

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 1 – The Senedd

Meeting date: 21 May 2018

Meeting time: 14.30

For further information contact:

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Committee Clerk

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- 1 Introduction, apologies, substitutions and declarations of interest

- 2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3
14.30 (Pages 1 – 2)
CLA(5)–15–18 – Paper 1 – Statutory instruments with clear reports
Negative Resolution Instruments
 - 2.1 SL(5)213 – The Special Guardianship (Wales) (Amendment) Regulations 2018

 - 2.2 SL(5)214 – Code of Practice on the exercise of social services functions in relation to special guardianship orders

- 3 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3 or 21.7
14.35
Negative Resolution Instruments
 - 3.1 SL(5)215 – The Firefighters’ Pension Scheme (Wales) (Amendment) Regulations 2018

(Pages 3 – 14)
CLA(5)–15–18 – Paper 2 – Regulations
CLA(5)–15–18 – Paper 3 – Explanatory Memorandum
CLA(5)–15–18 – Paper 4 – Report



**3.2 SL(5)216 – The Firefighters’ Pension Schemes and Compensation Scheme
(Wales) (Amendment) Order 2018**

(Pages 15 – 34)

CLA(5)–15–18 – Paper 5 – Order

CLA(5)–15–18 – Paper 6 – Explanatory Memorandum

CLA(5)–15–18 – Paper 7 – Report

4 Papers to note

14.40

(Pages 35 – 42)

CLA(5)–15–18 – Paper 8 – Letter to the House of Commons Procedure
Committee

CLA(5)–15–18 – Paper 9 – Letter to the Secretary of State

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

14.40

6 Correspondence from the Llywydd

(Page 43)

CLA(5)–15–18 – Paper 10 – Letter from the Llywydd

7 Correspondence from the Business Committee

(Pages 44 – 48)

CLA(5)–15–18 – Paper 11 – Letter from the Business Committee

CLA(5)–15–18 – Paper 11a – Background paper

**8 Operational matters concerning regulations made under the EU
(Withdrawal) Bill**

(Pages 49 – 80)

CLA(5)–15–18 – Paper 12 – Background paper

Date of the next meeting

11 June 2018

Statutory Instruments with Clear Reports

21 May 2018

SL(5)213 – The Special Guardianship (Wales) (Amendment) Regulations 2018

Procedure: Negative

The Regulations make amendments to the Special Guardianship (Wales) Regulations 2005 in respect of matters to be included in local authority reports to the court, and provision of special guardianship support services to former looked after children living in another local authority area.

Parent Act: Children Act 1989

Date Made: 02 May 2018

Date Laid: 08 May 2018

Coming into force date: 02 July 2018

SL(5)214 – Code of Practice on the exercise of social services functions in relation to special guardianship orders

Procedure: Negative

This code of practice is issued under section 145 of the Social Services and Wellbeing (Wales) Act 2014 ('the 2014 Act'), which gives the Welsh Ministers the power to issue codes on the exercise of social services functions. Local authorities, when exercising their social services functions in respect of special guardianship orders, must act in accordance with the requirements contained in this code and have regard to any guidelines set out here. Section 147 of the Act (departure from requirements in codes) does not apply to any requirements contained in this code, so this code must be followed in full.



In this code, a requirement is expressed as ‘must’ or ‘must not’. Guidelines are expressed as ‘may’ and ‘may not’ or ‘should’ and ‘should not’.

This code of practice replaces the statutory guidance on special guardianship issued by the Welsh Government in April 2006.

The Welsh Government undertook a review of special guardianship orders in Wales during 2016–17. This code of practice is one of the products of that review. The Welsh Government would like to thank the members of the Technical Group on Special Guardianship who assisted the Welsh Government in undertaking this review.

Parent Act: Social Services and Well-being (Wales) Act 2014

Date Laid: 09 May 2018



Agenda Item 3.1

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2018 No. 576 (W. 103)

**PUBLIC SERVICE PENSIONS,
WALES**

**The Firefighters' Pension Scheme
(Wales) (Amendment) Regulations
2018**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Firefighters' Pension Scheme (Wales) Regulations 2015 ("the 2015 Regulations") which established a scheme for the payment of pensions and other benefits to firefighters in Wales from 1 April 2015.

Regulations 3, 5, 6, 7 and 8(2) make minor amendments to clarify the provisions of the 2015 Regulations.

Regulation 4 amends regulation 80A of the 2015 Regulations to clarify how the lump sum should be calculated where a member is entitled to the immediate payment of an equivalent amount to the lower tier ill health pension in the Firefighters' Pension (Wales) Scheme 1992 (set out in Schedule 2 to the Firemen's Pension Scheme Order 1992) and exercises the option to commute part of the pension for a lump sum.

Regulation 8(3) amends paragraphs 37 and 38 of Schedule 2 to the 2015 Regulations to provide for the transitional arrangements in the event that the authority decides to obtain the written opinion of an independent qualified medical practitioner (a medical practitioner as defined in the 2015 Regulations) before making a determination about a member's entitlement to an ill-health award and the determination has not been made before the member's transition date. The amendments provide that members who are subsequently granted an ill health award remain in their existing pension scheme.

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

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

The Welsh Ministers' Regulatory Impact Assessment Code for Subordinate Legislation has been considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2018 No. 576 (W. 103)

**PUBLIC SERVICE PENSIONS,
WALES**

**The Firefighters' Pension Scheme
(Wales) (Amendment) Regulations
2018**

Made 9 May 2018

Laid before the National Assembly for Wales
10 May 2018

Coming into force 1 June 2018

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 1(1) and (2)(f)(1), 2(1), 3(1) to (3) and 18(5)(a) and (6) of, and Schedules 2 (paragraph 6(b)) and 3 (paragraphs 1 to 4) to, the Public Service Pensions Act 2013⁽²⁾.

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.

Title and commencement

1.—(1) The title of these Regulations is the Firefighters' Pension Scheme (Wales) (Amendment) Regulations 2018.

(2) These Regulations come into force on 1 June 2018.

(3) Subject to paragraph (4), the amendments made by these Regulations have effect from 1 April 2015.

(4) The amendments made by regulation 8(3) have effect from 1 June 2018.

(1) See also section 1(3) and Schedule 1.
(2) 2013 c. 25.

Amendment of the Firefighters' Pension Scheme (Wales) Regulations 2015

2. The Firefighters' Pension Scheme (Wales) Regulations 2015⁽¹⁾ which establish the Firefighters' Pension Scheme (Wales) 2015 are amended in accordance with regulations 3 to 8.

Amendment of Part 3 (scheme membership)

3. In Part 3 (scheme membership), in the English text of regulation 30 (pension credit member), for "WRPA 1999" substitute "WRPA 1999"⁽²⁾.

Amendment of Part 5 (retirement benefits)

4. In Part 5 (retirement benefits), in regulation 80A⁽³⁾ (option to commute part of an equivalent amount), after paragraph (3) insert—

"(4) Where the person is entitled to the immediate payment of an equivalent amount to the 1992 Scheme lower tier ill-health pension and exercises the option to commute under this regulation, the lump sum is calculated in accordance with rule B7 (commutation – general provision) of the 1992 Scheme."

