six months after the guarantee date, the amount of the club transfer value as specified in the statement of entitlement must be increased if necessary so that it is equal to the amount it would have been if the guarantee date had been the date on which the payment is made.

(4) If the transfer value or club transfer value is less than the minimum transfer value, the amount of the transfer value or club transfer value must be increased so that it is equal to the amount of the minimum transfer value.

(5) In this regulation—

“the minimum transfer value” (“*y lleiafswm gwerth trosglwyddo*”) means the total of—

- (a) the sum of all member contributions and added pension payments made by the member; and
- (b) the sum of all transfer payments received by this scheme in relation to the member.

### **Effect of transfers-out**

**147.** If a transfer payment is made under this Chapter in respect of a member’s accrued rights to benefits under this scheme, those rights are extinguished.

## **CHAPTER 3**

### **Transfers in**

#### **Application of Chapter**

**148.** This Chapter applies in relation to an active member of this scheme who has accrued rights under another pension scheme (P).

#### **Interpretation of Chapter**

**149.** In this Chapter—

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(1) Section 97 was amended by the Pensions Act 1995 (c. 26), Schedule 6, paragraph 4, and the Child Support, Pensions and Social Security Act 2000 (c. 19), Schedule 5, paragraph 8.



“another pension scheme” (“*cynllun pensiwn arall*”) means—

- (a) another occupational pension scheme that is a registered pension scheme but is not a connected scheme,
- (b) a qualifying recognised overseas pension scheme for the purposes of Part 4 of FA 2004, or
- (c) a personal pension scheme;

“club transfer value statement” (“*datganiad gwerth trosglwyddiad clwb*”) means a statement under regulation 153 (club transfer value statement) of the amount of club transfer earned pension;

“transfer date” (“*dyddiad trosglwyddo*”) means the earlier of—

- (a) if the scheme manager has provided a transfer statement or a club transfer value statement, the last day of the period of two months beginning with the date of the statement, or
- (b) the day on which the transfer payment is received by the scheme manager;

“transfer payment request” (“*cais am daliad trosglwyddo*”) means a request to the scheme manager under this Chapter that a transfer payment be accepted from another pension scheme; and

“transfer statement” (“*datganiad trosglwyddo*”) means a statement under regulation 151 (transfer statement).

### **Request for acceptance of a transfer payment**

**150.**—(1) P may by written notice to the scheme manager request that a transfer payment be accepted in respect of some or all of P’s accrued rights under another pension scheme.

(2) A transfer payment request—

- (a) must specify—
  - (i) the pension scheme from which the transfer payment is requested to be made, and
  - (ii) the anticipated amount of the transfer payment; and
- (b) subject to paragraph (3), must be made before the beginning of the period of one year ending with the date on which the member reaches normal pension age.

(3) A request that a transfer payment be accepted from a non-occupational pension scheme must be made during the period of one year beginning with the day on which the member becomes an active member or such longer period as the scheme manager may allow.

(4) On receiving a transfer payment request, the scheme manager may accept the transfer payment.

#### **Transfer statement**

**151.**—(1) This regulation applies in relation to—

- (a) a request for a transfer payment to be accepted from another pension scheme that is not a club scheme; and
- (b) a request for a transfer payment in respect of added pension to be accepted from another club scheme.

(2) The scheme manager may require that, before making a transfer payment request, P must ask the scheme manager of the other scheme to provide a statement of the amount of transferred pension, calculated in accordance with actuarial guidance, that P will be entitled to count under regulation 152 (amount of transferred pension) provided that the transfer date falls within the period of two months beginning with the date of that statement.

#### **Amount of transferred pension**

**152.**—(1) This regulation applies in relation to—

- (a) any transfer payment received in relation to P from another pension scheme that is not a club scheme; and
- (b) any transfer payment in respect of added pension received in relation to P from another club scheme.

(2) For the scheme year in which the transfer date falls, the amount of transferred pension which P is entitled to count in respect of the transfer payment is—

- (a) the amount specified in the transfer statement; or
- (b) if such a statement is not provided or is not calculated in accordance with actuarial guidance, an amount calculated by the scheme manager in accordance with actuarial guidance.

#### **Club transfer value statement**

**153.**—(1) This regulation applies in relation to a request for a club transfer value payment to be accepted from another club scheme.

(2) The scheme manager may require that, before making the transfer payment request, P must ask the scheme manager of the sending scheme to provide a statement of the amount of club transfer earned pension, calculated in accordance with actuarial guidance, that P will be entitled to count under regulation 154 (amount of club transfer earned

pension) provided that the transfer date falls within the period of two months beginning with the date of that statement.

(3) The statement must specify the basis on which an amount of accrued earned pension is revalued under the sending scheme while a member is in pensionable service under that scheme.

#### **Amount of club transfer earned pension**

**154.**—(1) This regulation applies in relation to a club transfer value payment received from another club scheme.

(2) For the scheme year in which the transfer date falls, the amount of club transfer earned pension which P is entitled to count is—

- (a) the amount specified in the club transfer value statement; or
- (b) if such a statement is not provided or is not calculated in accordance with actuarial guidance, an amount calculated by the scheme manager in accordance with actuarial guidance.

#### **CHAPTER 4**

Transfer of pension account entries to another scheme manager

#### **Requirement for scheme manager to provide a certificate**

**155.**—(1) A scheme manager must provide an active member who has ceased to be employed by one employer in scheme employment and has taken up scheme employment with another authority with a certificate stating—

- (a) the entries in the pension account, or pension accounts if more than one, at the date of the certificate;
- (b) the period of pensionable service in the scheme employment, or employments, with the employer; and
- (c) the date on which the certificate is given.

(2) Where a deferred member has taken up scheme employment with another authority after a gap in pensionable service not exceeding five years, the member must request the scheme manager in relation to the earlier period of pensionable service to provide the member with a certificate stating—

- (a) the entries in the pension account, or pension accounts if more than one, at the date of the certificate;

- (b) the period of pensionable service in the scheme employment, or employments, with that employer;
- (c) the date on which the member had ceased to be employed in scheme employment by that employer; and
- (d) the date on which the certificate is given.

(3) Where a scheme manager is required to provide a certificate under paragraph (1) and the scheme manager had established an added pension account for that member, the scheme manager must provide the member with a certificate stating—

- (a) the entries in the added pension account at the date of the certificate;
- (b) the date on which the certificate is given; and
- (c) details of the member's added pension election where the contributions period has not ended.

(4) Where a scheme manager is required to provide a certificate under paragraph (2), or where a deferred member intends to make an added pension election having taken up scheme employment after a gap in pensionable service exceeding five years, and the scheme manager in relation to a previous period of pensionable service had established an added pension account, the scheme manager must provide the member with a certificate, where the member requests one, stating—

- (a) the entries in the pension account at the date of the certificate;
- (b) the date on which the member had ceased to be employed in scheme employment by that employer; and
- (c) the date on which the certificate is given.

(5) Where an active member has two or more active member's accounts with two or more different scheme managers, and the member intends to make, or has made, an added pension election, the member may request a certificate from the scheme manager who established the added pension account in order that that certificate may be provided to another scheme manager (B) in respect of a different active member's account so that the entries may be transferred to an added pension account established by B.

(6) The scheme manager must provide a certificate under this regulation—

- (a) within three months after the date on which the active member leaves scheme employment; or
- (b) within three months after the date on which the deferred member notifies the scheme manager of the new scheme employment.

### **Request to confirm details on certificate**

**156.** Where a member has been provided with a certificate under regulation 155 (requirement for scheme manager to provide a certificate) and is dissatisfied with the information stated on the certificate, the member may, within the period of three months commencing on the date on which the certificate was received, request the scheme manager who provided the certificate to confirm the accuracy of the information contained in it or to provide an amended certificate.

### **Appeal concerning entries on the certificate**

**157.—**(1) Where a member (P) is not satisfied with the entries on the certificate, or amended certificate, after P has made a request under regulation 156 (request to confirm details on certificate), P may, by written notice given to the scheme manager who provided the certificate within 28 days of the notification date, require the scheme manager to deal with the disagreement by means of arrangements implemented by the scheme manager pursuant to the requirements of section 50 of the Pensions Act 1995<sup>(1)</sup> (resolution of disputes) and the Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008<sup>(2)</sup>.

(2) In paragraph (1), “the notification date” (“*y dyddiad hysbysu*”) is the date on which P is treated as having received from the scheme manager confirmation of the certificate provided under regulation 155 or provision of an amended certificate following P’s request under regulation 156 (request to confirm details on certificate).

### **Transfer of pension account entries**

**158.—**(1) A member who has been provided with a certificate under paragraph (1), (2), (3) or (4) of regulation 155 (requirement for scheme manager to provide a certificate) must give the certificate to the member’s new scheme employer.

(2) The new scheme employer must request the scheme manager who gave the certificate to confirm that the member has provided certificates in respect of all pension accounts for which that employer was the scheme manager.

(3) The scheme manager who gave the certificate must confirm to the new employer that the member has

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(1) 1995 c. 26. Section 50 was substituted by the Pensions Act 2004 (c. 35), section 273. Section 273 of the 2004 Act was amended, before coming into effect, by the Pension Act 2007 (c. 22), section 16.

(2) S.I. 2008/649.

provided certificates in respect of all pension accounts for which that employer was the scheme manager.

(4) After the confirmation has been provided by the scheme manager, the new scheme employer must transfer the appropriate entries from the certificate to the new active member's pension account which has been established under regulation 40 (establishment of active member's account) and, where the member had an added pension account, transfer the appropriate entries from the certificate provided in respect of that account to the new added pension account established under regulation 47 (establishment of added pension account).

(5) When the transfer of entries has been completed under paragraph (4), the new scheme manager must inform the former scheme manager that the transfer has taken place and the former scheme manager must close all pension accounts relating to the certificates provided in respect of the member.

(6) If the number of pension accounts in respect of which details have been provided by the former scheme manager under paragraph (1) or (2) of regulation 155 (requirement for scheme manager to provide a certificate) is greater than the number of active member's accounts established by the new scheme manager, the member must decide, following consultation with the new scheme manager, from which pension account entries must be transferred to the new active member's account or accounts and notify the former scheme manager.

(7) Where paragraph (6) applies and there are one or more pension accounts from which entries are not transferred, those accounts must be closed and the former scheme manager must establish a deferred member's account in respect of each of those accounts.

(8) Where a member has taken up scheme employment with two or more employers and intends to make an added pension election, the member may choose to which scheme manager the certificate provided under paragraph (3) or (4) of regulation 155 (requirement for scheme manager to provide a certificate) is to be given.

(9) The scheme manager is not required to make any payment to the new scheme manager in connection with the transfer of a pension account.

## PART 11

### Actuarial valuations

#### **Appointment of scheme actuary and actuarial valuations**

**159.**—(1) The Welsh Ministers must appoint an individual to provide a consulting service on actuarial matters in relation to this scheme and any connected scheme.

(2) The scheme actuary is responsible for—

- (a) carrying out valuations of this scheme and any connected scheme; and
- (b) preparing reports on the valuations.

(3) Before appointing an individual as scheme actuary the Welsh Ministers must be satisfied that the individual is appropriately qualified to carry out valuations of this scheme and any connected scheme in accordance with Treasury directions made under section 11 of the 2013 Act (“the Treasury directions”).

(4) A scheme manager must provide the scheme actuary with any data that the scheme actuary requires in order to carry out a valuation and prepare a report on the valuation.

(5) A valuation of the scheme and any connected scheme and the preparation of a report on the valuation must be carried out in accordance with the Treasury directions.

(6) Valuations of the scheme must be carried out within a time-frame which enables requirements in the Treasury directions regarding dates which are applicable to the valuation to be met.

#### **Employer cost cap**

**160.**—(1) The employer cost cap for this scheme is 17.1% of pensionable earnings of members of this scheme.

(2) Where the cost of this scheme, calculated following a valuation in accordance with the Treasury directions, is more than the margins specified in regulations made under section 12(5) of the 2013 Act<sup>(1)</sup> (“the Cost Cap Regulations”) above or below the employer cost cap, the Welsh Ministers must follow the procedure specified in paragraph (3) for reaching agreement with the scheme managers, employers and members (or representatives of employers and members) as to the steps required to achieve the target cost specified in the Cost Cap Regulations.

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(1) See regulation 3 of S.I. 2014/575.

(3) The procedure specified for the purposes of section 12(6)(a) of the 2013 Act is consultation for such period as the Welsh Ministers consider appropriate with the Firefighters' Pension Scheme Advisory Board for Wales with a view to reaching an agreement endorsed by all members of that Board.

(4) If, following such consultation, agreement is not reached within 3 months of the end of the consultation period, the Welsh Ministers must take steps to adjust the rate at which benefits accrue under regulation 43 (amount of pension for a scheme year) so that the target cost for this scheme is achieved.

## PART 12

### Determinations and appeals

#### CHAPTER 1

#### Determinations and role of IQMP

##### **Determinations by the scheme manager**

**161.** The scheme manager must determine whether a person is entitled to an award or to retain an award.

##### **Role of IQMP in determinations by the scheme manager**

**162.—(1)** In making a determination as to whether a person is entitled to an award, or to retain an award, where the determination as to entitlement depends in part on the ill-health or capacity of the person who would be so entitled, the scheme manager must obtain the written opinion of the IQMP on any issue which is wholly or partly of a medical nature.

(2) The scheme manager must request an IQMP to provide an opinion on the following issues for the purpose of determining any question arising under this scheme—

- (a) whether a person is incapable of performing any duties of the role in which that person was last employed because of incapacity of mind or body;
- (b) whether the incapacity in sub-paragraph (a) above is likely to continue until normal pension age or deferred pension age, as the case may be;
- (c) whether a person has become capable of performing any duties of the role from which that person retired on grounds of ill-health;
- (d) whether a person is or has become capable of undertaking regular employment; or
- (e) any other issue wholly or partly of a medical nature.



(3) Subject to paragraph (6), the IQMP must certify under paragraph (2) that—

- (a) the IQMP has not previously advised, or given an opinion on, or otherwise been involved in, the particular case for which the opinion has been requested; and
- (b) the IQMP is not acting, and has not at any time acted, as the representative of the member, the scheme manager, or any other party in relation to the same case.

(4) An IQMP's opinion under paragraph (2) is binding on the scheme manager unless it is superseded by the IQMP's response under regulation 163(2) (review of medical opinion) or the outcome of an appeal under regulation 164 (appeals against determinations based on medical evidence).

(5) The IQMP's response under regulation 163 (review of medical opinion) or the outcome of an appeal under regulation 164 (appeals against determinations based on medical evidence), as the case may be, is binding on the scheme manager.

(6) Where, in consequence of an opinion given under paragraph (2), a member has retired on the grounds of ill-health, the IQMP who gave the opinion may, if so requested by the scheme manager for the purposes of a review under regulation 77(1) (review of ill-health award or early payment of retirement pension), give a further opinion.

(7) If—

- (a) a person wilfully or negligently fails to submit to medical examination by the IQMP selected by the scheme manager; and
- (b) the IQMP is unable to give an opinion on the basis of the medical evidence available,

the scheme manager may make a determination on the issue on such other medical evidence as the scheme manager thinks fit, or without medical evidence.

(8) Within 14 days of making a determination under these Regulations, the scheme manager must—

- (a) give written notice of it to the person concerned; and
- (b) in the case of a determination on an issue wholly or partly of a medical nature, unless paragraph (7) applies, supply that person with a copy of the opinion obtained under paragraph (2).

### **Review of medical opinion**

**163.**—(1) Where—

- (a) new evidence on an issue wholly or partly of a medical nature is presented to the scheme manager by a member (P) in respect of whom

a determination has been made under these Regulations;

- (b) the scheme manager receives that evidence—
  - (i) where a copy of an opinion was supplied in accordance with regulation 162(8) (role of IQMP in determinations by the scheme manager), within 28 days of the receipt by P of that copy, and
  - (ii) in any other case, within 28 days of the receipt by P of notice of the scheme manager's determination; and
- (c) the scheme manager and P agree that the IQMP must be given the opportunity of reviewing that opinion in the light of the new evidence,

the scheme manager must send a copy of the new evidence to the IQMP and invite the IQMP to reconsider that opinion.

(2) An IQMP's response to an invitation under paragraph (1) must be in writing.

(3) An IQMP's response under paragraph (2) is binding on the scheme manager unless it is superseded by the outcome of an appeal under regulation 164 (appeals against determinations based on medical evidence).

(4) As soon as reasonably practicable after receiving a response under paragraph (2), the scheme manager must reconsider its determination.

(5) Within 14 days of that reconsideration, the scheme manager must—

- (a) give written notice to P that it has confirmed its determination or revised its determination (as the case may be);
- (b) if it has revised its determination, supply P with written notice of the revised determination; and
- (c) supply P with a copy of the response under paragraph (2).

## CHAPTER 2

### Appeals to Board of Medical Referees

#### **Appeals against determinations based on medical evidence**

**164.**—(1) A member (P) who wishes to appeal against a scheme manager's determination on an issue of a medical nature may do so to a board of medical referees in accordance with the provisions of regulations 165 (notice of appeal) to 172 (notices etc).

(2) Subject to paragraph (3), where a determination is—

- (a) made with regard to an opinion obtained under regulation 162(2) (role of IQMP in determinations by the scheme manager) or medical evidence relied on as mentioned in regulation 162(7); or
- (b) reconsidered under regulation 163(4) (review of medical opinion) with regard to a response under paragraph (2) of that regulation,

the scheme manager must, within 14 days of making, confirming or revising the determination (as the case may be), send to P the documents mentioned in paragraph (4).

(3) Nothing in paragraph (2) requires the supply of documents that have already been supplied under regulation 162(8) or 163(5).

(4) The documents are—

- (a) a copy of the opinion, response or evidence (as the case may be);
- (b) an explanation of the procedure for appeals under this Chapter; and
- (c) a statement that if P wishes to appeal against the scheme manager's determination on an issue of a medical nature, P must give written notice to the scheme manager, stating P's name and address and the grounds of appeal, not later than 28 days after P receives the last of the documents required to be supplied under this paragraph, or within such longer period as the scheme manager may allow.

### **Notice of appeal**

**165.**—(1) Subject to paragraph (2), written notice of appeal against a determination on an issue of a medical nature stating—

- (a) the appellant (P)'s name and address; and
- (b) the grounds of the appeal,

must be given to the scheme manager within 28 days of the date on which P receives the documents referred to in regulation 164(4) (appeals against determinations based on medical evidence); and where P receives those documents on different dates, they are to be treated for this purpose as received on the later or latest of those dates.

(2) Where—

- (a) notice of appeal is not given within the period specified in paragraph (1); but
- (b) the scheme manager is of the opinion that P's failure to give it within that period was not due to P's own default,

the scheme manager may extend the period for giving notice for such length, not exceeding six months from

the date mentioned in paragraph (1), as the scheme manager considers appropriate.

### **Reference of appeal to the board**

**166.**—(1) On receiving a notice of appeal, the scheme manager must supply the Welsh Ministers with three copies of—

- (a) the notice of appeal;
- (b) the notice of the relevant determination;
- (c) the opinion, response or evidence (as the case may be) supplied to the appellant (P); and
- (d) every other document in its possession or under its control which appears to it to be relevant to the issue that is the subject of the appeal.

(2) The Welsh Ministers must refer an appeal to a board of medical referees (“the board”).

(3) The board is to consist of not less than three medical practitioners appointed by, or in accordance with arrangements made by, the Welsh Ministers.

(4) One member of the board must be a specialist in a medical condition relevant to the appeal.

(5) One member of the board must be appointed as chairman.

(6) Where there is an equality of votes among the members of the board, the chairman is to have a second or casting vote.

(7) As soon as reasonably practicable after referring an appeal to the board, the Welsh Ministers must supply the board’s administrator with three copies of every document supplied under paragraph (1).

(8) The board must arrange for one of their number to review those documents (‘the reviewing member’).

(9) As soon as reasonably practicable after concluding the review, the reviewing member must give written notice to the Welsh Ministers—

- (a) of any other information which the reviewing member considers would be desirable so as to provide the board with sufficient information for the purpose of enabling the board to determine the appeal; and
- (b) if it is the case, that it is the reviewing member’s opinion that the board may regard the appeal as frivolous, vexatious or manifestly ill-founded.

(10) On receipt of the reviewing member’s notice the Welsh Ministers must—

- (a) where the reviewing member has notified the Welsh Ministers of the desirability of obtaining other information, require the

scheme manager to use its best endeavours to obtain that information; and

- (b) where the notice contains an opinion of the description mentioned in paragraph (9)(b), send a copy of it to the scheme manager.

(11) A scheme manager which receives a copy of a reviewing member's opinion must, as soon as reasonably practicable—

- (a) send a copy of it to P; and
- (b) by written notice to P—
  - (i) advise P that if P's appeal is unsuccessful, P may be required to pay the scheme manager's costs, and
  - (ii) require P to notify it within 14 days of the date of the notice whether P intends to pursue or withdraw the appeal.

(12) A scheme manager which notifies P under paragraph (11)(b) must inform the Welsh Ministers of P's response to the notice under sub-paragraph 11(b); and the Welsh Ministers must notify the board accordingly.

### **Procedure where appeal to be pursued**

**167.**—(1) Where an appeal is to be pursued, the board must secure that the appellant (P) and the scheme manager (“the parties”) have been informed—

- (a) that the appeal is to be determined by the board; and
- (b) of an address to which communications relating to the appeal may be delivered to the board.

(2) Subject to paragraph (5), the board—

- (a) must interview and medically examine P at least once; and
- (b) may interview or medically examine P or cause P to be interviewed or medically examined on such further occasions as the board thinks necessary for the purpose of determining the appeal.

(3) The board must appoint, and give the parties not less than two months' notice of, the time and place for every interview and medical examination; and if the board is satisfied that P is unable to travel, the place must be P's place of residence.

(4) P must attend at the time and place appointed for any interview and medical examination by the board or any member of the board or any person appointed by the board for that purpose.

(5) If—

- (a) P fails to comply with paragraph (4); and

- (b) the board is not satisfied that there was a reasonable cause for the failure,

the board may dispense with the interview and medical examination and may determine the appeal on such information as is then available.

(6) Any interview under this regulation may be attended by persons appointed for the purpose by the scheme manager or by P or by each of them.

(7) Where either party intends to submit written evidence or a written statement at an interview held under paragraph (2), the party must, subject to paragraph (8), submit the evidence or statement to the board and to the other party not less than 28 days before the date appointed for the interview.

(8) Where any written evidence or statement has been submitted under paragraph (7) less than 28 days before the date appointed for the interview, any written evidence or statement in response may be submitted by the other party to the board and the party submitting the first-mentioned evidence or statement at any time up to, and including, that date.

(9) Where any written evidence or statement is submitted in contravention of paragraph (7), the board may postpone the date appointed for the interview and require the party who submitted the evidence or statement to pay such reasonable costs of the board and of the other party as arise from the postponement.

### **The board's report**

**168.**—(1) The board must supply the Welsh Ministers with—

- (a) a written report of its decision on the relevant medical issues; and
- (b) if the board is of the opinion that the appeal was frivolous, vexatious or manifestly ill-founded, a statement to that effect (which may form part of the report).

(2) The Welsh Ministers must supply the parties with a copy of the report and of any separate statement under paragraph (1)(b).

### **Reconsideration by the board**

**169.**—(1) Where—

- (a) the parties have received a copy of the report supplied under regulation 168 (the board's report), and
- (b) the parties agree that the board has made an error of fact which materially affects the board's decision,

the scheme manager must within 28 days of receipt of the report, supply the Welsh Ministers with two copies of a statement agreed between the parties.

(2) The agreed statement must set out—

- (i) the error of fact,
- (ii) the correct fact, and

invite the board to reconsider its decision.

(3) The Welsh Ministers must within 14 days of receipt of the statement supply a copy of it to the board.

(4) As soon as reasonably practicable after receiving the statement, the board must reconsider its decision.

(5) Within 14 days of that reconsideration the board must—

- (a) give written notice to the Welsh Ministers that it has confirmed its decision or revised its decision (as the case may be); and
- (b) if it has revised its decision, supply the Welsh Ministers with a written report of its revised decision.

(6) The Welsh Ministers must supply to the parties a copy of the written notice confirming the board's decision or a copy of the written report of the board's revised decision (as the case may be).

#### **Fees and allowances payable to the board**

**170.**—(1) There must be paid to the board and the reviewing member—

- (a) such fees and allowances (including those payable to the reviewing member for work undertaken on the review of documents under regulation 166(8) (reference of appeal to the board)) as are determined in accordance with arrangements made by the Welsh Ministers; or
- (b) where no such arrangements have been made, such fees and allowances as the Welsh Ministers may from time to time determine.

(2) The fees and allowances payable under paragraph (1) must—

- (a) be paid by the scheme manager; and
- (b) be treated for the purposes of regulation 171 (expenses of each party) as part of the scheme manager's expenses.

#### **Expenses of each party**

**171.**—(1) Subject to regulation 167(9) (procedure where appeal to be pursued) and paragraphs (2) to (5) below, the expenses of each party to the appeal must be borne by that party.

(2) Where the board—

- (a) determines an appeal in favour of the scheme manager; and

(b) states that, in its opinion, the appeal was frivolous, vexatious or manifestly ill-founded, the scheme manager may require the appellant (P) to pay it such sum, not exceeding the total amount of the fees and allowances payable to the board and the reviewing member under regulation 170(1)(fees and allowances payable to the board), as the scheme manager considers appropriate.

(3) Where—

(a) P gives notice to the board—

- (i) withdrawing the appeal, or
- (ii) requesting cancellation of, postponement of, or adjournment of the date appointed for an interview or medical examination under regulation 167(3), and

the notice is given less than 22 working days before the date appointed under regulation 167(3); or

(b) P's acts or omissions cause the board to cancel, postpone or otherwise adjourn the date appointed under regulation 167(3) less than 22 working days before the date appointed,

the scheme manager may require P to pay it such sum, not exceeding the total amount of the fees and allowances payable to the board under regulation 170(1) (fees and allowances payable to the board), as the scheme manager considers appropriate.

(4) Where the board—

- (a) determines an appeal in favour of P; and
- (b) does not otherwise direct,

the scheme manager must refund to P the amount specified in paragraph (5).

(5) The amount is the total of—

- (a) any personal expenses actually and reasonably incurred by P in respect of any interview under regulation 167(2); and
- (b) if any such interview was attended by a qualified medical practitioner appointed by P, any fees and expenses reasonably paid by P in respect of such attendance.

(6) For the purposes of paragraphs (2) and (4), any question arising as to whether the board's determination is in favour of the scheme manager or of P is to be decided by the board or, in default, by the Welsh Ministers.

#### **Notices etc.**

**172.** Any notice, information or document which an appellant (P) is entitled to receive for any purpose of regulations 164 (appeals against determinations based on medical evidence) to 171 (expenses of each party)



is, unless the contrary is proved, to be treated as having been received by P if it was posted in a letter addressed to P at P's last known place of residence.

## CHAPTER 3

### Appeals on other issues

#### **Appeals on other issues**

**173.** Where—

- (a) a member (P) disagrees with a scheme manager's determination under regulation 161 (determinations by the scheme manager); and
- (b) the disagreement does not involve an issue of a medical nature,

P may, by written notice given to the scheme manager within 28 days of receipt of the determination, require the scheme manager to deal with the disagreement by means of the arrangements implemented by it pursuant to the requirements of section 50 of the Pensions Act 1995(1) (requirement for dispute resolution arrangements) and the Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008(2).

## PART 13

### Supplementary

#### CHAPTER 1

#### Payment of pensions

#### **Late payment of retirement index adjustment**

**174.** Nothing in these Regulations requires any part of a pension attributable to a retirement index adjustment to be paid before the end of the last active scheme year.

#### **Recovery of overpayment of benefits**

**175.**—(1) This regulation applies in respect of a financial year for which a percentage decrease in earnings is specified in an order made under section 9 of the 2013 Act(3).

(2) The scheme manager must recover any overpayment of benefits that has occurred as a result of

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(1) 1995 c. 26. Section 50 has been substituted by virtue of section 273 of the Pensions Act 2004 (c. 35).

(2) S.I. 2008/649.

(3) Under section 9 of the 2013 Act the change in earnings to be applied in a period is the percentage increase or decrease as a Treasury order under that section may specify in relation to the period.

the application of the retirement index adjustment for that year.

(3) When this regulation applies, the scheme manager must notify the member in writing that the amount of the overpayment is to be recovered by reducing the amount of each instalment of pension until the amount of the overpayment is recovered or by omitting to pay any increase in the amount of any pension due until the amount of the overpayment is recovered.

### **Guaranteed minimum pension**

**176.**—(1) If a member has a guaranteed minimum in relation to benefits under this scheme—

- (a) nothing in these Regulations permits or requires anything that would cause requirements made by or under PSA 1993 in relation to such a member and such a member's rights under this scheme not to be met in the case of the member;
- (b) nothing in these Regulations prevents anything from being done which is necessary or expedient for the purposes of meeting such requirements in the case of the member; and
- (c) the following provisions are subject to the generality of this paragraph.

(2) If apart from this regulation—

- (a) no pension would be payable to the member under this scheme; or
- (b) the weekly rate of the pensions payable would be less than the guaranteed minimum,

a pension at a weekly rate equal to the guaranteed minimum is payable to the member for life from the date on which the member reaches GMP age or, as the case may be, pensions the aggregate weekly rate of which is equal to the guaranteed minimum are so payable.

(3) Subject to paragraph (4), if—

- (a) on reaching GMP age the member is still in employment (whether or not it is scheme employment); and
- (b) if it is not scheme employment, the member consents to a postponement of the member's entitlement under paragraph (2),

paragraph (2) does not apply until the member leaves employment.

(4) If the member continues in employment for a further five years after reaching GMP age and does not then leave employment, the member is entitled from the end of that period to so much of the member's pension under Part 5 (retirement benefits) and Part 7 (benefits for pension credit members) as equals the

member's guaranteed minimum (or, as the case may be, to so much of the member's pensions under Part 5 and Part 7 as together have a weekly rate equal to the member's guaranteed minimum), unless the member consents to a further postponement of the entitlement.

(5) In the circumstances provided for in paragraph (3) or (4), the amount of the guaranteed minimum to which the member is entitled under this regulation is increased in accordance with section 15 (increase of guaranteed minimum where commencement of guaranteed minimum pension postponed) of PSA 1993.

(6) If—

- (a) before reaching the age of 65 the member becomes entitled to the immediate payment of a pension; and
- (b) the member has a guaranteed minimum in relation to the whole or part of a pension as a result of receipt by this scheme of a transfer payment from another pension scheme in respect of which the member had such a guaranteed minimum,

the weekly rate of the pension, so far as attributable to that service, must not be less than the guaranteed minimum, multiplied by such factor as is indicated in tables included in actuarial guidance for a person of the member's age and sex at the date on which the pension becomes payable.

(7) This paragraph applies if a person has ceased to be in employment that is contracted-out employment, within the meaning of Part 3 of PSA 1993 (certification of pension schemes and effects on members' state scheme rights and duties), by reference to this scheme and either—

- (a) a transfer payment in respect of all the person's rights to benefits under this scheme, except the person's rights in respect of the person's guaranteed minimum or rights under section 9(2B)(requirements for certification of schemes: general) of PSA 1993(1) ("the person's contracting-out rights"), has been made; or
- (b) the person has no rights to benefits under this scheme apart from the person's contracting-out rights.

(8) If paragraph (7) applies—

- (a) from the date on which the person reaches GMP age the person is entitled to a pension

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(1) Subsection (2B) was inserted by the Pensions Act 1995 (c. 26), section 136(3) and amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Schedule 1, paragraph 35.

payable for life at a weekly rate equal to the person's guaranteed minimum, if any; and

- (b) from the date on which the person reaches normal pension age under this scheme the person is entitled to a lump sum and pension in respect of that person's rights under section 9(2B) of PSA 1993,

but a person falling with paragraph (7) is not to be regarded as a pensioner member for the purposes of Part 6 (death benefits).

(9) Paragraphs (2) to (8) do not apply to a pension—

- (a) that is forfeited—
  - (i) as a result of a conviction for treason, or
  - (ii) in a case where the relevant offence under regulation 181 (forfeiture: offences committed by members, surviving partners or eligible children) falls under paragraph (b) of the definition in that regulation of "relevant offence" (Official Secrets Acts offences);
- (b) where that pension is commuted under regulation 177 (commutation of small pensions) and where the conditions in regulation 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996(1) are met,

and if any other provision of this scheme is inconsistent with this regulation, this regulation prevails.

(10) In this regulation, references to the amount of a pension are to its amount after the subtraction of the commutation amount, if any (but before the subtraction of the allocation amount, if any).

### **Commutation of small pensions**

**177.**—(1) This regulation applies if the pension entitlement of a member of the scheme or the pension entitlement of a member's beneficiary does not exceed the small pensions commutation maximum.

(2) Unless the member has reached deferred pension age, this regulation does not apply if the pension entitlement of the member or the member's beneficiary is equal to or exceeds the member's guaranteed minimum.

(3) The scheme manager may pay the member, surviving partner or eligible child a lump sum of an amount as represents the cash value of the pension calculated in accordance with actuarial guidance if—

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(1) S.I. 1996/1172. Regulation 60 was substituted by S.I. 2006/744 and amended by 2006/1337, 2009/2930 and 2010/499.

- (a) the person consents to receipt of a lump sum in respect of the pension; and
  - (b) the requirements of the commutation provisions that apply in the circumstances are met.
- (4) The payment of a lump sum under this regulation in place of a pension discharges all liabilities under this scheme in respect of that pension.
- (5) In this regulation—
- “the commutation provisions” (“*y darpariaethau cymudo*”) means the provisions permitting the commutation of pensions set out in—
- (a) regulation 2 of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997<sup>(1)</sup>,
  - (b) paragraph 7 of Schedule 29 (authorised lump sums-supplementary) to FA 2004 (which defines trivial commutation lump sums for the purposes of Part 4 of that Act)<sup>(2)</sup> and, in relation to a pension payable under Part 6 (death benefits), paragraph 20 of that Schedule (which defines trivial commutation lump sum death benefit for the purposes of Part 4 of that Act)<sup>(3)</sup>, and
  - (c) regulation 3 of the Pension Sharing (Pension Credit Benefit) Regulations 2000<sup>(4)</sup>; and
- “the small pensions commutation maximum” (“*yr uchafswm cymudo pensiyneu bach*”) means the amount that is permitted to be commuted, having regard to the commutation provisions that apply in the circumstances.

### **Payments for persons incapable of managing their affairs**

**178.** If it appears to the scheme manager that a person other than an eligible child is entitled to payment of benefits under this scheme but is, by reason of mental incapacity or otherwise, incapable of managing their affairs—

- (a) the scheme manager may pay the benefits or any part of them to a person having the care of the person entitled, or such other person as the scheme manager may determine, to be

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(1) S.I. 1997/785. Regulation 2 was amended by S.I. 2002/681, 2005/706, 2006/744, 2006/778 and 2009/2930.

(2) Paragraph 7 was amended by the Finance Act 2011 (c. 11), Schedule 16, paragraphs 23 and 29 and Schedule 18, paragraphs 1, 3, and 4; the Finance Act 2014 (c. 26), section 42(1); and S.I.2006/572.

(3) Paragraph 20 was amended by the Finance Act 2011 (c. 11), Schedule 16, paragraphs 32 and 39 and Schedule 18, paragraphs 1, 3 and 6.

(4) S.I. 2000/1054. Regulation 3 was amended by S.I. 2009/2930.

applied for the benefit of the person entitled;  
and

- (b) in so far as the scheme manager does not pay the benefits in that manner, the scheme manager may apply them in such manner as the scheme manager may determine, for the benefit of the person entitled, or any beneficiaries of the person entitled.

### **Payments due in respect of deceased persons**

**179.**—(1) Paragraph (2) applies if, when a person dies, the total amount due to that person's personal representatives under this scheme (including anything due at that person's death) does not exceed the amount specified in any order for the time being in force under section 6 of the Administration of Estates (Small Payments) Act 1965<sup>(1)</sup> and applying in relation to that person's death.

(2) A scheme manager may pay the whole or part of the amount due to—

- (a) a person's personal representatives; or
- (b) any person or persons appearing to the scheme manager to be beneficially entitled to the estate,

without the production of probate or letters of administration of the person's estate.

### **Limitation on assignment of benefits**

**180.** An assignment of an award under these Regulations is void to the extent that it is in favour of a person other than a dependant of the person entitled to the award.

## **CHAPTER 2**

### **Forfeiture**

#### **Forfeiture: offences committed by members, surviving partners or eligible children**

**181.**—(1) If a member, surviving partner or eligible child is convicted of a relevant offence, the scheme manager may, to such extent and for such duration as it considers appropriate, withhold pensions payable under this scheme to—

- (a) the member;
- (b) any person in respect of the member;
- (c) a surviving partner; or
- (d) an eligible child.