Amendment of Part 6 (death benefits)

5.—(1) Part 6 (death benefits) is amended as follows.

(2) In regulation 87(1) (surviving partner's pension payable on death of active member), for "more than", substitute "at least".

(3) In regulation 101(3) and (4) (bereavement pension: eligible child), for "surviving partner's pension", in each place where the words occur, substitute "eligible child's pension".

Amendment of Part 8 (contributions)

6.—(1) Part 8 (contributions) is amended as follows.

(2) In regulation 120(2) (contributions during absence from work due to illness, injury, trade dispute or authorised absence), after "may" insert "elect to".

(3) In regulation 128(5) (refund of employer additional contribution for ill health award following review), after "in respect of P", in the first place where those words occur, insert "from the date when the entitlement ceased".

(1) S.I. 2015/622 (W. 50), amended by S.I. 2015/1016 (W. 71).
(2) "WRPA 1999" means the Welfare Reform and Pensions Act 1999 (c. 30); see regulation 3 of S.I. 2015/622 (W. 50).
(3) Regulation 80A was inserted by regulation 2 of, and paragraph 5(f) of Schedule 1 to, S.I. 2015/1016 (W. 71).

Amendment of Part 9 (firefighters' pension fund)

7. In Part 9 (firefighters' pension fund), in the English text of regulation 137(2)(b) (actual deficits), after "must repay it" insert "to".

Amendment of Schedule 2 (transitional provisions)

8.—(1) Schedule 2 is amended as follows.

(2) In Part 3A(1) (payment of ill-health benefits to transition members)—

- (a) in paragraph 22(2)(a), after "rule 2" insert "of Part 3"; and
- (b) in paragraph 25(2), for both occurrences of "B1A(3)(i)" substitute "B1A(3)(a)".

(3) In Part 3C(2) (transitional provisions relating to the NFPS and the 1992 Scheme)—

- (a) in paragraph 37—
 - (i) for the heading "Scheme manager determines member of the NFPS is not entitled to an ill-health award" substitute "Authority determines the entitlement of a member of the NFPS to an ill-health award";
 - (ii) in sub-paragraph (2), for "If this paragraph applies," substitute "If the authority subsequently determines that the member of the NFPS is not entitled to an ill-health award,"; and
 - (iii) after sub-paragraph (2) insert—

"(3) If the authority subsequently determines that the member of the NFPS is entitled to an ill-health award—

 - (a) the member does not join this scheme;
 - (b) the member continues to be a member of the NFPS; and
 - (c) the ill-health award is payable under rule 2 of Part 3 (awards on ill-health retirement) of the NFPS."; and
- (b) in paragraph 38—
 - (i) for the heading "Scheme manager determines member of the 1992 Scheme is not entitled to an ill-health award" substitute "Authority determines the entitlement of a member of the 1992 Scheme to an ill-health award";

(1) Part 3A was inserted by regulation 2 of, and paragraph 7(d) of Schedule 1 to, S.I. 2015/1016 (W. 71).

(2) Part 3C was inserted by regulation 2 of, and paragraph 7(d) of Schedule 1 to, S.I. 2015/1016 (W. 71).

- (ii) in the opening words of sub-paragraph (2), for “If this paragraph applies,” substitute “If the authority subsequently determines that the member of the 1992 Scheme is not entitled to an ill-health award,”;
- (iii) in sub-paragraph (2)(b), for “H2A (appeals against opinion based on medical advice)” substitute “H2 (appeal against opinion on a medical issue)”;
- (iv) after sub-paragraph (2) insert—

“(3) If the authority subsequently determines that the member of the 1992 Scheme is entitled to an ill-health award—

 - (a) the member does not join this scheme;
 - (b) the member continues to be a member of the 1992 Scheme; and
 - (c) the ill-health award is payable under rule B3 (ill-health awards) of the 1992 Scheme.”

Amendment of the Firefighters’ Pension Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015

9. In the preamble to the Firefighters’ Pension Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015⁽¹⁾ omit “(6) and (7),”.

Alun Davies

Cabinet Secretary for Local Government and Public Services, one of the Welsh Ministers
9 May 2018

(1) S.I. 2015/1016 (W. 71).

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

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

Cabinet Secretary’s Declaration

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

Alun Davies

Cabinet Secretary for Local Government and Public Services

10 May 2018

1. Description

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

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

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

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

3 Legislative background

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

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

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

This instrument is subject to the negative resolution procedure.

4. Purpose & intended effect of the legislation

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

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

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

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

5. Consultation

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

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

6. Regulatory Impact Assessment (RIA)

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

7. Equality Impact Assessment

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

8. Competition Assessment

Not Applicable

9. Post Implementation Review.

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

SL(5)215 – The Firefighters’ Pension Scheme (Wales) (Amendment) Regulations 2018

Background and Purpose

These Regulations amend the Firefighters’ Pension Scheme (Wales) Regulations (SI 2015/622) (‘the 2015 Regulations’) by making a number of technical amendments. The 2015 Regulations established a scheme (‘the 2015 scheme’) for the payment of pensions and other benefits to firefighters in Wales from 1 April 2015.

In addition, these Regulations also amend The Firefighters’ Pension Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015 (which govern the transfer of members from the 1992 and 2007 schemes into the 2015 scheme) to make a minor technical amendment.

Procedure

Negative

Technical Scrutiny

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

Merits Scrutiny

A point is identified for reporting under Standing Order 21.3 in respect of this instrument.

The provisions within The Firefighters’ Pension Scheme (Wales) (Amendment) Regulations 2018 are retrospective and have effect from 1 April 2015, the date on which the 2015 scheme came in to force, (with the exception of regulation 8(3) which has effect 1 June 2018).

The power to make retrospective provision in regulations is conferred by section 3(3)(b) of the Public Service Pensions Act 2013 (‘the 2013 Act’). Section 23 of the 2013 Act sets out a procedure for making retrospective provision including:

- under subsection (1) a requirement for consent to be obtained from persons likely to be affected by the provisions where retrospective provision appears to have significant adverse effects in relation to the pension payable or in respect of members of the scheme: or
- under subsection (2) a requirement to consult persons likely to be affected by the provisions (with a view to reaching agreement with such persons) where retrospective provision appears to not have significant adverse effects as specified in subsection (1) but to have significant adverse effects in any other way in relation to members of the scheme.

In relation to the retrospective procedure under section 23 of the 2014 Act, the Welsh Government has clarified to Legal Services of the Assembly that section 23 does not apply to these Regulations because there are no significant adverse effect on members of the scheme and the purpose of the Regulations is to correct errors and/or clarify matters or in relation to the other provisions which have retrospective effect. This explanation appears satisfactory. In addition, the Welsh Government has also confirmed that a full consultation exercise has been carried out in the development of these Regulations with bodies that represent pension scheme members.



Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

The Welsh Government is fully aware of the effect of section 23 of the Public Service Pensions Act 2013. This requires the Welsh Ministers to consult, and/or seek the consent of, scheme members or their representatives to any retrospective changes to scheme rules which would have a significant adverse effect on scheme members. The Welsh Government believes these regulations would have no such effect. Their only purpose is to correct technical errors and ambiguities in the scheme rules, so any effect on members is neutral or positive. A full consultation exercise was nevertheless carried out and the draft SI was annexed. None of the respondents, including all of the main firefighters' unions, raised any issues in relation to any significant adverse effects.

Legal Advisers

Constitutional and Legislative Affairs Committee

15 May 2018



Agenda Item 3.2

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2018 No. 577 (W. 104)

**FIRE AND RESCUE
SERVICES, WALES**

PENSIONS, WALES

**The Firefighters' Pension Schemes
and Compensation Scheme (Wales)
(Amendment) Order 2018**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Firefighters' Pension (Wales) Scheme (set out in Schedule 2 to the Firemen's Pension Scheme Order 1992) as it has effect in Wales ("the 1992 Scheme"); the New Firefighters' Pension Scheme (Wales) (set out in Schedule 1 to the Firefighters' Pension Scheme (Wales) Order 2007); the Firefighters' Compensation Scheme (Wales) (set out in Schedule 1 to the Firefighters' Compensation Scheme (Wales) Order 2007) ("the 2007 Compensation Scheme") and the Firefighters' Pension (Wales) Scheme (Amendment and Transitional Provisions) Order 2016.

Article 2 amends the 1992 Scheme, in particular, to provide that the surviving spouse or civil partner of a firefighter who died from an injury received in the exercise of duty, or travelling to or from duty, is to retain his or her entitlement to a pension or gratuity under Part C of the 1992 Scheme if he or she marries, remarries, forms a civil partnership or subsequent civil partnership on or after 1 April 2015. It further provides that a pension or gratuity which had been withdrawn for these reasons prior to 1 April 2015 is reinstated with effect from that date. Article 2 also makes a number of unrelated amendments to the 1992 Scheme, including to clarify that under Part G of the 1992 Scheme a firefighter below the age of 50 who has reckoned 30 years' pensionable service is treated as an employee

of the fire and rescue authority for the purposes of annual employer contributions and that where such a firefighter has arrangements for additional pension benefits the firefighter must pay contributions in relation to these until the firefighter attains the age of 50. When the firefighter attains 50 the requirements in rule G2(1) of the 1992 Scheme will apply to the firefighter. Related to this, article 5 amends the transitional provision made by the Firefighters' Pension (Wales) Scheme (Amendment and Transitional Provisions) Order 2016 to make it clear that payments made by a fire and rescue authority under that provision do not include any sum in respect of a firefighter's contribution in relation to additional pension benefit.

Article 3 amends the New Firefighters' Pension Scheme (Wales) to remove the requirement that a surviving cohabiting partner must have been nominated by the scheme member as a condition of eligibility for a survivor's pension. Article 3 also makes a number of unrelated amendments to that Scheme in order to correct errors in cross-references.

Article 4(3) revokes rule 5 of Part 3 of the 2007 Compensation Scheme so as to allow, with effect from 1 April 2015, a person entitled to a pension or gratuity under that scheme to retain it following marriage, remarriage or forming a civil partnership or subsequent civil partnership. Pensions or gratuities which had been withdrawn prior to 1 April 2015 for these reasons are reinstated with effect from that date.

The 2007 Compensation Scheme superseded corresponding provisions of the 1992 Scheme. Article 4(2) amends the transitional arrangements in article 4 of the Firefighters' Compensation Scheme (Wales) Order 2007 so that equivalent provision will apply to special and augmented awards under rule C2 or C3 of the 1992 Scheme that relate to determinations or decisions made before 1 April 2006 relevant to whether death has been occasioned by a qualifying injury (by virtue of article 4(1) of that Order the 1992 Scheme in the form in which existed immediately before 1 April 2006 continues to have effect in these circumstances).

The amendments made by article 3(2) to (7) and (9) of this Order have effect from 6 April 2006, the amendments made by article 2(4)(b) have effect from 1 December 2006, the amendment made by article 5 has effect from 31 December 2016; the other amendments have effect from 1 April 2015. The power to give this Order retrospective effect is

conferred, in respect of the 1992 Scheme, by section 12 of the Superannuation Act 1972 as applied by section 16(3) of that Act and, in respect of the 2007 Compensation Scheme and the New Firefighters' Pension Scheme (Wales), by section 34(3) of the Fire and Rescue Services Act 2004.

The Welsh Ministers' Regulatory Impact Assessment Code for Subordinate Legislation has been considered in relation to this Order. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with this Order.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2018 No. 577 (W. 104)

**FIRE AND RESCUE
SERVICES, WALES**

PENSIONS, WALES

The Firefighters' Pension Schemes
and Compensation Scheme (Wales)
(Amendment) Order 2018

Made 9 May 2018

Laid before the National Assembly for Wales
10 May 2018

Coming into force 1 June 2018

This Order is made in the exercise of the powers
conferred by section 26(1) to (5) of the Fire Services

Act 1947(1) and section 12 of the Superannuation Act 1972(2) as applied by section 16(3)(3) of that Act, and by sections 34 and 62 of the Fire and Rescue Services Act 2004(4), now vested in the Welsh Ministers.

Before making this Order, and in accordance with section 34(5) of the Fire and Rescue Services Act 2004, the Welsh Ministers consulted such persons as they considered appropriate.

The Welsh Ministers make the following Order.

Title and commencement

1.—(1) The title of this Order is the Firefighters’ Pension Schemes and Compensation Scheme (Wales) (Amendment) Order 2018 and it comes into force on 1 June 2018.

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- (1) 1947 c. 41, repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c. 21). Subsections (1) to (5) of section 26 continue to have effect, in relation to Wales, for the purposes of the scheme established under that section as the Firemen’s Pension Scheme and set out in the Firemen’s Pension Scheme Order 1992 (S.I. 1992/129), by virtue of article 3 of S.I. 2004/2918 (W. 257). The name of the scheme was changed to the Firefighters’ Pension (Wales) Scheme by article 4 of that instrument. Section 26 of the Fire Services Act 1947 was amended by section 1 of the Fire Services Act 1951 (c. 27), section 42 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c. 65), section 33 of, and Schedule 3 to, the Theft Act 1968 (c. 60), sections 16 and 29 of, and Schedule 8 to, the Superannuation Act 1972 (c. 11), sections 100 and 101 of, and Schedule 27 to, the Social Security Act 1973 (c. 38), section 1 of, and Schedule 1 to, the Social Security (Consequential Provisions) Act 1975 (c. 18), section 32(2) of the Magistrates’ Courts Act 1980 (c. 43), section 1 of the Police and Firemen’s Pensions Act 1997 (c. 52), section 256 of, and Schedule 25 to, the Civil Partnership Act 2004 (c. 33), and by S.I. 1976/551. In so far as the Firefighters’ Pension Scheme is continued in force, in relation to Wales, by virtue of S.I. 2004/2918 (article 3(1)), section 26(1) to (5) have effect as if for each reference to the “Secretary of State” there were substituted a reference to the “National Assembly for Wales”; see article 2 of S.I. 2006/1672 (W. 160). By virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32) functions under section 26 of the Fire Services Act 1947 are now vested in the Welsh Ministers so far as they are exercisable in relation to Wales.
- (2) 1972 c. 11; section 12 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).
- (3) Section 16 was repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 but continues to have effect, in relation to Wales, by virtue of article 3(2) of S.I. 2004/2918 (W. 257).
- (4) 2004 c. 21. The powers conferred by section 34 of the Fire and Rescue Services Act 2004 are now vested in the Welsh Ministers so far as they are exercisable in relation to Wales. They were previously vested in the National Assembly for Wales by virtue of section 62 of that Act. By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006, they were transferred to the Welsh Ministers.