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(1) 1965 c. 32; there are amendments to section 6 which are not relevant to this instrument.

(2) Where a surviving partner's or an eligible child's pension under Part 6 (death benefits) is to be withheld under paragraph (1) as a result of a relevant offence falling under sub-paragraph (a) or (b) of the definition of that expression in paragraph (5), the offence must have been committed after the death on which the person became entitled to the surviving partner's or eligible child's pension, as the case may be.

(3) The scheme manager may only withhold that part of a person's pension that exceeds any guaranteed minimum to which the person is entitled under—

- (a) section 14 of PSA 1993 (earner's guaranteed minimum); or
- (b) section 17 (minimum pensions for widows and widowers)(1) of that Act.

(4) The scheme manager may, at any time and to such extent and for such duration as it thinks fit—

- (a) apply for the benefit of any dependant of the member; or
- (b) restore to the member,

so much of any pension as has been withheld under this regulation.

(5) In this regulation—

“forfeiture certificate” (*“tystysgrif fforffedu”*) means a certificate stating that the Welsh Ministers consider that the offence—

- (a) has been gravely injurious to the interests of the State, or
- (b) is liable to lead to serious loss of confidence in the public service;

“relevant offence” (*“trosedd berthnasol”*) means—

- (a) an offence of treason,
- (b) an offence under the Official Secrets Acts 1911 to 1989(2) for which the member has been sentenced on the same occasion—
  - (i) to a term of imprisonment of at least 10 years, or
  - (ii) to two or more consecutive terms amounting in the aggregate to at least 10 years, or
- (c) an offence—

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(1) Section 17 was amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Schedule 1, paragraph 39; the Child Support, Pensions and Social Security Act 2000 (c. 19), Schedule 5, paragraph 1 and Schedule 9, Part 3; the Pensions Act 2004 (c. 35), section 284(2); the Pensions Act 2007 (c. 22) section 14(2); the Marriage (Same Sex Couples) Act 2013 (c. 30), Schedule 4, paragraphs 18 and 20; and S.I. 2005/2050 and 2014/560.

(2) 1989 c. 6; see section 16(2) for the meaning of “Official Secrets Acts 1911 to 1989”.

- (i) committed in connection with the member's scheme employment; and
- (ii) in respect of which the Welsh Ministers have issued a forfeiture certificate.

**Forfeiture of pensions: offences committed by other persons**

**182.**—(1) If a person (“P”) is convicted of the murder of a member, the scheme manager must withhold all of any surviving partner's or eligible child's pension otherwise payable to P in respect of the member under Part 6 (death benefits).

(2) If P is convicted of a relevant offence, the scheme manager may, to such extent as it considers appropriate, withhold any surviving partner's or eligible child's pension payable to P in respect of a member under Part 6 (death benefits).

(3) If paragraph (1) applies, Part 6 (death benefits) applies as if P had died before the member.

(4) Under paragraph (2) the scheme manager may only withhold such part of P's pension as exceeds any guaranteed minimum to which P is entitled under section 17 of PSA 1993(1).

(5) If P is convicted of the murder of a member and the conviction is subsequently quashed on appeal, any surviving partner's or eligible child's pension withheld is to be payable from the day after that on which the member died, and the scheme manager must, as soon as reasonably practicable after the conviction is quashed, pay the arrears of the pension accrued.

(6) If P is convicted of a relevant offence and the conviction is subsequently quashed on appeal, any decision under paragraph (2) is to be treated as revoked and the scheme manager must, as soon as reasonably practicable after the conviction is quashed, pay the arrears of the pension accrued from the day after that on which the member died.

(7) Nothing in paragraphs (5) or (6) is to affect the application of paragraphs (1) or (2) if the person whose conviction is quashed is subsequently convicted of the murder of the member or of a relevant offence.

(8) In this regulation, “relevant offence” (*“trosedd berthnasol”*) means—

- (a) the manslaughter of the member; or
- (b) any other offence, apart from murder, of which the unlawful killing of the member is an element.

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(1) Pension Schemes Act 1993 (c. 48).



### **Forfeiture of lump sum death benefit: offences committed by other persons**

**183.**—(1) If a person is convicted of a relevant offence, the scheme manager must withhold all of any lump sum death benefit payable to that person in respect of a member under Chapter 4 of Part 6 (death benefits).

(2) In this regulation, “relevant offence” (*“trosedd berthnasol”*) means—

- (a) the murder of the member;
- (b) the manslaughter of the member; or
- (c) any other offence of which the unlawful killing of the member is an element.

(3) If paragraph (1) applies and the scheme manager withholds all benefits, Part 6 (death benefits) applies as if that person had died before the member.

(4) If a person is convicted of a relevant offence and the conviction is subsequently quashed on appeal, the scheme manager may, to such extent and for such duration as it thinks fit, restore to that person so much of any benefit as has been withheld under this regulation.

(5) Nothing in paragraph (4) is to affect the application of paragraph (1) if the person whose conviction is quashed is subsequently convicted of a relevant offence.

### **Forfeiture: relevant monetary obligations and relevant monetary losses**

**184.**—(1) If a member (P) has a relevant monetary obligation or has caused a relevant monetary loss the scheme manager may, to such extent and for such duration as it considers appropriate, withhold benefits payable to P under this scheme.

(2) The scheme manager may withhold benefits to the extent the scheme manager considers appropriate but may only withhold that part of P’s pension as exceeds any guaranteed minimum to which P is entitled under section 14 of PSA 1993.

(3) The scheme manager may not withhold more than the lesser of—

- (a) the amount of the relevant monetary obligation or relevant monetary loss; and
- (b) the value of P’s entitlement to benefits.

(4) The scheme manager may only withhold benefits if—

- (a) there is no dispute as to the amount of the relevant monetary obligation or relevant monetary loss; or
- (b) the relevant monetary obligation or relevant monetary loss is enforceable as follows—

- (i) under an order of a competent court, or
- (ii) in consequence of an award of an arbitrator.

(5) In this regulation—

“relevant monetary loss” (*colled ariannol berthnasol*) means a monetary loss which—

- (a) was caused to this scheme, and
- (b) arose out of P’s criminal, negligent or fraudulent act or omission; and

“relevant monetary obligation” (*rhwymedigaeth ariannol berthnasol*) means a monetary obligation which—

- (a) was incurred to P’s employer,
- (b) was incurred after P became an active member of this scheme,
- (c) arose out of P’s criminal, negligent or fraudulent act or omission, and
- (d) arose out of or was connected with service in the scheme employment in respect of which P is a member of this scheme.

#### **Set-off**

**185.**—(1) The scheme manager may set off a relevant monetary obligation against a member’s entitlement to benefits under this scheme.

(2) In this regulation, a “relevant monetary obligation” (*rhwymedigaeth ariannol berthnasol*) is a monetary obligation owed by a member (P), which satisfies the conditions in paragraphs (3), (4) or (5).

(3) The conditions in this paragraph are that the monetary obligation—

- (a) was incurred to P’s employer;
- (b) was incurred after P became an active member of this scheme;
- (c) arose out of or was connected with service in the scheme employment in respect of which P is a member of this scheme; and
- (d) arose out of P’s criminal, negligent or fraudulent act or omission.

(4) The conditions in this paragraph are that the monetary obligation—

- (a) was incurred to this scheme; and
- (b) arose out of P’s criminal, negligent or fraudulent act or omission.

(5) The conditions in this paragraph are that the monetary obligation—

- (a) was incurred to this scheme; and
- (b) arose out of a payment made to P in error by the scheme manager.

(6) Paragraph (7) applies if a set-off is to be applied as result of P owing a relevant monetary obligation which satisfies the conditions in paragraph (3).

(7) Where this paragraph applies, the scheme manager may not apply a set-off against that part of P's entitlement to benefits that represents transfer credits within the meaning of section 124(1) (interpretation of Part 1) of the Pensions Act 1995<sup>(1)</sup> other than prescribed transfer credits for the purposes of section 91(5)(d) (exceptions from the inalienability of occupational pensions) of that Act <sup>(2)</sup>.

(8) The scheme manager may only apply a set-off against that part of a member's pension that exceeds any guaranteed minimum to which that member is entitled under section 14 of PSA 1993.

(9) The value of the set-off applied must not exceed the lesser of—

- (a) the amount of the relevant monetary obligation; and
- (b) the value of P's entitlement to benefits.

(10) The scheme manager may only set off a relevant monetary obligation against P's entitlement to benefits if—

- (a) there is no dispute as to the amount of the relevant monetary obligation; or
- (b) the relevant monetary obligation is enforceable—
  - (i) under an order of a competent court, or
  - (ii) in consequence of an award of an arbitrator.

### **Forfeiture and set-off: procedure**

**186.**—(1) If the scheme manager proposes to withhold benefits or apply a set-off against a person's entitlement to benefits, the scheme manager must notify the person of the proposal in writing.

(2) If the scheme manager withholds benefits under regulation 184 (forfeiture: relevant monetary obligations and relevant monetary losses) or applies a set-off against an entitlement to benefits under regulation 185 (set-off), the scheme manager must give the member a certificate showing—

- (a) the amount withheld or set off; and

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(1) Section 124(1) was amended by the Welfare Reform and Pensions Act 1999 (c. 30), Schedule 12, paragraphs 43 and 61, the Child Support, Pensions and Social Security Act 2000 (c. 19), Schedule 5, paragraph 8, the Pensions Act 2004 (c. 35), section 7(2), Schedule 12, paragraphs 34, 43 and 69 and Schedule 13, Part 1 and S.I. 2005/2053, 2006/745 and 2014/560.

(2) Section 91(5)(d) was amended by the Welfare Reform and Pensions Act 1999 (c. 30), Schedule 12, paragraphs 43 and 57. See S.I. 1997/785 which prescribes the transfer credits.

- (b) the effect of the withholding or set-off on the member's, surviving partner's or eligible child's benefits under this scheme.

### CHAPTER 3

#### Payment and deduction of tax

#### **Scheme administrator for the purposes of the Finance Act 2004**

**187.** The scheme manager is appointed to be responsible for all liabilities and responsibilities connected with the functions conferred or imposed on the scheme administrator by or under Part 4 of FA 2004 which the scheme manager assumes as sub-scheme administrator under regulation 3 of, and Schedule 3 to, the Registered Pension Schemes (Splitting of Schemes) Regulations 2006<sup>(1)</sup>.

#### **Payment on behalf of members of lifetime allowance charge**

**188.—**(1) A member may request the scheme administrator to pay on the member's behalf any amount that is payable by way of the lifetime allowance charge under section 214 of FA 2004 when—

- (a) an event that is a benefit crystallisation event listed in the table in section 216(1) of FA 2004 occurs in relation to the member; and
- (b) the member and the scheme manager are jointly and severally liable in relation to that event.

(2) Such a request may only be made by notice to the scheme administrator given before the event occurs.

(3) The scheme manager may only comply with such a request if the member—

- (a) pays to it the amount in question on or before the date on which the event occurs; or
- (b) authorises the deduction of the amount in question from a lump sum becoming payable to the member under this scheme at the same time as the event occurs.

#### **Reduction of benefits where lifetime allowance charge payable**

**189.—**(1) This regulation applies if—

- (a) an event that is a benefit crystallisation event listed in the table in section 216(1) of FA

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(1) S.I. 2006/569; amended by S.I. 2013/1114.

2004 (“the table”) occurs in relation to a member<sup>(1)</sup>;

- (b) the member and the scheme manager are jointly and severally liable in relation to that event; and
- (c) no request has been duly made under regulation 188 (payment on behalf of members of lifetime allowance charge) in relation to the event or, if such a request has been made, the scheme manager is prevented from complying with it by paragraph (3) of that regulation.

(2) If this regulation applies—

- (a) the scheme manager must pay the tax payable on the event;
- (b) if the event is benefit crystallisation event 8 in the table (transfer to qualifying recognised overseas pension scheme), the amount or value of the sums or assets transferred must be reduced; and
- (c) in the case of any other event in that table, the amount or value of the benefits payable to or in respect of the member must be reduced.

(3) The amount or value of the reduction—

- (a) must be such that it fully reflects the amount of tax so paid; and
- (b) in the case of any reduction to pension benefits, must be calculated according to actuarial guidance.

### **Information about payment of annual allowance charge**

**190.**—(1) If a member’s pension scheme input amount for this scheme for a pension input period exceeds the amount of the annual allowance for the tax year in which the pension input period ends, paragraph (2) applies in respect of the member for that tax year.

(2) The scheme manager must, no later than 6 October after the end of the tax year, provide the member with such information as the scheme manager considers appropriate to assist the member to arrange payment of the annual allowance charge for that tax year and with the information required by regulation 14A of the Registered Pension Schemes (Provision of Information) Regulations 2006<sup>(2)</sup>.

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(1) Section 216(1) was amended by the Finance Act 2005 (c. 7), Schedule 10, paragraphs 31 and 42; the Finance Act 2006 (c. 25), Schedule 23, paragraph 30; the Finance Act 2008 (c. 9), Schedule 29, paragraphs 1(3) and 5; and the Finance Act 2011 (c. 11), Schedule 16, paragraphs 43 and 73(2).

(2) S.I. 2006/567; regulation 14A was inserted by regulations 2 and 8 of S.I. 2011/1797. It was amended by the Taxation of Pensions Act 2014 (c. 30), section 1 and Schedule 1, paragraph 88.

(3) In this regulation—

“pension input period” (*“cyfnod mewnbwn pensiwn”*) has the meaning given in section 238 (pension input period) of FA 2004(1);

“pension scheme input amount” (*“swm mewnbwn cynllun pensiwn”*) has the meaning given in section 237B(2) (liability of scheme administrator) of FA 2004(2).

### **Reduction of benefits where annual allowance charge paid by scheme manager**

**191.**—(1) This regulation applies where—

- (a) a member gives valid notice to the scheme manager of joint and several liability for an annual allowance charge under section 237B(3) of FA 2004; and
- (b) the scheme manager satisfies the liability specified in the notice.

(2) The amount or value of the benefits payable to or in respect of the member for the tax year to which the notice relates must be reduced by the scheme manager in accordance with paragraph (3).

(3) Subject to paragraph (4), the amount or value of the reduction of benefits must be—

- (a) such that it fully reflects the amount paid by the scheme manager; and
- (b) determined in accordance with actuarial guidance.

(4) Benefits may only be reduced under this regulation to the extent that the reduction would not result in the loss of any part of a guaranteed minimum pension to which a person is entitled.

## **CHAPTER 4**

### **General**

### **Calculation of periods of membership and service**

**192.**—(1) Subject to paragraph (3), for the purposes of this scheme, periods of membership and service must be expressed in the first instance in whole years, and days or fractions of a day, and the initial aggregation of periods that require to be aggregated is done by reference to periods so expressed.

(2) Subject to paragraph (3), if, when all periods of membership or service that require to be aggregated have been aggregated, there is any excess part day

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(1) Section 238 was amended by the Finance Act 2011 (c. 11), Schedule 17, paragraph 16.

(2) 2004 c. 12; section 237B was inserted by the Finance Act 2011 (c. 11), Schedule 17, paragraph 15 and was amended by the Finance Act 2013 (c. 29), Schedule 46, paragraphs 119 and 129.

over the number of whole days, that excess must be rounded up to a full day.

(3) If membership or service is referred to in these Regulations as membership or service in years—

- (a) the days referred to in paragraph (1), and
- (b) the full days referred to in paragraph (2),

must be converted into years by dividing the number of days in excess of the period of whole years by 365, and using the result to four decimal places.

(4) If a period of membership or service is less than one year, this regulation applies as if the words “whole years, and” were omitted from paragraph (1) and the words “in excess of the period of whole years” were omitted from paragraph (3).

### **Annual benefit information statements**

**193.**—(1) The scheme manager must provide an annual benefit information statement to each of its members who are not pensioner members in respect of the pension account for which the statement is to be provided.

(2) The first such statements must be provided on or before 31 August 2016.

(3) Subject to paragraph (4), subsequent statements must be provided at least once per year on or before 31 August of each year that follows.

(4) If a member requests in writing that a statement is provided to them after the end of a scheme year but before 31 August of the following scheme year, the scheme manager must provide an annual benefit information statement as soon as reasonably practicable in accordance with the member’s request, unless the relevant data to enable it to do so is not available.

(5) The statement provided to active members of this scheme must be in accordance with section 14 of the 2013 Act (information about benefits).

### **Evidence of entitlement**

**194.**—(1) A scheme manager may by written notice require any person who is in receipt of a pension or may have an entitlement to a pension or a lump sum under this scheme to provide it with such supporting evidence as it may reasonably require to establish—

- (a) the identity of that person; and
- (b) that person’s continuing or future entitlement to the payment of any amount under this scheme.

(2) A notice under paragraph (1) must specify the date by which the supporting evidence is to be provided.

(3) Where a person fails to comply with the requirements of a notice given in accordance with paragraph (1), the scheme manager may withhold the whole or part of any amount that it otherwise considers to be payable under this scheme.

**Information to be provided to a member before reserve forces service leave**

**195.** The scheme manager must give a member who is about to start on a period of reserve forces service leave a statement stating—

- (a) the assumed pensionable pay for that member whilst on reserve forces service leave;
- (b) the member contribution rate to apply during that period;
- (c) details of any payments to be paid by the employer to the member whilst on reserve forces service leave; and
- (d) the employer contribution which applies during that period.

**Transitional provisions**

**196.** Schedule 2 has effect.

**Duty to have regard to guidance**

**197.** A scheme manager must have regard to any guidance issued by the Welsh Ministers for the purposes of this Part.

*Leighton Andrews*  
Minister for Public Services, one of the Welsh  
Ministers  
9 March 2015



# SCHEDULES

## SCHEDULE 1 Regulation 124

### Payments for added pension

#### PART 1

##### Interpretation

##### **Interpretation**

###### **1. In this Schedule—**

“amount of extra pension” (“*swm o bensiwn ychwanegol*”) means the amount of accrued added pension at any time;

“appropriate pay period” (“*cyfnod tâl priodol*”) means the pay period that the scheme manager considers appropriate;

“notice of election” (“*hysbysiad o ddewisiad*”) has the meaning given in paragraph 5;

“overall limit of extra pension” (“*terfyn cyffredinol o bensiwn ychwanegol*”) has the meaning given in paragraph 2;

“period of service” (“*cyfnod o wasanaeth*”) in relation to this scheme, means a continuous period of pensionable service under this scheme;

“periodical payment period” (“*cyfnod taliadau cyfnodol*”) means the period for which periodical payments for added pension payments are payable;

“the relevant day” (“*y diwrnod perthnasol*”) means the day on which the lump sum is received by the scheme manager;

“the relevant scheme year” (“*y flwyddyn gynllun berthnasol*”) means the scheme year in which the relevant day falls.

##### **Meaning of “overall limit of extra pension”**

###### **2.—(1) The overall limit of extra pension is—**

- (a) £6,500 for any scheme year ending before 1 April 2016; and
- (b) for any scheme year beginning on or after 1 April 2016—
  - (i) the overall limit of extra pension determined by the Treasury in respect of that scheme year as published before the start of that scheme year, or

(ii) if no such determination is made, the amount calculated under sub-paragraph (2).

(2) The amount is the amount to which the annual rate of a pension of an amount equal to the overall limit of extra pension for the previous scheme year would have been increased under the PIA 1971 if—

- (a) that pension were eligible to be so increased; and
- (b) the beginning date for that pension were the first day of the previous scheme year.

### **Limit on elections**

3. An added pension election may not be exercised by an active member if the amount of extra pension would exceed the overall limit of extra pension if that election were made.

### **Amount of accrued added pension may not exceed overall limit of extra pension**

4.—(1) At any given time, the total amount of accrued added pension in a member's added pension account may not exceed the overall limit of extra pension.

(2) If a member has elected to make periodical payments for added pension, the scheme manager may by written notice to the member cancel the election if it appears to the scheme manager that the overall limit of extra pension will be exceeded if the member continues to make the periodical payments.

(3) If the scheme manager cancels the election, the periodical payments cease to be payable from the next pay period beginning after the date specified in the notice of cancellation.

## **PART 2**

### **CHAPTER 1**

#### **Exercising the added pension election**

### **Added pension election exercisable by member**

5.—(1) An active member of this scheme may elect to make added pension payments to this scheme to increase the member's retirement benefits and death benefits.

(2) A member may make the added pension election by notice to the scheme manager in such form as the scheme manager may require.

(3) The notice given in sub-paragraph (2) is referred to in this Schedule as the notice of election.

- (4) The notice of election must state—
- (a) whether added pension payments are to be made by—
    - (i) periodical payments, or
    - (ii) a lump sum payment;
  - (b) whether the member has an added pension account with another employer; and
  - (c) whether the member is making an added pension election in connection with another scheme employment.

(5) An election to pay added pension payments by a lump sum payment may only be made if the member gives notice to the scheme manager not later than 12 months after the date on which the person last became employed by that scheme employer as a firefighter.

(6) An election to pay added pension payments by periodical payments may only be made at least two years before the member's normal pension age and cannot be made once the scheme manager has agreed that the member will leave the scheme employment with entitlement to a pension or an ill-health award.

## CHAPTER 2

### Periodical payments for added pension

#### **Application of Chapter**

**6.** This Chapter applies in relation to an active member of this scheme who elects to make periodical payments for added pension.

#### **Member's election to make periodical payments for added pension**

**7.—**(1) The notice of election must specify—

- (a) the periodical payment period; and
- (b) the amount of the periodical payment to be deducted by the member's employer from the member's pensionable pay in each pay period.

(2) The amount of the periodical payment may be expressed as—

- (a) a percentage of the member's pensionable pay; or
- (b) a fixed sum.

(3) The amount of the periodical payment must not be less than any minimum amount determined by the scheme manager.

#### **Periodical payments**

**8.—**(1) The periodical payments may be payable by deduction by the member's employer from the

member's pensionable pay during the periodical payment period.

(2) The periodical payment period—

- (a) begins with the first appropriate pay period beginning on or after the date on which the scheme manager receives the notice of election; and
- (b) ends on the earliest of the date—
  - (i) of the beginning of the next appropriate pay period if the member gives the notice of discontinuance under paragraph 9,
  - (ii) of the beginning of the next pay period after the date specified in a notice of cancellation given by the scheme manager under paragraph 4(2),
  - (iii) on which the member ceases to be an active member, and
  - (iv) specified in the notice of election.

(3) If the member does not want to pay the periodical payments by deduction from pensionable pay, the scheme manager may agree another method of payment.

#### **Discontinuance of periodical payments**

9. If a member wishes to discontinue the payment of periodical payments, the member must give written notice to the scheme manager.

#### **Periodical payments during periods of assumed pensionable pay**

10.—(1) The periodical payments are payable by deduction from the member's pensionable pay during the periodical payments period and whilst the member is treated as receiving assumed pensionable pay, reduced pay or no pay, the member may—

- (a) stop the periodical payments; or
- (b) continue the periodical payments as if the member were receiving pensionable pay at the full rate.

(2) During any period in which the member is receiving statutory maternity pay or is on paid ordinary maternity leave, paid ordinary adoption leave or paid paternity leave, the member may—

- (a) stop the periodical payments; or
- (b) pay the periodical payments of an amount determined by reference to the member's actual pay during that period.

(3) If a member stops the periodical payments during a period of assumed pensionable pay or a period of reduced pay, the member may choose to resume the periodical payments in the next pay period after the

period of assumed pensionable pay or period of reduced pay ends.

(4) After a period of assumed pensionable pay or a period of reduced pay, the member may give written notice to the scheme manager authorising the employer to deduct the aggregate of payments which would have been made during this period from the member's pay during a period of six months from the end of the period of reduced pay or such longer period as the scheme manager may allow.

(5) Notice under sub-paragraph (4) must be given to the scheme manager not later than one month after the end of the period of assumed pensionable pay or reduced pay.

#### **Amount of added pension for a scheme year**

**11.**—(1) This paragraph applies for each scheme year during which a member makes periodical payments to increase both the member's retirement benefits and death benefits.

(2) An amount of added pension must be credited to the member's added pension account for that scheme year.

(3) The amount credited to the added pension account is an amount determined by the scheme manager by reference to actuarial guidance.

### **CHAPTER 3**

#### **Lump sum payments for added pension**

##### **Application of Chapter**

**12.** This Chapter applies in relation to an active member of this scheme who has elected to make a lump sum payment for added pension.

##### **Member's election to make a lump sum payment for added pension**

**13.**—(1) The notice of election must specify the amount of lump sum which must not be less than any minimum amount determined by the scheme manager.

(2) If the lump sum is not paid within three months after the date on which the notice of election was given, then the notice of election is void.

##### **Amount of added pension to be credited to added pension account**

**14.**—(1) This paragraph applies if a member elects to pay a lump sum to increase the member's retirement benefits and death benefits.

(2) Following payment of the lump sum by the member, an amount of added pension must be credited

to the added pension account for the relevant scheme year.

(3) The amount credited to the added pension account is an amount determined by the scheme manager by reference to actuarial guidance.

## SCHEDULE 2 Regulation 196 Transitional provisions

### PART 1

#### General

#### Interpretation

**1.** In this Schedule—

“active member of an existing public body pension scheme” (“*aelod actif o gynllun pensiwn corff cyhoeddus presennol*”) has the meaning given in paragraph 7;

“active member of an existing scheme” (“*aelod actif o gynllun presennol*”) has the meaning given in paragraph 6;

“active member of the 1992 Scheme or the NFPS” (“*aelod actif o Gynllun 1992 neu o CPNDT*”) has the meaning given in paragraph 5;

“closing date” (“*dyddiad cau*”)—

- (a) in relation to an existing scheme, means the date referred to in section 18(4)(a) or (b) of the 2013 Act, as the case may be,
- (b) in relation to an existing public body pension scheme, means the date determined under section 31(2) of the 2013 Act by the public authority responsible for that scheme, and
- (c) in relation to a transition member, means—
  - (i) if the member is a tapered protection member of the 1992 Scheme or the NFPS, the tapered protection closing date for that member, or
  - (ii) if the member is not a protected member of one of those schemes, the scheme closing date;

“eligible to be an active member of the NFPS” (“*cymwys i fod yn aelod actif o CPNDT*”) has the meaning given in paragraph 4;

“exception” (“*eithriad*”) means—

- (a) in relation to an existing scheme, an exception under section 18(5) of the 2013 Act provided for in the scheme regulations for that scheme,

- (b) in relation to an existing public body pension scheme, an exception under section 31(4) of the 2013 Act provided for by the public authority responsible for that scheme;

“existing public body pension scheme” (“*cynllun pensiwn corff cyhoeddus presennol*”) means a public body pension scheme to which section 31 of the 2013 Act applies;

“full protection member” (“*aelod diogelwch llawn*”), in relation to the 1992 Scheme or the NFPS, has the meaning given in paragraph 9;

“fully protected member” (“*aelod a ddiogelir yn llawn*”) of an existing scheme or an existing public body pension scheme means a person in respect of whom an exception applies, which exception is one to which section 18(6) of the 2013 Act<sup>(1)</sup> (or that section as applied by section 31(4) of that Act) applies for the purposes of that scheme;

“protected member” (“*aelod a ddiogelir*”), in relation to an existing scheme or an existing public body pension scheme, means a full protection member or tapered protection member of one of those schemes;

“protection period” (“*cyfnod diogelwch*”)—

- (a) for a full protection member of the 1992 Scheme or the NFPS, has the meaning given in paragraph 10, and
- (b) for a tapered protection member of the 1992 Scheme or the NFPS, has the meaning given in paragraph 16;

“scheme closing date” (“*dyddiad cau’r cynllun*”) means 31 March 2015;

“tapered protection closing date” (“*dyddiad cau diogelwch taprog*”), in relation to a tapered protection member of an existing scheme, has the meaning given in paragraph 3;

“tapered protection member” (“*aelod diogelwch taprog*”), in relation to the 1992 Scheme or the NFPS, has the meaning given in paragraph 15;

“transition date” (“*dyddiad trosiant*”), in relation to a transition member, means—

- (a) if the member is a tapered protection member of the 1992 Scheme or the NFPS, the day after the tapered protection closing date for that member, and
- (b) if the member is not a protected member of the 1992 Scheme or the NFPS, the day after the scheme closing date, or, if later, the day

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(1) Section 18(6) was amended by the Pensions Act 2014 (c. 19), section 52(3).

the person ceased to be a protected member of that scheme;

“transition member” (“*aelod trosiannol*”) means a person—

- (a) who is a member of the 1992 Scheme or the NFPS by virtue of their pensionable service under that scheme, or who is eligible to be an active member of the NFPS, before the transition date, and
- (b) who is a member of this scheme by virtue of the person’s pensionable service under this scheme.

#### **Meaning of “continuity of service”**

2.—(1) A transition member (T) has continuity of service between pensionable service in the 1992 Scheme or the NFPS, as the case may be, and pensionable service in this scheme unless T has a gap in service exceeding five years which—

- (a) begins on or before T’s transition date; and
- (b) ends on the day on which T becomes an active member of this scheme.

(2) For the purposes of sub-paragraph (1), after the scheme closing date T is not on a gap in service while T is in service which is pensionable under an existing scheme, an existing public body pension scheme, a scheme under section 1 of the 2013 Act or a new public body pension scheme.

#### **Meaning of “tapered protection closing date”**

3.—(1) The tapered protection closing date for a tapered protection member of the 1992 Scheme is the date found by applying the relevant date in column 3 of the 1992 Scheme table in Part 4 of this Schedule to the birthday referred to in column 1 and column 2.

(2) Subject to sub-paragraph (3), the tapered protection closing date for a tapered protection member of the NFPS is the date found by applying the relevant date in column 3 of the NFPS table in Part 4 of this Schedule to the birthday referred to in column 1 and column 2.

(3) The tapered protection closing date for a tapered protection member of the NFPS to whom paragraph 9(5) or 21 applies is a date determined by the scheme manager.

#### **Meaning of “eligible to be an active member” of the NFPS**

4.—(1) For the purpose of this Schedule, a person (P) is eligible to be an active member of the NFPS on a given date if on that date P is not in pensionable



service under the 1992 Scheme or the NFPS and either—

- (a) P is in service as a firefighter which entitles P to be eligible to be an active member of the NFPS; or
- (b) P is on a gap in pensionable service not exceeding five years.

(2) For the purpose of sub-paragraph (1)(b), after the scheme closing date P is not on a gap in service while P is in pensionable public service.

**Meaning of “active member of the 1992 Scheme or the NFPS”**

5.—(1) For the purpose of this Schedule, a person (P) is an active member of the 1992 Scheme or the NFPS on a given date if on that date P is—

- (a) in pensionable service under the 1992 Scheme or the NFPS; or
- (b) on a gap in service not exceeding five years.

(2) For the purpose of sub-paragraph (1)(b), after the scheme closing date P is not on a gap in service while P is in pensionable public service.

**Meaning of “active member of an existing scheme”**

6.—(1) For the purpose of this Schedule, a person (P) is an active member of an existing scheme<sup>(1)</sup> (other than the 1992 Scheme or the NFPS) on a given date if on that date P is—

- (a) in pensionable service under that scheme; or
- (b) on a gap in service not exceeding five years.

(2) For the purpose of sub-paragraph (1)(b), after the closing date for the existing scheme P is not on a gap in service while P is in pensionable public service.

**Meaning of “active member of an existing public body pension scheme”**

7.—(1) For the purpose of this Schedule, a person (P) is an active member of an existing public body pension scheme on a given date if on that date P is—

- (a) in pensionable service under that scheme; or
- (b) on a gap in service not exceeding five years.

(2) For the purpose of sub-paragraph (1)(b), after the closing date for the existing public body pension scheme P is not on a gap in service while P is in pensionable public service.

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(1) See section 18(2) of the 2013 Act for the meaning of “existing scheme”.

### **Commencement of active membership of this scheme**

8.—(1) A person who is a transition member on entering pensionable service under this scheme and who does not have continuity of service becomes an active member of this scheme on the day the person begins pensionable service in a scheme employment.

(2) A person who is a transition member on entering pensionable service under this scheme and who has continuity of service (T) becomes an active member of this scheme—

- (a) if T is in pensionable service in a scheme employment on the transition date, on that date; or
- (b) if T is not in pensionable service in a scheme employment on the transition date, on the day T enters pensionable service in a scheme employment after that date.

## **PART 2**

### **Full protection members of the 1992 Scheme or the NFPS**

#### **Full protection members of the 1992 Scheme or the NFPS**

9.—(1) A person (P) to whom any of paragraphs 12 to 14 applies is a full protection member of the 1992 Scheme or the NFPS, as the case may be.

(2) P ceases to be a full protection member of the 1992 Scheme or the NFPS, as the case may be, when P ceases to be in pensionable service under that scheme and ceases to be eligible to be an active member of the NFPS, unless sub-paragraph (3) or (4) applies.

(3) This sub-paragraph applies if P—

- (a) returns to service which is pensionable under the NFPS from service which is pensionable under an existing scheme (other than the 1992 Scheme) or an existing public body pension scheme; and
- (b) would have been a fully protected member of that existing scheme or existing public body pension scheme had P re-entered service which is pensionable under that scheme on the date P returns to service which is pensionable under the NFPS.

(4) This sub-paragraph applies if P returns to service which is pensionable under the NFPS—

- (a) otherwise than from service which is pensionable under an existing scheme or an existing public body pension scheme; and

(b) after a gap in service not exceeding five years.

(5) If P returns to service which is pensionable under the NFPS in circumstances where sub-paragraph (6) applies, P is a tapered protection member of the NFPS when P returns to that service.

(6) This sub-paragraph applies if P—

(a) returns to service which is pensionable under the NFPS from service which is pensionable under an existing scheme or an existing public body pension scheme; and

(b) would have been a protected member of the existing scheme or existing public body pension scheme by virtue of an exception to which section 18(7)(a) and (b) of the 2013 Act (or that section as applied by section 31(4) of that Act) applies had P re-entered service which is pensionable under that scheme on the date P returns to service which is pensionable under the NFPS.

(7) For the purpose of sub-paragraph (4)(b), after the scheme closing date P is not on a gap in service while P is in pensionable public service.

#### **Exception for full protection member during protection period**

**10.**—(1) The protection period for a person (P) who is a full protection member of the 1992 Scheme or the NFPS, as the case may be, is the period which—

(a) begins on the day after the scheme closing date; and

(b) ends when P ceases to be a full protection member of the 1992 Scheme or the NFPS (unless P is a tapered protection member by virtue of paragraph 9(5)).

(2) During the protection period—

(a) P is eligible to be in pensionable service under the NFPS or, where P is an active member of the 1992 Scheme, eligible to be in pensionable service under that scheme;

(b) section 18(1) of the 2013 Act does not apply in respect of that pensionable service; and

(c) benefits are to be provided under the 1992 Scheme or the NFPS, as the case may be, to or in respect of P in relation to that pensionable service.

#### **Full protection member not eligible to join this scheme**

**11.** While a person (P) is a full protection member of the 1992 Scheme or the NFPS, P is not eligible to be an active member of this scheme in respect of that scheme employment.

**Full protection: members of the 1992 Scheme or the NFPS on scheme closing date**

**12.**—(1) This paragraph applies if sub-paragraph (2) or sub-paragraph (3) applies.

(2) This sub-paragraph applies if—

- (a) P was an active member of the 1992 Scheme or an active member, or eligible to be an active member, of the NFPS on the scheme closing date;
- (b) P was an active member of the 1992 Scheme or an active member, or eligible to be an active member, of the NFPS on 31 March 2012; and
- (c) if P—
  - (i) is an active member of the 1992 Scheme, P would, unless P dies, reach normal pension age under the 1992 Scheme(1) on or before 1 April 2022; or
  - (ii) is an active member, or eligible to be an active member, of the NFPS, P would, unless P dies, reach normal pension age under the NFPS(2) on or before 1 April 2022.

(3) This sub-paragraph applies if P—

- (a) was an active member of an existing scheme (other than the 1992 Scheme or the NFPS) or an existing public body pension scheme (“P’s transitional scheme”) on 31 March 2012;
- (b) was an active member or eligible to be an active member of the NFPS on the scheme closing date; and
- (c) would, unless P dies, reach normal pension age under the NFPS and P’s transitional scheme on or before 1 April 2022.

**Full protection: members of an existing scheme**

**13.** This paragraph applies if—

- (a) P was an active member of an existing scheme (other than the 1992 Scheme or the NFPS) or an existing public body pension scheme on the closing date for that scheme;
- (b) P was an active member of an existing scheme or an existing public body pension

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(1) S.I. 1992/129: rule A13 provides that normal pension age is 55 and rule B1 enables regular firefighters over the age of 50 to retire once they have reckoned pensionable service of at least 25 years. Rule A13 as it has effect in Wales was substituted by S.I. 2006/1672. Rule B1 as it has effect in Wales has been amended by S.I. 2005/566 and 2014/3242.