(2) The amendments made by—

- (a) article 2(2), (3), (4)(a) and (5); and
- (b) articles 3(8) and 4;

have effect from 1 April 2015.

(3) The amendments made by article 3(2) to (7) and (9) have effect from 6 April 2006.

(4) The amendments made by article 2(4)(b) have effect from 1 December 2006.

(5) The amendment made by article 5 has effect from 31 December 2016⁽¹⁾.

Amendment of the Firemen’s Pension Scheme Order 1992

2.—(1) Schedule 2 to the Firemen’s Pension Scheme Order 1992⁽²⁾ (in which is set out the Firefighters’ Pension (Wales) Scheme) is amended as follows.

(2) In Part B (personal awards)—

- (a) in rule B1A(3)⁽³⁾ (continuous service pension)—

- (i) in sub-paragraph (a), for “paragraph (1)(a)” substitute “paragraph (1)(b)”; and

- (ii) for sub-paragraph (b) substitute—

“(b) paragraph (1) of this rule applies as if the age ascertained under sub-paragraph (a) were substituted for “normal pension age”.”;

- (b) in rule B2A⁽⁴⁾ (continued pension), for “rule B1A(3)(i)” substitute “rule B1A(3)(a)”;

- (c) in rule B5A(4B)(a)⁽⁵⁾ (entitlement to two pensions), for “(A/B) x (B/C) x G” substitute “(A/E) x (B/C) x G”;

- (d) in rule B5D(1A)⁽⁶⁾ (additional pension benefit: supplementary provisions), for “paragraph (3)(i)” substitute “paragraph (3)(a)”.

⁽¹⁾ Power to give retrospective effect is conferred by section 12(1) of the Superannuation Act 1972 and by section 34(3) of the Fire and Rescue Services Act 2004.

⁽²⁾ S.I. 1992/129; amended by S.I.s 1997/2309 and 2851, 1998/1010, 2001/3649 and 3691, 2004/1912 and 2918 (W. 257), 2006/1672 (W. 160), 2007/1074 (W. 112), 2009/1226 (W. 109), 2010/234, 2013/736 (W. 88), 2014/522 (W. 63) and 3242 (W. 329) and 2015/1016 (W. 71).

⁽³⁾ Rule B1A was inserted by regulation 4 of and Schedule 3 to S.I. 2015/1016 (W. 71).

⁽⁴⁾ Rule B2A was inserted by regulation 4 of, and Schedule 3 to, S.I. 2015/1016 (W. 71).

⁽⁵⁾ Rule B5A was inserted by article 2 of, and the Schedule to, S.I. 2009/1226 (W. 109) and paragraphs (4A) and (4B) inserted by article 2 of, and the Schedule to, S.I. 2014/3242 (W. 329).

⁽⁶⁾ Rule B5D was inserted by article 2 of, and the Schedule to, S.I. 2009/1226 (W. 109) and paragraph (1A) inserted by regulation 4 of, and Schedule 3 to, S.I. 2015/1016 (W. 71).

(3) In Part C (awards on death – spouses), in rule C9 (effect of remarriage)—

- (a) in paragraph (1), for “A person” substitute “Subject to paragraphs (3) to (6), a person”;
- (b) in paragraph (2), for “Where a person” substitute “Subject to paragraphs (3) to (6), where a person”; and
- (c) after paragraph (2) insert—

“(3) Paragraphs (1) and (2) do not apply in relation to a person (“P”) who is entitled to a pension or gratuity under this Part, where—

- (a) P is either—
 - (i) entitled to a pension under rule C1 (spouse’s ordinary pension), rule C4 (spouse’s accrued pension), rule C5 (limitation on award to spouse or civil partner by reference to date of marriage or formation of partnership), rule C6 (spouse or civil partner’s requisite benefit and temporary pension) or rule C8 (limitation where spouses living apart); or
 - (ii) receiving a gratuity under rule C8(7); and
- (b) the deceased spouse or civil partner of P (“D”) died as a result of an injury—
 - (i) received in the exercise of D’s duties as a firefighter; or
 - (ii) sustained while on a journey necessary to enable D to report for duty or return home after duty.

(4) Where P’s entitlement to a pension or any part of a gratuity under this Part was removed by virtue of paragraph (1) or (2) prior to 1 April 2015 and the conditions in paragraph (3) were satisfied in relation to P, entitlement to the pension or part of gratuity is reinstated with effect from 1 April 2015 and the pension or part of gratuity becomes payable as from that date.

(5) Nothing in paragraph (4) requires the making of any payment where the person to whom the payment would otherwise have been made has died prior to 1 April 2015.

(6) Where a payment is required to be made under paragraph (4) in respect of a person who has died between 1 April 2015 and 1 June 2018, the amount due must be paid to that person’s personal representatives.”

(4) In Part G (pensionable pay and contributions)—

- (a) in rule G1 (pensionable pay and average pensionable pay)—

- (i) in paragraphs (10) and (11)(1), for “paragraph 34 of Schedule 2” substitute “paragraph 33 of Schedule 2”;
 - (ii) in paragraph (11), for “paragraph 34(4) of Schedule 2” substitute “paragraph 33(4) of Schedule 2”;
 - (iii) in paragraph (13), for “paragraph 34(3) of Schedule 2” substitute “paragraph 33(3) of Schedule 2”; and
- (b) in rule G2 (pension contributions)—
- (i) in paragraph (1), for “paragraph (1B)”⁽²⁾ substitute “paragraphs (1B) to (1D)”;
 - (ii) after paragraph (1B) insert—
“(1C) A firefighter who is—
 - (a) below the age of 50 and has reckoned 30 years’ pensionable service; and
 - (b) entitled to be credited with additional pension benefit under rule B5B or B5C,
until the firefighter attains the age of 50, pays pensions contributions to the fire and rescue authority only in relation to that additional pension benefit.
- (1D) Contributions payable under paragraph (1C) are payable—
- (a) at the rate of 11% in the period starting on 1 December 2006 and ending on 31 March 2012; and
 - (b) on and after 1 April 2012 at the rate specified in the Table in paragraph 3 of Part A1 of Schedule 8.”; and
- (iii) for paragraph (4) substitute—
“(4) The annual contribution is such percentage of the authority’s estimate of the aggregate of the pensionable pay, for the year in respect of which the contribution is made, of those firefighters employed by the authority who are—
 - (a) required by paragraph (1) to make pensions contributions in that year; and
 - (b) below the age of 50 and have reckoned 30 years’ pensionable service,
as shall have been notified to them for that year by the Secretary of State.”

(1) Rule G1(10) to (13) was inserted by S.I. 2015/1016 (W. 71).
(2) Rule G2(1B) was inserted by S.I. 2016/1136 (W. 274).

(5) In Part 2A(1) (continuous service pension) of Schedule 2 (personal awards), for “40 years”, where the words occur for the first time, substitute “30 years”.

Amendment of the Firefighters’ Pension Scheme (Wales) Order 2007

3.—(1) Schedule 1 to the Firefighters’ Pension Scheme (Wales) Order 2007(2) is amended as follows.

(2) In the Table of Contents, in the headings to Chapter 1 of Part 4 and rules 1 and 5 of that Chapter, for “nominated partners” substitute “cohabiting partners”.

(3) In Part 1 (title and interpretation), in rule 2(1) (interpretation)—

- (a) in the definition of “child”, in paragraph (a)(iii), for “nominated partner” substitute “cohabiting partner”;
- (b) omit the definition of “nominated partner”; and
- (c) in the appropriate place insert—

““cohabiting partner” (*“partner sy’n cyd-fyw”*) has the meaning given by rule 1(6) of Part 2;”.

(4) In Part 2 (scheme membership, cessation and retirement), in rule 1 (scheme membership)—

- (a) in paragraph (5)(b), for “nominated partner” substitute “cohabiting partner”;
- (b) for paragraph (6) substitute—

“(6) For the purposes of paragraph (5), the cohabiting partner of a firefighter member, deferred member or pensioner member (referred to in this paragraph as “the scheme member”) is a person who—

- (a) is living with the scheme member as if that person and the scheme member were spouses or civil partners; and
- (b) at the date on which the question of the cohabiting partner’s status in relation to the scheme member falls to be considered—
 - (i) is not the spouse or civil partner of any person,
 - (ii) could enter into a marriage or a civil partnership with the scheme

(1) Part 2A was inserted by regulation 4 of and Schedule 3 to S.I. 2015/1016 (W. 71).
(2) S.I. 2007/1072 (W. 110); relevant amendments were made by S.I. 2015/1016 (W. 71).

member under the law of England and Wales,

(iii) is financially dependent on the scheme member, or is, with the scheme member, in a state of mutual financial dependency, and

(iv) is in a long-term relationship with the scheme member.”;

(c) omit paragraph (7)(b);

(d) omit paragraphs (8) and (9).

(5) In Part 3 (personal awards), in rule 11(2)(a) (allocation of pension), for “nominated partner” substitute “cohabiting partner”.

(6) In Chapter 1 of Part 4 (survivors’ pensions)—

(a) in the Chapter heading and in the heading to rule 1, for “nominated partners” substitute “cohabiting partners”;

(b) in rule 1, in the closing words of paragraph (1), for “nominated partner” substitute “cohabiting partner”;

(c) in the heading to rule 5, for “nominated partner” substitute “cohabiting partners”.

(7) In Part 7 (reservists), in rule 3 (awards on death or permanent disablement), in the closing words of paragraph (3), for “nominated partner” substitute “cohabiting partner”.

(8) In Part 11 (pensionable pay, pension contributions and purchase of additional service)—

(a) in rule 1 (pensionable pay)—

(i) in paragraphs (7) and (8), for “paragraph 33 of Schedule 2” substitute “paragraph 32 of Schedule 2”;

(ii) in paragraph (8), for “paragraph 33(4) of Schedule 2” substitute “paragraph 32(4) of Schedule 2”; and

(iii) in paragraph (9), for “paragraph 33(3) of Schedule 2” substitute “paragraph 32(3) of Schedule 2”;

(b) in rule 2 (final pensionable pay), in paragraph (2A)(b), for “paragraph 33(4) of Schedule 2” substitute “paragraph 32(4) of Schedule 2”.

(9) In Part 15, omit rules 5(3) and 6(3).

Amendment of the Firefighters’ Compensation Scheme (Wales) Order 2007

4.—(1) The Firefighters’ Compensation Scheme (Wales) Order 2007(1) is amended as follows.

(1) S.I. 2007/1073 (W. 111); amended by S.I.s 2010/234, 2014/3256 (W. 331) and 2015/1013 (W. 69).

(2) In article 4 (transitional provision: decisions and determinations made before 1 April 2006)—

- (a) in paragraph (1), after “disablement” insert “or death”;
- (b) in paragraph (2), after “1 April 2006,” insert “subject to the amendments made by paragraphs (3) and (4)”; and
- (c) after paragraph (2) insert—

“(3) Omit rule C9 (effect of a new relationship).

(4) Where entitlement to a pension or any part of a gratuity under this Part was removed by virtue of rule C9 prior to 1 April 2015, entitlement to the pension or part of gratuity is reinstated with effect from 1 April 2015 and the pension or part of gratuity becomes payable as from that date.

(5) Nothing in paragraph (4) requires the making of any payment where the person to whom the payment would otherwise have been made has died prior to 1 April 2015.

(6) Where a payment is required to be made under paragraph (4) in respect of a person who has died between 1 April 2015 and 1 June 2018, the amount due must be paid to that person’s personal representatives.”

(3) In Schedule 1, in Part 3 (awards on death: spouses and civil partners)—

- (a) omit rule 5 (effect of new relationship); and
- (b) after rule 5, insert—

“Reinstatement of entitlement to pension and gratuity

5A.—(1) The revocation of rule 5 of this Part by the Firefighters’ Pension Schemes and Compensation Scheme (Wales) (Amendment) Order 2018 has the effect of reinstating entitlement to a pension or any part of a gratuity under this Part which was removed by virtue of paragraph (1) or (2) prior to 1 April 2015, with effect from and payable as from that date.

(2) Nothing in paragraph (1) requires the making of any payment where the person to whom the payment would otherwise have been made has died prior to 1 April 2015.

(3) Where a payment is required to be made under paragraph (1) in respect of a person who has died between 1 April 2015 and 1 June 2018, the amount due must be paid to that person’s personal representatives.”

Amendment of the Firefighters' Pension (Wales) Scheme (Amendment and Transitional Provisions) Order 2016

5. In the description of “A” in paragraph (3) of article 3 (transitional provision) of the Firefighters' Pension (Wales) Scheme (Amendment and Transitional Provisions) Order 2016⁽¹⁾, after “contribution”, the first time that it appears, insert “(not including any contribution in relation to an additional pension benefit)”.

Alun Davies

Cabinet Secretary for Local Government and Public Services, one of the Welsh Ministers
9 May 2018

(1) S.I. 2016/1136 (W. 274).