(2) S.I. 2007/1072 (W. 110): rule 3(1) of Part 2 provides that normal retirement age of firefighter members is 60.

- scheme (“P’s transitional scheme”) on 31 March 2012;
- (c) P begins service which is pensionable under the NFPS not more than five years after leaving pensionable service under an existing scheme other than the 1992 Scheme or the NFPS;
  - (d) on the date that P begins service which is pensionable under the NFPS, P would have been a fully protected member of the existing scheme referred to in sub-paragraph (c) had P re-entered service which is pensionable under that scheme on that date; and
  - (e) P would, unless P dies, reach normal pension age under the NFPS and P’s transitional scheme on or before 1 April 2022.

**Full protection: members of an existing public body pension scheme**

**14.** This paragraph applies if—

- (a) P was an active member of an existing scheme (other than the 1992 Scheme or the NFPS) or an existing public body pension scheme on the closing date for that scheme;
- (b) P was an active member of an existing scheme or an existing public body pension scheme (“transitional scheme”) on 31 March 2012;
- (c) P begins service which is pensionable under the NFPS not more than five years after leaving pensionable service under an existing public body pension scheme;
- (d) on the date that P begins service which is pensionable under the NFPS, P would have been a fully protected member of the existing public body pension scheme referred to in sub-paragraph (c) had P re-entered service which is pensionable under that scheme on that date; and
- (e) P would, unless P dies, reach normal pension age under the NFPS and P’s transitional scheme on or before 1 April 2022.

## PART 3

### Exceptions to section 18(1) of the 2013 Act: tapered protection members of the 1992 Scheme or the NFPS

#### **Tapered protection members of the 1992 Scheme or the NFPS**

**15.**—(1) A person (P) to whom any of paragraphs 18 to 21 applies is a tapered protection member of the 1992 Scheme or the NFPS.

(2) P ceases to be a tapered protection member of the 1992 Scheme or the NFPS on whichever of the following days occurs first—

- (a) P's tapered protection closing date; or
- (b) the day on which P ceases to be in pensionable service under the 1992 Scheme or if later, ceases to be eligible to be in pensionable service under the NFPS, unless sub-paragraph (3) or sub-paragraph (4) applies.

(3) This sub-paragraph applies if—

- (a) before P's transition date P returns to service which is pensionable under the NFPS from service which is pensionable under an existing scheme or an existing public body pension scheme; and
- (b) P would have been a protected member of that existing scheme or existing public body pension scheme had P re-entered service which is pensionable under that scheme on the date P returns to service which is pensionable under the NFPS.

(4) This sub-paragraph applies if—

- (a) before P's transition date P returns to service which is pensionable under the NFPS otherwise than from service which is pensionable under an existing scheme or an existing public body pension scheme; and
- (b) P returns to service which is pensionable under the NFPS after a gap in service not exceeding five years.

(5) For the purpose of paragraph (4)(b), after the scheme closing date, P is not on a gap in service while P is in pensionable public service.

#### **Exception for tapered protection members during protection period**

**16.**—(1) The protection period for a tapered protection member of the 1992 Scheme or the NFPS is the period which—

- (a) begins on the day after the scheme closing date; and
  - (b) ends when P ceases to be a tapered protection member of the 1992 Scheme or the NFPS.
- (2) During the protection period—
- (a) P is eligible to be in pensionable service under the NFPS or, where P is an active member of the 1992 Scheme, eligible to be in pensionable service under that scheme;
  - (b) section 18(1) of the 2013 Act does not apply in respect of that pensionable service; and
  - (c) benefits are to be provided under the 1992 Scheme or the NFPS, as the case may be, to or in respect of P in relation to that pensionable service.

**Tapered protection member not eligible to join this scheme**

17. While a person (P) is a tapered protection member of the 1992 Scheme or the NFPS, P is not eligible to be an active member of this scheme in respect of that scheme employment.

**Tapered protection: members of the 1992 Scheme or the NFPS on scheme closing date**

18.—(1) This paragraph applies if sub-paragraph (2) or sub-paragraph (3) applies.

- (2) This sub-paragraph applies if—
- (a) P was an active member of the 1992 Scheme or was an active member, or eligible to be an active member, of the NFPS on the scheme closing date;
  - (b) on 31 March 2012 P was an active member of the 1992 Scheme or was an active member, or eligible to be an active member, of the NFPS; and
  - (c) if P—
    - (i) is an active member of the 1992 Scheme P would, unless P dies, reach normal pension age under the 1992 Scheme during the period beginning with 2 April 2022 and ending with 31 March 2026; or
    - (ii) is an active member, or eligible to be an active member, of the NFPS, P would, unless P dies, reach normal pension age under the NFPS during the period beginning with 2 April 2022 and ending with 31 March 2026.
- (3) This sub-paragraph applies if P—
- (a) was an active member of an existing scheme (other than the 1992 Scheme or the NFPS), or

- of an existing public body pension scheme (“P’s transitional scheme”) on 31 March 2012;
- (b) was an active member of the NFPS on the scheme closing date; and
- (c) would, unless P dies, reach normal pension age—
  - (i) under the NFPS during the period beginning with 2 April 2022 and ending with 31 March 2026, and
  - (ii) under P’s transitional scheme on or before 1 September 2025.

**Tapered protection: members of an existing scheme**

**19.** This paragraph applies if—

- (a) P was an active member of an existing scheme (other than the 1992 Scheme or the NFPS) or an existing public body pension scheme on the closing date for that scheme;
- (b) P was an active member of an existing scheme or an existing public body pension scheme (“P’s transitional scheme”) on 31 March 2012;
- (c) P begins service which is pensionable under the NFPS not more than five years after leaving pensionable service under an existing scheme other than the 1992 Scheme or the NFPS;
- (d) on the date that P begins service which is pensionable under the NFPS, P would have been a protected member of the existing scheme referred to in sub-paragraph (c) had P re-entered service which is pensionable under that scheme on that date; and
- (e) P would, unless P dies, reach normal pension age—
  - (i) under the NFPS during the period beginning with 2 April 2022 and ending with 31 March 2026, and
  - (ii) under P’s transitional scheme on or before 1 September 2025.

**Tapered protection: members of an existing public body pension scheme**

**20.** This paragraph applies if—

- (a) P was an active member of an existing scheme (other than the 1992 Scheme or the NFPS) or an existing public body pension scheme on the closing date for that scheme;
- (b) P was an active member of an existing scheme or an existing public body pension



scheme (“P’s transitional scheme”) on 31 March 2012;

- (c) P begins service which is pensionable under the NFPS not more than five years after leaving pensionable service under an existing public body pension scheme;
- (d) on the date that P begins service which is pensionable under the NFPS, P would have been a protected member of the existing public body pension scheme referred to in sub-paragraph (c) had P re-entered service which is pensionable under that scheme on that date; and
- (e) P would, unless P dies, reach normal pension age—
  - (i) under the NFPS during the period beginning with 2 April 2022 and ending with 31 March 2026, and
  - (ii) under P’s transitional scheme on or before 1 September 2025.

**Tapered protection members of an existing scheme or an existing public body pension scheme**

21. This paragraph applies if—

- (a) paragraph 13 or 14 of this Schedule would have applied but for the fact that P would not have been a fully protected member of the existing scheme or existing public body pension scheme referred to in paragraph 13(c) or 14(c), as the case may be, (“transferring scheme”) on the date P begins service which is pensionable under the NFPS; and
- (b) P would have been a protected member of the transferring scheme by virtue of an exception to which section 18(7)(a) and (b) of the 2013 Act (or that section as applied by section 31(4) of that Act) applies had P re-entered service which is pensionable under the transferring scheme on the date P returns to service which is pensionable under the NFPS.

**PART 4**

**1992 Scheme**

<i>Date of birth from</i>	<i>Date of birth to</i>	<i>Date of end of protection</i>
02/04/1967	01/05/1967	31/03/2022
02/05/1967	01/06/1967	06/02/2022
02/06/1967	01/07/1967	14/12/2021
02/07/1967	01/08/1967	23/10/2021
02/08/1967	01/09/1967	29/08/2021

02/09/1967	01/10/1967	06/07/2021
02/10/1967	01/11/1967	15/05/2021
02/11/1967	01/12/1967	21/03/2021
02/12/1967	01/01/1968	28/01/2021
02/01/1968	01/02/1968	05/12/2020
02/02/1968	01/03/1968	11/10/2020
02/03/1968	01/04/1968	22/08/2020
02/04/1968	01/05/1968	28/06/2020
02/05/1968	01/06/1968	07/05/2020
02/06/1968	01/07/1968	14/03/2020
02/07/1968	01/08/1968	21/01/2020
02/08/1968	01/09/1968	28/11/2019
02/09/1968	01/10/1968	05/10/2019
02/10/1968	01/11/1968	13/08/2019
02/11/1968	01/12/1968	20/06/2019
02/12/1968	01/01/1969	28/04/2019
02/01/1969	01/02/1969	05/03/2019
02/02/1969	01/03/1969	10/01/2019
02/03/1969	01/04/1969	22/11/2018
02/04/1969	01/05/1969	29/09/2018
02/05/1969	01/06/1969	07/08/2018
02/06/1969	01/07/1969	14/06/2018
02/07/1969	01/08/1969	22/04/2018
02/08/1969	01/09/1969	27/02/2018
02/09/1969	01/10/1969	04/01/2018
02/10/1969	01/11/1969	12/11/2017
02/11/1969	01/12/1969	19/09/2017
02/12/1969	01/01/1970	29/07/2017
02/01/1970	01/02/1970	04/06/2017
02/02/1970	01/03/1970	11/04/2017
02/03/1970	01/04/1970	21/02/2017
02/04/1970	01/05/1970	29/12/2016
02/05/1970	01/06/1970	06/11/2016
02/06/1970	01/07/1970	13/09/2016
02/07/1970	01/08/1970	23/07/2016
02/08/1970	01/09/1970	29/05/2016
02/09/1970	01/10/1970	05/04/2016
02/10/1970	01/11/1970	13/02/2016
02/11/1970	01/12/1970	20/12/2015
02/12/1970	01/01/1971	29/10/2015
02/01/1971	01/02/1971	05/09/2015
02/02/1971	01/03/1971	12/07/2015
02/03/1971	01/04/1971	24/05/2015

**NFPS**

<i>Date of birth from</i>	<i>Date of birth to</i>	<i>Date of end of protection</i>
02/04/1962	01/05/1962	31/03/2022
02/05/1962	01/06/1962	06/02/2022
02/06/1962	01/07/1962	14/12/2021
02/07/1962	01/08/1962	23/10/2021
02/08/1962	01/09/1962	29/08/2021

02/09/1962	01/10/1962	06/07/2021
02/10/1962	01/11/1962	15/05/2021
02/11/1962	01/12/1962	21/03/2021
02/12/1962	01/01/1963	28/01/2021
02/01/1963	01/02/1963	05/12/2020
02/02/1963	01/03/1963	11/10/2020
02/03/1963	01/04/1963	23/08/2020
02/04/1963	01/05/1963	30/06/2020
02/05/1963	01/06/1963	09/05/2020
02/06/1963	01/07/1963	15/03/2020
02/07/1963	01/08/1963	23/01/2020
02/08/1963	01/09/1963	30/11/2019
02/09/1963	01/10/1963	06/10/2019
02/10/1963	01/11/1963	15/08/2019
02/11/1963	01/12/1963	22/06/2019
02/12/1963	01/01/1964	30/04/2019
02/01/1964	01/02/1964	07/03/2019
02/02/1964	01/03/1964	12/01/2019
02/03/1964	01/04/1964	22/11/2018
02/04/1964	01/05/1964	29/09/2018
02/05/1964	01/06/1964	07/08/2018
02/06/1964	01/07/1964	14/06/2018
02/07/1964	01/08/1964	22/04/2018
02/08/1964	01/09/1964	27/02/2018
02/09/1964	01/10/1964	04/01/2018
02/10/1964	01/11/1964	12/11/2017
02/11/1964	01/12/1964	19/09/2017
02/12/1964	01/01/1965	29/07/2017
02/01/1965	01/02/1965	04/06/2017
02/02/1965	01/03/1965	11/04/2017
02/03/1965	01/04/1965	21/02/2017
02/04/1965	01/05/1965	29/12/2016
02/05/1965	01/06/1965	06/11/2016
02/06/1965	01/07/1965	13/09/2016
02/07/1965	01/08/1965	23/07/2016
02/08/1965	01/09/1965	29/05/2016
02/09/1965	01/10/1965	05/04/2016
02/10/1965	01/11/1965	13/02/2016
02/11/1965	01/12/1965	20/12/2015
02/12/1965	01/01/1966	29/10/2015
02/01/1966	01/02/1966	05/09/2015
02/02/1966	01/03/1966	12/07/2015
02/03/1966	01/04/1966	24/05/2015

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## **EXPLANATORY MEMORANDUM TO THE FIREFIGHTERS' PENSION SCHEME (WALES) REGULATIONS 2015**

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

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Firefighters' Pension Scheme (Wales) Regulations 2015. I am satisfied the benefits of making the Regulations outweigh any costs.

**Leighton Andrews AM**  
**Minister for Public Services**  
**9 March 2015**

## **Description**

1. To establish a scheme for the payment of pensions and other benefits to firefighters in Wales from 1 April 2015 onwards through the making of regulations, using the powers of the Welsh Ministers in relation to public service pension schemes for fire and rescue workers under sections 1 to 3, 7, 8, 12, 18 of, and Schedules 2, 3, and 5 to, the Public Service Pensions Act 2013 (“the 2013 Act”).

## **Matters of special interest to the Constitutional and Legislative Affairs Committee**

2. Under the 2013 Act, the Regulations must come into force by 1 April 2015. When the Regulations were in the final stages of preparation, it came to the Welsh Government’s attention that the Parliamentary Joint Committee on Statutory Instruments (“the JCSI”) had published a report criticising the drafting of three provisions in the Firefighters’ Pension Scheme (England) Regulations 2014 (“the English 2015 Scheme Regulations”). The Regulations are substantially based on the English 2015 Scheme Regulations and include the three provisions the JCSI criticised. The provisions in question in the Regulations are regulations 15 (scheme employment), 70(3) and (5) (early payment reduction) and 80 (option to commute lump sum). Despite the JCSI’s criticisms, the Welsh Government considers that the drafting of those provisions is effective.

3. As regards regulation 70(3) and (5), the Welsh Government’s understanding is that their drafting is consistent with provisions in other public service pension schemes dealing with actuarial reductions applied when members take early retirement. Further, the provision has been reviewed by pension’s specialists. Regulation 70(3) differs from the equivalent provision in the English 2015 Scheme Regulations because it provides that future increases in pension between the date an active member of the scheme aged 55 or over takes early retirement and their normal pension age should be in line with increases in earnings, rather than prices. As regards regulation 80, Welsh Government Legal Services have amended this provision to respond to specific drafting points the JCSI made in its report.

4. Although the Welsh Government is content that the drafting of the provisions is effective, it will further reflect on the JCSI’s concerns post-introduction of the Regulations and will consider whether it is appropriate to bring forward amending regulations in due course.

## **Legislative background**

5. The Welsh Ministers have the power to make regulations in relation to public service pension schemes for fire and rescue workers under sections 1 to 3, 7, 8, 12, 14, and 18 of, and Schedules 2, 3, and 5 to, the Public Service Pensions Act 2013 (“the 2013 Act”).

6. Under section 21 of the 2013 Act, the Welsh Ministers must consult such persons (or representatives of such persons) as appear likely to the Welsh

Ministers to be affected by them. Section 23 of the Act permits retrospective amendment of pension schemes but restricts the circumstances in which it is possible to do so.

7. These Regulations will follow the negative resolution procedure.

### **Purpose & intended effect of the legislation**

8. Responsibility for the firefighters' pension schemes in Wales is devolved to the Welsh Ministers under the Fire and Rescue Services Act 2004 and the 2013 Act.

9. In 2010, the UK Government commissioned Lord Hutton to chair the Independent Public Service Pensions Commission to review public service pensions and to make recommendations on how they can be made sustainable and affordable and fair in the long-term.

10. The Commission published its final report on 10 March 2011 and set out a number of recommendations including the adoption of a new career average revalued earnings (CARE) scheme for general use in the public service schemes, an increase in Normal Pension Age (NPA) in the new schemes in line with State Pension Age apart from the uniformed services (armed forces, police and firefighters) where the NPA would be set at 60 to reflect the unique characteristics of the work involved. In addition, the Commission recommended a tiered approach to employee contribution rates to address the differing characteristics of higher and lower earnings and best practice governance arrangements. The 2013 Act gave effect to these recommendations.

11. Following the principles to be applied across all public sector pension schemes, these Regulations now establish the Firefighters' Pension Scheme (Wales) 2015, the details of which are as follows:-

- **Regulations 1–3** are general introductory provisions, including the commencement date and a list of definitions.
- **Regulations 4– 14** detail the new governance arrangements including the establishment and membership of Local Pension Boards and the Firefighters' Pension Scheme Advisory Board for Wales, and stipulate the role of the scheme manager. They also confer a power on the Welsh Ministers and Scheme Managers to delegate their functions.
- **Regulations 15-17** set out the eligibility criteria for joining the scheme. If a person is eligible through more than one employment, they are permitted to hold a membership in respect of each scheme employment.
- **Regulations 18–25** deal with the automatic enrolment or re-enrolment for eligible individuals. Members have the right to opt out of the scheme. If they do so before the expiry of a three month period, it is taken that no pensionable service has been accrued. For any longer periods, however, scheme membership is accrued for the time in question.

- **Regulations 26–27** set out the elements that comprise a member’s “pensionable pay” and the circumstances in which “assumed pensionable pay” will apply.
- **Regulations 28–30** define the concepts of “active membership”, “deferred membership” and “pension credit member”.
- **Regulation 31** defines the “description of pension” for the purposes of pension accounts.
- **Regulation 32** explains how accrued pension should be calculated for the purposes of deferment and retirement. Any added pension that has been purchased is also taken into account.
- **Regulations 33 – 36** provide for an adjustment of the indexation to be applied to a type of pension in the leaving year. Whilst a member remains in active membership, accrued pension is increased annually so that it keeps pace with earnings. Members who continue to contribute to the Scheme after the NPA are awarded an “age addition” to maintain the overall value of the pension due to it being taken later.
- **Regulations 37– 38** outline the system of pension accounts, an essential feature of the career-average system.
- **Regulations 39– 42** introduce the detailed provisions relating to members’ accounts. If a member belongs to the Scheme through more than one contemporaneous employment, an active member’s account must be maintained for each. Members may receive a credit to their account in respect of membership that is transferred from another recognised scheme.
- **Regulations 43 – 46** specify the accrual rate as 1/61.4th, meaning that for each year of full membership, this fraction of the member’s pensionable pay is accrued in their account. It is also specified that during each year of active membership, pension earned in a previous year is increased by an index adjustment. When a member returns to active membership from a period of lower-tier ill-health, the pension that they had accrued earlier is protected.
- **Regulations 47 - 51** set out the provisions for added pension. A separate account is established if a member decides on this option, which should be operated in a similar method as the main account.
- **Regulations 52 – 58** set out the operation of deferred members’ accounts. Such an account should be opened at the same time as the active member’s account is closed if the member is not claiming a pension, with the addition of the appropriate index adjustment and, in respect of a member who is at least a month beyond the Normal Pension Age, the assumed age addition. A deferred member’s account is also established if a member ceases to be paid a lower tier ill-health pension. A deferred account is replaced by an active account

if a member returns to pensionable service within five years and the member's earlier accrued pension is restarted and recalculated so that the period of non membership is uprated in accordance with earnings.

- **Regulations 59 – 60**, retirement accounts are to be created, for either a retirement or an ill-health pension, replacing the active member's account. If a member opts for partial retirement, the existing active member account is closed, and the accrued pension transferred to a retirement account. The figure to be entered into the new retirement account must take into account a number of considerations, including the retirement index adjustment, any age addition, any added pension, any early payment reductions, any commutation amount and any allocation amount. A new active member's account is opened for the subsequent period of service.
- **Regulations 61 – 62** stipulate how, following the death of a member, a survivor's account should be established, for each survivor who is entitled to be a beneficiary.
- **Regulations 63 – 64** stipulate how a pension credit member's account should be established, following divorce or dissolution of a civil partnership. The account of the original scheme member is subjected to an appropriate pension debit.
- **Regulation 66** sets out the type of membership that counts as "qualifying service". This may include membership of one of the existing Firefighters' Pension Schemes or of some other pension scheme, or pension that has been transferred into the 2015 scheme.
- **Regulations 67 – 69** stipulate the conditions that need to be fulfilled if a member is to claim a retirement pension, including that the member has reached the age of 55 and has at least three months qualifying service. Formulae are specified for the purposes of calculating the annual rate of pension for both formerly active and formerly deferred members.
- **Regulations 70– 71** As identified above the scheme proposed in Wales is the same as the England scheme (as set out in The Firefighters' Pension Scheme (England) Regulations 2014 (SI 2014/2848), **except** in respect of early retirement from active service and the active accrual rate (Regulation 43). **Regulation 70** deals with early retirement reduction and it distinguishes between those members who are in active service and those who have left the scheme. Both active and deferred members may claim a retirement pension from the age of 55 onwards.

In calculating the reduction to an active member's pension, the value of the reduced pension payable should be compared to the present value of a pension payable at normal pension age, with future increases between the date of the member's early retirement and normal pension age being in line with increases under the index adjustment. This reflects the fact that had the member remained in employment to age 60, he/she could have expected an earnings adjustment increase on their pension to that age. The pension is then reduced to reflect the



fact it is being paid for longer. Once in payment, the pension is increased in line with the Pension Increases Act.

Regulation 70(3) specifies that the earnings adjustment will apply in the calculation of the member's early retirement pension, rather than separately rely on a reference to "actuarial guidance". Increases to a member's pension after normal pension age shall be in line with increases under the PIA 1971.

In summary, for an active member retiring between ages 55 and 60, the Scheme Actuary will prepare on behalf of Welsh Government a table for the administrators which shows the actuarial reduction which should apply under Regulation 70(3). This will reflect the earnings adjustments which apply to age 60. The resulting benefit is then subject to Regulation 68 which provides for increases to be applied under the Pension Increases Act each year.

- **Regulations 72 – 73** set out where a member aged at least 55 may exercise the option of partial retirement, receiving benefits accrued up to that point whilst remaining in pensionable service.
- **Regulations 74 – 76** state when a member may potentially be entitled to a lower tier or to a higher tier ill-health pension. To be entitled for a lower tier ill-health pension, a firefighter must be permanently incapable of undertaking the role in which they were last employed. To be entitled to the additional higher tier pension, a firefighter must be incapable of any regular employment, as defined in the Regulations. A particular formula is specified for calculating the level of pension in each case. There is also separate provision for the early payment of pension to a deferred member if the member is unable to undertake regular employment.
- **Regulations 77 – 78** set out the scheme manager's duties regarding the review of cases where members have been granted an ill-health award. In the case of a lower-tier ill-health member whose health has sufficiently improved, the entitlement to such a pension ceases following any offer of employment by the employer.
- **Regulations 79– 80** deal with the commencement of retirement pension, partial retirement pension, and ill-health pension, detailing the responsibilities of the scheme manager and of the member. Before payment of pension is commenced, a member may commute up to 25% into a lump sum cash payment at the rate of 12:1. A member cannot commute the higher tier element of an ill-health pension. The application of Regulation 80(4)(b) is hypothetical at present, and will remain so until and unless HMRC set a threshold below 25% for the proportion of pension which can be commuted without creating a scheme chargeable payment.
- **Regulations 81 – 84** deal with the process of allocation whereby an active or deferred member may allocate up to a third of the amount of the annual rate of retirement pension to their nominated beneficiary. If an allocation election takes effect, the member's retirement pension is reduced accordingly, although if

the beneficiary pre-deceases the member, the allocated portion is paid to the pensioner.

- **Regulations 85 – 86** introduce the survivor benefits that are available under the Scheme. These may be awarded to a spouse, civil partner or an individual in a long-term relationship with the member.
- **Regulations 87 – 89** set out the survivor's pension to be paid to those individuals who meet the criteria. Different formulae are stipulated according to whether the member was active, deferred or a pensioner.
- **Regulation 90** sets out a bereavement pension is payable to a survivor for a period of 13 weeks. Different formulae are stipulated according to whether the member was active or a pensioner.
- **Regulation 91** sets out survivor pensions are reduced if the survivor is more than 12 years younger than the member.
- **Regulation 92** defines the survivor's guaranteed minimum pension.
- **Regulations 93 – 94** introduce the provisions on children's pensions, which can include the entitlement to a bereavement pension. A number of criteria through which an individual can qualify as an "eligible child" are listed.
- **Regulations 95 – 97** set out the survivor's pension for eligible children. Different formulae are stipulated according to whether the member was active, deferred or a pensioner.
- **Regulation 98** states the rate of benefit payable to each eligible child is adjusted according to the number of eligible children in the family.
- **Regulations 99 – 101** set the rate of benefit is increased if there is no surviving partner or if the member was a pension debit member. A bereavement pension is payable to an eligible child if there is no surviving partner or if the partner dies within 13 weeks of the member's death.
- **Regulations 102 – 103** introduce the provisions on lump sum death benefits by providing definitions for "final pay" and "annualised final pay", both of which are necessary elements in the formulae for calculating such benefits.
- **Regulation 104** stipulates that the scheme manager has discretion to pay the lump sum death benefit to an individual with a connection to the member.
- **Regulations 105 – 107** makes clear different amounts are paid depending on whether the member is active or a pensioner. If on a member's death that individual was both an active and a pensioner member the option which produces the highest amount for the beneficiary should be used.

- **Regulation 108** provides formulae for a lump sum payable on the death of a pension credit member either before that member had received any benefit or before that member reached the age of 75. Different formulae should be used in each of those two scenarios.
- **Regulations 109 – 113** deal with the commencement, adjustment and cessation of death benefits. It is made clear that such survivor benefits may be adjusted or ceased if they were awarded on the basis of incorrect information.
- **Regulations 114 – 118** set out the benefits for pension credit members. The pension may only be claimed from the age of 65 onward. Up to a quarter of the pension may be commuted to a lump sum.
- **Regulation 119** specifies four different pay ranges and the pension contribution rate to be paid by members in each of those four bands for each of the four years from 2015 – 16 onward. Part-time regular firefighters pay at the rate of their whole time equivalents. Retained firefighters pay at the rate which applies to a regular firefighter employed in a similar role and with equivalent qualifying service.
- **Regulation 120** sets out the contributions that a member needs to pay during certain types of absence. If the member is absent due to illness, contributions are paid on the pay received, including statutory sick pay. Members who then move on to nil pay may, if they wish, make contributions on the basis of their pay immediately before cessation. Members may also make contributions when they are either absent on a trade dispute or on an authorised unpaid absence.
- **Regulations 121** deals with members during absences from work on reserve forces service leave. Those members who are treated as receiving assumed pensionable pay must pay contributions at the specified rate.
- **Regulation 122** deals with members on child-related leave. Those who are paid must pay contributions at the specified rate; whilst those on ordinary, but unpaid, leave are treated as if they had paid contributions. Those on additional leave may elect to pay contributions if they wish.
- **Regulations 123-124** deal with the timing and method of deductions of contributions for ordinary and additional pension.
- **Regulation 125** sets out where if an individual leaves the scheme before accruing a total of three months membership, providing that certain other conditions are met, all contributions are returned, minus a deduction equal to the income tax payable. All rights under the scheme are extinguished.
- **Regulation 126** sets out the employer must pay contributions on each member's pensionable earnings at a rate set by the Welsh Ministers after consultation with the Scheme Actuary.

- **Regulations 127 – 128** are when additional contributions are payable by the employer in the circumstances of an award being made for a member's ill-health, depending on whether only a lower tier pension has been awarded or whether a higher tier award has been added. Repayments are due from the scheme manager to the employer if it is determined to be appropriate that entitlement to either level of award should cease.
- **Regulation 129** sets out that employers must also pay additional contributions when they determine that a member should be paid a retirement pension before the Normal Pension Age without an actuarial reduction.
- **Regulations 130 – 133** make it clear that the Firefighters' Pension Fund to be used in respect of the 2015 scheme is the same Fund as that used for the existing schemes. The seven types of payment which need to be paid into the Fund by the scheme manager are listed. Repayments, refunds, benefits and transfer payments are to be made from the Fund.
- **Regulation 134** stipulates that the scheme manager must provide to the Welsh Ministers all necessary financial information by the stated deadlines.
- **Regulation 135** deals with estimated deficits. Where it is estimated that the amount to be paid out of the fund will exceed the amount to be paid into the fund in a particular financial year, the Welsh Ministers must pay such amount of the estimated deficit as the Welsh Ministers think fit.
- **Regulation 136** deals with estimated surpluses. Where it is estimated that the amount to be paid into the fund will exceed the amount to be paid out of the fund in a particular financial year, the scheme manager must pay such amount of the estimated surplus to the Welsh Ministers as the Welsh Ministers specify by written notice.
- **Regulation 137** deals further with deficits. Firstly, where it appears likely that the deficit for the financial year is likely to be either more or less than was estimated under Regulation 135, the Welsh Ministers, or the scheme manager, as the case may be, must make up the difference. Secondly, once the accounts have been audited, where it is evident that the deficit is either more or less than was previously estimated, the Welsh Ministers, or the scheme manager, as the case may be, must again make up the difference.
- **Regulation 138** deals further with surpluses. Firstly, where it appears likely that the surplus for the financial year is likely to be either more or less than was estimated under Regulation 136, the Welsh Ministers, or the scheme manager, as the case may be, must make up the difference. Secondly, once the accounts have been audited, where it is evident that the surplus is either more or less than was previously estimated, the Welsh Ministers, or the scheme manager, as the case may be, must again make up the difference.
- **Regulation 139** states a scheme manager must provide the Welsh Ministers with any such information in relation to the Firefighters' Pension Fund as the Welsh Ministers request.

- **Regulations 140 and 141** introduce Part 10 on transfers, giving the legislative context and a list of definitions.
- **Regulation 142** details the legislative restrictions relating to transfers out of the scheme. Transfers undertaken between public service bodies (and other, limited bodies) may be undertaken on 'Club' terms. The regulation specifies that Club transfers may only be made in the 12 months following the member becoming eligible for the new scheme concerned.
- **Regulations 143 – 144** sets out where a member wishing to transfer out of the scheme must obtain a statement of entitlement from the scheme manager. The statement should specify the value of the pension to be transferred as at a specified ("guarantee") date.
- **Regulation 145** states where having obtained such a statement, any member wishing to proceed with a transfer must submit a written notice to the scheme manager, specifying the other pension scheme or arrangement to which the transfer payment should be made.
- **Regulation 146** sets out the provisions on calculating the transfer value, which should be calculated using actuarial guidance as necessary. If the payment is made more than six months after the guarantee date, the amount of the guaranteed cash equivalent must be increased in accordance with the appropriate regulations.
- **Regulation 147** makes it clear that transfers of all the member's accrued pension results in all of the member's scheme rights being extinguished.
- **Regulations 148 - 149** introduce Chapter 3 on transfers into the scheme, providing a list of definitions.
- **Regulations 150 – 151** stipulate that a member may submit a written request to the scheme manager, requesting that specified rights from another named pension scheme be transferred into the firefighters' scheme. In turn, the scheme manager may require the member to obtain from the transferring scheme a statement of the amount to be transferred.
- **Regulations 152 and 154** state the amount of pension which the member is entitled to count as a result of the transfer. Under Regulation 153, the scheme manager may require the member to obtain from a transferring club scheme a statement of the amount of pension to be transferred.
- **Regulation 155** deals with transfers of employment within the fire service. When such transfers occur, scheme managers must provide to the member a certificate setting out the details of their pension account(s), including any additional pension.

- **Regulations 156–157** give rights to members who wish to dispute the information supplied in such a certificate. A member should firstly request that the accuracy be checked. A member who is still dissatisfied has the right to instigate the Internal Dispute Resolution Procedure.
- **Regulation 158** states the next stage is for an individual to give the certificate to the new employer, who must obtain confirmation from the original employer that all of the member's accounts have been dealt with. There are special procedures in place to deal with situations in which more than one account has to be closed or opened.
- **Regulation 159** deals with the appointment by the Welsh Ministers of a suitably qualified scheme actuary. The scheme manager must provide the actuary with sufficient data to enable valuations and reports of the scheme to be completed.
- **Regulation 160** Regulation 160 provides for the employer cost cap for the scheme which is 17.1% of pensionable earnings of members of the this scheme. The employer cost cap has been set by the 2012 valuation of the Firefighters' Pension Schemes in Wales. The next valuation of the scheme will be as at 31 March 2016, which will apply a cost cap from 1 April 2019. The regulations provide for Welsh Ministers to seek to reach agreement with scheme managers, employers and members (or their representatives) to achieve the target cost. That procedure involves consultation with the Firefighters' Pension Scheme Advisory Board for Wales for such a period as the Welsh Ministers considers appropriate, with a view to reaching a unanimous agreement with members of that Board. However, if agreement is not reached within 3 months after the end of that consultation, the Welsh Ministers must take steps to adjust the accrual rate to achieve the target cost of the scheme.
- **Regulation 161** stipulates that it is the role of the scheme manager to determine if an individual should be entitled either to an award or to retain such an award.
- **Regulations 162-163** detail it is the role of the Independently Qualified Medical Practitioner (IQMP) to advise on the health-related aspects of such determinations. In particular the IQMP is required to consider such issues as an individual's current and future capacity, both in a firefighting role and in general employment. Where the IQMP is able to give an opinion, this is binding on the scheme manager, unless it is superseded by a further IQMP response based on new evidence or by an appeal to the Board of Medical Referees.
- **Regulation 164** sets out where the scheme manager has sent to the member a copy of the documents relating to such a determination as outlined above where a member is entitled to appeal against the decision to a board of medical referees.
- **Regulations 165 – 166** set out the appeals process. The member must submit written notice of an appeal within 28 days of receiving all of the relevant documents (or within six months if extended by the scheme manager). The

scheme manager is obliged to send all necessary documentation to the Welsh Ministers, who must refer the appeal to a board of medical referees consisting of at least three members. Having obtained any further necessary information, the board must come to a decision on whether there is sufficient evidence to proceed and inform the scheme manager accordingly. The scheme manager must conclude this stage of the process by updating the member and the Welsh Ministers.

- **Regulation 167** states the board must inform both interested parties if it is going to determine an appeal. It must then proceed towards a decision by means of interview, medical examination and consideration of the written evidence.
- **Regulation 168** deals with the board's report, which must be submitted to the Welsh Ministers, for onward transmission to both parties. Where both parties agree that the board has made an error of fact which materially affected its decision, the board is obliged to reconsider, as detailed in Regulation 169.
- **Regulations 170 and 171** set down the procedures for fees and allowances to be paid to the board members and for the expenses of either party to be met, depending on the outcome of the case.
- **Regulation 172**, if relevant information is posted to the member at the member's last known place of residence, it is assumed as having been received, unless there is proof to the contrary.
- **Regulation 173** details for appeals of a non-medical nature, permits a member to appeal under the dispute resolution arrangements for the matter in question to be resolved.
- **Regulation 174** makes it clear that members have no right to anticipate that all matters related to pensions increase will be paid before the end of the scheme year in which they retire.
- **Regulation 175** applies to years when the Treasury determine that the economic conditions are such that pensions increase should be negative. In such circumstances, the scheme manager must inform members that any overpayment will be recovered by reducing or omitting future payments.
- **Regulation 176** provides an assurance to members that nothing in the Regulations will counter a member's statutory rights to a Guaranteed Minimum Pension.
- **Regulation 177** provides that a member entitled to a small pension, as defined in this Regulation, and in other legislation, may consent to receiving a lump sum in place of the pension.
- **Regulation 178** deals with individuals who become incapable of managing their own affairs, so that payments can be made for their benefit.