Explanatory Memorandum to The Firefighters' Pension Schemes and Compensation Scheme (Wales) (Amendment) Order 2018

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

Cabinet Secretary's Declaration

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

Alun Davies

Cabinet Secretary for Local Government and Public Services

10 May 2018

1. Description

The Firefighters' Pension Schemes and Compensation Scheme (Wales) (Amendment) Order 2018 ("the Order") amends the following:-

- The Firemen's Pension Scheme Order 1992 ("the 1992 Order"), which governs the Firefighters' Pension (Wales) Scheme 1992 ("the 1992 Scheme");
- The Firefighters' Compensation Scheme (Wales) Order 2007 ("the Compensation Order"), which governs the Firefighters' Compensation Scheme (Wales) ("the Compensation Scheme");
- The Firefighters' Pension Scheme (Wales) Order 2007 ("the 2007 Order"), which governs the Firefighters' Pension Scheme 2007 ("the 2007 Scheme"); and
- The Firefighters' Pension (Wales) Scheme (Amendment and Transitional Provisions) Order 2016

The 1992 Scheme and the Compensation Scheme currently provide that any surviving partner loses her or his entitlement to survivor's benefits on remarriage or formation of a new civil partnership. The Order amends these provisions to allow the surviving spouse or civil partner of a firefighter who dies or has died from an injury received in the exercise of duty, or travelling to or from duty to retain her or his entitlement to a survivor's benefit if s/he remarries or forms a civil partnership on or after 1 April 2015. In addition, benefits withdrawn prior to 1 April 2015 due to operation of the schemes are to be reinstated with effect from that date.

Following the Supreme Court ruling in the case of Brewster¹, the Order amends the 2007 Order to remove the requirement that a surviving cohabiting partner be nominated as a condition for eligibility for a survivor's pension.

The Order also amends minor errors and ambiguities within the 1992 Scheme, the 2007 Order and the Firefighters' Pension (Wales) Scheme (Amendment and Transitional Provisions) Order 2016..

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

The provisions in the Order are retrospective as detailed in article 1(2) – (5).

¹ [2017] UKSC 8. Ms Brewster was in a cohabiting relationship with Mr McMullan, a member of the Northern Ireland local government pension scheme. Following his death, she was refused a survivor's pension on the basis that he had allegedly not completed the requisite nomination form in her favour, despite her relationship with him otherwise complying with the scheme rules. The Court held that the requirement to complete a nomination form was an unreasonable and unlawful infringement of Ms Brewster's human rights, and declared that the requirement in the Regulations that she and Mr McMullan should have made a nomination be disapplied, and that she was entitled to receive a survivor's pension under the scheme.

3 Legislative background

In addition to the 1992 Scheme, there are two further principal pension schemes for firefighters. These are: the 2007 Scheme governed by the 2007 Order and the 2015 Scheme governed by the Firefighters' Pension Scheme (Wales) Regulations 2015. The 2007 Scheme was closed to new firefighters on 31 March 2015, and the 1992 Scheme had already closed to new firefighters in April 2006. There is no need for the survivor benefit provisions to be reformed in the 2007 or 2015 Schemes, because under the applicable provisions, survivor benefits are not terminated on remarriage or on the formation of a new civil partnership. Survivors of firefighters who are not members of an occupational pension scheme can nevertheless be eligible for compensation under the Compensation Order.

The powers of the Welsh Ministers in relation to the Firefighters Pension (Wales) Scheme 1992 are contained in section 26 of the Fire Services Act 1947 and the power to give retrospective effect is conferred by sections 12 and 16 of the Superannuation Act 1972. In respect of the Compensation Scheme and the 2007 Pension Scheme, the powers of the Welsh Ministers are contained in sections 34 and 62 of the Fire and Rescue Services Act 2004 and the power to give retrospective effect is conferred by section 34(3) of that Act.

This instrument is subject to the negative resolution procedure.

4. Purpose & intended effect of the legislation

Article 2 of the Order amends the 1992 Order to allow surviving spouses and civil partners of a firefighter who died from an injury received in the exercise of duty, or travelling to or from duty, to retain their entitlement to a survivor's benefit under Part C of the 1992 Scheme, should they remarry or enter into a new civil partnership on or after 1 April 2015. The Order also provides that a pension or gratuity which had been withdrawn under the 1992 Scheme prior to 1 April 2015 should be reinstated with effect from that date. In addition, Article 4(3) of the instrument revokes rule 5 of Part 3 of the Compensation Scheme to allow, with effect from 1 April 2015, a person entitled to a pension or gratuity under that scheme to retain it following marriage, remarriage or formation of a civil partnership. Benefits withdrawn prior to 1 April 2015 due to operation of the scheme are to be reinstated with effect from that date.

The Compensation Scheme superseded corresponding provisions of the Firefighters' Pension Scheme 1992. Article 4(2) of the Order amends the transitional arrangements in Article 4 of the 2007 Compensation Scheme Order so that equivalent provisions will apply to special and augmented awards under rules C2 and C3 of the 1992 Scheme that relate to determinations or decisions made before 1 April 2006 relevant to whether death has been occasioned by a qualifying injury.

Articles 2(2), 2(4), 2(5) and 3 of the Order also make unrelated amendments to the 1992 and 2007 Orders. These include an amendment by article 2(4)(b) to clarify that under Part G of the 1992 Scheme a firefighter below the age of 50 who has reckoned 30 years' pensionable service is treated as an employee of the fire and rescue authority for the purposes of annual employer contributions and that where such a firefighter has arrangements for additional pension benefits the firefighter must pay contributions in relation to these until attaining the age of 50, when the requirements in rule G2(1) of the 1992 Scheme will apply. Related to this, article 5 amends the transitional provision made by the Firefighters' Pension Scheme (Amendment and Transitional Provisions)(Wales) Order 2016 to ensure that, following the implementation of that Order, firefighters continue to pay contributions in relation to additional pension benefit as appropriate, and that fire and rescue authorities pay the appropriate level of employer contributions. Amendments made by article 2(4)(b) of this Order have effect from 1 December 2006 and those introduced by Article 5 take effect from 31 December 2016.

In addition, following the Supreme Court ruling in the case of Brewster, article 3 of the Order removes the requirement in the 2007 Scheme that a surviving cohabiting partner must have been nominated by the scheme member as a condition of eligibility for a survivor's pension. Under the amending provisions a person who can show that s/he was in a qualifying relationship with a deceased scheme member at the time of death will be eligible to receive such benefits, regardless of any prior nomination, in the same way as spouses and civil partners are. This provision will have retrospective effect from 6 April 2006 when the 2007 Scheme came into effect .

Article 3 also makes a number of unrelated amendments to the 2007 Scheme in order to correct errors in cross references.

5. Consultation

Section 34 of the Fire and Rescue Services Act 2004 requires the Welsh Ministers to consult either those who are likely to be affected by them, or the representatives of those persons, before making any amendments. The Welsh Government conducted a 12 week consultation from the 27 September to 21 December 2017 inviting stakeholder views on amendments to the various firefighter pension schemes and the 2007 Firefighters' Compensation scheme.

The Welsh Government received three consultation responses from North Wales Fire and Rescue Authority, South Wales Fire and Rescue Authority and Mid and West Wales Fire and Rescue Authority.

In respect of proposed amendments to allow surviving spouses and civil partners of qualifying firefighters to retain their benefits should they remarry or enter into a new civil partnership, the Welsh Government provided four potential options for how to make the changes retrospective, as follows :-

Option 1 - introduce a provision that would reverse the existing provision completely with no qualifying date. This would mean all those who had had their benefits withdrawn would have them restored and backdated to the point of withdrawal.