- **Regulation 179** applies on the death of a member, enabling payments to be made to those beneficially entitled to the deceased's estate or personal representatives where the Administration of Estates (Small Payments) Act 1965 applies.
- **Regulation 180** is a general provision to safeguard the legitimate payment of benefits to members' dependants.
- **Regulation 181** states that relevant offences (gravely injurious to the interests of the state and liable to loss of confidence in the public service) may result in the forfeiture of scheme benefits, although a guaranteed minimum would be retained. Scheme managers may subsequently restore benefits if they conclude that this would be appropriate.
- **Regulation 182** states no individual may benefit from survivor benefits if they are convicted of the murder of the member, whilst the benefits of individuals guilty of manslaughter may be withheld to the extent the scheme manager considers appropriate. If convictions are quashed, benefits are suitably restored.
- **Regulation 183** states no individual may benefit from lump sum death benefit if they are convicted of the murder or manslaughter of the member. If the conviction is quashed, benefits are suitably restored.
- **Regulation 184** states the scheme manager has powers to withhold certain benefits to a member who owes a monetary obligation to the employer or to the scheme.
- **Regulation 185** sets out that scheme managers also have powers to set off certain relevant monetary obligations owed by members to their employer or the scheme against the amount of a member's benefits.
- **Regulation 186** sets out how scheme managers are obliged to inform members in writing of any forfeiture or set-off procedure taken against them, including the provision of a certificate to show the amount of benefit concerned.
- **Regulations 187-189** confirms the scheme manager's responsibilities as regards the administration of taxation and sets out that a member may request the lifetime allowance charge is paid by the scheme administrator. Under regulation 189 if no such request is made and the scheme manager and member are jointly liable to pay the necessary charge, the amount of benefits payable is reduced accordingly.
- **Regulations 190 -191** oblige the scheme manager to inform members of any annual allowance charge, as necessary. Where the scheme manager pays any such liability, benefits for the relevant tax year are reduced accordingly.
- **Regulation 192** deals with how different periods of time should be measured under the Regulations. The scheme's primary measurement is years.



- **Regulation 193** obliges the scheme manager to provide an annual benefit statement to non-pensioner members.
- **Regulation 194** sets out where a scheme manager considers it necessary, to ask beneficiaries or potential beneficiaries for supporting evidence in order to demonstrate their entitlement.
- **Regulation 195** sets out a scheme manager is required to supply to members, who are about to commence reserve forces service leave, a statement giving details of assumed pensionable pay and the future contribution rates which will apply.
- **Regulation 197** imposes a duty on scheme managers to have regard to any guidance issued by the Welsh Ministers for the purpose of Part 13.
- **Schedule 1** specifies the procedures for making payments for added pension, setting out notice periods and the timing and limit for payments.
- **Schedule 2** sets out how long certain members of the 1992 and 2007 schemes may remain as members of those schemes, including a group of members whose protection is to be tapered as detailed in Part 3 of that Schedule.

12. It is intended the Regulations will come into force on 1 April 2015.

### **Consultation**

13. Two consultations were undertaken during 2014 with Chief Fire Officers, Chief Executives of local authorities, Welsh Local Government Association and representative bodies including the Fire Brigades Union, the Retained Firefighters' Union and the Association of Principal Fire Officers. The second and final consultation was also drawn to the individual attention of all firefighters in Wales by means of a circular letter from the Minister for Public Services. Please refer to the Regulatory Impact Assessment consultation paragraph below for further information.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **a) Options**

**Do Nothing** – The Public Services Pension Act 2013 provides for the establishment of new public service pension schemes from 1 April 2015. The 2013 Act provides that no benefits are to be provided under an existing scheme to or in respect of person in relation to the person's service after the closing date which for these regulations is 31 March 2015. If these regulations were not established then firefighters in Wales would not have access to a public service pension scheme.

**Make the Legislation** – The regulations will ensure firefighters in Wales are able to access to a pension scheme established under the Public Services Pension Act 2013.

## **b) Benefits**

The replies to the consultation have been considered. The main benefits of the new scheme are:-

- A Normal Pension Age (NPA) of 60 (and a deferred pension age of State Pension Age)
- A pension scheme based on career average revalued earnings (CARE)
- An accrual rate of 1/61.4th of pensionable earnings for each year of service
- Revaluation of past CARE service for active members in line with earnings
- Pensions in payment and in deferment indexed in line with prices<sup>1</sup>
- Flexible retirement from the scheme's minimum pension age of 55 built around the scheme's NPA of 60, with members being able to take their pension from the scheme's minimum pension age as follows:
  - for all active members who are aged 55 or more at retirement, 2015 scheme benefits taken before NPA will be actuarially reduced so that the reduced early retirement pension payable immediately is equal in value to the member's pension for service up to early retirement date if they had instead remained as an active member of the scheme until NPA or until an earlier exit due to death or ill health, with increases up to exit based on revaluation of past CARE service for active members.
  - all other members will have their 2015 scheme benefits actuarially reduced so that the reduced early retirement pension payable immediately is equal in value to the member's pension payable from deferred pension age indexed up to deferred pension age in line with prices.
- Optional commutation, with a 12:1 factor for converting pension to lump sum.
- Ancillary benefits (ill-health, death and survivors' benefits) that match the provisions that are currently available to new members (ie a lower tier ill health pensioner receives an unreduced CARE pension; a partner receives same proportion of member's pension as now)
- Members re-joining after a period of deferment of fewer than 5 years can link new service with previous service, as if they had always been active members (so previous accruals are indexed by earnings for that period of deferment)
- Members transferring between public service schemes would be treated as having continuous active service (which would include those transferring

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<sup>1</sup> Pensions in payment and in deferment are indexed with the Pension Increases Act 1971 and increases in line with this Act are assumed to be in line with the Consumer Prices Index.

between schemes who had re-joined public service after a gap of less than 5 years)

- There will be transitional protection as follows:
  - All accrued rights are protected and those past benefits will be linked to final salary when members leave the Firefighters' Pension Scheme 2015.
  - All active members who, as of 1 April 2012, have 10 years or less to their current NPA will see no change in when they can retire, or any decrease in the amount of pension they receive at the current NPA. This means these members will remain in their existing schemes and not transfer to the Firefighters' Pension Scheme 2015.
  - There will be a further 4 years of tapered protection for scheme members. This means members who are up to 14 years from their current NPA, as of 1 April 2012, will have limited protection so, on average, for every month of age they are beyond 10 years of their NPA, they gain about 53 days of protection, before they transfer to the Firefighters' Pension Scheme 2015.

### **c) Costs**

Costs for the firefighters' pension scheme in Wales are covered by employer and employee contributions, along with grant funding through Annual Managed Expenditure (AME) which is used to top-up the difference between scheme income and expenditure, funded by HM Treasury. This procedure will not change when the new scheme is introduced from 1 April 2015.

### **Consultation**

14. The initial consultation on the regulations to introduce a new Firefighters' Pension Scheme from April 2015 was published on 23 May 2014 for 12 weeks to 4 July 2014; four responses were received to the initial consultation. One of which included a proposal from a representative body for early retirement factors to be calculated on an active rather than on a deferred basis providing further enhanced actuarial reduction rates over what had been consulted on in the initial consultation. On 14 November 2014, the Welsh Government issued a nine week consultation on the draft regulations to introduce a new Firefighters' Pension Scheme from April 2015. This second consultation sought views in relation to scheme design on two alternative proposals:-

- i. a detailed scheme, which would mirror the Firefighter Pension Scheme to be introduced in England from 1 April 2015, where the actuarial reduction is based on Normal Pension Age (NPA) (Scheme A). This would mean a firefighter who wished to retire at age 55 would see his or her pension reduced by about 21%.
- ii. a scheme which would offer better early retirement terms than the English scheme where the actuarial reduction is based on NPA but on the

assumption that the employee remains an active member until NPA. This would mean a reduction at age 55 of only about 9%, and would be paid for by a lower annual accrual rate (Scheme B).

15. The consultation closed on Friday 16 January 2015. The consultation sought views in relation to three specific areas; scheme design (as detailed above), scheme governance and employee contribution rates. 32 responses were received to this consultation. Each of these areas are covered in more detail below:-

- **Scheme design**

The consultation sought specific views on the alternative proposals for scheme design as detailed in paragraph 12. The clear majority of respondents who expressed a view on the scheme design stated their preference for the design of the firefighter pension scheme in Wales was for Scheme B. They argued this scheme was fairer on firefighters who would struggle to maintain the Service's stringent fitness standards into their late fifties, and allowed them the option of retiring early without suffering the major reductions to the pension they could then claim under Scheme A.

In addition to the comments in relation to Scheme B, comments were received in relation to the tapered protection element of the scheme. It was felt the tapered protection should be available for all who reach 20 years of service by the cut off date, regardless of their age. A suggestion was provided to amend the regulations to provide the necessary taper tables and protection criteria for members of the modified version of the 2007 scheme

Additional comments related to the fitness standard and the unlikelihood of being able to carry out the full duties of an operational firefighter at 60. Some comments were received in relation to the inclusion of fire control staff in the scheme. Further respondents stressed the additional workload to ensure transitional/protection arrangements were correctly applied and expressed concern about possible ICT system issues associated with implementing the changes.

- **Employee Contribution Rates**

The Firefighters' Pension Scheme 2015 regulations also need to provide for the employee contribution rates which are payable by members of the scheme. In considering the employee contribution rates to apply for Wales, there is the requirement that the employee contribution rates across all the firefighters' pension schemes will average 13.2%. Six respondents accepted the increase. Comments included the consistency with other public service pension schemes across the UK although it was noted the rates should be transparent and justified to ensure sustainability of the scheme.

Five respondents felt the contribution rates were too high with concerns raised about the risk of staff withdrawing from the pension scheme as a result of the increases and concerns that it would discourage members from seeking promotion opportunities. A respondent expanded on their answer

stating the contribution rates for employees are considerably higher than the NFPS and even with the tapered introduction, firefighters will opt not to join the 2015 scheme.

Two respondents disagreed with the effect the proposals would have on existing members transferring from the FPS 1992 or NFPS 2007 scheme but accepted the protection provided to new entrants. Five respondents agreed the level of the tiered bands to be set each year from 2015-16 to 2018-19 were fair but acknowledged the majority of employee contributions will be made from those earners within the middle two tiers.

- **Governance Arrangements**

Of the 32 responses received, 9 had specific comments on the governance proposals. The key area for comment was concern on the knowledge and understanding required by Fire and Rescue Authorities (FRA) members to be part of the Local Pension Boards (LPBs) and Firefighter Pension Scheme Advisory Board for Wales. Nine respondents were content with the governance proposals. Comments included the need to have a Board which is clearly defined and transparent. Concerns were raised over the level of pensions' knowledge required to undertake an effective role on the Board and additionally the strain in attending numerous meetings.

A representative Body commented on the membership of the local pension boards and Scheme Advisory Board for Wales commenting that the employee representatives should be reflective of the scheme members. A comment was also raised about providing for LPBs to merge in future. The current regulations establish one LPB per Scheme Manager.

## **Welsh Government Response**

16. The Welsh Government has considered the responses to the consultation and remains committed to public service pension schemes which are affordable, sustainable and fair for public service workers. In considering these issues and in deciding on the scheme design, the Welsh Government has had due regard to the factors referred to in section 149 of the Equality Act 2010 (the public sector equality duty).

17. In terms of scheme design, the Welsh Government reflected on the responses to the proposals outlined in the consultation response on the alternative proposals for scheme design and confirms the agreed design to be Scheme B and these regulations reflect this design. The normal pension age for firefighters is now 60, with most other classes of public sector workers having a normal pension age of 65, under the Public Service Pensions Act 2013. However, almost all categories of such workers are not subject to fitness standards (and those who are, such as police officers, generally have pension schemes which are more beneficial in other ways). There is thus a strong argument for treating firefighters as a special case, and adopting a scheme with better early retirement benefits.

18. Comments were received from several respondents on extending the basis on which members of existing schemes acquire protected rights, meaning

they could stay in pension schemes of which they are currently members. The regulations make no such provision. Actuarial advice has indicated those costs would be in the order of £6 million over the seven years April 2015 to March 2022, with between 150 and 160 firefighters benefiting from them during this period. Extending protection would go above the HM Treasury's cost ceiling for the scheme. This means the cost would have to be met from severely constrained Welsh Government budgets which pay for other public services and other public sector workers. The Minister for Public Services determined that this could not be justified on value for money grounds.

19. The employee contribution rates will be introduced as consulted on and when the Firefighter Pension Scheme Advisory Board for Wales is established from April 2015 the Board will assess whether the yield is meeting the average year on year. If it appeared the yield would be greater or less than 13.2% then the tiers would need to be revised accordingly.

20. Over the last 12 months, officials have worked with the FRA through an interim Firefighter Pension Scheme Advisory Board for Wales to develop understanding of the new governance proposals however it is noted that the knowledge and understanding required is a challenge for the FRAs to take forward. Taking this into account, the regulations were amended to remove the requirement for the conditions of appointment as either member or employer representative from "capacity and understanding" to just "capacity". In addition, the regulations have been amended to remove the restriction on member representatives on local pension boards to those in scheme employment as there's no reason why pensioners or deferred members should be excluded. Concerns have been raised by the FRS that they have a limited pool of members and this would allow further flexibility in this respect.

21. For both the LPB and Firefighter Pension Scheme Advisory Board for Wales, the Fire Brigades Union (FBU) have, through the consultation and interim Board challenged the equal representation for employer and employee representatives. However, other comments received have disputed this and have confirmed the appropriateness of equal representation across all employee bodies. The Welsh Government believes the key issue should be breadth of representation across the scheme membership, not just weight of numbers. While the FBU is by far the largest representative body, its membership is derived largely from whole-time firefighting and front-line management grades. It has much lower membership from more senior management grades, and has only limited membership among retained firefighters (which particularly affects its coverage in Mid and West Wales and North Wales). Therefore, the Welsh Government concludes that membership should include all relevant representative bodies.

22. In terms of merging the LPBs this has been discussed through the interim Advisory Board where it was agreed it was appropriate to have three LPBs due to the possible conflict of considering another FRAs issues and that this would be reviewed through the Firefighter Pension Scheme Advisory Board for Wales.

## **Competition Assessment**

23. Not applicable.

### **Post implementation review**

24. The Welsh Government will continue to review the regulations, as advised by the Scheme Advisory Board. The scheme will be subject to actuarial valuations every four years, the next valuation being in 2016 and the UK government had committed to reviewing the impact of the Normal Pension Age of 60.

### **Equality Impact Assessment**

25. An equality impact assessment will be published on the Welsh Government Equality and Diversity webpage when the Scheme regulations are introduced.

# Agenda Item 4.2

## **Constitutional and Legislative Affairs Committee Draft Report CLA**

### **Title: The Control of Waste (Dealing with Seized Property)(England and Wales) Regulations 2015**

These Regulations strengthen existing powers for local authorities and Natural Resources Wales (and the Environment Agency in England) to seize vehicles suspected of involvement in fly-tipping and waste crime. They set out what an authority must do to ensure the safe custody and determine the rightful owner of any seized vehicle or other property, the circumstances in which an authority must return any vehicle or seized property to its rightful owner and the circumstances, in which it can sell, destroy or otherwise dispose of seized property. They also revoke the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 (S.I. 1991/1624).

**Procedure:** Negative

### **Technical Scrutiny**

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. These Regulations have not been made bilingually. Paragraph 2 of the Explanatory Memorandum explains (amongst other matters) that “this composite SI will apply to Wales and England [and] subordinate legislation made by the Welsh Ministers concurrently with Ministers of the UK Government and which is subject to UK Parliamentary [scrutiny] will be made in English only.” [Standing Order 21.2(ix) – not made bilingually]

### **Merits Scrutiny**

No points are identified for reporting under Standing Order 21.3 in respect of this statement.

### **Legal Advisers**

Constitutional and Legislative Affairs Committee  
March 2015



## **Government Response**

These composite Regulations will apply to England and Wales and are subject to negative resolution procedure in the National Assembly for Wales and in both Houses of the UK Parliament. Because the Regulations will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

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STATUTORY INSTRUMENTS

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**2015 No. 426**

**ENVIRONMENTAL PROTECTION, ENGLAND AND  
WALES**

**The Control of Waste (Dealing with Seized Property) (England  
and Wales) Regulations 2015**

*Made* - - - - - *3rd March 2015*  
*Laid before Parliament* *5th March 2015*  
*Laid before the National Assembly for Wales* *5th March 2015*  
*Coming into force* - - - *6th April 2015*

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The Secretary of State in relation to England, and the Welsh Ministers in relation to Wales, make these Regulations in exercise of the powers conferred by sections 5A(2) to (4), 6(1)(c) and (5) to (7) and 8(2) of the Control of Pollution (Amendment) Act 1989(a) and section 34C(2) to (4) of the Environmental Protection Act 1990(b).

## PART 1

### General

#### Citation, commencement and extent

**1.—(1)** These Regulations may be cited as the Control of Waste (Dealing with Seized Property) (England and Wales) Regulations 2015 and come into force on 6th April 2015.

**(2)** These Regulations extend to England and Wales.

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- (a) 1989 c. 14. In relation to Wales, the functions of the Secretary of State conferred by that Act were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and Schedule 1. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by the Government of Wales Act 2006 (c. 32), Schedule 11, paragraph 30. Section 5A was substituted (together with section 5) for section 5 as originally enacted, in relation to England and Wales, by the Clean Neighbourhoods and Environment Act 2005 (c. 16), section 37. Section 6 was amended by the 1990 Act, Schedule 15, paragraph 31 and the Environment Act 1995 (c. 25), Schedule 22, paragraph 37(4), and is repealed by S.I. 2015/425 on the same date as this instrument comes into force. Section 8(2) was amended by the Clean Neighbourhoods and Environment Act 2005, Schedule 4, paragraph 11(4). For the definition of “appropriate person”, see section 9(1) of the 1989 Act.
- (b) 1990 c. 43. In relation to Wales, the functions of the Secretary of State conferred by that Act were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and Schedule 1. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by the Government of Wales Act 2006 (c. 32), Schedule 11, paragraph 30. Section 34C was inserted, in relation to England and Wales, by the Clean Neighbourhoods and Environment Act 2005, section 46(1). For the definition of “appropriate person”, see section 29(1A) of the 1990 Act.

## Interpretation

### 2. In these Regulations—

“the 1989 Act” means the Control of Pollution (Amendment) Act 1989;

“the 1990 Act” means the Environmental Protection Act 1990;

“claim period” means the period determined in accordance with regulation 10;

“date of seizure” means the date on which the property was seized under section 5 of the 1989 Act(a) (power to require production of authority, stop and search etc.) or section 34B of the 1990 Act(b) (power to search and seize vehicles etc.);

“date of the determination notice” means the date on which the determination notice is given in accordance with regulation 12(2)(b);

“date of the seizure notice” means the first working day on which the period for display of the seizure notice begins in accordance with regulation 7(1)(a)(i);

“determination notice” means the notice given in accordance with regulation 12(1)(c);

“entitled person” means a person determined under regulation 12(1)(a) as entitled to all or part of the seized property;

“forfeiture offence” means an offence specified in section 33C(1) of the 1990 Act (section 33 offences: forfeiture of vehicles), in respect of which an order for forfeiture can be made under subsection (2) of that section(c);

“relevant collection period” means the period determined in accordance with regulation 12(1)(b)(ii);

“seizure authority” means—

(a) a regulation authority(d) on whose behalf property is seized under section 5 of the 1989 Act; or

(b) an enforcement authority(e) on whose behalf property is seized under section 34B of the 1990 Act;

“seizure notice” means a notice given in accordance with regulation 7(1);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(f).

## Notices

3.—(1) Any notice required by these Regulations to be served on or given to a person may be served or given by—

(a) personal delivery;

(b) leaving it at the person’s proper address; or

(c) sending it by post or by electronic means to the person’s proper address.

(2) Any such notice may—

(a) in the case of a body corporate, be served on or given to the secretary or clerk;

(b) in the case of a partnership, be served on or given to a partner or a person having control or management of the partnership business.

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(a) Section 5 was substituted (together with section 5A), in relation to England and Wales, by the Clean Neighbourhoods and Environment Act 2005, section 37. It was amended by the 1990 Act, Schedule 15, paragraph 31.

(b) Section 34B was inserted, in relation to England and Wales, by the Clean Neighbourhoods and Environment Act 2005, section 46(1). It was amended by S.I. 2005/2900, 2007/3538, 2010/675 and 2013/755.

(c) Section 33C was inserted, in relation to England and Wales, by the Clean Neighbourhoods and Environment Act 2005, section 44(1). Section 33C(1) was substituted, in relation to England and Wales, by S.I. 2007/3538 and amended, in relation to England and Wales, by S.I. 2010/675.

(d) For the definition of “regulation authority”, see section 9(1), (1A) and (1AA) of the 1989 Act.

(e) For the definition of “enforcement authority”, see section 34B(11) of the 1990 Act.

(f) 1971 c. 80.

- (3) For the purposes of this regulation, “proper address” means—
- (a) in the case of a body corporate or its secretary or clerk—
    - (i) the registered or principal office of that body; or
    - (ii) the email address of the secretary or clerk;
  - (b) in the case of a partnership or a partner or person having control or management of the partnership business—
    - (i) the principal office of the partnership; or
    - (ii) the email address of a partner or a person having that control or management;
  - (c) in any other case, a person’s last known address, including an email address.
- (4) For the purposes of this regulation, the principal office of a company registered outside the United Kingdom or of a partnership established outside the United Kingdom is its principal office in the United Kingdom.

## PART 2

### General duties in relation to seized property

#### **General duty in relation to seized property**

4. Where any property is seized on behalf of a seizure authority under section 5 of the 1989 Act or section 34B of the 1990 Act, the seizure authority must deal with the seized property in accordance with these Regulations.

#### **Duty of safe custody**

5. A seizure authority must keep the seized property in safe custody until—
- (a) any duty to return under regulation 14, 15(2)(b), 16(2)(b) or 17(2)(c) ceases in accordance with regulation 19(1); or
  - (b) where applicable, the ability to sell, destroy or otherwise dispose of the seized property arises in accordance with regulation 21 or 22.

#### **Ascertainment of entitled person**

6.—(1) Where the seized property is a vehicle, a seizure authority must, on the date of seizure or the first working day after that date—

- (a) request information as to the registered keeper of the vehicle—
  - (i) where there is a Great Britain or Northern Ireland registration mark, from the Driver and Vehicle Licensing Agency;
  - (ii) where there is a foreign registration mark, from the relevant authority in the country of registration; and
- (b) take reasonable steps to identify whether the vehicle is subject to a hire-purchase agreement and, if so, to identify the person entitled to possession of the vehicle under that agreement.

(2) In this regulation, “hire-purchase agreement” has the meaning given in section 189(1) of the Consumer Credit Act 1974(a) (definitions).

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(a) 1974 c. 39.

### Notice of seizure

7.—(1) A seizure authority must give notice of the seizure of property under section 5 of the 1989 Act or under section 34B of the 1990 Act by—

- (a) displaying a notice at the office of the seizure authority on whose behalf the seizure was made, for the period—
  - (i) beginning with the first working day after the date of seizure; and
  - (ii) ending 15 working days after that date; and
- (b) publishing such notice in a newspaper or on the seizure authority's website in accordance with regulation 8.

(2) A seizure notice must contain the following information—

- (a) a brief description of the seized property, including any registration mark;
- (b) the time and place where the property was seized;
- (c) the power under which the property was seized;
- (d) the name and contact details, including the address, of the seizure authority;
- (e) the address and contact details of where to claim entitlement to the property (if different from that given under sub-paragraph (d));
- (f) the claim period;
- (g) an explanation of the evidence that a claimant will need to provide to the seizure authority to establish entitlement to the seized property in accordance with regulation 11; and
- (h) an explanation that the seized property can be sold, destroyed or otherwise disposed of in accordance with regulation 21 if it is not claimed within the claim period or if a claimant who brought a claim within such period is not determined as entitled.

### Publication of seizure notice

8. The requirements in relation to publication in regulation 7(1)(b) are—

- (a) where publication is in a newspaper—
  - (i) the newspaper must be a local newspaper, or, if there is none, a local newsletter, circular or similar document, circulating within the area of the office of the seizure authority on whose behalf the seizure was made; and
  - (ii) the seizure notice must be published on at least one occasion within the period beginning with the date of the seizure notice and ending 15 working days after that date;
- (b) where publication is on the seizure authority's website—
  - (i) the website must be its only website or, if not, the website that is wholly or mainly used by the authority to publicise matters relating to waste; and
  - (ii) the seizure notice must be published for the period beginning with the first working day after the date of the seizure notice and ending 15 working days after that date.

### Service of seizure notice

9.—(1) A copy of the seizure notice must be served on—

- (a) the chief officer of police for the police area in which the property was seized;
- (b) the person (if any) identified as the registered keeper under regulation 6(1)(a); and
- (c) the person (if any) identified as entitled to possession under regulation 6(1)(b).

(2) The copy of the seizure notice must be served—

- (a) in the case of notice served under paragraph (1)(a) or (b), within the period beginning with the date of the seizure notice and ending 5 working days after that date;

- (b) in the case of notice served under paragraph (1)(c), within the period beginning with the date on which the person entitled to possession was identified and ending 5 working days after that date.

(3) In this regulation, “chief officer of police” has the meaning given in section 101(1) of the Police Act 1996(a) (interpretation).

## PART 3

### Retention and return of seized property

#### Claim period

**10.** A person may make a claim of entitlement to seized property, accompanied by the evidence required by regulation 11, within the period—

- (a) beginning with the date of seizure; and
- (b) ending 15 working days after the date of the seizure notice.

#### Evidence for determination of entitlement

**11.—**(1) The evidence accompanying a claim under regulation 10 must be sufficient to enable the seizure authority to make a determination of entitlement to the seized property and must include—

- (a) the claimant’s name, address and proof of identity;
- (b) where an agent makes the claim on behalf of their principal, the information in subparagraph (a) in respect of the agent and proof of authority to act as agent;
- (c) where the seized property is a vehicle with a registration mark, and the person claiming entitlement purports to be the registered keeper of the vehicle, the registration document.

(2) Where the claimant does not provide sufficient information to satisfy the requirements of paragraph (1), the seizure authority must, within the period beginning with the date on which the claim is made under regulation 10 and ending 1 working day after that date, require the claimant to provide such information within 2 further working days.

#### Determination of entitlement

**12.—**(1) Where a claim is made which satisfies the requirements of regulation 10, a seizure authority must—

- (a) determine entitlement in respect of a claim;
- (b) where a claimant is determined as entitled, determine—
  - (i) whether a duty to retain arises under regulation 15(2)(a) or 16(2)(a); and
  - (ii) where such a duty does not arise, the period for collection, which is the period beginning with the date of the determination notice and ending 10 working days after that date; and
- (c) give notice of such determination.

(2) The notice under paragraph (1) must—

- (a) meet the requirements of regulation 13; and
- (b) be given within the period—
  - (i) beginning with the date on which the claim was made and ending 3 working days after that date; or

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(a) 1996 c. 16.

- (ii) where applicable, beginning with the date on which evidence was provided in accordance with regulation 11(2) and ending 3 working days after that date.

(3) Where there is more than one claim to the seized property or any part of the seized property, a seizure authority must determine under paragraph (1) which person is entitled to such property (including any part of that property) on the basis of the evidence provided to the authority.

### **Content of determination notice**

**13.** The determination notice must state—

- (a) where the determination is of entitlement to all or part of the seized property—
  - (i) the determination of entitlement;
  - (ii) the property to which the determination relates; and
  - (iii) whether the property is to be—
    - (aa) collected, where regulation 12(1)(b)(ii) applies, and accordingly the relevant collection period and details to enable collection by the claimant including contact details, the place and any times for collection;
    - (bb) retained in accordance with regulation 15, and accordingly the determination as to retention and an explanation of the ability to retain in accordance with that regulation; or
    - (cc) retained in accordance with regulation 16, and accordingly the determination as to retention, and the periods for retention and return as determined in accordance with that regulation;
- (b) where the determination is that a person is not entitled to all or part of the seized property—
  - (i) the determination that the claimant is not entitled;
  - (ii) the property to which the determination relates; and
  - (iii) an explanation that the seized property can be sold, destroyed or otherwise disposed of in accordance with regulation 21.

### **Return of seized property**

**14.** Where a seizure authority has made a determination in accordance with regulation 12(1)(b)(ii), it is under a duty to return the seized property by enabling the entitled person to collect the seized property to which that person is entitled within the relevant collection period.

### **Retention and return when court proceedings have been commenced**

**15.—**(1) A seizure authority must deal with seized property in accordance with paragraph (2) where—

- (a) before the date of the determination notice, the authority has commenced proceedings in respect of the offence, or one of the offences, in relation to which the property was seized;
  - (b) such an offence is a forfeiture offence; and
  - (c) the authority is of the opinion that it is necessary to retain the seized property in respect of such proceedings.
- (2) The duty in relation to the seized property is to—
- (a) retain it during the continuance of such proceedings while the seizure authority is of the opinion in paragraph (1)(c); and
  - (b) return it in accordance with regulation 18.



**Retention and return when an offence is being investigated**

**16.**—(1) A seizure authority must deal with seized property in accordance with paragraph (2) where—

- (a) before the date of the determination notice, the authority is investigating an offence in respect of which the property was seized; and
- (b) the authority is of the opinion that it is necessary to retain the property in order to investigate the offence.

(2) The duty in relation to the seized property is to—

- (a) retain it during the continuance of the period determined in accordance with paragraph (3) while the seizure authority is of the opinion in paragraph (1)(b); and
- (b) return it during the period determined in accordance with paragraph (4), in accordance with regulation 18.

(3) The period for retention is the period which—

- (a) begins with the date of the determination notice; and
- (b) ends no later than—
  - (i) 15 working days after that date; or
  - (ii) 30 working days after that date, where the seizure authority is the Environment Agency or the Natural Resources Body for Wales and the offence, or one of the offences, in respect of which the property was seized is a forfeiture offence.

(4) The period for return is the period which—

- (a) begins with the last day of the period in paragraph (3); and
- (b) ends 10 working days after that date.

**Retention and return when court proceedings are commenced during the retention period**

**17.**—(1) A seizure authority must deal with seized property in accordance with paragraph (2) where—

- (a) during the period for retention (determined in accordance with regulation 16(3)) the seizure authority has commenced court proceedings in respect of the offence, or one of the offences, in respect of which the property was seized;
- (b) such an offence is a forfeiture offence; and
- (c) the authority is of the opinion that it is necessary to retain the seized property in respect of such proceedings.

(2) The duty is to—

- (a) retain the seized property during the continuance of proceedings while the seizure authority is of the opinion in paragraph (1)(c);
- (b) notify the entitled person of the commencement of such proceedings and of the effect of this regulation; and
- (c) return the property in accordance with regulation 18.

**Duty to return arising during the retention period**

**18.**—(1) Where a seizure authority retains property in accordance with regulation 15(2)(a), 16(2)(a) or 17(2)(a), it must return the seized property to the entitled person and, unless a court order provides for the return of the seized property, it must give notice of the return of the seized property in accordance with paragraph (2), where—

- (a) the authority is no longer of the opinion that it is necessary to retain such property in accordance with the appropriate regulation; or
- (b) proceedings have been discontinued or have ended.

(2) A notice under paragraph (1) must be given within the period beginning with the date on which paragraph (1)(a) or (1)(b) applies and ending 1 working day after that date, and must state that the seized property may be—

- (a) collected within the period beginning with the date of the notice under this regulation and ending 10 working days after that date; and
- (b) sold, destroyed or otherwise disposed of in accordance with regulation 21, if it is not collected within that period.

### **Ending of duty to return**

**19.**—(1) Where a duty to return has arisen under regulation 14, 15(2)(b), 16(2)(b) or 17(2)(c), the duty ceases—

- (a) on the return of the seized property;
- (b) where the court makes an order for forfeiture of the seized property; or
- (c) where the entitled person has not collected the seized property by the end of—
  - (i) the period determined in accordance with regulation 16(4) or, if applicable, 18(2)(a); or
  - (ii) otherwise, the relevant collection period.

(2) Where the duty to return ceases, any duties of the seizure authority applicable at that date in relation to the seized property under Part 2 or this Part cease to apply.

## **PART 4**

### **Sale, destruction and disposal of seized property**

#### **Prohibition of sale etc.**

**20.** A seizure authority must not sell, destroy or otherwise dispose of seized property other than in accordance with this Part.

#### **Circumstances permitting sale etc.**

**21.** A seizure authority may sell, destroy or otherwise dispose of seized property where a seizure notice has been published and served in accordance with regulations 7 to 9 and—

- (a) the claim period has ended and no claim was made;
- (b) a claim was made within the claim period but the seizure authority did not determine that the claimant was entitled; or
- (c) a duty to return arose but has ceased in accordance with regulation 19.

#### **Immediate disposal**

**22.** Where the condition of any seized property requires its disposal without delay, a seizure authority may immediately dispose of such property and accordingly—

- (a) the requirements of regulation 21 are dispensed with; and
- (b) the duties placed on the seizure authority under Part 2 or 3 of these Regulations, if applicable at the time of such disposal, cease to apply.

#### **Notice of sale**

**23.** Where a seizure authority has sold seized property in accordance with regulation 21, it must give notice of this within 10 working days of the sale—

- (a) to any person notified in respect of such property under regulation 9(1)(a); and

- (b) where the seized property is a vehicle with a Great Britain or Northern Ireland registration mark, to the Driver and Vehicle Licensing Agency.

#### **Notice of destruction or disposal**

**24.** Where a seizure authority has destroyed seized property in accordance with regulation 21, or disposed of such property in accordance with regulation 21 or 22, it must give notice of this within 10 working days of the destruction or disposal to any person notified in respect of such property under regulation 9(1)(a).

#### **Proceeds of sale**

**25.—**(1) Subject to paragraph (2), a seizure authority may use the proceeds of the sale of any seized property sold under regulation 21 towards meeting expenses incurred by the authority in exercising its functions under—

- (a) section 5 or 5A of the 1989 Act; or
- (b) section 34B or 34C of the 1990 Act.

(2) A seizure authority must pay the net proceeds of sale of any seized property sold under regulation 21 to any person who, before the end of the period of three months beginning with the date on which the property is sold—

- (a) provides the evidence specified in regulation 11(1); and
- (b) satisfies the authority that at the time of the sale that person was entitled to the property.

(3) Where there is more than one person who claims entitlement to the seized property or any part of the seized property under paragraph (2), a seizure authority must determine which person was entitled to such property (including any part of that property) on the basis of the evidence provided to the authority.

(4) In paragraph (2), “the net proceeds of sale” means any sum by which the proceeds of the sale of the seized property exceed the total expenses incurred by the seizure authority in respect of the seizure, retention and sale of that property.

## **PART 5**

### **Revocation and saving**

#### **Revocation**

**26.** The Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991(a) are revoked.

#### **Saving**

**27.** Notwithstanding regulation 26, the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 continue to have effect in relation to any vehicle seized under section 6 of the 1989 Act(b) (seizure and disposal of vehicles used for illegal waste disposal) before 6th April 2015.

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(a) S.I. 1991/1624, amended by S.I. 1997/2971 and 2011/988.

(b) Section 6 was amended by the 1990 Act, Schedule 15, paragraph 31 and the Environment Act 1995 (c. 25), Schedule 22, paragraph 37(4), and is repealed by S.I. 2015/425 on the same date as this instrument comes into force.

3rd March 2015

*Dan Rogerson*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural Affairs

3rd March 2015

*Carl Sargeant*  
Minister for Natural Resources, one of the Welsh Ministers

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations provide for how seized property must be dealt with in England and Wales, where property is seized under section 5 of the Control of Pollution (Amendment) Act 1989 (c. 14) (“the 1989 Act”) (power to require production of authority, stop and search etc.) or section 34B of the Environmental Protection Act 1990 (c. 43) (“the 1990 Act”) (power to search and seize vehicles etc.). The Environment Agency, the Natural Resources Body for Wales and a waste collection authority (“a seizure authority”) can seize property under these powers.

Part 2 sets out the general duties of a seizure authority in relation to seized property, including keeping the property in safe custody until it is returned or disposed of (regulation 5). Where the seized property is a vehicle, the seizure authority must take steps to identify the registered keeper or person entitled to possession (regulation 6). The seizure authority must take steps to inform persons who may be entitled to seized property of the seizure (regulations 7 to 9).

Part 3 provides for the retention and return of seized property. The seizure authority must return it if a person has claimed the seized property within a prescribed period and the authority has determined that the person is entitled (regulations 10 to 14). If the property was seized in respect of an offence specified in section 33C(1) of the 1990 Act (section 33 offences: forfeiture of vehicles) and court proceedings are commenced in respect of such an offence, the seizure authority must retain and return the seized property in prescribed circumstances (regulations 15 and 17). If there is an investigation of an offence in respect of the seized property, the seizure authority must retain and return the property in prescribed circumstances (regulation 16). The seizure authority must return the seized property in the circumstances mentioned in regulation 18. The duty to return ends in the circumstances mentioned in regulation 19.

Part 4 provides for when seized property may be sold, destroyed or disposed of. Sale, destruction or disposal of seized property is permitted where the notification requirements in Part 2 have been complied with, the claim period has ended and no valid claim has been made in accordance with Part 3, or the duty to return arose but has ceased (regulation 21). Notification of sale, destruction or disposal is required (regulations 23 and 24). Sale proceeds may be used to meet certain expenses incurred by the seizure authority but a person who can show entitlement to the property within three months of the date of sale may claim the net proceeds of sale (excluding expenses incurred in relation to the seizure, retention and sale of that property) (regulation 25).