Option 2 - introduce a provision permitting survivors who remarry or enter into a civil partnership on or after a specified date in the past (1 April 2015) to retain their entitlement to survivors' benefits, and in addition reinstate lost benefits to all survivors who had remarried or entered into a civil partnership before that date, with those benefits being reinstated as from 1 April 2015.

Option 3 - allow survivors who remarry or enter into a civil partnership on or after a specified date in the past (1 April 2015) to retain their entitlement. Those who had remarried or entered into a new civil partnership before that date would receive nothing.

Option 4 - allow survivors who remarry or enter into a civil partnership on or after a specified date in the future (say 1 July 2018) to retain their entitlement to pension benefits. Those who have already remarried or entered into a new civil partnership would receive nothing.

All three FRAs agreed that Option 2 would provide the most balanced approach between fairness and cost effectiveness. This was also the Welsh Government's preferred option. One FRA, however, raised concerns that re-instating benefits only from a set date (in this case 1 April 2015) would not provide consistency with the recent Supreme Court rulings in the cases of Walker² and Brewster, both of which had in effect provided for full backdating.

Option 1 in the original consultation document had provided for full retrospection of survivor benefits to the point of withdrawal, provided the cost burdens on the Fire and Rescue Authorities were limited or manageable. The Welsh Government has subsequently reviewed the cost implications of complete retrospection and has concluded that adopting this approach at a time when budgets for front line services are under significant pressure would not be feasible. The Welsh Government has therefore continued with the proposals to adopt Option 2 as set out in the consultation document.

It is important to note that the judgments in the cases of Brewster and Walker held that the affected pension schemes had discriminated unlawfully on the grounds of marital status and sexual orientation, respectively. As such, the scheme rules were held by the Court to be, and always to have been, unlawful. There have been no claims of unlawful discrimination nor judgments holding that the scheme rules are unlawful as regards survivors who remarry or form new civil

²² [2017] UKSC 47. Mr Walker is gay, and had sought confirmation that his husband (who had previously been his civil partner) would receive a survivor's pension in the event of his death. The administrator of his pension scheme declined on the grounds that Mr Walker's pensionable service ended before the Civil Partnerships Act 2004 came into force, and before Mr Walker entered into such a partnership. The Court held that this decision amounted to unlawful discrimination on grounds of sexual orientation, and ordered that Mr Walker's husband would be eligible for a survivor's pension based on all the years of Mr Walker's service.

partnerships. The Welsh Government has introduced amendments to the 2007 Order purely to remove what we believe is harsh treatment of survivors of firefighters who have died whilst on duty.

No particular issues were raised as part of the consultation about the other proposed amendments

The consultation document explained that there would be no consultation following the Supreme Court ruling in the case of Brewster given that the Welsh Government are merely reflecting the judgment of the Supreme Court.

6. Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment has been considered, but has not been conducted in this instance as the Order will not introduce any additional costs to charities, or the private or third sector. The impact on Fire and Rescue Authorities (FRAs) is expected to be minimal. There are very few known historic cases covered by this Order, and the costs of reinstating pensions in those cases are likely to be very modest indeed. Those costs will be met from the pension fund (or, in the case of payments under the Compensation Scheme, from FRA core funding) in the normal way.

7. Equality Impact Assessment

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

8. Competition Assessment

Not Applicable

9. Post Implementation Review.

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

SL(5)216 – The Firefighters’ Pension Scheme and Compensation Scheme (Wales) (Amendment) Order 2018

Background and Purpose

This Order amends:

- The Firefighters’ Pension (Wales) Scheme (set out in Schedule 2 to the Firemen’s Pension Scheme Order 1992 - SI 1992/129 as amended, as it has effect in Wales) (“the 1992 Scheme”);
- The New Firefighters’ Pension Scheme (Wales) (set out in Schedule 1 to the Firefighters’ Pension Scheme (Wales) Order 2007 – SI 2007/1072, as amended) (“the 2007 Order”);
- The Firefighters’ Compensation Scheme (Wales) (set out in Schedule 1 to the Firefighters’ Compensation Scheme (Wales) Order 2007 – SI 2007/1073, as amended) (“the 2007 Compensation Scheme”) and
- The Firefighters’ Pension (Wales) Scheme (Amendment and Transitional Provisions) Order 2016 – SI 2016/1136.

The 1992 Scheme and the 2007 Compensation Scheme currently provide that any surviving partner loses his or her entitlement to survivor’s benefits on remarriage or formation of a new civil partnership. This Order amends these specific provisions to allow the surviving spouse or civil partner of a firefighter who dies or has died from an injury received in the exercise of duty, or travelling to or from duty, to retain her or his entitlement to a survivor’s benefit if s/he remarries or forms a civil partnership on or after 1 April 2015. In addition, benefits withdrawn prior to 1 April 2015 due to operation of the schemes are to be reinstated with effect from that date.

In addition, the Order amends the 2007 Order to remove the requirement that a surviving cohabiting partner be nominated as a condition for eligibility for a survivor’s pension, following the Supreme Court ruling in the case of Brewster¹.

The Order also makes some technical amendments concerning the 1992 Scheme, the 2007 Order and the Firefighters’ Pension (Wales) Scheme (Amendment and Transitional Provisions) Order 2016.

Procedure

Negative

Technical Scrutiny

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

¹ [2017] UKSC 8. In the matter of an application by Denise Brewster for Judicial Review (Northern Ireland)

Merits Scrutiny

A point is identified for reporting under Standing Order 21.3 in respect of this instrument.

The provisions in the Order are all retrospective. The power to give retrospective effect is conferred in respect of the 1992 Scheme by section 12 of the Superannuation Act 1972 as applied by section 16(3) of that Act and in respect of the 2007 Compensation Scheme and the New Firefighters' Pension Scheme (Wales), by section 34(3) of the Fire and Rescue Services Act 2004.

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

No government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

15 May 2018



Mr Charles Walker MP
Chair
Procedure Committee
House of Commons

11 May 2018

Dear Mr Walker

European Union (Withdrawal) Bill

We have been giving consideration to the amendments agreed at the House of Lords report stage in relation to the European Union (Withdrawal) Bill ("the Bill") and the sifting mechanism that is to apply to regulations made under its provisions. We have identified a discrepancy between the timing offered to Westminster committees and the timing offered to the National Assembly for Wales committees. I have enclosed a letter which I have today sent to the Secretary of State for Wales on this matter.

I am aware that your Committee is on the next phase of its inquiry on the scrutiny of secondary legislation under the Bill, and is now considering the operation in the House of Commons of the scrutiny mechanism provided for in the Bill. I would like to draw your attention to our report on the [Scrutiny of regulations made under the European Union \(Wales\) Bill](#) and, specifically, to paragraphs 54 to 58. In these paragraphs we comment on the ability for UK Ministers, acting alone, to use their broad powers to make regulations in devolved areas. With regards to these regulations, we believe the sift committee at the National Assembly (this is likely to be the Constitutional and Legislative Affairs Committee) should be given some role in the scrutiny of regulations made by UK Ministers in devolved areas that are laid before the UK Parliament only.



It would be helpful to know whether your report is likely to consider formal mechanisms by which we would be notified of UK Ministers using their consequential powers under clause 22 of the Bill in devolved areas.