Part 5 provides for the consequential revocation of the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 (S.I. 1991/1624), which relate to the treatment of vehicles seized under section 6 of the 1989 Act (regulation 26). Regulation 27 provides that those Regulations continue to have effect in relation to vehicles seized under section 6 before 6th April 2015.

An impact assessment has not been produced for this instrument as no impact on the costs of business is foreseen. An Explanatory Memorandum is available alongside the instrument at [www.legislation.gov.uk](http://www.legislation.gov.uk).

**Explanatory Memorandum to The Control of Waste (Dealing with Seized Property) (England and Wales) Regulations 2015.**

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

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Control of Waste (Dealing with Seized Property) (England and Wales) Regulations 2015. I am satisfied that the benefits outweigh any costs.

Carl Sargeant AM

Minister for Natural Resources  
3 March 2015

## **1. Description**

These Regulations strengthen existing powers for local authorities and Natural Resources Wales (and the Environment Agency in England) to seize vehicles suspected of involvement in fly-tipping and waste crime. They set out what an authority must do to ensure the safe custody and determine the rightful owner of any seized vehicle or other property, the circumstances in which an authority must return any vehicle or seized property to its rightful owner and the circumstances, in which it can sell, destroy or otherwise dispose of seized property. They also revoke the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 (S.I. 1991/1624).

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

The Clean Neighbourhoods and Environment Act 2005 (Commencement No. 6 and Saving) (England and Wales) Order 2015 Order commenced, in so far as they are not already in force in relation to Wales, sections 37 (enforcement powers: which inserts a new section 5 and 5A into the Control of Pollution (Amendment) Act 1989) and 46 (power to search and seize vehicles: which inserts a new section 34B and (C) into the Environmental Protection Act 1990) of the Clean Neighbourhoods and Environment Act 2005 (“the 2005 Act”), which will enable enforcement authorities to seize vehicles for a wider range of suspected offences, if they have reasonable grounds to believe or suspect that an offence has been committed.

The Control of Waste (Dealing with Seized Property) (England and Wales) Regulations 2015 set out how seized property must be dealt with in England and Wales, where property is seized under section 5 of the Control of Pollution (Amendment) Act 1989 (c. 14) (“the 1989 Act”) (power to require production of authority, stop and search etc.) or section 34B of the Environmental Protection Act 1990 (c. 43) (“the 1990 Act”) (power to search and seize vehicles etc.). The Environment Agency, the Natural Resources Body for Wales, a waste collection authority or local authority in Wales (“a seizure authority”) can seize property under these powers.

On the basis that the issues facing local authorities and Natural Resources Wales (NRW) in dealing with waste crime are the same and some operators work cross-border the proposals will be implemented through composite Regulations with Defra so that local authorities in Wales and NRW have the same enforcement powers as local authorities and Environment Agency in England. This composite SI will apply to Wales and England. Subordinate legislation made by the Welsh Ministers concurrently with Ministers of the UK Government and which is subject to UK Parliamentary will be made in English only.

By virtue of section 8 Control of Pollution Act 1989, and section 161 Environmental Protection Act 1990, regulations made under these Acts are in this instance, subject to negative Assembly procedure.

### **3. Legislative background**

The Welsh Ministers can make the Control of Waste (Dealing with Seized Property) (England and Wales) Regulations, using the powers conferred by sections 5A(2) to (4), 6(1)(c) and (5) to (7) and 8(2) of the Control of Pollution (Amendment) Act 1989 (“the 1989 Act”) and section 34C(2) to (4) of the Environmental Protection Act 1990 (“the 1990 Act”). In relation to Wales, the functions of the Secretary of State conferred by the 1989 and 1990 Acts were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and Schedule 1. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by the Government of Wales Act 2006 (c. 32), Schedule 11, paragraph 30. Paragraph 34 of Schedule 11 transfers equivalent to parliamentary procedure to the Assembly, in relation to regulations made under the Environmental Protection Act 1990.

Relevant functions of the Environment Agency under section 5 of the 1989 Act and section 34B of the 1990 Act have been transferred to Natural Resources Wales under the Natural Resources Body for Wales (Functions) Order 2013 so that the NRBW will be designated as the “seizure authority” for the purposes of these regulations.

This Statutory Instrument is subject to annulment by the National Assembly for Wales and follows the negative procedure.

### **4. Purpose & intended effect of the legislation**

Waste crime blights the areas where it occurs, can pose a risk to the environment and human health, and affects the livelihoods of those involved in the legitimate waste management industry. There are the obvious illegal fly-tips that blight our streets and countryside. But often fly-tipping is a result of other crimes involving, for example, breaches of waste controls that are meant to ensure waste is dealt with responsibly and waste being described or treated incorrectly. Many people and businesses are also duped into paying illegal operators who they believe will deal with their waste responsibly but who then dump the waste illegally. More widely, waste crime has been estimated by the Environmental Services Association Education Trust to cost the UK economy £568m per year.

The impacts of waste crime and illegal dumping include:

- a reduction in the quality of local environments;
- cost and aggravation for landowners, and the enforcement authorities who are

left to deal with waste that is dumped illegally;  
pollution of the environment and, sometimes, risks to human health; and  
the legitimate majority of the waste management industry being undermined.

The overall purpose of these additional powers is to simplify the regulatory regime, thereby reducing the number of fly-tipping incidents, breaches of the duty of care, illegal waste sites and unregistered waste carriers. This will reduce costs for enforcement authorities to tackle non-compliant operators, simplify the enforcement process and will be welcomed by the legitimate industry which makes up the vast majority of operators.

The Welsh Government works with Natural Resources Wales (NRW), Keep Wales Tidy, local authorities and landowners on fly-tipping prevention measures, including education campaigns, training and best practice guidance. However, enforcement is an important arm of the overall approach, focussed on those who blatantly and persistently break the law. Local authorities and NRW have a range of powers at their disposal, including statutory notices, fixed penalty notices, prosecution and the power to seize vehicles with a warrant (for limited offences and reasons). While at present some local authorities make occasional use of the existing seizure powers, most are put off by their limited application as well as the cost and bureaucracy surrounding the process. As such, the powers are not as effective as they might be and local authorities and NRW are deprived of a tool which could significantly enhance their enforcement against waste crime.

Local authorities, NRW and the Environment Agency currently have the power to seize a vehicle where they have reasonable grounds to believe that an offence under section 33 of the Environmental Protection Act 1990 (the deposit, treatment or disposal of waste without a permit) has been committed. However, they can only seize a vehicle to ascertain who was using it at the time the offence was committed and must return it once the registered keeper is identified. The seizure process can be slow, expensive and burdensome given that they must obtain a warrant from a magistrate prior to seizing the vehicle and then publish details of the seizure in a local newspaper.

The Clean Neighbourhoods and Environment Act 2005 amended the Control of Pollution (Amendment) Act 1989 and the Environmental Protection Act to broaden the range of offences for which a vehicle can be seized and to remove the need for a warrant to be obtained before seizure.

These new Regulations will allow enforcement authorities to carry out more effective enforcement of waste controls and continue to contribute to a reduction in illegal waste activity. The powers will reduce unnecessary bureaucracy for frontline enforcement authority staff. There will be benefits for enforcement authorities but also for the waste management industry as more effective action to tackle illegal



waste activity will help create a level-playing field for legitimate businesses, especially waste carriers. Benefits will also be passed on to the public sector as a result of a reduction of illegal waste dumping. Magistrates will no longer have to issue a warrant for seizure.

The policy objective is to reduce criminal waste activity. Improving and strengthening existing powers for enforcement authorities to seize vehicles suspected of involvement in waste crime would facilitate investigations, disrupt illegal activity and penalise those involved. We would expect the number of vehicle seizures to increase as a result of the introduction of these revised powers, contributing to a fall in the number of fly-tipping incidents.

The enhanced powers would be seen as part of the tougher approach in tackling waste crime so we can also expect support from business organisations. There are no burdens on waste carriers or other businesses other than those suspected of committing an offence.

## **5. Consultation**

Defra and the Welsh Government held a formal consultation between 13 June and 17 September 2008 on commencing the powers in the Clean Neighbourhoods Act with a view to making regulations that would:-

- broaden the range of waste offences for which a vehicle can be seized by enforcement authorities to include flytipping, operation of an illegal waste site and carrying controlled waste while unauthorised to do so;

- remove the need for a warrant before seizure to reduce the cost and complexity of the system and enable an authority to react more quickly to a suspected offence;

- further reduce costs by allowing an authority to publish a notice of seizure in a local newspaper or on its website, rather than the mandatory newspaper advert at present;

- allow local authorities to retain a seized vehicle for up to 15 days and the Environment Agency up to 30 days; and

- introduce strict controls on how and when a vehicle must be returned to its rightful keeper.

The consultation revealed widespread support for these measures from both the business community and enforcement bodies. The vast majority of respondents supported the introduction of measures to support what they felt would be more effective powers to tackle waste crime.

Following the consultation in 2008, there was a change in UK Government at Ministerial level leading to a review of the proposed changes in Defra which resulted

in the October 2009 commencement order date being missed and the proposals being mothballed.

This work was later picked up and these proposals were then subject to a joint 7 week consultation with Welsh Government and Defra from 15 December 2014 to 3 February 2015. The consultation sought views on proposals to commence powers to help enforcement authorities to disrupt and prevent illegal waste activities more effectively than at present, reducing the impact of waste crime on the environment, while helping to bring about a level playing field for the legitimate waste industry and encouraging growth through investment.

There were 15 responses to the consultation in Wales broken down as follows: 5 (33%) from local authorities, 5 (33%) from professional bodies, 2 (13%) from private businesses), 2 (13%) from Individuals and 1 (7%) from a charity. Organisations who responded included Keep Wales Tidy, Institution of Civil Engineers Wales Cymru, National Farmers Union Cymru, Chartered Institute of Waste management (CIWM), Country Land and Business Association (CLA) and UK Environmental Law Association (Wales). The consultation was primarily aimed at enforcement authorities. As a result many of those who responded felt it inappropriate to comment on many of the questions and restricted themselves to general comments and or answering some of the questions.

Overall there was near unanimous support for the proposed changes although business and some professional bodies had some concerns about the potential negative impacts on business (legitimate or otherwise) and the balance of enforcement in favour of government agencies/LA's (i.e. a level playing field) and large businesses (i.e. LA owned large employer or not for profit utility company). The rest, although supportive of the changes provided some caveats and additional advice. These included:

- raising awareness (i.e. a communications campaign) of responsibilities to existing duties particularly to householders and to raise awareness of these changes.

- guidance on these regulations to explain in more detail rights and responsibilities when using these powers.

- additional finance (for local authorities) for implementing these powers due to perceived extra running costs/administrative burdens.

There were a number of issues raised in the responses which we have considered further with Defra and some additional changes to the Regulations which address these concerns have been proposed. These are:-

amend Regulation 8 so that the publication period in a newspaper and on a website ends 15 working days after the date of the seizure notice. This is to take into account the difference between the publication period of the seizure notice in a newspaper and on a website.

ensure that an extended retention period (of 30 days) for seized vehicles be available to NRW (and 15 days for local authorities);

amend the definition of “net proceeds of sale” in Regulation 25 to ensure that, where the owner of the property makes a valid claim after its sale, the enforcement authority is only required to return the sale proceeds after the deduction of any costs incurred as a result of the sale.

produce a guidance document for enforcement authorities explaining in more detail their rights and responsibilities when exercising these powers and raise awareness of the enhanced powers to ensure that they act as a deterrent for possible offenders.

## **6. Regulatory Impact Assessment (RIA)**

Use of the powers provided by the Regulations will be undertaken by Natural Resources Wales (NRW) in relation to Wales (acting as a regulation authority under section 5 of the 1989 Act) and by waste collection authorities (where acting as an enforcement authority under section 34 B of the 1990 Act). The proposal will not result in any costs to legitimate businesses and will result in long term cost savings in relation to reduced fly-tipping incidents and other waste crime. It is presumed that NRW and local authorities acting as the seizure authority will seek to recover their full costs in successful prosecutions made against environmental offenders. The full costs would include the seizure authority’s investigation and enforcement costs and any costs associated with the seizure of the vehicles. Following the consultation, Regulation 25 amends the definition of “net proceeds of sale” to ensure that, where the owner of the property makes a valid claim after its sale, the enforcement authority is only required to return the sale proceeds after the deduction of any costs incurred (as well as after the deduction of any costs of the seizure and retention of the property).

Because there were no costs to legitimate business and the costs resulting from this policy on business would be less than £1m per annum Defra were not required to prepare a full Impact Assessment. An impact of the costs to Wales has been attached at Annex A. An impact of the costs to the Justice system has been prepared by Defra in a Regulatory Triage Assessment (available on request). Whilst there are additional costs to Local authorities if they choose to use these new powers, there will be a reduction in the costs to them of dealing with the clear up of fly-tipping. For example in Wales during 2013/14 there were 32,934 incidents of fly-tipping reported by local authorities costing Welsh taxpayers an estimated £1.8m to clear up.

## **ANNEX A**

### **Costs and benefits to enforcement authorities**

If, as expected, the reduced burden of seizing a vehicle leads enforcement authorities to seize more vehicles, they may incur an additional cost. Enforcement authorities will only do this where necessary to aid investigation of suspected offences and if they believe it represents good value for money (for instance, by reducing the clean-up costs associated with fly-tipping, which is discussed below), so an assessment of the scale of this additional cost has not been included

The overall purpose of these additional powers is to simplify the regulatory regime, thereby reducing the number of fly-tipping incidents, breaches of the duty of care, illegal waste sites and unregistered waste carriers. This will reduce costs for enforcement authorities to tackle non-compliant operators, simplify the enforcement process and will be welcomed by the legitimate industry which makes up the vast majority of operators.

After discussions with a number of local authorities, it is assumed that there will be a reduction in the number of fly-tipping incidents of 2% - 5%, which will mean a reduction in clean-up and enforcement costs to enforcement authorities. In the financial year 2013/14 local authorities in Wales spent £1.8 million on removing fly-tipped waste. These figures do not take account of fly-tipping on private land which has been estimated to cost £50 – 150 million (£2.5 - £7.5 million in Wales) to clear up each year across the UK (the Wales figures are approximations and improving data collection to understand the true scale of the problem will be a major part of implementing the Welsh Government's strategy for tackling fly-tipping). If as a direct result of these measures fly-tipping was to reduce by as little as 2% per year, this would result in a saving to local authorities in Wales of around £180,000 present value over 5 years. If there were a similar reduction of fly-tipping incidents on private land, we expect there would also be a comparable saving in that regard.

The most notable benefit for enforcement authorities would be the reduction in clearance costs of fly-tipping, although this would have to be balanced against any additional enforcement costs.

The Regulations will enhance the current regime by simplifying the process in a bid to reduce costs and make it a more feasible enforcement option for enforcement authorities. The Regulations will also remove a small burden on HM Courts and Tribunals Service by abolishing the need for a warrant for seizure, resulting in cost savings as regards magistrate and clerk time. It is estimated that this proposal would give a cost saving for local authorities, the Environment Agency and Natural Resources Wales of £496.70 for each vehicle seizure and a time saving of 4 hours (a reduction of 31% in costs and 31% in time from current administrative levels).

A comparison of the current and proposed regimes is set out in the table below. Enforcement will not always require the completion of all the processes detailed below when conducting a seizure but the table is a good representation of the average saving in costs and time per seized vehicle as a result of the new processes.

**TABLE 1: PROCESS OF VEHICLE SEIZURE AND STORAGE WITH ASSOCIATED TIME AND COST<sup>1</sup>**

(Changes between current and new processes are highlighted in the shaded cells)

Vehicle Seizure Process	Current Time	Current Costs	New Time	New Cost
Decision on whether vehicle should be seized	2 hrs	£71.32	2 hrs	£71.32
Taking of witness / suspect statements	2 hrs	£71.32	2 hrs	£71.32
Driver vehicle licensing agency (DVLA) check	0.5 hrs	£17.83	0.5 hrs	£17.83
Preparations for requesting a warrant	2 hrs	£71.32	Not required	Not required
Court appearance to obtain warrant	3 hrs	£106.98	Not required	Not required
Searching for vehicle on police national computer	0.5 hrs	£17.83	0.5 hrs	£17.83
Police attendance at scene of seizure	2 hrs	£71.32	2 hrs	£71.32
Seized vehicle pick up and transport to storage		£230.62		£230.62
Possible disposal of waste if vehicle is loaded		£118.33		£118.33
Vehicles storage	Up to 28 days	£153.80	Up to 38 days <sup>2</sup>	£208.73
Vehicle storage for driver identification / investigation	3 days	£16.50	3 days	£16.50
Publication of notice in local paper		£373.33	Not required	Not required
Notification of seizure/destruction	1 hr	£35.66	1 hr	£35.66
Vehicle transport to final destination		£246.66		£246.66
<b>Total</b>	13 hrs	£1,602.82	9 hrs	£1,106.12
<b>Cost and time saving</b>			<b>4 HRS</b>	<b>£496.70</b>

<sup>1</sup> These are based on consultation with the enforcement authorities. The assumption is that the time and costs will be the same for a local authority, the Environment Agency and Natural Resources Wales (£35.66 / hour). These costs will differ according to the size of vehicle seized i.e. a tipper lorry will cost more to seize than a car. However, for the purposes of this table, estimates are for a vehicle the size of a transit van, a good representative proxy for the average costs incurred by a local authority.

<sup>2</sup> Includes retention period - 15 working days; determination period – 3 working days; and collection period 10 working days.

# Agenda Item 4.3

## **Constitutional and Legislative Affairs Committee Draft Report**

**Title:** The Surface Waters and Water Resources (Miscellaneous Revocations) Regulations 2015

These Regulations revoke 10 pieces of 'obsolete' subordinate legislation as a consequence of the Red Tape Challenge. The instruments in question implement EU law which has since been superseded or revoked, are redundant as a result of later legislation, or relate to time-limited procedures that are now spent.

**Procedure:** Negative

### **Technical Scrutiny**

These composite Regulations will apply to England and Wales and are subject to approval by both Houses of Parliament and the National Assembly for Wales. The Welsh Government considered that it was therefore not reasonably practicable for this instrument to be made or laid bilingually.

Standing Order 21.2(ix): the instrument is not made or to be made in both English and Welsh.

### **Merits Scrutiny**

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Legal Advisers  
Constitutional and Legislative Affairs Committee  
March 2015

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STATUTORY INSTRUMENTS

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**2015 No. 524**

**WATER RESOURCES, ENGLAND AND WALES**

**The Surface Waters and Water Resources (Miscellaneous Revocations) Regulations 2015**

<i>Made</i> - - - -	<i>3rd March 2015</i>
<i>Laid before Parliament</i>	<i>6th March 2015</i>
<i>Laid before the National Assembly for Wales</i>	<i>6th March 2015</i>
<i>Coming into force</i> - -	<i>6th April 2015</i>

The Secretary of State makes these Regulations—

- (a) in relation to England and Wales, in exercise of the powers conferred by section 92 of the Water Industry Act 1991(a) and section 102 of the Water Resources Act 1991(b),
- (b) in relation to England, in exercise of the powers conferred by sections 50, 82, 116, and 219(2) of the Water Resources Act 1991(c), and
- (c) with the agreement of the Welsh Ministers, in relation to those parts of Wales within the catchment areas of the rivers Dee, Wye and Severn, in exercise of the powers conferred by section 82 of the Water Resources Act 1991.

The Welsh Ministers make these Regulations—

- (a) in relation to Wales, in exercise of the powers conferred by sections 50 and 116 of the Water Resources Act 1991, and
- (b) in relation to Wales, other than those parts within the catchment areas of the rivers Dee, Wye and Severn, in exercise of the powers conferred by sections 82 and 219(2) of the Water Resources Act 1991.

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(a) 1991 c.56; section 92 was amended by S.I. 2011/1043.  
 (b) 1991 c.57; section 102 was amended by S.I. 2011/1043.  
 (c) Section 50 was repealed by the Water Act 2003 (c.37), section 23(4) and Schedule 9, Part 1 but, under section 23(5), regulations made under it which were in force immediately before its repeal continue to have effect despite its repeal. Section 116 was amended by the Marine and Coastal Access Act 2009 (c.23), Schedule 16, paragraph 22, and by S.I. 2011/1043 and 2013/755. Section 219(2) was amended by the Environment Act 1995 (c.25), Schedule 22, paragraph 176 and Schedule 24, and the Water Act 2003, Schedule 7, Part 2, paragraph 28(4). In relation to Wales, the functions of the Secretary of State under sections 50 and 116 were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) (“the TFO”), article 2 and Schedule 1. The functions under section 82 were transferred to the National Assembly for Wales by those provisions of the TFO except so far as they are exercisable in relation to those parts of Wales which are within the catchment areas of the rivers Dee, Wye and Severn. Under article 5 and Schedule 2 of the TFO, the Secretary of State may exercise the functions under section 82 in relation to those parts of Wales only with the agreement of the National Assembly for Wales. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by the Government of Wales Act 2006 (c.32), Schedule 11, paragraph 30.



## Citation and commencement

1. These Regulations may be cited as the Surface Waters and Water Resources (Miscellaneous Revocations) Regulations 2015 and come into force on 6th April 2015.

## Revocations

2. The following Regulations are revoked—

- (a) the Water Resources (Succession to Licences) Regulations 1969(a);
- (b) the Surface Waters (Dangerous Substances) (Classification) Regulations 1989(b);
- (c) the Surface Waters (Dangerous Substances) (Classification) Regulations 1992(c);
- (d) the Surface Waters (River Ecosystem) (Classification) Regulations 1994(d);
- (e) the Surface Waters (Abstraction for Drinking Water) (Classification) Regulations 1996(e);
- (f) the Surface Waters (Fishlife) (Classification) Regulations 1997(f);
- (g) the Surface Waters (Dangerous Substances) (Classification) Regulations 1997(g);
- (h) the Surface Waters (Dangerous Substances) (Classification) Regulations 1998(h);
- (i) the Surface Waters (Fishlife) (Classification) (Amendment) Regulations 2003(i); and
- (j) the Surface Waters (Fishlife) (Classification) (Amendment) Regulations 2009(j).

3rd March 2015

*Dan Rogerson*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural Affairs

26th February 2015

*Carl Sargeant*  
Minister for Natural Resources, one of the Welsh Ministers

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations revoke ten instruments on surface waters and water resources that are spent or otherwise superseded.

An impact assessment has not been produced for this instrument as no impact on the private, voluntary or public sectors is foreseen. An Explanatory Memorandum is available alongside the instrument at [www.legislation.gov.uk](http://www.legislation.gov.uk).

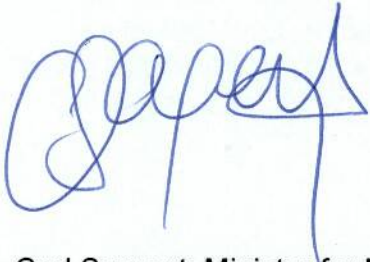
- 
- (a) S.I. 1969/976.
  - (b) S.I. 1989/2286.
  - (c) S.I. 1992/337.
  - (d) S.I. 1994/1057.
  - (e) S.I. 1996/3001.
  - (f) S.I. 1997/1331.
  - (g) S.I. 1997/2560.
  - (h) S.I. 1998/389.
  - (i) S.I. 2003/1053.
  - (j) S.I. 2009/1264.

**Explanatory Memorandum to the Surface Water and Water Resources  
(Miscellaneous Revocations) Regulations 2015  
2015 No. [XXXX]**

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

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Surface Water and Water Resources (Miscellaneous Revocations) Regulations 2015.



Carl Sargent, Minister for Natural Resources

26 February 2015

## **1. Description**

The Surface Water and Water Resources (Miscellaneous Revocations) Regulations 2015 revoke various pieces of 'obsolete' subordinate legislation as a consequence of the Red Tape Challenge.

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

The Red Tape Challenge (RTC) is a Cabinet Office led initiative designed to draw on the experience and ideas of both business and individuals to assist in a review of the regulatory stock. The Water and Marine theme of the Challenge covers drinking water quality, flood management, inland waterways, marine conservation and fisheries. Of the 371 regulations considered under this theme, Defra has committed to make changes to 235 regulations.

These composite Regulations will apply to England and Wales and are subject to negative resolution procedure in the National Assembly for Wales and in both Houses of the UK Parliament. Because the Regulations will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

## **3. Legislative background**

The Welsh Ministers are making these Regulations in relation to Wales, in exercise of the powers conferred by Section 50 and 116 of the Water Resources Act 1991, in relation to Wales, other than those parts within the catchment areas of the rivers Dee, Wye and Severn, in exercise of the powers conferred by Sections 82 and 219(2) of the Water Resources Act 1991.

These Regulations may be cited as the Surface Waters and Water Resources (Miscellaneous Revocations) Regulations 2015 and come into force on 6th April 2015.

In relation to Wales, the functions of the Secretary of State under sections 50 and 116 were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) ("the TFO"), article 2 and Schedule 1. The functions under section 82 were transferred to the National Assembly for Wales by those provisions of the TFO except so far as they are exercisable in relation to those parts of Wales which are within the catchment areas of the rivers Dee, Wye and Severn. Under article 5 and Schedule 2 of the TFO, the Secretary of State may exercise the functions under section 82 in relation to those parts of Wales only with the agreement of the National Assembly for Wales. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by the Government of Wales Act 2006 (c.32), Schedule 11, paragraph 30.

As part of Defra's commitment to the Red Tape Challenge initiative a number of regulations have been identified as redundant and suitable for revoking. The Welsh Government have fully considered this and concur with this position.

This instrument will revoke ten regulations relating to surface waters and water resources.

This Order extends to England and Wales.

#### **4. Purpose & intended effect of the legislation**

The four Surface Waters (Dangerous Substances) (Classification) Regulations prescribed systems for classifying the quality of inland freshwaters, coastal waters and relevant territorial waters with a view to reducing pollution of those waters by the certain substances. The Regulations were made to establish the water quality objectives under Council Directive 76/464/EEC, which has now been revoked.

The Surface Waters (River Ecosystem) (Classification) Regulations 1994 prescribed a system of classification of inland fresh waters and implemented requirements under Directive 75/440 EEC and Directive 79/869 EEC. It has been superseded by the Directions relevant to the implementation of the Water Framework Directive (2000/60/EC).

The Surface Waters (Fishlife) (Classification) Regulations 1997 and the two amending sets of regulations implement the Freshwater Fish Directive (Directive 2006/44 EC) which has been revoked.

The Surface Waters (Abstraction for Drinking Water) (Classification) Regulations are now redundant because sampling and analysis of inland surface waters intended for drinking water is now carried out to an equivalent standard under other regulations.

The Water Resources (Succession to Licences) Regulations 1969 conferred water abstraction licence rights on those taking over land previously occupied by persons who had licences to abstract water for use on the land. The procedures for doing this are time limited and are now spent, therefore these regulations can now be revoked.

#### **5. Consultation**

These are legislative functions which require no outside consultation.

#### **6. Regulatory Impact Assessment (RIA)**

Having considered the Welsh Ministers' code of practice, an Impact Assessment has not been prepared for this instrument.



# Agenda Item 4.4

## Constitutional and Legislative Affairs Committee

### Draft Report

#### CLA

#### Title: The Welsh Language Standards (No. 1) Regulations 2015

The Welsh Language (Wales) Measure 2011 (nawm 1) (“the 2011 Measure”) makes provision for the specification of standards in relation to the Welsh language. These replace the system of Welsh language schemes provided for by the Welsh Language Act 1993 (c. 38).

Section 26 of the 2011 Measure enables the Welsh Ministers to specify standards, and section 39 enables them to provide that a standard is specifically applicable to a person by authorising the Welsh Language Commissioner (“the Commissioner”) to give a notice to that person requiring compliance with the standard (a “compliance notice”).

These Regulations specify standards in relation to the conduct of the Welsh Ministers, county and county borough councils and National Park authorities (which are referred to in the Regulations as “bodies”). The Regulations also authorise (subject to certain exceptions) the Commissioner to give a compliance notice, in relation to standards specified by the Regulations, to those bodies.

#### Procedure: Affirmative

#### Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

#### Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3(ii) in respect of this instrument – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

1. These Regulations are the first to specify standards under the 2011 Measure.
2. The Assembly’s legislative competence in 2011 related to the Welsh Language. That remains the position today. The Assembly cannot therefore legislate in relation to the English language unless it is within competence in another way, such as in the national curriculum. That has resulted in the standards not including things that might be regarded as obvious because they do not relate to services in Welsh.

3. One example is the requirement in standards 49, 50A, 55 and 124 that an English document must state that it is available in Welsh. There is no corresponding requirement that a Welsh document must state that it is available in English.

4. Another example may be found in Standard 79 –

“If you receive a tender in Welsh and it is necessary to interview the tenderer as part of your assessment of the tender you must—

(a) offer to provide a translation service from Welsh to English to enable the tenderer to use the Welsh language at the interview, and ...”

It is expressed in this way because it derives from a Welsh Language Measure. In fact, of course, the tenderer, in those circumstances, would be perfectly capable of using Welsh without a translator. Translation may be needed to enable those listening to understand what is being said i.e. for the benefit of those who do not speak Welsh.

5. Under a reserved powers model of devolution, it is inconceivable that the power to legislate in relation to the English language would have been reserved. Legislation being considered by the Assembly could then be expressed more logically.

**Legal Advisers**

**Constitutional and Legislative Affairs Committee**

**March 2015**

*Draft Regulations laid before the National Assembly for Wales under section 150(2) of the Welsh Language (Wales) Measure 2011, for approval by resolution of the National Assembly for Wales*

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DRAFT WELSH STATUTORY  
INSTRUMENTS

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**2015 No. (W.)**

**WELSH LANGUAGE**

**The Welsh Language Standards  
(No. 1) Regulations 2015**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

The Welsh Language (Wales) Measure 2011 (nawm 1) (“the 2011 Measure”) makes provision for the specification of standards of conduct in relation to the Welsh language (“standards”). These replace the system of Welsh language schemes provided for by the Welsh Language Act 1993 (c. 38).

Section 26 of the 2011 Measure enables the Welsh Ministers to specify standards, and section 39 enables them to provide that a standard is specifically applicable to a person by authorising the Welsh Language Commissioner (“the Commissioner”) to give a notice to that person requiring compliance with the standard (a “compliance notice”).

These Regulations specify standards in relation to the conduct of the Welsh Ministers, county and county borough councils and National Park authorities (which are referred to in the Regulations as “bodies”). The Regulations also authorise (subject to certain exceptions) the Commissioner to give a compliance notice, in relation to standards specified by the Regulations, to those bodies.

In accordance with section 44 of the 2011 Measure, the Commissioner may (by way of a compliance notice) require a body to comply with one or more standards that are specifically applicable to it. To reflect that, the standards specified by the Regulations are expressed in the second person narrative, meaning that they are in “you must” form (where “you” means the relevant body in each case).



Using the flexibility provided by section 44 of the 2011 Measure the Commissioner may (if it is reasonable and proportionate, and the Commissioner wishes to do so) require a body to comply with one standard in some circumstances and another standard in other circumstances. For example, if a standard is specifically applicable to a body the Commissioner may require the body to comply with the standard in some circumstances but not others, or require it to comply with the standard only in some areas. Similarly if two or more standards relate to a specific conduct (for example, standards 8 to 11 in relation to answering telephone calls), the Commissioner may (by way of a compliance notice) require a body to comply with one of those standards only, or with different standards at different times, in different circumstances, or in different areas; as is appropriate for the body. The Commissioner is not, therefore, obliged to require every body to comply with every standard.

In accordance with section 46 of the 2011 Measure, the compliance notice given to a body must state the imposition day, or imposition days; meaning the day or days upon which the body becomes required to comply with a standard (or comply with a standard in a specific way). Using the flexibility provided for by section 46, the Commissioner may set an early imposition day for a body to comply with a standard (provided this is at least 6 months after the date on which the body was given the related compliance notice), or set an imposition day further in the future (for example in relation to more challenging standards).

Where a standard specified in these Regulations requires written material to be displayed or provided in Welsh, or for a service to be provided in Welsh, this does not mean that that material must be displayed or provided in Welsh only, or that that service must only be provided in Welsh (unless that is specifically stated).

**Schedule 1** to the Regulations specifies **service delivery standards**. Section 28 of the 2011 Measure provides that a “service delivery standard” means a standard that relates to a service delivery activity, and is intended to promote or facilitate the use of the Welsh language, or to work towards ensuring that the Welsh language is treated no less favourably than the English language when that activity is carried out. A “service delivery activity” means a person delivering services to another person, or dealing with any other person in connection with delivering services to that other person, or to a third person.

**Schedule 2** to the Regulations specifies **policy making standards**. Section 29 of the 2011 Measure provides that a “policy making standard” means a standard that relates to a policy decision, and is

intended to secure, or to contribute to securing, that the person making the policy decision considers one or more of the following—

- (a) what effects, if any, (whether positive or adverse) the policy decision would have on opportunities for people to use the Welsh language, or on treating the Welsh language no less favourably than the English language;
- (b) how the decision could be made so that the decision has positive effects, or increased positive effects, on opportunities for people to use the Welsh language, or on treating the Welsh language no less favourably than the English language;
- (c) how the decision could be made so that the decision does not have adverse effects, or has decreased adverse effects, on opportunities for other persons to use the Welsh language, or on treating the Welsh language no less favourably than the English language.

**Schedule 3** to the Regulations specifies **operational standards**. Section 30 of the 2011 Measure provides that an “operational standard” means a standard that relates to the functions, or a business or other undertaking (“relevant activities”) of a person (“A”), that is intended to promote or facilitate the use of the Welsh language—

- (a) by A in carrying out A’s relevant activities,
- (b) by A and another person in dealings between them in connection with A’s relevant activities, or
- (c) by a person other than A in carrying out activities for the purposes of, or in connection with, A’s relevant activities.

**Schedule 4** to the Regulations specifies **promotion standards**. Section 31 of the 2011 Measure states that a “promotion standard” means a standard (relating to any activity) that is intended to promote or facilitate the use of the Welsh language more widely.

**Schedule 5** to the Regulations specifies **record keeping standards**. Section 32 of the 2011 Measure provides that a “record keeping standard” is a standard relating to the keeping of records about other specified standards, records about complaints concerning compliance with other specified standards, or records about other complaints concerning the Welsh language.

**Schedule 6** to the Regulations specifies **standards that deal with supplementary matters**. These are specific forms of service delivery standards, policy making standards, operational standards, promotion standards and record keeping standards that deal with the matters referred to in section 27(4) of the 2011

Measure (which are supplementary to the matters dealt with in Schedules 1 to 5).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Language Unit, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

*Draft Regulations laid before the National Assembly for Wales under section 150(2) of the Welsh Language (Wales) Measure 2011, for approval by resolution of the National Assembly for Wales.*

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DRAFT WELSH STATUTORY  
INSTRUMENTS

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**2015 No. (W.)**

**WELSH LANGUAGE**

**The Welsh Language Standards  
(No. 1) Regulations 2015**

*Made* \*\*\*

*Laid before the National Assembly for Wales* \*\*\*

*Coming into force* \*\*\*

The Welsh Ministers, in exercise of the powers conferred upon them by sections 26, 27, 39 and 150(5) of the Welsh Language (Wales) Measure 2011<sup>(1)</sup>, having received the approval of the National Assembly for Wales in accordance with section 150(2) of that Measure, make the following Regulations:

**Title, commencement, application and interpretation**

1.—(1) The title of these Regulations is the Welsh Language Standards (No. 1) Regulations 2015.

(2) These Regulations come into force on 31 March 2015.

(3) These Regulations apply in relation to Wales.

(4) In these Regulations—

a “body” (“*corff*”) means the Welsh Ministers, a county council or county borough council or a National Park authority;

an “individual” (“*unigolyn*”) means a member of the public;

a “member of staff” (“*aelod o staff*”) means an employee of a body or an individual working for a

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<sup>(1)</sup> 2011 nawm 1.

body (and “staff” (“*staff*”) must be construed accordingly);

a reference to an employee of a body or an individual working for a body includes, in the case of the Welsh Ministers, an employee of the Welsh Government or an individual working for the Welsh Government.

(5) In these Regulations—

- (a) references to any activity being carried out by a body, or to any service being provided by a body, are to be read as including a reference to that activity being carried out on the body’s behalf or to that service being provided on the body’s behalf by a third party under arrangements made between the third party and the body;
- (b) accordingly, unless a compliance notice provides to the contrary, a body will have failed to comply with a standard in respect of an activity or service it has arranged to be carried out or provided by a third party if that activity or service has not been carried out or provided in accordance with the standard.

### **Standards specified**

2.—(1) In Schedule 1—

- (a) Part 1 specifies service delivery standards;
- (b) Part 2 provides that a compliance notice must require a body to comply with certain standards specified in Part 1 if it has required the body to comply with certain other standards;
- (c) Part 3 defines a number of words and expressions.

(2) In Schedule 2—

- (a) Part 1 specifies policy making standards;
- (b) Part 2 defines a number of words and expressions.

(3) In Schedule 3—

- (a) Part 1 specifies operational standards;
- (b) Part 2 provides that a compliance notice must require a body to comply with certain standards specified in Part 1 if it has required the body to comply with certain other standards;
- (c) Part 3 defines a number of words and expressions.

(4) In Schedule 4—

- (a) Part 1 specifies promotion standards;
- (b) Part 2 provides that a compliance notice must require a body to comply with certain

standards specified in Part 1 if it has required the body to comply with certain other standards.

(5) In Schedule 5—

- (a) Part 1 specifies record keeping standards;
- (b) Part 2 defines a number of words and expressions.

(6) Schedule 6 specifies standards that deal with matters which are supplementary to the matters dealt with in the standards specified in Schedules 1 to 5 and, in particular—

- (a) Part 1 specifies service delivery standards that deal with supplementary matters;
- (b) Part 2 specifies policy making standards that deal with supplementary matters;
- (c) Part 3 specifies operational standards that deal with supplementary matters;
- (ch) Part 4 specifies promotion standards that deal with supplementary matters;
- (d) Part 5 specifies record keeping standards that deal with supplementary matters;
- (dd) Part 6 makes provision about interpreting the supplementary standards;
- (e) Part 7 makes supplementary provision.

### **Standards that are specifically applicable**

3.—(1) The Welsh Ministers authorise the Welsh Language Commissioner to give a compliance notice to the Welsh Ministers, to county councils, to county borough councils and to National Park authorities requiring them to comply with any of the standards specified under regulation 2.

(2) But the Commissioner is not authorised to give a compliance notice to the Welsh Ministers requiring them to comply with standards 145 or 146 (promotion standards) or standards 173 or 174 (promotion standards that deal with supplementary matters).

*Name*

First Minister of Wales

Date

SCHEDULE 1 Regulation 2(1)

Service delivery standards

PART 1

THE STANDARDS

**1 Standards relating to correspondence sent by a body**

*(1) When a body replies to correspondence*

**Standard 1:** If you receive correspondence from a person in Welsh you must reply in Welsh (if an answer is required), unless the person has indicated that there is no need to reply in Welsh.

*(2) When a body initiates correspondence*

*(a) When a body corresponds with an individual*

**Standard 2:** When you correspond with an individual (“A”) for the first time, you must ask A whether A wishes to receive correspondence from you in Welsh, and if A responds to say that A wishes to receive correspondence in Welsh you must—

- (a) keep a record of A’s wish,
- (b) correspond with A in Welsh when corresponding with A from then onwards, and
- (c) send any forms you send to A from then onwards in Welsh.

*(b) When a body corresponds with more than one member of the same household*

**Standard 3:** When you send correspondence addressed to two individuals who are members of the same household (for

example, the parents of a child) for the first time, you must ask them whether they wish to receive correspondence from you in Welsh; and if—

- (a) both individuals respond to say that they wish to receive correspondence in Welsh, you must keep a record of that wish and correspond in Welsh from then onwards when sending correspondence addressed to both of those individuals;
- (b) one (but not both) of the individuals responds to say that he or she wishes to receive correspondence in Welsh, you must keep a record of that wish and provide a Welsh language version of correspondence from then onwards when sending correspondence addressed to both of those individuals.

*(c) When a body corresponds with several persons (for example, when it sends a circular, or sends the same letter to a number of homes)*

**Standard 4:** When you send the same correspondence to several persons, you must send a Welsh language version of the correspondence at the same time as you send any English language version.

***(3) General standards relating to correspondence***

**Standard 5:** If you don't know whether a person wishes to receive correspondence from you in Welsh, when you correspond with that person you must provide a Welsh language version of the correspondence.

**Standard 6:** If you produce a Welsh language version and a corresponding English language version of correspondence, you must not treat the Welsh language version less favourably



than the English language version (for example, if the English version is signed, or if contact details are provided on the English version, then the Welsh version must be treated in the same way).

**Standard 7:** You must state—

- (a) in correspondence, and
- (b) in publications and official notices that invite persons to respond to you or to correspond with you,

that you welcome receiving correspondence in Welsh, that you will respond to correspondence in Welsh, and that corresponding in Welsh will not lead to delay.

**2 Standards relating to telephone calls made and received by a body**

*(1) Telephone calls made to a body's main contact number and to any helplines or call centres*

**Standard 8:** When a person contacts you on your main telephone number (or numbers), or on any helpline numbers or call centre numbers, you must greet the person in Welsh.

**Standard 9:** When a person contacts you on your main telephone number (or numbers), or on any helpline numbers or call centre numbers, you must inform the person that a Welsh language service is available.

**Standard 10:** When a person contacts you on your main telephone number (or numbers), or on any helpline numbers or call centre numbers, you must deal with the call in Welsh in its entirety if that is the person's wish (where necessary by transferring the call to a member of staff who is able to deal with the call in Welsh).

**Standard 11:** When a person contacts you on your main telephone number (or numbers), or on any helpline numbers or call centre numbers, you must deal with the call in Welsh if

that is the person's wish until such point as—

- (a) it is necessary to transfer the call to a member of staff who does not speak Welsh who can provide a service on a specific subject matter; and
- (b) no Welsh speaking member of staff is available to provide a service on that specific subject matter.

**Standard 12:** When you advertise telephone numbers, helpline numbers or call centre services, you must not treat the Welsh language less favourably than the English language.

**Standard 13:** If you offer a Welsh language service on your main telephone number (or numbers), on any helpline numbers or call centre numbers, the telephone number for the Welsh language service must be the same as for the corresponding English language service.

**Standard 14:** When you publish your main telephone number, or any helpline numbers or call centre service numbers, you must state (in Welsh) that you welcome calls in Welsh.

**Standard 15:** If you have performance indicators for dealing with telephone calls, you must ensure that those performance indicators do not treat telephone calls made in Welsh any less favourably than calls made in English.

**Standard 16:** Your main telephone call answering service (or services) must inform persons calling, in Welsh, that they can leave a message in Welsh.

**Standard 17:** When there is no Welsh language service available on your main telephone number (or numbers), or on any helpline numbers or call centre numbers, you must inform persons calling, in Welsh (by way of an automated message or otherwise), when a Welsh language service will

be available.

***(2) Telephone calls made to departments and to members of a body's staff***

**Standard 18:** If a person contacts one of your departments on a direct line telephone number (including on staff members' direct line numbers), and that person wishes to receive a service in Welsh, you must provide that service in Welsh in its entirety (if necessary by transferring the call to a member of staff who is able to deal with the call in Welsh).

**Standard 19:** If a person contacts one of your departments on a direct line telephone number (including on staff members' direct line numbers), and that person wishes to receive a service in Welsh, you must deal with the call in Welsh until such point as—

- (a) it is necessary to transfer the call to a member of staff who does not speak Welsh who can provide a service on a specific subject matter; and
- (b) no Welsh speaking member of staff is available to provide a service on that specific subject matter.

**Standard 20:** When a person contacts you on a direct line number (whether on a department's direct line number or on the direct line number of a member of staff), you must ensure that, when greeting the person, the Welsh language is not treated less favourably than the English language.

***(3) Telephone calls made by a body***

**Standard 21:** When you telephone an individual ("A") for the first time you must ask A whether A wishes to receive telephone calls from you in Welsh, and if A responds to say that A wishes to receive telephone calls in

Welsh you must keep a record of that wish, and conduct telephone calls made to A from then onwards in Welsh.

***(4) A body dealing with telephone calls using an automated system***

**Standard 22:** Any automated telephone systems that you have must provide the complete automated service in Welsh.

**3 Standards relating to a body holding meetings that are not open to the general public**

***(1) Meetings between a body and one other invited person***

**Standard 23:** If you invite one person only (“P”) to a meeting, you must offer to conduct the meeting in Welsh; and if P informs you that P wishes for the meeting to be conducted in Welsh, you must conduct the meeting in Welsh (without the assistance of a simultaneous or consecutive translation service).

**Standard 24:** If you invite one person only (“P”) to a meeting you must ask P whether P wishes to use the Welsh language at the meeting, and inform P that you will, if necessary, provide a translation service from Welsh to English for that purpose.

**Standard 24A:** If you have invited one person only (“P”) to a meeting and P has informed you that P wishes to use the Welsh language at the meeting, you must arrange for a simultaneous translation service from Welsh to English to be available at the meeting (unless you conduct the meeting in Welsh without the assistance of a translation service).

**Standard 24B:** If you have invited one person only (“P”) to a meeting and P has informed you that P wishes to use the Welsh language at the meeting, you must arrange for a consecutive

translation service from Welsh to English to be available at the meeting (unless you conduct the meeting in Welsh without the assistance of a translation service).

**Standard 25:** If you invite an individual (“A”) to a meeting, and the meeting relates to the well-being of A, you must—

- (a) ask A whether A wishes for the meeting to be conducted in Welsh, and
- (b) if A informs you that A wishes for the meeting to be conducted in Welsh, conduct the meeting in Welsh (without the assistance of a simultaneous or consecutive translation service).

**Standard 26:** If you invite an individual (“A”) to a meeting, and the meeting relates to the well-being of A, you must ask A whether A wishes to use the Welsh language at the meeting, and inform A that you will, if necessary, provide a translation service from Welsh to English and from English to Welsh for that purpose.

**Standard 26A:** You must arrange for a simultaneous translation service from Welsh to English and from English to Welsh to be available at a meeting—

- (a) if the meeting relates to the well-being of an invited individual (“A”), and
- (b) if A has informed you that A wishes to use the Welsh language at the meeting;

unless you conduct the meeting in Welsh without the assistance of a translation service.

**Standard 26B:** You must arrange for a consecutive translation service from Welsh to English and from English to Welsh to be available at a meeting—

- (a) if the meeting relates to the well-being of an invited individual (“A”), and
- (b) if A has informed you that A wishes to use the Welsh

language at the meeting;  
unless you conduct the meeting in  
Welsh without the assistance of a  
translation service.

***(2) Meetings between a body and  
more than one invited person***

**Standard 27:** If you invite more than one person to  
a meeting (which does not relate to  
the well-being of one or more of the  
individuals invited), you must ask  
each person whether they wish to  
use the Welsh language at the  
meeting.

**Standard  
27A:** If you have invited more than one  
person to a meeting (which does not  
relate to the well-being of one or  
more of the individuals invited), and  
at least 10% (but less than 100%) of  
the persons invited have informed  
you that they wish to use the Welsh  
language at the meeting, you must  
arrange for a simultaneous  
translation service from Welsh to  
English to be available at the  
meeting.

**Standard  
27B:** If you have invited more than one  
person to a meeting (which does not  
relate to the well-being of one or  
more of the individuals invited), and  
at least 20% (but less than 100%) of  
the persons invited have informed  
you that they wish to use the Welsh  
language at the meeting, you must  
arrange for a simultaneous  
translation service from Welsh to  
English to be available at the  
meeting.

**Standard  
27C:** If you have invited more than one  
person to a meeting (which does not  
relate to the well-being of one or  
more of the individuals invited), and  
at least 30% (but less than 100%) of  
the persons invited have informed  
you that they wish to use the Welsh  
language at the meeting, you must  
arrange for a simultaneous  
translation service from Welsh to  
English to be available at the  
meeting.

**Standard** If you have invited more than one

**27CH:** person to a meeting (which does not relate to the well-being of one or more of the individuals invited), and all of the persons invited have informed you that they wish to use the Welsh language at the meeting, you must conduct the meeting in Welsh (without the assistance of a simultaneous or consecutive translation service).

**Standard 27D:** If you have invited more than one person to a meeting (which does not relate to the well-being of one or more of the individuals invited), and all of the persons invited have informed you that they wish to use the Welsh language at the meeting, you must arrange for a simultaneous translation service from Welsh to English to be available at the meeting (unless you conduct the meeting in Welsh without the assistance of a translation service).

**Standard 28:** If you invite more than one person to a meeting, and that meeting relates to the well-being of one or more of the individuals invited, you must—

- (a) ask that individual or each of those individuals whether he or she wishes for the meeting to be conducted in Welsh, and
- (b) if that individual, or if each of those individuals, informs you that he or she wishes for the meeting to be conducted in Welsh, conduct the meeting in Welsh (without the assistance of a simultaneous or consecutive translation service).

**Standard 29:** If you invite more than one person to a meeting, and that meeting relates to the well-being of one or more of the individuals invited, you must—

- (a) ask that individual or each of those individuals whether he or she wishes to use the Welsh language at the meeting, and
- (b) inform that individual (or

those individuals) that, if necessary, you will provide a translation service from Welsh to English and from English to Welsh for that purpose.

**Standard  
29A:**

You must provide a simultaneous translation service from Welsh to English and from English to Welsh at a meeting—

- (a) if you have invited more than one person to the meeting,
- (b) if the meeting relates to the well-being of one or more of the individuals invited, and
- (c) if at least one of those individuals has informed you that he or she wishes to use the Welsh language at the meeting;

unless you conduct the meeting in Welsh without the assistance of a translation service.

**Standard  
29B:**

You must provide a consecutive translation service from Welsh to English and from English to Welsh at a meeting—

- (a) if you have invited more than one person to the meeting,
- (b) if the meeting relates to the well-being of one or more of the individuals invited, and
- (c) if at least one of those individuals has informed you that he or she wishes to use the Welsh language at the meeting;

unless you conduct the meeting in Welsh without the assistance of a translation service.

**4**

**Standards relating to meetings arranged by a body that are open to the public**

**Standard 30:**

If you arrange a meeting that is open to the public you must state on any material advertising it, and on any



invitation to it, that anyone attending is welcome to use the Welsh language at the meeting.

**Standard 31:** When you send invitations to a meeting that you arrange which is open to the public, you must send the invitations in Welsh.

**Standard 32:** If you invite persons to speak at a meeting that you arrange which is open to the public you must—

- (a) ask each person invited to speak whether he or she wishes to use the Welsh language, and
- (b) if that person (or at least one of those persons) has informed you that he or she wishes to use the Welsh language at the meeting, provide a simultaneous translation service from Welsh to English for that purpose (unless you conduct the meeting in Welsh without a translation service).

**Standard 33:** If you arrange a meeting that is open to the public, you must ensure that a simultaneous translation service from Welsh to English is available at the meeting, and you must orally inform those present in Welsh—

- (a) that they are welcome to use the Welsh language, and
- (b) that a simultaneous translation service is available.

**Standard 34:** If you display any written material at a meeting that you arrange which is open to the public, you must ensure that that material is displayed in Welsh, and you must not treat any Welsh language text less favourably than the English language text.

**5 Standards relating to public events organised or funded by a body**

**Standard 35:** If you organise a public event, or fund at least 50% of a public event, you must ensure that, in promoting the event, the Welsh language is treated no less favourably than the English language (for example, in the way the event is advertised or publicised).

**Standard 36:** If you organise a public event, or fund at least 50% of a public event, you must ensure that the Welsh language is treated no less favourably than the English language at the event (for example, in relation to services offered to persons attending the event, in relation to signs displayed at the event and in relation to audio announcements made at the event).

**6 Standard relating to a body's publicity and advertising**

**Standard 37:** Any publicity or advertising material that you produce must be produced in Welsh, and if you produce the advertising material in Welsh and in English, you must not treat the Welsh language version less favourably than you treat the English language version.

**7 Standards relating to a body displaying material in public**

**Standard 38:** Any material that you display in public must be displayed in Welsh, and you must not treat any Welsh language version of the material less favourably than the English language version.

**Standard 39:** Any material that you display at a public exhibition organised by you must be displayed in Welsh, and you must not treat any Welsh language version of the material less favourably than you treat an English language version.

**8 Standards relating to a body producing and publishing documents**

**Standard 40:** Any documents that you produce for

public use must be produced in Welsh.

**Standard 41:** If you produce the following documents you must produce them in Welsh—

- (a) agendas, minutes and other papers that are available to the public, which relate to management board or cabinet meetings;
- (b) agendas, minutes and other papers for meetings, conferences or seminars that are open to the public.

**Standard 42:** Any licence or certificate you produce must be produced in Welsh.

**Standard 43:** Any brochure, leaflet, pamphlet or card that you produce in order to provide information to the public must be produced in Welsh.

**Standard 44:** If you produce the following documents, and they are available to the public, you must produce them in Welsh—

- (a) policies, strategies, annual reports and corporate plans;
- (b) guidelines and codes of practice;
- (c) consultation papers.

**Standard 45:** Any rules that you publish that apply to the public must be published in Welsh.

**Standard 46:** When you issue any statement to the press you must issue it in Welsh and, if there is a Welsh language version and an English language version of a statement, you must issue both versions at the same time.

**Standard 47:** If you produce a document for public use, and no other standard has required you to produce the document in Welsh, you must produce it in Welsh—

- (a) if the subject matter of the document suggests that it should be produced in Welsh, or

- (b) if the anticipated audience, and their expectations, suggests that the document should be produced in Welsh.

**Standard 48:** If you produce a document in Welsh and in English (whether separate versions or not), you must not treat any Welsh language version less favourably than you treat the English language version.

**Standard 49:** If you produce a Welsh language version and a separate English language version of a document, you must ensure that the English language version clearly states that the document is also available in Welsh.

**9 Standards relating to a body producing and publishing forms**

**Standard 50:** Any form that you produce for public use must be produced in Welsh.

**Standard 50A:** If you produce a Welsh language version and a separate English language version of a form, you must ensure that the English language version clearly states that the form is also available in Welsh.

**Standard 50B:** If you produce a form in Welsh and in English (whether separate versions or not), you must ensure that the Welsh language version is treated no less favourably than the English language version, and you must not differentiate between the Welsh and English versions in relation to any requirements that are relevant to the form (for example in relation to any deadline for submitting the form, or in relation to the time allowed to respond to the content of the form).

**Standard 51:** If you pre-enter information on a Welsh language version of a form (for example, before sending it to a member of the public in order for him or her to check the content or to fill in the remainder of the form),

you must ensure that the information that you pre-enter is in Welsh.

**10 Standards relating to a body's websites and on-line services**

*(1) Websites published by a body*

**Standard 52:** You must ensure that—

- (a) the text of each page of your website is available in Welsh,
- (b) every Welsh language page on your website is fully functional, and
- (c) the Welsh language is not treated less favourably than the English language on your website.

**Standard 53:** You must ensure that—

- (a) the text of the homepage of your website is available in Welsh,
- (b) any Welsh language text on your homepage (or, where relevant, your Welsh language homepage) is fully functional, and
- (c) the Welsh language is treated no less favourably than the English language in relation to the homepage of your website.

**Standard 54:** You must ensure that when you publish a new page on your website or amend a page—

- (a) the text of that page is available in Welsh,
- (b) any Welsh language version of that page is fully functional, and
- (c) the Welsh language is treated no less favourably than the English language in relation to that page.

**Standard 55:** If you have a Welsh language web page that corresponds to an English language web page, you must state

clearly on the English language web page that the page is also available in Welsh, and you must provide a direct link to the Welsh page on the corresponding English page.

**Standard 56:** You must provide the interface and menus on every page of your website in Welsh.

***(2) Apps published by a body***

**Standard 57:** All apps that you publish must function fully in Welsh, and the Welsh language must be treated no less favourably than the English language in relation to that app.

**11 Standards relating to a body's use of social media**

**Standard 58:** When you use social media you must not treat the Welsh language less favourably than the English language.

**Standard 59:** If a person contacts you by social media in Welsh, you must reply in Welsh (if an answer is required).

**12 Standard relating to self service machines**

**Standard 60:** You must ensure that any self service machines that you have function fully in Welsh, and the Welsh language must be treated no less favourably than the English language in relation to that machine.

**13 Standards relating to signs displayed by a body**

**Standard 61:** When you erect a new sign or renew a sign (including temporary signs), any text displayed on the sign must be displayed in Welsh (whether on the same sign as you display corresponding English language text or on a separate sign); and if the same text is displayed in Welsh and in English, you must not treat the Welsh language text less favourably than the English language text.

**Standard 62:** When you erect a new sign or renew a sign (including temporary signs) which conveys the same information in Welsh and in English, the Welsh-language text must be positioned so that it is likely to be read first.

**Standard 63:** You must ensure that the Welsh language text on signs is accurate in terms of meaning and expression.

**14 Standards relating to a body receiving visitors at its buildings**

**Standard 64:** Any reception service you make available in English must also be available in Welsh, and any person who requires a Welsh language reception service must not be treated less favourably than a person who requires an English language reception service.

**Standard 65:** If you arrange a visit or appointment in advance for a person (“P”) which will mean that P will come to your reception, you must ask P whether P wishes to receive a Welsh language reception service (unless you already know whether P wishes to receive that service in Welsh).

**Standard 65A:** You must provide a face to face Welsh language reception service for a person (“P”) at your reception if you have arranged a visit or appointment for P in advance and—

(a) P has informed you in advance that P wishes to receive the service in Welsh, or

(b) you are already aware that P wishes to receive the service in Welsh.

**Standard 66:** If you have no face to face Welsh language reception service available, you must ensure that a Welsh language reception service is available over a phone in your reception.

**Standard 67:** You must display a sign in your reception which states (in Welsh)

that persons are welcome to use the Welsh language at the reception.

**Standard 68:** You must ensure that staff at the reception who are able to provide a Welsh language reception service wear a badge to convey that.

**15 Standards relating to official notices made by a body**

**Standard 69:** Any official notice that you publish or display must be published or displayed in Welsh, and you must not treat any Welsh language version of a notice less favourably than an English language version.

**Standard 70:** When you publish or display an official notice that contains Welsh language text as well as English language text, the Welsh language text must be positioned so that it is likely to be read first.

**16 Standards relating to a body awarding grants**

**Standard 71:** Any documents that you publish which relate to applications for a grant, must be published in Welsh, and you must not treat a Welsh language version of such documents less favourably than an English language version.

**Standard 72:** When you invite applications for a grant, you must state in the invitation that applications may be submitted in Welsh and that any application submitted in Welsh will be treated no less favourably than an application submitted in English.

**Standard 72A:** You must not treat applications for a grant submitted in Welsh less favourably than applications submitted in English (including, amongst other matters, in relation to the closing date for receiving applications and in relation to the time-scale for informing applicants of decisions).

**Standard 73:** If you receive an application for a grant in Welsh and it is necessary to



interview an applicant as part of your assessment of the application, you must offer to conduct that interview in Welsh and, if the applicant so wishes, you must conduct the interview in Welsh (without the assistance of a simultaneous or consecutive translation service).

**Standard 74:** If you receive an application for a grant in Welsh and it is necessary to interview the applicant as part of your assessment of the application you must—

- (a) offer to provide a translation service from Welsh to English to enable the applicant to use the Welsh language at the interview, and
- (b) if the applicant wishes to use the Welsh language at the interview, provide a simultaneous translation service for that purpose (unless you conduct the interview in Welsh without a translation service).

**Standard 75:** When you inform an applicant of your decision in relation to an application for a grant, you must do so in Welsh if the application was submitted in Welsh.

**17 Standards relating to a body awarding contracts**

**Standard 76:** Any invitations to tender for a contract that you publish must be published in Welsh, and you must not treat a Welsh language version of any invitation less favourably than an English language version.

**Standard 77:** When you publish invitations to tender for a contract, you must state in the invitation that tenders may be submitted in Welsh, and that a tender submitted in Welsh will be treated no less favourably than a tender submitted in English.

**Standard** You must not treat a tender for a

**77A:** contract submitted in Welsh less favourably than a tender submitted in English (including, amongst other matters, in relation to the closing date for receiving tenders, and in relation to the time-scale for informing tenderers of decisions).

**Standard 78:** If you receive a tender in Welsh and it is necessary to interview a tenderer as part of your assessment of the tender, you must offer to conduct that interview in Welsh and, if the tenderer so wishes, you must conduct the interview in Welsh (without the assistance of a simultaneous or consecutive translation service).

**Standard 79:** If you receive a tender in Welsh and it is necessary to interview the tenderer as part of your assessment of the tender you must—

- (a) offer to provide a translation service from Welsh to English to enable the tenderer to use the Welsh language at the interview, and
- (b) if the tenderer wishes to use the Welsh language at the interview, provide a simultaneous translation service for that purpose (unless you conduct the interview in Welsh without a translation service).

**Standard 80:** When you inform a tenderer of your decision in relation to a tender, you must do so in Welsh if the tender was submitted in Welsh.

**18** **Standards for raising awareness about Welsh language services provided by a body**

**Standard 81:** You must promote any Welsh language service that you provide, and advertise that service in Welsh.

**Standard 82:** If you provide a service in Welsh that corresponds to a service you provide in English, any publicity or document that you produce, or

website that you publish, which refers to the English service must also state that a corresponding service is available in Welsh.

**19 Standard relating to a body's corporate identity**

**Standard 83:** When you form, revise or present your corporate identity, you must not treat the Welsh language less favourably than the English language.

**20 Standards relating to courses offered by a body**

**Standard 84:** If you offer an education course that is open to the public, you must offer it in Welsh.

**Standard 85:** If you offer an education course that is open to the public and which is aimed specifically at persons aged 18 or under, you must offer it in Welsh.

**Standard 86:** If you develop an education course that is to be offered to the public, you must assess the need for that course to be offered in Welsh; and you must ensure that the assessment is published on your website.

**21 Standard relating to public address systems used by a body**

**Standard 87:** When you announce a message over a public address system, you must make that announcement in Welsh and, if the announcement is made in Welsh and in English, the announcement must be made in Welsh first.

## PART 2

### STANDARDS THAT ARE RELIANT ON OTHER STANDARDS - SPECIAL CONDITIONS

**22** When a compliance notice requires a body to comply with one of the standards listed on a specific row in column 1 of Table 1, that compliance notice must also require that

body to comply (in whatever way the Welsh Language Commissioner considers appropriate) with the standard or standards listed in column 2 of that row (or with one or more of those standards where that is stated).

**TABLE 1**

<i>Row</i>	Column 1 <i>Main standard</i>	Column 2 <i>Reliant standard</i>
	<b>Replying to correspondence</b>	
(1)	Standard 1	Standard 7
	<b>Corresponding with members of the same household</b>	
(2)	Standard 3	Standard 6
	<b>Corresponding with several persons</b>	
(3)	Standard 4	Standard 6 Standard 7
	<b>General standards relating to correspondence</b>	
(4)	Standard 5	Standard 6 Standard 7
	<b>Raising awareness about corresponding in Welsh</b>	
(5)	Standard 7	Standard 1
	<b>Receiving telephone calls</b>	
(6)	Standard 9	One or more of the following: Standard 10 Standard 11
	<b>Receiving telephone calls</b>	
(7)	Standards 10 or 11	Standard 9 Standard 14
	<b>Raising awareness about telephone services in Welsh</b>	
(8)	Standard 14	One or more of the following:

		Standard 10 Standard 11  and also Standard 16, and Standard 17
(9)	<b>Meetings with one person</b>  Standard 24	One or more of the following: Standard 24A Standard 24B
(10)	<b>Meetings with one person</b>  Standards 24A or 24B	Standard 24
(11)	<b>Meetings with one person</b>  Standard 26	One or more of the following: Standard 26A Standard 26B
(12)	<b>Meetings with one person</b>  Standards 26A or 26B	Standard 26
(13)	<b>Meetings with more than one person</b>  Standard 27	One or more of the following: Standard 27A Standard 27B Standard 27C  and also one of more of the following;  Standard 27CH Standard 27D
(14)	<b>Meetings with more than one person</b>  Standards 27A, 27B, 27C, 27CH or 27D	Standard 27
	<b>Meetings with more</b>	

(15)	<b>than one person</b> Standard 29	One or more of the following: Standard 29A Standard 29B
(16)	<b>Meetings with more than one person</b> Standards 29A or 29B	Standard 29
(17)	<b>Public meetings</b> Standard 30	Standard 33
(18)	<b>Public meetings</b> Standard 33	Standard 30
(19)	<b>Documents</b> Standards 40, 41, 42, 43, 44, 45, or 47	Standard 48 Standard 49
(20)	<b>Forms</b> Standard 50	Standard 50A Standard 50B
(21)	<b>Websites</b> Standards 52, 53 or 54	Standard 55
(22)	<b>Signs</b> Standards 61 or 62	Standard 63
(23)	<b>Reception</b> Standard 64	Standard 67 Standard 68
(24)	<b>Reception</b> Standard 65	Standard 65A
(25)	<b>Reception</b> Standard 66	Standard 67
(26)	<b>Raising awareness of Welsh-language services in a reception</b> Standard 67	One or more of the following: Standard 64

		Standard 66
(27)	<b>Grants</b> Standard 72	Standard 72A Standard 75
(28)	<b>Grants</b> Standard 73 or 74	Standard 72 Standard 72A
(29)	<b>Contracts</b> Standard 77	Standard 77A Standard 80
(30)	<b>Contracts</b> Standard 78 or 79	Standard 77 Standard 77A

### PART 3

#### INTERPRETING THE STANDARDS

- 23 The standards specified in Part 1 of this Schedule must be interpreted as follows.
- 24 The standards only apply to the extent that a body—
- (a) delivers services to a person, or
  - (b) deals with any other person in connection with delivering services—
    - (i) to that other person, or
    - (ii) to a third person.
- 25 A body is not required to produce to display or to send material in Welsh to the extent that another enactment has specified the wording of a document, a sign or a form which would run contrary to that requirement.
- 26 For the purposes of the standards—
- (a) a requirement to produce, to send, to publish, to display, to make available



or to issue any written material in Welsh does not mean that the material should be produced, sent, published, displayed, made available or issued in Welsh only, nor does it mean that the material should be produced in Welsh first (unless that is specifically stated in the standard);

- (b) a requirement to provide a service in Welsh does not mean that that service should only be provided in Welsh (unless that is specifically stated in the standard).

27 For the purposes of standards 2, 3 and 21, a body corresponds with an individual or makes a telephone call to an individual for the first time when it corresponds or makes a telephone call for the first time after the date on which a compliance notice has required the body to comply with the standard.

28 In standard 22 an “automated” telephone system means a system that answers telephone calls and guides persons through a set procedure with a recorded message which, for example, asks a person to press different numbers in order to choose different options.

29 Where a standard refers to material that is to be produced in Welsh (with the exception of standards 52 to 57 (websites and apps), 58 and 59 (social media) and 76 (invitations to tender)), references to treating the Welsh language no less favourably than the English language, or to treating a Welsh language version no less favourably than an English language version, include, amongst other matters (and in addition to specific matters referred to in any individual standard), treating the Welsh language no less favourably as regards—

- (a) the visual presentation of material (for example in relation to the colour or font of any text);
- (b) the size of the material;
- (c) the position and prominence of the material in any public place;
- (ch) when and how the material is published, provided or exhibited;
- (d) the publication format of material.

30

For the purposes of standards 40, 41, 44, 47 and 50, references to documents or other materials being available to the public or being produced for public use do not include documents or materials that are only available to the public by virtue of the Freedom of Information Act 2000 (c. 36).

31

(1) Standards 50, 50A and 50B do not apply to the forms listed in sub-paragraph (3).

(2) For the purposes of standard 2, a body is not required to send a Welsh language version of the forms listed in sub-paragraph (3).

(3) The forms are—

- (a) forms used by a body to recruit employees (see standards 137A, 138 and 139 in relation to recruitment);
- (b) forms used when applying for grant assistance from a body (see standards 71 to 75 in relation to applications for grants);
- (c) forms used when submitting a tender to enter into a contract with a body (see standards 76 to 80 in relation to tendering for a contract).

32

Standards 40, 47, 48 and 49 do not apply to an enactment made by a

body or to a draft enactment prepared by a body.

33 Standard 45 does not apply to rules specified in an enactment or in a draft enactment prepared by a body.

34 Standards 52 to 56 (websites) do not apply to—

(a) documents to which a link is provided on a website, advertising material on a website, or to video and audio clips on a website (see standards 40 to 49 for specific provision in relation to documents, and standard 37 in relation to advertising material produced by a body);

(b) information presented by persons (other than the body) on an interactive page published on a body's website (for example on a section for comments or on a discussion forum).

35 (1) For the purpose of standard 57 an 'app' is a software application designed to undertake a specific task on an electronic device.

(2) Standard 57 does not apply to any advertising material on an app (see standard 37 in relation to advertising material produced by a body).

36 For the purpose of standards 52 to 57 (websites and apps) and standards 58 and 59 (social media), references to treating the Welsh language no less favourably than the English language include, amongst other matters (and in addition to specific matters referred to in any individual standard), treating the Welsh language no less favourably as regards—

- (a) the visual presentation of the material (for example in relation to the colour, size, font and format of any text), or
- (b) when material is published on the website, app or social media;

but it does not mean that Welsh language material must appear on the same page as English language material, or on a page that a person is likely to find before the English language page when searching.

37

(1) Standards 1 to 7 (correspondence) do not apply to correspondence sent by social media (see standards 58 and 59 in relation to social media).

(2) Standards 52 to 57 (websites and apps) do not apply to social media (see standards 58 and 59 in relation to social media).

38

Standards 58 and 59 (social media) do not apply to—

- (a) documents to which a link is provided through social media, or to video and audio clips provided through social media (see standards 40 to 49 for specific provision in relation to documents, and standard 37 in relation to advertising material produced by a body);
- (b) information presented by persons (other than the body) on a body's social media account (for example on a section for comments).

39

For the purpose of standard 60 (self service machines) reference to treating the Welsh language no less favourably than the English language include, amongst other matters, treating the Welsh language no less favourably as regards the visual presentation of

the material (for example in relation to the colour, size, font and format of any text), but it does not mean that Welsh language material must appear on screen at the same time as English language material.

40

For the purposes of standards 64 to 68 (receiving visitors)—

- (a) “reception” means an area in a body’s offices and service locations where staff are made available for the purpose of welcoming persons;
- (b) “reception service” means a service for welcoming persons to the body’s offices or service locations by staff who are made available for that purpose;
- (c) “service locations” include libraries, leisure centres, arts centres, advice centres and drop in centres.

41

For the purposes of standards 7, 69 and 70 an “official notice” means any notice that a body publishes to inform persons about service delivery activities or changes to service delivery activities, but it does not include official notices prescribed by an enactment.

42

For the purposes of standard 76 (invitation to tender)—

(1) A body is not required to publish an invitation to tender in Welsh in the Official Journal of the European Union.

(2) A reference to treating a Welsh language version no less favourably than an English language version includes, amongst other matters, treating the Welsh language no less favourably as regards—

- (a) the visual presentation of material (for example in

- relation to the colour or font of any text);
- (b) the size of the material;
- (c) the position and prominence of the material in any public place;
- (ch)when and how the material is published, provided or exhibited;
- (d) the publication format of material;

but a body will not be treating the Welsh language less favourably than the English language by not publishing an invitation to tender in Welsh in the Official Journal of the European Union.

43

(1) For the purposes of standard 83, the reference to a body presenting its “corporate identity” includes, amongst other things, the way a body presents itself by means of visual statements, the name or names used by a body, and a body’s branding and slogans (for example, branding and slogans printed on its stationery).

(2) Standard 83 does not apply to the extent that an enactment requires a body to use a legal name.

44

For the purposes of standards 84, 85 and 86 (courses), an “education course” means any seminar, training, workshop or similar provision which is provided in order to educate or to improve the skills of members of the public; but does not include activities or courses provided as part of the curriculum in accordance with any enactment.

45

For the purposes of the standards “enactment” means an enactment (whenever enacted or made) comprised in, or in an instrument made under—

- (a) an Act of Parliament; or

(b) a Measure or an Act of the National Assembly for Wales.

SCHEDULE 2 Regulation 2(2)  
Policy making Standards

PART 1

THE STANDARDS

**1**                    **Standards relating to considering the effects of a body's policy decisions on the Welsh language**

**Standard 88:**        When you formulate a new policy, or review or revise an existing policy, you must consider what effects, if any (whether positive or adverse), the policy decision would have on—

(a) opportunities for persons to use the Welsh language, and

(b) treating the Welsh language no less favourably than the English language.

**Standard 89:**        When you formulate a new policy, or review or revise an existing policy, you must consider how the policy could be formulated (or how an existing policy could be changed) so that the policy decision would have positive effects, or increased positive effects, on—

(a) opportunities for persons to use the Welsh language, and

(b) treating the Welsh language no less favourably than the English language.

**Standard 90:**        When you formulate a new policy, or review or revise an existing policy, you must consider how the policy could be formulated (or how an existing policy could be changed) so that the policy decision would not have adverse effects, or so that it would have decreased adverse effects, on—

(a) opportunities for persons to use the Welsh language, and



- (b) treating the Welsh language no less favourably than the English language.