The Intergovernmental Agreement agreed between the Welsh Government and the UK Government deals with consent for regulations made by UK Ministers under "clauses 7, 8 and 9" (as they then were). However, there is no reference to clause 22. We are concerned that clause 22 consequential regulations could impact on devolved matters without our knowledge.

I am copying this letter to Lord Trefgarne, Chairman of the House of Lords Secondary Legislation Scrutiny Committee.

Yours sincerely,

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Rt Hon Alun Cairns MP
Secretary of State for Wales

11 May 2018

Dear Secretary of State

European Union (Withdrawal) Bill

We have been giving consideration to the amendments agreed at the House of Lords report stage in relation to the European Union (Withdrawal) Bill ("the Bill") and the sifting mechanism that is to apply to regulations made under its provisions.

As drafted, the Bill gives Westminster committees 10 sitting days to carry out a sift. "Sitting day" is defined as meaning, in respect of either House, a day on which that House sits.

We understand that the House of Commons usually sits Monday to Thursday, with some Fridays being sitting days (we believe 11 May, 15 June, 6 July, 26 October, and 23 November are agreed sitting Friday dates). Where the House of Commons sits Monday to Thursday, the 10 day sitting period could actually last 19 calendar days. For example, if regulations were laid on Thursday 29 November, the clock would not start running until the following Monday and would stop running at the end of Tuesday 18 December. We understand that the House of Lords arrangements follow a similar pattern, and it's agreed sitting Friday dates are 11 May, 29 June, 20 July and 7 September.

The National Assembly for Wales does not use the term "sitting days". We note that, as a result, paragraph 4 of Schedule 7 does not refer to the Assembly sift being carried out within a certain number of sitting days. Instead, the Assembly has been given a fixed "14 days" (i.e. 14 calendar days excluding any time the Assembly is dissolved or in recess for more than four days). This is the maximum period available to the Assembly to sift and is considerably shorter than the time that could be available to Westminster committees.



Naturally, we are concerned at the lack of consistency between the timing offered to Westminster committees and the timing offered to committees of the National Assembly for Wales. Given the considerable task we all have of scrutinising the UK's exit from the EU, every day is important.

I would therefore be grateful if you could explain why this discrepancy exists, and what scope there is to amend the Bill to ensure there is parity of treatment for scrutiny committees across all institutions. One option to consider would be to amend the Bill to provide the National Assembly's sifting committee with the ability to discharge its responsibility within 14 calendar days or the equivalent amount of days afforded to the House of Commons and House of Lords, whichever is the greater.

At this point in time, it is uncertain the extent to which this disparity may cause problems, particularly because of uncertainties surrounding the scrutiny of joint and composite instruments.

A further issue relating to the sifting process regards the acceptance by the House of Lords on 8 May 2018 of amendment 70 (tabled in the name of Lord Lisvane and now paragraph 3 of Schedule 7), which ensures that the sifting committees' decisions are binding on Ministers save where a House of Parliament resolves otherwise. Please could you let us know whether it is the UK Government's intention to mirror these provisions for the sifting committee in the National Assembly. You may recall that the National Assembly unanimously endorsed a recommendation in similar terms on 7 March 2018.

Please could you also explain how the former Devolution Guidance Note 9 has been amended as compared to the new Devolution Guidance Note: Parliamentary and Assembly Primary Legislation Affecting Wales and the reasons for the changes. We have noted a number of instances where provision is not as it was previously; for example please would you explain what exceptions you expect will apply to the SICM rule, as noted in paragraph 109 of the new Devolution Guidance Note.

Finally I would be grateful to know when the UK Government intends to reflect both the UK exiting the EU and the Intergovernmental Agreement on the EU (Withdrawal) Bill and the Establishment of Common Frameworks within the Devolution Guidance Notes and whether they will then be subject to full public consultation in line with recommendation 4 of our report *UK governance post-Brexit*.

I am copying this letter to Chloe Smith MP, Minister for the Constitution, Elin Jones AM, the Presiding Officer of the National Assembly for Wales, the Rt Hon Carwyn Jones AM, First Minister, and Julie James AM, Leader of the House and Chief Whip.



I would be grateful for a response in respect of the sifting process by Friday 18 May 2018 and in respect of the Devolution Guidance Notes as soon as possible thereafter.

Yours sincerely,

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Rt Hon Alun Cairns MP
Secretary of State for Wales

11 May 2018

Dear Secretary of State

European Union (Withdrawal) Bill

We have been giving consideration to the amendments agreed at the House of Lords report stage in relation to the European Union (Withdrawal) Bill ("the Bill") and the sifting mechanism that is to apply to regulations made under its provisions.

As drafted, the Bill gives Westminster committees 10 sitting days to carry out a sift. "Sitting day" is defined as meaning, in respect of either House, a day on which that House sits.

We understand that the House of Commons usually sits Monday to Thursday, with some Fridays being sitting days (we believe 11 May, 15 June, 6 July, 26 October, and 23 November are agreed sitting Friday dates). Where the House of Commons sits Monday to Thursday, the 10 day sitting period could actually last 19 calendar days. For example, if regulations were laid on Thursday 29 November, the clock would not start running until the following Monday and would stop running at the end of Tuesday 18 December. We understand that the House of Lords arrangements follow a similar pattern, and it's agreed sitting Friday dates are 11 May, 29 June, 20 July and 7 September.

The National Assembly for Wales does not use the term "sitting days". We note that, as a result, paragraph 4 of Schedule 7 does not refer to the Assembly sift being carried out within a certain number of sitting days. Instead, the Assembly has been given a fixed "14 days" (i.e. 14 calendar days excluding any time the Assembly is dissolved or in recess for more than four days). This is the maximum period available to the Assembly to sift and is considerably shorter than the time that could be available to Westminster committees.



Naturally, we are concerned at the lack of consistency between the timing offered to Westminster committees and the timing offered to committees of the National Assembly for Wales. Given the considerable task we all have of scrutinising the UK's exit from the EU, every day is important.

I would therefore be grateful if you could explain why this discrepancy exists, and what scope there is to amend the Bill to ensure there is parity of treatment for scrutiny committees across all institutions. One option to consider would be to amend the Bill to provide the National Assembly's sifting committee with the ability to discharge its responsibility within 14 calendar days or the equivalent amount of days afforded to the House of Commons and House of Lords, whichever is the greater.

At this point in time, it is uncertain the extent to which this disparity may cause problems, particularly because of uncertainties surrounding the scrutiny of joint and composite instruments.

A further issue relating to the sifting process regards the acceptance by the House of Lords on 8 May 2018 of amendment 70 (tabled in the name of Lord Lisvane and now paragraph 3 of Schedule 7), which ensures that the sifting committees' decisions are binding on Ministers save where a House of Parliament resolves otherwise. Please could you let us know whether it is the UK Government's intention to mirror these provisions for the sifting committee in the National Assembly. You may recall that the National Assembly unanimously endorsed a recommendation in similar terms on 7 March 2018.

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Yours sincerely,

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Mick Antoniw

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



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Agenda Item 7

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

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