**Standard 91:** When you publish a consultation document which relates to a policy decision, the document must consider, and seek views on, the effects (whether positive or adverse) that the policy decision under consideration would have on—

- (a) opportunities for persons to use the Welsh language, and
- (b) treating the Welsh language no less favourably than the English language.

**Standard 92:** When you publish a consultation document which relates to a policy decision the document must consider, and seek views on, how the policy under consideration could be formulated or revised so that it would have positive effects, or increased positive effects, on—

- (a) opportunities for persons to use the Welsh language, and
- (b) treating the Welsh language no less favourably than the English language.

**Standard 93:** When you publish a consultation document which relates to a policy decision the document must consider, and seek views on, how the policy under consideration could be formulated or revised so that it would not have adverse effects, or so that it would have decreased adverse effects, on—

- (a) opportunities for persons to use the Welsh language, and
- (b) treating the Welsh language no less favourably than the English language.

**Standard 94:** You must produce and publish a policy on awarding grants (or, where appropriate, amend an existing policy) which requires you to take the following matters into account when you make decisions in relation to the awarding of a grant—

- (a) what effects, if any (and whether positive or negative), the awarding of a grant would have on—
  - (i) opportunities for persons to use the Welsh language, and
  - (ii) treating the Welsh language no less favourably than the English language;
- (b) how the decision could be taken or implemented (for example, by imposing conditions of grant) so that it would have positive effects, or increased positive effects, on—
  - (i) opportunities for persons to use the Welsh language, and
  - (ii) treating the Welsh language no less favourably than the English language;
- (c) how the decision could be taken or implemented (for example, by imposing conditions of grant) so that it would not have adverse effects, or so that it would have decreased adverse effects on—
  - (i) opportunities for persons to use the Welsh language, and
  - (ii) treating the Welsh language no less favourably than the English language;
- (ch) whether you need to ask the applicant for any additional information in order to assist you in assessing the effects of

awarding a grant on—

- (i) opportunities for persons to use the Welsh language, and
- (ii) treating the Welsh language no less favourably than the English language.

**Standard 95:** When you commission or undertake research that is intended to assist you to make a policy decision, you must ensure that the research considers what effects, if any (and whether positive or adverse), the policy decision under consideration would have on—

- (a) opportunities for persons to use the Welsh language, and
- (b) treating the Welsh language no less favourably than the English language.

**Standard 96:** When you commission or undertake research that is intended to assist you to make a policy decision, you must ensure that the research considers how the policy decision under consideration could be made so that it would have a positive effects, or so that it would have increased positive effects, on—

- (a) opportunities for persons to use the Welsh language, and
- (b) treating the Welsh language no less favourably than the English language.

**Standard 97:** When you commission or undertake research that is intended to assist you to make a policy decision, you must ensure that the research considers how the policy decision under consideration could be made so that it would not have adverse effects, or so that it would have decreased adverse effects, on—

- (a) opportunities for persons

- to use the Welsh language,  
and  
(b) treating the Welsh  
language no less  
favourably than the  
English language.

## PART 2

### INTERPRETING THE STANDARDS

- 2 In Part 1 of this Schedule a “policy decision” means any decision made by a body about the exercise of its functions or about the conduct of its business or other undertaking, and it includes, amongst other things (and as appropriate to the body), decisions about—
- (a) the content of legislation;
  - (b) the exercise of statutory powers;
  - (c) the content of policy statements;
  - (ch) strategies or strategic plans;
  - (d) internal structures.
- 3 In Part 1 of this Schedule a reference to positive or adverse effects is a reference to such effects whether direct or indirect.

SCHEDULE 3 Regulation 2(3)

Operational standards

PART 1

THE STANDARDS

**1 Standards relating to the use of the Welsh language within a body's internal administration**

**Standard 98:** You must develop a policy on using Welsh internally for the purpose of promoting and facilitating the use of the language, and you must publish that policy on your intranet.

**Standard 99:** When you offer a new post to an individual, you must ask that individual whether he or she wishes for the contract of employment or contract for services to be provided in Welsh; and if that is the individual's wish you must provide the contract in Welsh.

**Standard 100:** You must—

- (a) ask each employee whether he or she wishes to receive any paper correspondence that relates to his or her employment, and which is addressed to him or her personally, in Welsh, and
- (b) if an employee so wishes, provide any such correspondence to that employee in Welsh.

**Standard 101:** You must ask each employee whether he or she wishes to receive any documents that outline his or her training needs or requirements in Welsh; and if that is the employee's wish you must provide any such documents to him or to her in Welsh.

**Standard 102:** You must ask each employee

whether he or she wishes to receive any documents that outline his or her performance objectives in Welsh; and if that is the employee's wish you must provide any such documents to him or to her in Welsh.

**Standard 103:** You must ask each employee whether he or she wishes to receive any documents that outline or record his or her career plan in Welsh; and if that is the employee's wish you must provide any such documents to him or to her in Welsh.

**Standard 104:** You must ask each employee whether he or she wishes to receive any forms that record and authorise—

- (a) annual leave,
- (b) absences from work, and
- (c) flexible working hours,

in Welsh; and if that is an employee's wish, you must provide any such forms to him or to her in Welsh.

**Standard 105:** If you publish a policy relating to behaviour in the workplace, you must publish it in Welsh.

**Standard 106:** If you publish a policy relating to health and well-being at work, you must publish it in Welsh.

**Standard 107:** If you publish a policy relating to salaries or workplace benefits, you must publish it in Welsh.

**Standard 108:** If you publish a policy relating to performance management, you must publish it in Welsh.

**Standard 109:** If you publish a policy about absence from work, you must publish it in Welsh.

**Standard 110:** If you publish a policy relating to working conditions, you must publish it in Welsh.

**Standard 111:** If you publish a policy regarding

work patterns, you must publish it in Welsh.

**2 Standards relating to complaints made by a member of a body's staff**

**Standard 112:** You must allow each member of staff—

- (a) to make complaints to you in Welsh, and
- (b) to respond in Welsh to any complaint made about him or about her.

**Standard 112A:** You must state in any document that you have that sets out your procedures for making complaints that each member of staff may—

- (a) make a complaint to you in Welsh, and
- (b) respond to a complaint made about him or about her in Welsh;

and you must also inform each member of staff of that right.

**Standard 113:** If you receive a complaint from a member of staff or a complaint about a member of staff, and a meeting is required with that member of staff, you must—

- (a) offer to conduct the meeting in Welsh, and
- (b) if the member of staff wishes for the meeting to be conducted in Welsh, conduct the meeting in Welsh (without the assistance of a simultaneous or consecutive translation service).

**Standard 114:** If you receive a complaint from a member of staff or a complaint about a member of staff, and a meeting is required with that member of staff, you must—

- (a) ask the member of staff whether he or she wishes to use the Welsh language at the meeting;

- (b) explain that you will provide a translation service from Welsh to English for that purpose if it is required;

and if the member of staff wishes to use the Welsh language, you must provide a simultaneous translation service from Welsh to English at the meeting (unless you conduct the meeting in Welsh without translation services).

**Standard 115:** When you inform a member of staff of a decision you have reached in relation to a complaint made by him or by her, or in relation to a complaint made about him or about her, you must do so in Welsh if that member of staff—

- (a) made the complaint in Welsh,
- (b) responded in Welsh to a complaint about him or about her,
- (c) asked for a meeting about the complaint to be conducted in Welsh, or
- (ch) asked to use the Welsh language at a meeting about the complaint.

### **3 Standards relating to a body disciplining staff**

**Standard 116:** You must allow all members of staff to respond in Welsh to allegations made against them in any internal disciplinary process.

**Standard 116A:** You must—

- (a) state in any document that you have which sets out your arrangements for disciplining staff that any member of staff may respond in Welsh to any allegations made against him or against her, and
- (b) if you commence a disciplinary procedure in relation to a member of staff, inform that member



of staff of that right.

**Standard 117:** If you organise a meeting with a member of staff regarding a disciplinary matter that relates to his or to her conduct you must—

- (a) offer to conduct the meeting in Welsh; and
- (b) if the member of staff wishes for the meeting to be conducted in Welsh, conduct the meeting in Welsh (without the assistance of a simultaneous or consecutive translation service).

**Standard 118:** If you organise a meeting with a member of staff regarding a disciplinary matter that relates to his or her conduct you must—

- (a) ask the member of staff whether he or she wishes to use the Welsh language at the meeting, and
- (b) explain that you will provide a translation service for that purpose if it is required;

and, if the member of staff wishes to use the Welsh language, you must provide a simultaneous translation service from Welsh to English at the meeting (unless you conduct the meeting in Welsh without a translation service).

**Standard 119:** When you inform a member of staff of a decision you have reached following a disciplinary process, you must do so in Welsh if that member of staff—

- (a) responded to allegations made against him or her in Welsh,
- (b) asked for a meeting regarding the disciplinary process to be conducted in Welsh, or
- (c) asked to use the Welsh language at a meeting regarding the disciplinary

process.

**4 Standards relating to a body's information technology and about support material provided by a body, and relating to the intranet**

**Standard 120:** You must provide staff with computer software for checking spelling and grammar in Welsh, and provide Welsh language interfaces for software (where an interface exists).

**Standard 121:** You must ensure that—

- (a) the text of each page of your intranet is available in Welsh,
- (b) every Welsh language page on your intranet is fully functional, and
- (c) the Welsh language is treated no less favourably than the English language on your intranet.

**Standard 122:** You must ensure that—

- (a) the text of the homepage of your intranet is available in Welsh,
- (b) any Welsh language text on your intranet's homepage (or, where relevant, your Welsh language intranet homepage) is fully functional, and
- (c) the Welsh language is treated no less favourably than the English language in relation to the homepage of your intranet.

**Standard 123:** You must ensure that each time you publish a new intranet page or amend a page—

- (a) the text of that page is available in Welsh,
- (b) any Welsh language version of that page is fully functional, and
- (c) the Welsh language is

treated no less favourably than the English language in relation to the text of that page.

**Standard 124:** If you have a Welsh language page on your intranet that corresponds to an English language page, you must state clearly on the English language page that the page is also available in Welsh, and must provide a direct link to the Welsh language page on the corresponding English language page.

**Standard 125:** You must designate and maintain a page (or pages) on your intranet which provides services and support material to promote the Welsh language and to assist your staff to use the Welsh language.

**Standard 126:** You must provide the interface and menus on your intranet pages in Welsh.

**5 Standards relating to a body developing Welsh language skills through planning and training its workforce**

**Standard 127:** You must assess the Welsh languages skills of your employees.

**Standard 128:** You must provide training in Welsh in the following areas, if you provide such training in English—

- (a) recruitment and interviewing;
- (b) performance management;
- (c) complaints and disciplinary procedures;
- (ch) induction;
- (d) dealing with the public; and
- (dd) health and safety.

**Standard 129:** You must provide training (in Welsh) on using Welsh effectively in—

- (a) meetings;

- (b) interviews; and
- (c) complaints and disciplinary procedures.

**Standard 130:** You must provide opportunities during working hours—

- (a) for your employees to receive basic Welsh language lessons, and
- (b) for employees who manage others to receive training on using the Welsh language in their role as managers.

**Standard 131:** You must provide opportunities for employees who have completed basic Welsh language training to receive further training free of charge, to develop their language skills.

**Standard 132:** You must provide training courses so that your employees can develop—

- (a) awareness of the Welsh language (including awareness of its history and its role in Welsh culture);
- (b) an understanding of the duty to operate in accordance with the Welsh language standards;
- (c) an understanding of how the Welsh language can be used in the workplace.

**Standard 133:** When you provide information to new employees (for example by means of an induction process), you must provide information for the purpose of raising their awareness of the Welsh language.

**Standard 134:** You must provide text or a logo for your staff to include in e-mail signatures which will enable them to indicate whether they speak Welsh fluently or whether they are learning the language.

**Standard 135:** You must provide wording for your

employees which will enable them to include a Welsh language version of their contact details in e-mail messages, and to provide a Welsh language version of any message which informs others that they are unavailable to respond to e-mail messages.

**6 Standards relating to a body recruiting and appointing**

**Standard 136:** When you assess the requirements for a new or vacant post, you must assess the need for Welsh language skills, and categorise it as a post where one or more of the following apply—

- (a) Welsh language skills are essential;
- (b) Welsh language skills need to be learnt when appointed to the post;
- (c) Welsh language skills are desirable; or
- (ch) Welsh language skills are not necessary.

**Standard 136A:** If you have categorised a post as one where Welsh language skills are essential, desirable or need to be learnt you must—

- (a) specify that when advertising the post, and
- (b) advertise the post in Welsh.

**Standard 137:** When you advertise a post, you must state that applications may be submitted in Welsh, and that an application submitted in Welsh will not be treated less favourably than an application submitted in English.

**Standard 137A:** If you publish—

- (a) application forms for posts;
- (b) material that explains your procedure for applying for posts;
- (c) information about your interview process, or about other assessment methods

when applying for posts;  
(ch) job descriptions;  
you must publish them in Welsh;  
and you must ensure that the Welsh  
language versions of the documents  
are treated no less favourably than  
any English language versions of  
those documents.

**Standard 137B:** You must not treat an application for a post made in Welsh less favourably than you treat an application made in English (including, amongst other matters, in relation to the closing date you set for receiving applications and in relation to any time-scale for informing individuals of decisions).

**Standard 138:** You must ensure that your application forms for posts provide a space for individuals to indicate that they wish an interview or other method of assessment in Welsh and if an individual so wishes, you must conduct any interview or other method of assessment in Welsh (without the assistance of a simultaneous or consecutive translation service).

**Standard 139:** You must ensure that your application forms for posts—

- (a) provide a space for individuals to indicate that they wish to use the Welsh language at an interview or at any other method of assessment, and
- (b) explain that you will provide a translation service from Welsh to English for that purpose if it is required;

and, if the individual wishes to use the Welsh language at the interview or assessment, you must provide a simultaneous translation service at the interview or assessment (unless you conduct the interview or assessment in Welsh without that translation service).

**Standard 140:** When you inform an individual of

your decision in relation to an application for a post, you must do so in Welsh if the application was made in Welsh.

**7 Standards relating to signs displayed in a body's workplace**

**Standard 141:** When you erect a new sign or renew a sign in your workplace (including temporary signs), any text displayed on the sign must be displayed in Welsh (whether on the same sign as the corresponding English language text or on a separate sign), and if the same text is displayed in Welsh and in English, you must not treat the Welsh language text less favourably than the English language text.

**Standard 142:** When you erect a new sign or renew a sign in your workplace (including temporary signs) which conveys the same information in Welsh and in English, the Welsh-language text must be positioned so that it is likely to be read first.

**Standard 143:** You must ensure that the Welsh language text on signs displayed in your workplace is accurate in terms of meaning and expression.

**8 Standard relating to audio announcements and messages in a body's workplace**

**Standard 144:** When you make announcements in the workplace using audio equipment, that announcement must be made in Welsh, and if the announcement is made in Welsh and in English, the announcement must be made in Welsh first.

**PART 2**

**STANDARDS THAT ARE RELIANT ON OTHER STANDARDS - SPECIAL CONDITIONS**

9 When a compliance notice requires a

body to comply with one of the standards listed on a specific row in column 1 of Table 1, that compliance notice must also require that body to comply (in whatever way the Welsh Language Commissioner considers appropriate) with the standard or standards listed in column 2 of that row.



**TABLE 1**

<i>Row</i>	<b>Column 1</b> <i>Main standard</i>	<b>Column 2</b> <i>Reliant standard</i>
(1)	<b>Complaints procedures</b> Standard 112	Standard 112A
(2)	<b>Complaints procedures</b> Standard 112A	Standard 112
(3)	<b>Disciplining staff</b> Standard 116	Standard 116A
(4)	<b>Disciplining staff</b> Standard 116A	Standard 116
(5)	<b>Intranet</b> Standards 121, 122 or 123	Standard 124
(6)	<b>Recruitment and appointments</b> Standard 136	Standard 136A
(7)	<b>Recruitment</b> Standard 137	Standard 137A Standard 137B Standard 140
(8)	<b>Internal signs</b> Standard 141	Standard 143

## PART 3

### INTERPRETING THE STANDARDS

- 10 The standards specified in Part 1 of this Schedule must be interpreted as follows.
- 11 For the purposes of standards 121, 122 and 123 (a body's intranet), references to treating the Welsh language no less favourably than the English language include, amongst other matters (and in addition to specific matters referred to in any individual standard), treating the Welsh language no less favourably as regards—
- (a) the visual presentation of the material (for example in relation to the colour, size, font and format of any text);
  - (b) when material is published on the intranet;
- but it does not mean that the Welsh language material must appear on the same page as the English language material, or on a page that is likely to open before the corresponding English language version of a page.
- 12 For the purposes of standards 137A (recruitment) and 141 (internal signs), references to treating the Welsh language no less favourably than the English language includes, amongst other matters (and in addition to specific matters referred to in any individual standard), treating the Welsh language no less favourably as regards—
- (a) the visual presentation of the material (for example in relation to the colour or font of any text);
  - (b) the size of the material;
  - (c) the position and prominence of the material in any public area;
  - (ch) when and how material is

published, provided or exhibited;

- (d) the publication format of material.

13

For the purposes of the standards a requirement to publish, provide or display any written material in Welsh does not mean that material should be published, provided or, displayed in Welsh only, nor does it mean that the material should be produced in Welsh first (unless that is specifically stated in the standard).

14

Standards 121 to 124 (intranet) do not apply to—

- (a) documents to which a link is provided on the intranet, advertising material on the intranet, or to video and audio clips on the intranet (see standards 105 to 111 for specific provision in relation to documents);
- (b) information presented by persons on an interactive page published on a body's intranet (for example on a section for comments or on a discussion forum).

15

For the purposes of standards 136 and 136A only—

- (a) “post” includes a public appointment;
- (b) “public appointment” means any appointment to a public body or public office.

## SCHEDULE 4 Regulation 2(4)

### Promotion Standards

#### PART 1

#### THE STANDARDS

#### **1 Standards relating to a body promoting the Welsh language**

**Standard 145:** You must produce, and publish on your website, a 5-year strategy that sets out how you propose to promote the Welsh language and to facilitate the use of the Welsh language more widely in your area; and the strategy must include (amongst other matters)—

- (a) a target (in terms of the percentage of speakers in your area) for increasing or maintaining the number of Welsh speakers in your area by the end of the 5 year period concerned, and
- (b) a statement setting out how you intend to reach that target;

and you must review the strategy and publish a revised version on your website within 5 years of publishing a strategy (or of publishing a revised strategy).

**Standard 146:** Five years after publishing a strategy in accordance with standard 145 you must—

- (a) assess to what extent you have followed that strategy and have reached the target set by it, and
- (b) publish that assessment on your website, ensuring that it contains the following information—
  - (i) the number of Welsh speakers in your area, and the age of those speakers;
  - (ii) a list of the activities

that you have arranged or funded during the previous 5 years in order to promote the use of the Welsh language.

**PART 2**  
**STANDARDS THAT ARE RELIANT ON**  
**OTHER STANDARDS - SPECIAL**  
**CONDITIONS**

- 2                      When a compliance notice requires a body to comply with one of the standards listed on a specific row in column 1 of Table 1, that compliance notice must also require that body to comply (in whatever way the Welsh Language Commissioner considers appropriate) with the standard of standards listed in column 2 of that row.

**TABLE 1**

<i>Row</i>	<i>Column 1 Main standard</i>	<i>Column 2 Reliant Standard</i>
(1)	<b>Reviewing strategy</b>  Standard 146	Standard 145

## SCHEDULE 5 Regulation 2(5)

### Record Keeping Standards

#### PART 1

#### THE STANDARDS

#### **1 Standards relating to a body keeping records**

**Standard 147:** You must keep a record, in relation to each financial year, of the number of complaints you receive relating to your compliance with standards.

**Standard 148:** You must keep a copy of any written complaint that you receive that relates to your compliance with the standards with which you are under a duty to comply.

**Standard 149:** You must keep a copy of any written complaint that you receive that relates to the Welsh language (whether or not that complaint relates to the standards with which you are under a duty to comply).

**Standard 150:** You must keep a record of the steps that you have taken in order to ensure compliance with the policy making standards with which you are under a duty to comply.

**Standard 151:** You must keep a record (following assessments of your employees' Welsh language skills made in accordance with standard 127), of the number of employees who have Welsh language skills at the end of each financial year and, where you have that information, you must keep a record of the skill level of those employees.

**Standard 152:** You must keep a record, for each financial year of—

- (a) the number of members of staff who attended

training courses offered by you in Welsh (in accordance with standard 128), and

- (b) if a Welsh version of a course was offered by you in accordance with standard 128, the percentage of the total number of staff attending the course who attended that version.

**Standard 153:** You must keep a copy of every assessment that you carry out (in accordance with standard 136) in respect of the Welsh language skills that may be needed in relation to a new or vacant post.

**Standard 154:** You must keep a record, in relation to each financial year of the number of new and vacant posts which were categorised (in accordance with standard 136) as posts where—

- (a) Welsh language skills are essential;
- (b) Welsh language skills need to be learnt when appointed to the post;
- (c) Welsh language skills are desirable; or
- (ch) Welsh language skills are not necessary.

## PART 2

### INTERPRETING THE STANDARDS

2 The standards specified in Part 1 of this Schedule must be interpreted as follows.

3 For the purposes of standards 147, 151, 152 and 154—

- (a) when a body is under a duty to comply with a standard for the first time, “financial year” means the

period beginning with the day from which a body is under a duty to comply with a standard and ending with the following 31 March;

- (b) subject to that, “financial year” means the period of 12 months ending with 31 March.



SCHEDULE 6 Regulation 2(6)

Standards which deal with  
Supplementary Matters

PART 1

SERVICE DELIVERY STANDARDS

**1 A body publicising service delivery standards**

**Standard 155:** You must ensure that a document which records the service delivery standards with which you are under a duty to comply, and the extent to which you are under a duty to comply with those standards, is available—

- (a) on your website, and
- (b) in each of your offices that are open to the public.

**2 A body publishing a complaints procedure**

**Standard 156:** You must—

- (a) ensure that you have a complaints procedure that deals with the following matters—
  - (i) how you intend to deal with complaints relating to your compliance with the service delivery standards with which you are under a duty to comply, and
  - (ii) how you will provide training for your staff in relation to dealing with those complaints,
- (b) publish a document that records that procedure on your website, and
- (c) ensure that a copy of that document is available in each of your offices that are open to the public.

**3 A body publishing arrangements for oversight, promotion etc.**

**Standard 157:** You must—

- (a) ensure that you have arrangements for—
  - (i) overseeing the way you comply with the service delivery standards with which you are under a duty to comply,
  - (ii) promoting the services that you offer in accordance with those standards, and
  - (iii) facilitating the use of those services,
- (b) publish a document that records those arrangements on your website, and
- (c) ensure that a copy of that document is available in each of your offices that are open to the public.

**4 A body producing an annual report regarding service delivery standards**

**Standard 158:**

- (1) You must produce a report (an “annual report”), in Welsh, in relation to each financial year, which deals with the way in which you have complied with the service delivery standards with which you were under a duty to comply during that year.
- (2) The annual report must include the number of complaints that you received during that year which related to your compliance with the service delivery standards with which you were under a duty to comply.
- (3) You must publish the annual report no later than 30 June following the financial year to which the report relates.
- (4) You must publicise the fact that you have published an annual report.
- (5) You must ensure that a current copy of your annual report is available—

- (a) on your website, and
- (b) in each of your offices that are open to the public.

**5**                    **A body publicising the way it intends to comply with service delivery standards**

**Standard 159:** You must publish a document on your website which explains how you intend to comply with the service delivery standards with which you are under a duty to comply.

**6**                    **A body providing information to the Welsh Language Commissioner**

**Standard 160:** You must provide any information requested by the Welsh Language Commissioner which relates to your compliance with the service delivery standards with which you are under a duty to comply.

## PART 2

### POLICY MAKING STANDARDS

**7**                    **A body publicising policy making standards**

**Standard 161:** You must ensure that a document which records the policy making standards with which you are under a duty to comply, and the extent to which you are under a duty to comply with those standards, is available—

- (a) on your website, and
- (b) in each of your offices that are open to the public.

**8**                    **A body publishing a complaints procedure**

**Standard 162:** You must—

- (a) ensure that you have a complaints procedure that deals with the following

matters—

- (i) how you intend to deal with complaints relating to your compliance with the policy making standards with which you are under a duty to comply, and
  - (ii) how you will provide training for your staff in relation to dealing with those complaints,
- (b) publish a document that records that procedure on your website, and
  - (c) ensure that a copy of that document is available in each of your offices that are open to the public.

**9 A body publishing arrangements for oversight**

**Standard 163:** You must—

- (a) ensure that you have arrangements for overseeing the way you comply with the policy making standards with which you are under a duty to comply,
- (b) publish a document that records those arrangements on your website, and
- (c) ensure that a copy of that document is available in each of your offices that are open to the public.

**10 A body producing an annual report regarding policy making standards**

**Standard 164:** (1) You must produce a report (an “annual report”), in Welsh, in relation to each financial year, which deals with the way in which you have complied with the policy making standards with which you were under a duty to comply during that year.

(2) The annual report must include the number of complaints you received during the year which related to your compliance with the policy making standards with which you were under a duty to comply.

(3) You must publish the annual report no later than 30 June following the financial year to which the report relates.

(4) You must publicise the fact that you have published an annual report.

(5) You must ensure that a current copy of your annual report is available—

(a) on your website, and

(b) in each of your offices that are open to the public.

**11** **A body publicising the way it intends to comply with policy making standards**

**Standard 165:** You must publish a document on your website which explains how you intend to comply with the policy making standards with which you are under a duty to comply.

**12** **A body providing information to the Welsh Language Commissioner**

**Standard 166:** You must provide any information requested by the Welsh Language Commissioner which relates to compliance with the policy making standards with which you are under a duty to comply.

### PART 3

#### OPERATIONAL STANDARDS

**13** **A body publicising operational standards**

**Standard 167:** You must ensure that a document which records the operational standards with which you are under a duty to comply, and the extent to which you are under a duty to comply with those standards, is available—

- (a) on your website, and
- (b) in each of your offices that are open to the public.

**14 A body publishing a complaints procedure**

**Standard 168:** You must—

- (a) ensure that you have a complaints procedure that deals with the following matters—
  - (i) how you intend to deal with complaints relating to your compliance with the operational standards with which you are under a duty to comply, and
  - (ii) how you will provide training for your staff in relation to dealing with those complaints, and
- (b) publish a document that records that procedure on your intranet.

**15 A body publishing oversight arrangements, promotion etc.**

**Standard 169:** You must—

- (a) ensure that you have arrangements for—
  - (i) overseeing the way you comply with the operational standards with which you are under a duty to comply,
  - (ii) promoting the services that you offer in accordance with those standards, and



- were essential,
- (ii) Welsh language skills needed to be learnt when appointed to the post,
  - (iii) Welsh language skills were desirable, or
  - (iv) Welsh language skills were not necessary,
- (on the basis of the records you kept in accordance with standard 154);
- (d) the number of complaints that you received during that year which related to your compliance with the operational standards with which you were under a duty to comply.
- (3) You must publish the annual report no later than 30 June following the financial year to which the report relates.
- (4) You must publicise the fact that you have published an annual report.
- (5) You must ensure that a current copy of your annual report is available—
- (a) on your website, and
  - (b) in each of your offices that are open to the public.

**17**

**A body publicising the way it intends to comply with operational standards**

**Standard 171:**

You must publish a document on your website which explains how you intend to comply with the operational standards with which you are under a duty to comply.

**18**

**A body providing information to the Welsh Language Commissioner**

**Standard 172:**

You must provide any information requested by the Welsh Language Commissioner which relates to



compliance with which you are under a duty to comply.

## PART 4

### PROMOTION STANDARDS

**19 A body publicising promotion standards**

**Standard 173:** You must ensure that a document which records the promotion standards with which you are under a duty to comply, and the extent to which you are under a duty to comply with those standards, is available—

- (a) on your website, and
- (b) in each of your offices that are open to the public.

**20 A body providing information to the Welsh Language Commissioner**

**Standard 174:** You must provide any information requested by the Welsh Language Commissioner which relates to compliance with the promotion standards with which you are under a duty to comply.

## PART 5

### RECORD KEEPING STANDARDS

**21 A body publicising record keeping standards**

**Standard 175:** You must ensure that a document which records the record keeping standards with which you are under a duty to comply, and the extent to which you are under a duty to comply with those standards, is available—

- (a) on your website, and
- (b) in each of your offices that are open to the public.

**22 A body providing information to**

**the Welsh Language  
Commissioner**

- Standard 176:** You must provide any records you kept in accordance with the record keeping standards with which you are under a duty to comply to the Welsh Language Commissioner, if the Commissioner asks for those records.

## PART 6

### INTERPRETING THE STANDARDS

- 23 The standards specified in Part 1 to 5 must be interpreted as follows.
- 24 For the purposes of standards 158, 164 and 170—
- (a) when a body is under a duty to comply with a standard for the first time, “financial year” means the period beginning with the day from which a body is under a duty to comply with a standard and ending with the following 31 March;
  - (b) subject to that, “financial year” means the period of 12 months ending with 31 March.
- 25 For the purpose of the standards a requirement to produce or publish any written material in Welsh does not mean that material should be produced or published in Welsh only, nor does it mean that the material should be produced in Welsh first (unless that is specifically stated in the standard).

## PART 7

### SUPPLEMENTARY PROVISION

- 26 **Complaints procedures**
- (1) When a body is under a duty to comply with one or more of the

following standards, it may—

- (a) comply with them in one complaints procedure;
  - (b) revise an existing complaints procedure.
- (2) The standards are—
- (a) standard 156;
  - (b) standard 162;
  - (c) standard 168.

**27**

### **Supervisory arrangements**

(1) When a body is under a duty to comply with one or more of the following standards, it may comply with them in one set of supervisory arrangements.

- (2) The standards are—
- (a) standard 157;
  - (b) standard 163;
  - (c) standard 169.

**28**

### **Annual reports**

(1) When a body is under a duty to comply with one or more of the following standards, it may comply with them by including the necessary information in one annual report, to be called “Welsh Language Standards Annual Report”.

- (2) The standards are—
- (a) standard 158;
  - (b) standard 164;
  - (c) standard 170.

**29**

### **Publicising the way in which a body intends to comply with standards**

(1) When a body is under a duty to comply with one or more of the following standards, it may comply with them in one document.

- (2) The standards are—
- (a) standard 159;
  - (b) standard 165;

(c) standard 171.

## **EXPLANATORY MEMORANDUM TO**

### **Welsh Language Standards (No. 1) Regulations 2015**

This Explanatory Memorandum has been prepared by the Welsh Language Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

#### **First Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Welsh Language Standards (No. 1) Regulations 2015. I am satisfied that the benefits justify the likely costs.

Carwyn Jones AM  
First Minister of Wales

24 February 2015

## **1. Description**

1.1. The Welsh Language Standards (No. 1) Regulations 2015 ('the Standards') specify service delivery standards; policy making standards; operational standards; promotion standards; and record keeping standards.

1.2. The Regulations also make the standards specifically applicable to Welsh Ministers, County and County Borough Councils, and National Park Authorities, enabling the Welsh Language Commissioner ('the Commissioner') to issue Compliance Notices to those organisations in relation to the standards specified.

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

### 2.1. Numbers in the Regulations

The Regulations use the Welsh alphabet i.e. (a), (b), (c), (ch) etc. This affects only one group of standards - standards 27A-D. It also affects;

- (1) a small number of sub paragraphs within individual standards (see standards 94, 115, 128, 136, 137A, 154, 170).
- (2) paragraph 29 and 42 of Schedule 1, paragraph 2 of Schedule 2, paragraph 12 of Schedule 3 and
- (3) regulation 2(6).

This style is different to the usual numbering style adopted in subordinate legislation made by the Welsh Ministers. Usually, the Welsh and English versions adopt the English alphabet. In this case, because of the nature and the subject matter of the Regulations, the Welsh alphabet has been used. The Welsh style numbering has been used in the English and Welsh versions to ensure consistency and to remove any possibility of confusion when cross-referring.

### 2.2. Name of the Regulations

The title of the draft Regulations consulted upon was the Welsh Language Standards (Welsh Ministers, County and County Borough Councils, and National Park Authorities) Regulations 2015. The title of the Regulations laid is the Welsh Language Standards (No. 1) Regulations 2015.

It is unusual for '(No. 1)' to appear in the title of the first in a series, because it is not usually known that there will be further Regulations in the series. In this instance, further Regulations will be made in order to specify Standards for other persons listed in Schedule 6 of the Welsh Language (Wales) Measure 2011 ('the Measure').

We therefore propose that all regulations made under section 26 of the Measure will be one continuous series, in the same way as commencement orders. It is felt that this approach will make the Regulations easier to deal with and to refer to, particularly when Compliance notices refer to regulations.

### 2.3. Local Government Reorganisation

Schedule 6 of the Measure sets out which bodies are liable to comply with Standards. It does not name individual County Borough Councils and County Councils. Therefore the proposed reorganisation of Local Government has no impact on the Commissioner's ability to issue Compliance Notices on existing Councils.

The position will be revisited should Councils be reorganised in the future.

## **3. Legislative background**

The Regulations are made in exercise of the powers conferred on the Welsh Ministers under sections 26, 27, 39 and 150(5) of the Measure. Section 26 of the Measure enables the Welsh Ministers to specify standards by regulations. Section 27 enables the Welsh Ministers to specify different standards in relation to different conduct. It also enables them, in relation to a particular conduct, to specify one standard or a number of standards.

Before the Commissioner can give a person a compliance notice requiring them to comply with a standard, that standard has to be specifically applicable to the person (section 25). Section 39 provides that a standard is specifically applicable to a person once the Welsh Ministers have authorised the Commissioner to give that person a Compliance notice in respect of that standard. Section 150(5) provides that any power of the Welsh Ministers to make regulations includes a power to make such transitional, transitory, consequential, saving incidental and other provision as the Welsh Ministers think necessary or appropriate.

The Regulations, pursuant to section 150(2) of the Measure must be laid before and approved by resolution of the National Assembly for Wales (i.e. the affirmative procedure).

## **4. Purpose & intended effect of the legislation**

The Measure confirmed the official status of the Welsh language in Wales and created a new legislative framework for the language.

A key step in giving effect to the Measure is specifying standards and authorising the Commissioner to require persons to comply with those Standards.

Section 25 of the Measure provides that a person is required to comply with a standard specified by the Welsh Ministers where certain conditions are met. Those conditions include;

- i. that a standard is specifically applicable to the person (ie. the Welsh Ministers have authorised the Commissioner to give that person a Compliance notice in respect of that Standard),
- ii. that the Welsh Language Commissioner has given a Compliance notice to the person,
- iii. the Compliance notice requires the person to comply with the standard, and
- iv. the Compliance notice is in force.

The duty to comply with standards will take the place of the Welsh Language Schemes that were developed under the Welsh Language Act 1993 and monitored by the Welsh Language Board until its abolition on 31 March 2012, and the Welsh Language Commissioner since 1 April 2012.

The Regulations have two purposes. The first is to specify Standards.

Standards falling into the following categories of standards are specified in the Regulations:

- **Service-delivery standards** will be imposed in relation to the delivery of services in order to promote or facilitate the use of the Welsh language, or to ensure that it is treated no less favourably than English.
- **Policy-making standards** will require organisations to consider what effect their policy decisions will have on the ability of persons to use the language and on the principle of treating Welsh no less favourably than English.
- **Operational standards** deal with the internal use of Welsh by organisations.
- **Promotion standards** will require organisations to adopt a strategy setting out how it proposes to promote and facilitate the use of Welsh.
- **Record-keeping standards** will make it necessary to keep records about some of the other standards, and about any complaints received by an organisation. These records will assist the Commissioner in regulating the organisation's compliance with standards.

The standards have been drafted with the aim of:

- improving the services Welsh-speakers can expect to receive from organisations in Welsh
- increasing the use people make of Welsh-language services
- making it clear to organisations what they need to do in terms of the Welsh language
- ensuring that there is an appropriate degree of consistency in terms of the duties placed on bodies in the same sectors.

Some standards are dependent on each other. The Regulations therefore contain tables (in Part 2 of Schedules 1, 3 and 4) to accompany the Service delivery standards, Operational standards and the Promotion standards, detailing which other



standards will also need to be imposed when a particular standard is included in a Compliance notice.

The second purpose of the Regulations is to authorise the Commissioner to give Compliance notices to Welsh Ministers, county and county borough councils and National Park authorities in Wales requiring them to comply with the standards specified. The Regulations do not authorise the Commissioner to give the Welsh Ministers a Compliance notice requiring them to comply with Promotion Standards. This is because section 78 of the Government of Wales Act 2006 already places a duty on Welsh Ministers to prepare a strategy in relation to the Welsh language.

The Regulations, when they come into force, will not have a direct effect on organisations and they will not, by themselves, create rights for Welsh language users. That will only happen when all the conditions in section 25 have been met. However, the Regulations are a crucial step in the Measure's framework, and enable the Commissioner to require organisations to comply with the standards.

It will be for the Commissioner to choose which standards to impose on each organisation by way of a Compliance notice. The Regulations set the range of standards which could be imposed on an organisation. There is no requirement on the Commissioner to require every organisation to comply with every standard. The organisation may have to comply with the standard only in some circumstances and not in others or in some areas and not in others – depending on what is stated in their Compliance notice. The Compliance notice will also set the date by which the organisation is required to comply with a standard.

#### *Means of Appeal*

Any organisation will be able to challenge the requirement to comply with a particular standard on the grounds of whether it is reasonable and proportionate to require them to do so.

In the first place, an organisation will be able to present a challenge to the Welsh Language Commissioner. If they are unable to resolve the dispute, there is a route of appeal available to the newly set up Welsh Language Tribunal, and thereafter to the High Court.

#### *Sanctions*

The Welsh Language Commissioner will be responsible for enforcing compliance with standards. In cases where the Commissioner determines that an organisation has failed to comply with a standard, the Commissioner may take enforcement action. Enforcement action under the Measure can vary from the making of recommendations or giving advice to an organisation, to the imposition of a civil penalty not exceeding £5,000.

## **5. Risks if Regulations are not made**

If the proposed Regulations are not made, the following issues will arise:

- Welsh Language Schemes introduced under the Welsh Language Act 1993 will continue in place for Welsh Ministers, Local Authorities and National Park Authorities in Wales
- If Welsh language schemes remain there will be no enforcement mechanism if an organisation breaches their Scheme.
- Currently, Welsh language schemes vary from organisation to organisation, and the commitments in some Schemes are unspecific. This leads to a situation where the public are unsure about which services they can expect to receive in Welsh. This uncertainty will continue if the Regulations are not made. The standards are specific in their nature and will therefore reduce the public's uncertainty.
- Uncertainty on the part of organisations concerning their Welsh language provisions, due to the fact that they have been under the impression that their Schemes will be replaced by standards. Many organisations have started to prepare for the onset of standards and the new monitoring and enforcement regime.
- No improvement as far as organisation's internal use of Welsh is concerned. An organisation's internal use of Welsh would continue to depend on the goodwill of that organisation, with no monitoring system in place.
- A key component of the Measure will not be implemented.

More detailed information about the risks and benefits of implementing the standards can be found in the RIA below, with the risks of not introducing standards highlighted in the "Option 1: do nothing" section of the benefits.

## 6. Consultation

The Commissioner conducted a standards investigation with the 26 organisations who can be required to comply with the standards specified in the Regulations between January and April 2014. Welsh Ministers fully considered the recommendations the Commissioner presented in the Standards reports and in a separate advice note. Those reports can be found on the Commissioner's website.

Welsh Ministers conducted a consultation on the draft Regulations during November 2014. Comments were invited from organisations subject to the first set of Standards and members of the public with an interest in the standards. The consultation was published on the Welsh Government website and publicised through the Welsh Government's social media feeds. Policy officials met with organisations subject to the first set of standards and lobby groups during the consultation period. A discussion was also held with young people to collect their views. Matters raised during that consultation were given full consideration as the final Regulations were drafted. A "Summary of Responses Report" has been published in relation to this consultation and is available at <http://wales.gov.uk/consultations/welshlanguage/welsh-language-standards-regulations/?status=closed&lang=en>

More details regarding consultation are included in the RIA below.

## **7. Competition Assessment**

Businesses, charities and /or the voluntary sector will not be required to comply with the Standards specified in the Regulations. However, business, charities and/or the voluntary sector may (depending on an organisation's Compliance notice) have the benefit of some of the standards, depending on their involvement with the organisation –see for example the standards relating to grants (standards 71-75).

## **8. Post Implementation Review**

The Measure provides many opportunities for the Commissioner to bring the suitability of the standards specified in the Regulations to the Welsh Ministers' attention. For example;

- The Commissioner may make recommendations or provide advice to the Welsh Ministers (section 4 of the Measure) which could directly recommend amending the Regulations if she sees fit to do so. Advice given by her could also lead to the Welsh Ministers determining that it would be appropriate to review the standards. The Welsh Ministers must have due regard to any written recommendations or advice that the Commissioner makes or gives when exercising the function to which the recommendation or advice relates.
- Section 18 of the Measure requires the Commissioner to produce an annual report which must include a review of issues relevant to the Welsh language (among other matters) and could also include any other matters the Commissioner thinks it is appropriate to include.
- The Commissioner also has the power to undertake Standards Investigations (section 61 and 62 of the Measure) which can consider which standards should be, or should continue to be, specifically applicable to a person, whether or not the standards are already specified by the Welsh Ministers. After a Standards investigation the Commissioner must produce a Standards report, a copy of which must be provided to the Welsh Ministers.

Subject to their Compliance notices, organisations will publish Annual Reports each year which deals with how they have complied with the standards imposed on them (see standards 158, 164 and 170). These Annual Reports could also raise issues regarding the suitability of the standards specified.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **Background**

1. The Welsh Government published proposed standards on 6 January 2014, based upon which a Welsh Government Regulatory Impact Assessment (RIA) was undertaken with the 26 organisations subject to the first round of standards. The RIA questionnaire was distributed with the Welsh Language Commissioner's ("the Commissioner") Standards Investigation documentation. The Commissioner's investigation was conducted between 27 January 2014 and 18 April 2014, and organisations were requested to submit their RIA responses directly to the Welsh Government.
2. 19 of the 26 organisations responded to the RIA questionnaire. While this is a non-response rate of over 26 percent, the responding organisations include the Welsh Government, all the National Parks and 15 Local Authorities, covering a range of urban, rural, and Welsh Language characteristics. The responding organisations provided detailed information about the costs and benefits of implementing the standards within their organisation. Several Welsh language lobby and interest groups and 409 members of the public also presented their responses to the Commissioner's Standards Investigation to the Welsh Government.
3. In June 2014 the Commissioner presented her official Standards Investigation response to the Welsh Government in the form of three standards reports and an advice note for Welsh Ministers issued under section 4 of the Welsh Language (Wales) Measure 2011 ('the Measure'). Welsh Ministers must have due regard (i) to the Commissioner's Standards Reports in deciding whether and how to exercise the powers in Part 4 of the Measure (which includes the power to specify standards), and (ii) to any advice issued by the Commissioner in writing.
4. The Commissioner's advice note advised Welsh Ministers that during her Standards Investigation many people and organisations wanted to have their say on matters which went beyond the scope of her investigation. That being so, she suggested that Welsh Ministers hold a consultation to ask people what they thought about the draft regulations to make the standards.

### **Amendments: from draft standards to draft regulations.**

5. Converting the proposed standards published by the Welsh Government on 6 January 2014 into standards to be specified in regulations resulted in amendments. The number of standards also increased, due to some additional standards being drafted, and due to some standards being

converted into multiple standards. The duty to give due regard to the Commissioner's reports and advice also resulted in some amendments. The changes included introducing the principle of the proactive offer, the need to keep a record of language preference and meetings in relation to well being.

6. **Proactive offer** - the proposed standards published in January 2014 required organisations to provide Welsh language services when it was indicated that a Welsh service was required. In the standards specified in the regulations, however, the onus has been placed on the organisations to ask whether an activity (be it a phone call, correspondence or meeting, for instance) is required through the medium of Welsh. This approach is based on theories which suggest that users may need to be nudged to use services in Welsh where they have previously used them in English. It is widely accepted in the language planning discipline that the use of services in a minority language is greater if the service is offered as opposed to the user having to request it. The principle of the proactive offer also applies to an organisation's members of staff through the operational standards.
7. On a practical level, the requirement to make a proactive offer means that an organisation will be required to keep a record of language preferences in relation to phone conversations and correspondence so that, after the initial contact, members of the public continue to receive those services in Welsh without having to ask, or be asked, each time.
8. **Personal meetings involving an individual's wellbeing** – some standards (for example 25, 26, 26A, 26B) require an organisation to conduct meetings through the medium of Welsh (or to provide a translation service) when that meeting relates to an individual's wellbeing. Where it is not practical to conduct a meeting through the medium of Welsh, the organisation will be required to facilitate the use of Welsh through simultaneous translation, giving the individual more flexibility to use Welsh in a variety of circumstances.

#### **Amendments as a result of Welsh Government consultation on draft regulations**

9. The four week consultation on the draft regulations, conducted between 5 November and 7 December 2014, ensured that interested parties had had an opportunity to have a say on these new elements.
10. A total of 188 written responses to the consultation were received. These included 17 organisations subject to the first set of standards, 12 other organisations, 9 lobby/interest groups, and 150 individuals (136 of which were based on a template prepared by Cymdeithas yr Iaith Gymraeg). Urdd

Gobaith Cymru also arranged for board members of the Syr IfanC group to discuss the draft regulations - the meeting was attended by young people aged from 14 to 20 from all over Wales.

11. Respondents to the consultation were asked to consider 8 specific questions. They were also given an opportunity to comment on related issues which may not have been specifically addressed in the consultation document.

12. As a result of the feedback received during the consultation exercise, several amendments were made to the regulations. These include introducing new standards relating to self-service machines (standard 60) and social media (standards 58 and 59).

13. Further amendments include:

- amending the phrase “personal interests and well-being” in standards 25, 26, 26A, 26B, 27, 27 A-D, 28, 29, 29A and 29B in relation to personal meetings – deleting the term “*personal interests*” so that they now only refer to meetings relating to an individual’s well-being.
- amending standards 35 and 36 in relation to public events – the draft regulations only placed duties where an event was organised or funded in its entirety by an organisation; this has been amended to place duties where the organisation funds at least 50% of an event.
- in relation to the provision of services by a third party, a new regulation has been drafted (regulation 1(5)), which makes it clear that the standards apply if an organisation has made arrangements with another party to provide services on its behalf. This additional text has been drafted with the intention that it covers both contracts and partnership arrangements.
- in relation to recruitment, we have added a second part to standard 136, which now places a duty on organisations to assess the need for Welsh language skills when assessing the requirements for a new or vacant post and categorise it as a post where one or more of the following applies:
  - Welsh language skills are essential
  - Welsh language skills needs to be learnt
  - Welsh language skills are desirable
  - No Welsh language skills requiredThe amendment clarifies that any post can be denoted as one where Welsh language skills are essential or desirable, if that is the outcome of the assessment.
- We have deleted 4 of the draft record keeping standards (draft standards 150, 152, 153 and 154). These were standards that placed duties on organisations to keep a record of:

- Number of calls to a main telephone number, helpline or call centre number where the caller requested a service in Welsh
- Number of persons who responded to an offer to say that they wished to receive a call in Welsh
- Number of persons who responded to an offer to say that they wished to receive correspondence in Welsh
- Number of persons who responded to an offer to say that they wished to speak Welsh in a meeting.

## **Conclusion**

14. Despite the amendments noted above, the general policy intent of the standards has remained unchanged. The RIA exercise conducted between January and April 2014 has therefore been maintained as a basis, with updates made in light of new information received in response to the recent consultation on the draft regulations, conducted between 7 November 2014 and 5 December 2014.
15. We believe that responses to the RIA questionnaire completed by organisations during the first Standards Investigation in 2014 remains fit for purpose and continues to reflect the individual organisations' position with regard to standards. This is borne out by the fact that only one of the 26 organisations (Wrexham) provided further estimated costs during the consultation on the regulations.
16. The 26 organisations subject to these Regulations were also given early sight of a draft version of this RIA in January 2015. This presented them with an opportunity to review the figures and report any factual errors. One organisation (Neath Port Talbot) provided additional figures during this exercise.

## **Summary of responses**

17. Responses to the RIA questionnaire were received from the Welsh Government (on behalf of the Welsh Ministers), all three National Park Authorities (Brecon Beacons, Pembrokeshire Coast, and Snowdonia), and 15 of the 22 Local Authorities (Monmouthshire, Wrexham, Blaenau Gwent, Caerphilly, Neath Port Talbot, Swansea, Torfaen, Gwynedd, Ceredigion, Merthyr, Pembrokeshire, Cardiff, Carmarthen, Conwy and Flintshire). The Local Authorities who responded include city councils, urban and rural areas; Local Authorities where the Welsh language is prominent as well as those where it is less prominent; and are spread geographically around the country.
18. The responses reflect a general support for the introduction of standards. Over half of respondents (12 out of 19 respondents) noted that they would be beneficial to the development of the Welsh language, with social and

linguistic benefits in particular being highlighted. 8 out of 19 respondents organisations also felt the standards would bring additional economic and environmental benefits to the areas in question.

## **Options**

19. This Regulatory Impact Assessment considers two options:

- **Option 1:** Do Nothing – Continue with the existing Welsh Language Schemes as operated under the Welsh Language Act 1993.
- **Option 2:** Introduce Welsh Language Standards for Welsh Ministers, Local Authorities and National Park Authorities (26 organisations in total).

20. The following analysis considers the costs and benefits associated with each of these options in turn.

## **Costs**

### **Option 1: Do Nothing**

21. There are no additional costs associated with this option, however the following provides an estimate of the costs that are currently incurred.

22. In the past, the costs in relation to complying with the requirements under the 1993 Act was not routinely measured, and Welsh language service provision has increasingly been seen as an integral part of mainstream service-provision in Wales. As such, providing any accurate estimate of the costs associated with complying with duties has been a difficult task.

23. The questionnaire circulated to the 26 organisations in January 2014 asked them to provide an estimate of the current annual costs relating to their Welsh Language Schemes, as well as any additional cost that may be incurred to implement and deliver the new system of standards.

24. The current cost of implementing Welsh Language Schemes included employing those with a specific role in their implementation, translation costs (in-house as well as outsourced translation work), and training costs (Welsh language courses as well as courses to raise awareness of the Welsh Language Scheme).

25. The current annual costs ranged from £33,000 (Monmouthshire Local Authority) to £3,211,122 (the Welsh Government). On the basis of the 19



responses received, the total cost to the 26 organisations of delivering their current Welsh Language Schemes is approximately £7,462,347 per annum:

- Welsh Government - £3,211,122
- National Park Authorities - £248,860
- Local Authorities – £4,002,365 (based on the average of the 15 responding Local Authorities).

## **Option 2: Specify Welsh Language Standards for the Welsh Ministers, Local Authorities and National Park Authorities**

26. The Measure prescribes that the Welsh Language Commissioner determines which standards each organisation will be under a duty to comply with. Those duties must be reasonable and proportionate, and will be imposed by a Compliance Notice issued by the Commissioner to the organisation. As a result, the Welsh Government is not in a position to provide a definitive answer to the final cost implications at this stage, since it is unknown at this point which standards the Commissioner will impose on each organisation. However, the RIA questionnaire exercise provided an indication of any additional costs that may be incurred by the organisations in question.
27. The Welsh Government, all three National Park Authorities, and 15 Local Authorities responded to the RIA questionnaire issued on 27 January 2014. One Local Authority (Wrexham) submitted further estimated costs as part of the consultation on the draft regulations between 7 November and 5 December 2014, and another (Neath Port Talbot) provided additional figures when the organisations in question were given early sight of this RIA in January 2015.
28. The estimated additional cost of implementing the standards can be categorised into two groups - recurring costs and one-off costs.
29. The additional **one-off costs** quoted by some organisations included resources to improve ICT systems, for instance the Corporate Record Management systems associated with the record-keeping standards and, to a lesser degree, the operational standards. These costs would include the initial set-up outlay, and user management and training costs.
30. Due to the changes made to the draft regulations when compared with the standards published in January 2014 (referred to above in paras 6-11), some possible additional cost is foreseen in connection with standards 2, 3 and 21, which require organisations to keep a record of individuals' language preferences in response to the proactive offer and in connection with service-

delivery standards. However, this depends on how far their current arrangements go to fulfil the requirements of those standards.

31. The main **recurring costs** included staffing, in particular staff with expertise in the fields of translation, marketing and policy. Most responses also foresaw the need to expand translation facilities, either by recruiting more internal translators or more commonly by outsourcing translation work to external providers. This was foreseen in relation to the requirements in the service-delivery standards (e.g. simultaneous translation and web improvements) and the operational standards (e.g. developing intranet provision and HR requirements).
32. Training costs appeared as one-off as well as recurring costs. The one-off training costs involved internal administration and ICT, with the recurring training costs focusing to a greater degree on the possible need to provide more statutory staff training through the medium of Welsh, training for staff to improve their Welsh language skills, and training regarding the implementation of standards. In the main, these costs arise from the need to comply with operational standards and service-delivery standards.
33. It is fair to say that the responses in relation to the estimated cost of the proposed standards varied, although it is crucial to note that many responses were based upon the organisation being required to comply with all of the standards, thus giving the highest possible cost that could be estimated.
34. It will be for the Commissioner to determine what standards each organisation must comply with on the basis of what is reasonable and proportionate, but it is unlikely that any one organisation will be under a duty to comply with every single standard. If an organisation believes that the standards imposed on it are unreasonable and disproportionate, there will be means to appeal to the Commissioner in the first instance, and thereafter to the newly established Welsh Language Tribunal.
35. All 26 organisations included in the first tranche of standards already have Welsh Language Schemes in place, which operate under the 1993 Welsh Language Act. Those schemes are monitored by the Commissioner. The organisations should, therefore, already be providing a range of Welsh language services to the public. It could be argued that the introduction of standards (especially the service-delivery standards) should not lead to significant new financial burdens on those organisations affected.
36. Two of the 19 responding organisations (Gwynedd and Carmarthenshire Local Authorities) felt that the duties specified in the standards as a whole could be absorbed within their current budgets, while 17 of the 19 responding organisations recognised a potential for additional costs.

37. The 17 organisations which recognised a potential for additional costs specified which category of standards (whether service-delivery, policy-making, operational, promotion, or record-keeping) could be achievable or unachievable within their current budgets. The service delivery, operational and promotion standards featured prominently as the most likely to involve more thought, planning and, inevitably, cost.
38. Responses to the consultation on the draft regulations (7 November – 5 December 2014) provided more information on the organisations' capability to achieve the standards, with the comments reflecting a similar pattern to those in response to the earlier RIA questionnaire (although given the additional detail of the draft regulations, some chose to respond to individual standards rather than the wider categories).
39. With regards to implementing standards, it would be feasible for organisations to consider ways of working collaboratively with other organisations which provide a similar service in order to achieve economies of scale. There are existing examples where this has successfully been achieved, such as Local Authorities sharing translation resources.

## **Responses to categories of standards**

### **Service-delivery standards**

40. Organisations supplied costs ranging from £0 to £636,000 to implement the service-delivery standards, with the Welsh Government and 8 of the 15 Local Authorities who responded anticipating no or minimal cost implications. Further details regarding how organisations have allocated these costs can be found under the summary of data provided in the appendix.
41. Some of the additional costs noted for the service delivery standards suggest that the Commissioner's discretion to vary the standards imposed on different organisations had been misunderstood, and that organisations, due to not knowing which standards would be made applicable to them, estimated on the premise that the whole range of standards would be imposed on them. It is highly unlikely that any one organisation will be required to comply with all 87 service-delivery standards and, therefore, a fair assumption can be made that some estimated costs are considerably higher than will be the case in actual fact.
42. We would expect organisations to absorb the majority of the requirements specified in the service-delivery standards as they relate closely to the requirements already found in current Welsh Language Schemes. It is also

worth noting that the Welsh Language Commissioner, when issuing her compliance notices to individual organisations, will need to consider the reasonability and proportionality of imposing each standard, and also the date by which the organisation has to comply with the standard (imposition date).

	<b>Range</b>	<b>Average</b>	<b>Total</b>
<b>Welsh Government</b>	n/a	n/a	£0
<b>National Park Authorities</b>	£1,800 <sup>1</sup> – 163,000	£82,400	£247,200
<b>Local Authorities</b>	£0 - 636,000	£161,462*	£3,552,154**
		<b>TOTAL</b>	<b>£3,799,354</b>

\*based on the 15 Local Authorities who responded to the RIA questionnaire

\*\* projected aggregate for all 22 Local Authorities

### **Policy-making standards**

43. Based upon the RIA responses, over half (11/19) of organisations felt that the policy-making standards would have little or no effect on the current budgets allocated to the Welsh language. Four Local Authorities noted that implementing these standards could have monetary implications, however no estimated costs were provided. Ceredigion, Pembrokeshire and Conwy Local Authorities noted costs of £22,500, £44,000 and £10,000 respectively.

	<b>Range</b>	<b>Average</b>	<b>Total</b>
<b>Welsh Government</b>	n/a	n/a	£0
<b>National Park Authorities</b>	£0 – 0	£0	£0
<b>Local Authorities</b>	£0 – 44,000	£6,955*	£153,000**
		<b>TOTAL</b>	<b>£153,000</b>

\*based on the 15 Local Authorities who responded to the RIA questionnaire

\*\* projected aggregate for all 22 Local Authorities

### **Operational and Promotion standards**

44. The costs foreseen in relation to the operational and promotion standards were greater, although quantifying these costs has been difficult for the organisations in question. Organisations' predicted expenditure in these categories of standards is not unexpected, as their Welsh Language

<sup>1</sup> Of the three National Parks Authorities, two provided figures and one stated there would be costs but they did not know how much.

Schemes have not in the past focused on the internal use of Welsh or their role in promoting the language externally.

### Promotion Standards Additional Costs

	Range	Average	Total
<b>Welsh Government</b>	n/a	n/a	£20,000
<b>National Park Authorities</b>	£0 – 19,000	£8,107	£24,320
<b>Local Authorities</b>	£0 – 45,000	£22,500*	£495,000**
		<b>TOTAL</b>	<b>£539,320</b>

\*based on the 15 Local Authorities who responded to the RIA questionnaire

\*\* projected aggregate for all 22 Local Authorities

### Operational Standards Additional Costs

	Range	Average	Total
<b>Welsh Government</b>	n/a	n/a	n/a
<b>National Park Authorities</b>	£0 – 15,000	£7,500	£22,500
<b>Local Authorities</b>	£0 – 258,000	£40,188*	£884,125**
		<b>TOTAL</b>	<b>£906,625</b>

\*based on the 15 Local Authorities who responded to the RIA questionnaire

\*\* projected aggregate for all 22 Local Authorities

### Record-keeping standards

45. As with the operational and promotional standards, organisations have found it difficult to quantify the financial impact the record keeping standards may have. Eleven of the 19 organisations responding foresee some costs with some referring to the need to update their ICT or allocate additional staff to improve their current database in order to comply with these standards.

	Range	Average	Total
<b>Welsh Government</b>	n/a	n/a	£0
<b>National Park Authorities</b>	£5,620 – 12,000	£8,810	£26,430
<b>Local Authorities</b>	£0 -40,000***	£5,000*	£110,000**
		<b>TOTAL</b>	<b>£136,430</b>

\*based on the 15 Local Authorities who responded to the RIA questionnaire

\*\* projected aggregate for all 22 Local Authorities

\*\*\*7 of the 15 responding Local Authorities responded that there would be no additional costs associated with record keeping, 7 of the remaining 8 Local Authorities thought there would be additional costs but could not quantify them. Only Conwy provided a quantifiable cost.

### Total estimated additional cost for implementing standards

	Range	Average	Total
<b>Welsh Government</b>	n/a	n/a	£20,000
<b>National Park Authorities</b>	£12,740 - £178,000	£106,817	£320,450
<b>Local Authorities</b>	£0 - £758,000	£236,104*	£5,194,279 **
		<b>TOTAL</b>	<b>£5,534,729</b>

\*based on the 15 Local Authorities who responded to the RIA questionnaire

\*\* projected aggregate for all 22 Local Authorities

46. It is important to emphasise that the above figures are estimates only, and that a more accurate evaluation of each organisation's costs will only be possible when the Commissioner has issued her compliance notices. In the Standards Reports presented to Welsh Ministers by the Commissioner, she noted that she would consult with organisations before issuing a compliance notice. Factors such as the reasonability and proportionality of individual standards may be discussed at this stage, as well as whether the organisation should be required to comply with the standards in all, or some circumstances, or in all, or in some areas.
47. The Commissioner may also issue codes of practice for the purpose of providing practical guidance with respect to the requirements of any standards.
48. The way an organisation plans to provide bilingual services can have an impact on costs. For example, it can be more costly if the Welsh element of service provision is bolted on to the English provision rather than being factored into each project or activity from the outset. It is important to note here that the cost of using the English language to provide a service is not something that is routinely measured – it could be argued that the same principle should apply to the Welsh language.
49. Proposed changes under the Reforming Local Government Programme have the potential to change the way that Welsh language services are delivered. The latest White Paper - 'Power to Local People' - sets out the Welsh Government's vision for the future of Local Government. It responds to the Williams Commission findings that there are unacceptable variations in local performance among Local Authorities in Wales, and that radical change is needed in the way in which Local Authorities conduct their business, make decisions, and are held to account.
50. In the context of the Welsh language, it is envisaged that reformed Local Authorities should have greater capacity and capability to ensure a coherent approach to promoting and sustaining the language, both in the workplace

and the provision of public services. The proposals aim to significantly strengthen corporate governance and accountability in Local Authorities, for example, by strengthening the role of the Audit Committee and Scrutiny Committees, and placing a requirement on the chief executive to prepare a corporate plan. As corporate plans will deal with both service delivery and operational matters, they will be an appropriate place to demonstrate compliance with the new Welsh Language Standards. This will give Local Authorities the means to take forward building Welsh language into their everyday business and to implement their strategies to promote the Welsh language.

51. This has the potential to aid the revised Local Authorities to comply with the standards imposed on them. For instance, it is intended to require all Local Authorities to establish a streamlined online complaints process. This could facilitate the processing and tracking of complaints, provide an auditable trail and enable a Local Authority to build up a comprehensive picture of its performance in relation to service-delivery and internal operations, as well as the views of the public. This could aid compliance with record-keeping standards.
52. The White Paper includes a number of proposals for deepening engagement between Local Authorities and the communities they serve, for example, by establishing a new system of community governance which is intended to give individuals and communities greater influence over how services are delivered in their area, giving individuals and community groups a greater role in scrutiny, and enabling individuals and communities to have their views on any open agenda items of the Executive, Council or its committees, taken into account.
53. In addition, the White Paper proposes to establish a number of 'community rights' which will give community bodies a role in improving service delivery, the ability to initiate asset transfer from the Local Authority, and a right of first refusal to buy (private) assets of community value.
54. As a whole, these proposals have significant potential to improve Local Authority performance in relation to the Welsh Language Standards and to improve the prosperity and resilience of Welsh language communities.

## **Benefits**

### **Option 1: Do Nothing**

55. This is the baseline option and as such there are no additional benefits associated with this option.
56. Doing nothing would leave untouched the current Welsh Language Schemes which have been in place since 1993. The regulatory role of the Commissioner would continue along similar lines to that of the Welsh

Language Board, while the resource-intensive procedures involved in agreeing and amending schemes would also continue, as would the current, limited, enforcement regime.

57. In many areas, arrangements for delivering services to the public in Wales have changed since the Welsh Language Act 1993 ('the 1993 Act'), under which the Welsh Language Schemes operated. However, the framework set out by the 1993 Act does not enable these changes to be taken into account in a consistent way. For example, changes to the structure of certain, key public services and new ways of delivering services mean that the public face of some key services fall outside the scope of Welsh Language Schemes. This creates the potential for uncertainty about the services that Welsh speaking customers can expect to receive.
58. In terms of enforcement, the 1993 Act only provided for a single formal mechanism for investigating alleged breaches of schemes and did not provide for any graduated alternatives. A single mechanism may not be appropriate in all cases, and may not achieve the right results for all in each case. In addition, the Commissioner at present lacks the power to require persons to provide it with evidence and information that will assist it with its investigations.
59. *The National Survey for Wales, 2013-14: Welsh language use survey*<sup>2</sup>, published on 29 January 2015, contains some useful indicators as to the present use of Welsh by the public and employees, especially in relation to fields covered by the service-delivery and operational standards.
60. In the context of receiving services, when dealing with public organisations in Wales the survey showed that 51 per cent of Welsh speakers tried to use the Welsh language when dealing with public organisations, and 37 per cent tried to use Welsh to complete official forms.
61. Of those who had a job description at work, 15 per cent had Welsh language skills specified as essential and 27 per cent specified as desirable. For 57 per cent of those with job descriptions, Welsh language skills were not noted.
62. Of those who worked in the public sector, 60 per cent who had a job description had one that specified Welsh language skills as either essential or desirable (compared with 18 per cent in the private sector).
63. We are of the view that the situation, as detailed by the *National Survey*, is unlikely to improve if Option 1 were adopted.

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<sup>2</sup> <http://wales.gov.uk/docs/statistics/2015/150129-welsh-language-use-survey-en.pdf>



## **Option 2: Specify Welsh Language Standards for the Welsh Ministers, Local Authorities and National Park Authorities**

64. The standards' purpose is to improve the level of service which members of the public can expect to receive. This will establish enforceable rights for Welsh speakers.
65. The standards will make it clear what organisations need to do in terms of the Welsh language, so that people can also be clear about what to expect with regard to Welsh language services. This clarity, for public and organisations alike, will help ensure the standards can be effectively enforced and lead to an increase in the use people make of Welsh language services.
66. For the organisations themselves this is not a leap in the dark. All of the organisations subject to the first set of standards – Local Authorities, the National Parks, and Welsh Ministers – already operate Welsh Language Schemes and have committed to doing many of the things set out in the standards.
67. The standards build on the Schemes and place more rigorous requirements on organisations. Nevertheless it will be a requirement that the standards imposed on organisations will be reasonable and proportionate, so that no one can be asked to do something that is unreasonable or disproportionate to their circumstances.
68. On a practical level, the standards will simplify the resource-intensive procedures involved in agreeing and amending Welsh language schemes. Commitments outlined in Welsh Language Schemes are at times unspecific and can be open to interpretation both by the organisations themselves and by members of the public. Where organisations saw commitments as being unspecific, the level of implementation varied from organisation to organisation. Duties imposed by standards will be specific and enforceable.
69. Organisations who will have to comply with standards will now be required to take a more proactive, strategic approach to mainstreaming the Welsh language. Key to this will be the “proactive offer”, which places the onus on the organisation to offer services in Welsh, rather than expect people to have to request them. This will provide a solid foundation to improve services for Welsh speakers.
70. The introduction of standards will also impose duties on local authorities and National Park authorities in Wales with regard to promoting the use of Welsh more widely.

71. An improved enforcement regime will provide a more effective means of dealing with alleged non-compliance and allow for early and informal resolution of complaints as appropriate.

72. We are of the view that if the regulations are made to specify Standards for the Welsh Ministers, Local Authorities and National Park Authorities, the situation described by the *National Survey* in paragraphs 59 to 62 may improve. Users should be clearer about their rights to access services and the strengthening of the monitoring should encourage organisations to think holistically about the range of Welsh language services they offer, both internally and externally.

### **Summary of the preferred option**

73. Based on the analysis undertaken on both options, it is considered that option 2 should be adopted, i.e. making regulations to specify Welsh Language Standards for Welsh Ministers, National Parks Authorities and Local Authorities.

## Summary of data provided in RIA

### Regulatory Impact Assessment - Welsh Language Standards: Results

#### Benefits to Welsh Language

- > Total of 19 Responses - WG, all 3 National parks and 15 Local Authorities
- > All\* but 1 (Pembrokeshire) feel that the WL Standards will benefit the Welsh language (\*13 responses to benefits question) - see table 1
- > Most feel the Standards will bring social and linguistic benefits to the area
- > Some organisations feel the Standards will bring economic and environmental benefits to the area as well as social/ linguistic benefits (Welsh Government, Wrexham, Blaenau Gwent, Gwynedd, Carmarthen, Flint, Conwy)

#### Cost Implications

- > Over half (11/19) of organisations felt that policy making standards would have **little or no effect on current budgets** allocated to the Welsh language
- > Areas of most concern (with regard to the additional cost required to successfully implement the standards) were the **promotion standards** and the **operational standards**. These are new elements not previously included in Welsh Language Schemes.
- > It has been difficult for organisations to gauge what the costs associated with these Standards, including **record keeping** standards could be.
- > Organisations have found it difficult to establish costs without knowing exactly which Standards would be imposed on them.
- > Additional costs include: Staffing (with expertise in translation / marketing / policy) / ICT improvements (due to record keeping and operational standards) / external translation costs / internal staff training costs (resulting from operational standards)
- > Additional costs range from £0 to £758,000 (see table 2)

**Table 1**

Corff / Body	Will Standards have local benefits?				Will Standards have cost implications ?				
	Economic	Social	Environ'tal	Linguistic	Service D	Policy	Record k'ing	Prom'tion	Operat'nal
Welsh Gov	Y	Y	Y	Y	N	N	N	Y	N
Breacon Beacons NP	no answer	/	/	/	Y	N	Y	N	Y
Snowdonia NP	no answer	Y	Y	Y	Y	N	Y	Y	N
Penbr.Coast NP	no answer	Y	/	Y	Y	Y	Y	Y	Y
Monmouthshire	no answer	/	/	/	N	N	N	Y	Y
Wrexham	Y	Y	Y	Y	Y	N	Y	Y	Y
Blaenau Gwent	Y	Y	Y	Y	N	N	N	Y	Y
Caerphilly	no answer	/	/	/	N	N	N	Y	Y
Neath Port Talbot	no answer	Y	Y	/	Y	Y	Y	Y	Y
Swansea	Y	Y	/	Y	Y	N	Y	Y	Y
Torfaen	Y	Y	/	Y	Y	Y	Y	Y	Y
Gwynedd	Y	Y	Y	Y	N	N	N	N	N
Ceredigion	Y	/	Y	Y	N	Y	Y	Y	Y
Merthyr	no answer	/	/	/	Y	Y	Y	Y	Y
Pembrokeshire	N	N	N	N	Y	Y	Y	Y	Y
Cardiff	no answer	/	/	/	N	N	N	Y	Y
Carmarthen	Y	Y	Y	Y	N	N	N	N	N
Flint	Y	Y	Y	Y	Y	Y	N	Y	Y
Conwy	Y	Y	Y	Y	N	Y	Y	Y	N

**Table 2**

Costs	Current costs to implement WLS				Additional costs following Standards				
	Compliance	Training*	Tr'slation**	Mk'ting / o	Service D	Policy	Record K'pi	Prom'tion	Operat'nal
Welsh Gov	£320,314	£190,300	£2,637,908	£62,600	£0	£0	£0	£20,000	£0
Breacon Beacons N	£4,000	£18,000	£19,000	£4,000	£163,000	£0	Y-£?	£0	£15,000
Snowdonia NP	£4,420	£800	£93,640	£0	£1,800	£0	£5,620	£5,320	£0
Penbr.Coast NP	£50,000	£0	£30,000	£25,000	Y-£?	Y-£?	£12,000	£19,000 +	Y-£?
Monmouthshire	£18,000	£0	£15,000	£0	£0	£0	£0	Y-£?	Y-£?
Wrexham	£14,000	£7,950	£126,500	£0	£500,000	£0	Y-£?	Y-£?	£258,000
Blaenau Gwent	£6,000	£0	£11,000	£?	£0	£0	£0	Y-£?	Y-£?
Caerphilly	£0	£3,250	£79,000	£4,500	£0	£0	£0	Y-£?	Y-£?
Neath Port Talbot	£187,000	£700+	£10,000	£0	£143,000	Y-£?	Y-£?	Y-£?	£4,000
Swansea	£?	£?	£?	£0	Y-£?	£0	Y-£?	Y-£?	Y-£?
Torfaen	£75,000	£3,000	£15,000	£0	£450,000	Y-£?	Y-£?	Y-£?	Y-£?
Gwynedd	£?	£?	£?	£?	£0	£0	£0	£0	£0
Ceredigion	£43,500	£8,500	£202,000	£140,600	0	£22,500	Y-£?	Y-£?	£13,500
Merthyr	£18,000	£15,000	£18,000	£?	Y-£?	Y-£?	Y-£?	Y-£?	Y-£?
Pembrokeshire	£10,000	£0	£129,000	£0	£636,000	£44,000	Y-£?	£45,000	£30,000
Cardiff	£77,000	£11,000	£212,000	£0	£0	£0	£0	Y-£?	Y-£?
Cardiff	£60,000	£16,600	£345,000	£15,000	£0	£0	£0	£0	£0
Flint	£?	£39,200	£123,500	£?	£370,000	£?	£0	£?	£16,000+
Conwy	£33,000	£8,000	£190,000	£0	£0	£10,000	£40,000	£45,000	£0

Y-£?= Standards will have cost implications but no costs have been provided

£0 - Standards will have no/or minimal cost implications

\*including Welsh awareness courses/ Couses through the medium of Welsh/ Welsh language courses (to learn the language)

\*\* translation costs include internal translators as well as buying in external translators

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