

# **SL(6)183 – The Firefighters’ Pension Scheme (Wales) (Amendment) Regulations 2022**

## **Background and Purpose**

The Firefighters’ Pension Scheme (Wales) (Amendment) Regulations 2022 (“the Regulations”) are made by the Welsh Ministers under the powers conferred by sections 1(1) and (2)(f), 2(1), and 3(1), (2)(c) and (3)(a) of the Public Service Pensions Act 2013 (“the 2013 Act”), as amended by the Public Service Pensions and Judicial Offices Act 2022 (“the Act”).

The Act, which follows the judgment in the case of *Sargeant and others v London Fire Commissioner and others*, removes the age discrimination from the main public service pension schemes which had occurred in the introduction of the 2015 pension schemes across the UK. It closes the legacy schemes to further accrual from 1 April 2022.

The Regulations provide arrangements to transfer all active “protected members” from the legacy schemes - the scheme established by the Firemen’s Pension Scheme Order 1992 (“the 1992 Scheme”) and the scheme established by the Firefighters’ Pension Scheme (Wales) Order 2007 - to the Firefighters’ Pension Scheme (Wales) 2015 (“the 2015 Scheme”), which is governed by the Firefighters’ Pension Scheme (Wales) Regulations 2015 from 1 April 2022.

They also provide an ill-health “underpin” by making provision in relation to members of the 1992 Scheme who transfer to the 2015 Scheme on 1 April 2022, where a fire and rescue authority in Wales had decided prior to transfer, to obtain the written opinion of an independent qualified medical practitioner in regard to a potential ill-health award. If it is subsequently decided that an ill-health award is payable then provision is made for the award to be at least equal to that which the member would have received had the decision on their ill-health award been made under the 1992 Scheme on 31 March 2022.

The Regulations are subject to the consent of the Treasury in accordance with section 3(5) of the 2013 Act. The process for giving consent is a matter for the Treasury. In this case, it has been signified by two of the Lords Commissioners of the Treasury signing the Regulations.

## **Procedure**

Negative.

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

## **Technical Scrutiny**

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



## Merits Scrutiny

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

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

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Hannah Blythyn MS, Deputy Minister for Social Partnership, in a letter to the Llywydd dated 22 March 2022.

In particular, we note the following:

*“The Regulations are necessary to align with the requirements of the Act, which received Royal Assent on 10 March; the relevant provisions came into force immediately. Given it is not possible to make the Regulations until after the Bill receives Royal Assent, it is not therefore possible to allow for the conventional 21 day period before they need to come into force on 30 March.*

*If the Regulations were not made and brought into force by the end of the financial year, around 200 affected firefighters would not be members of any pension scheme from 1 April. This is because the Act closes their existing pension schemes; the Regulations are essential to transfer them to the 2015 Scheme.”*

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

Whilst it is clear from the preamble to the Regulations and part 5 of the Explanatory Memorandum that the Welsh Ministers have consulted in compliance with the obligation set out in section 21(1) of the 2013 Act, it is unclear whether they have published a statement, and kept it up to date, in accordance with section 21(2), which requires:

*“(2) The responsible authority must publish a statement indicating the persons that the authority would normally expect to consult under subsection (1) (and keep the statement up-to-date).”*

It has not been possible on reasonable investigation to locate such a statement. Whilst we note that any failure to comply with section 21(2) does not invalidate the consultation that was undertaken to discharge the obligation under section 21(1), if in fact such a statement has not been published, it is appropriate that a compliant statement is produced and made readily accessible to the public as soon as is practicable.



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

We note the potential detrimental impact on female and disabled firefighters as set out in the two specific areas highlighted in part 5 of the Explanatory Memorandum. We note further that no equality impact assessment for the Regulations has been carried out in compliance with regulation 8(1) of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 both in this regard and generally.

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

We note part 6 of the Explanatory Memorandum states in relation to the decision not to carry out a regulatory impact assessment, that the decision, “... *is in line with the policy set out in the Welsh Ministers’ code of practice for carrying out regulatory impact assessments for subordinate legislation.*” However, it is unclear, both from the Explanatory Memorandum and Explanatory Note, which exception is being relied upon under paragraph 3.2 of the *Welsh Ministers’ regulatory impact assessment code for subordinate legislation.*

## **Welsh Government response**

### **Merit Scrutiny point 2:**

All formal Welsh Government consultations on matters relating to firefighters’ pensions, including on these and all other scheme regulations, are publicly available and are not limited to specific organisations. Any organisation or individual can read and respond to them if they choose; we aim in particular to draft consultation documents in ways that are accessible to individual scheme members as well as their employers and representative bodies.

In practice, the persons most likely to respond to consultations on matters relating to firefighters’ pensions are the members of the statutory Firefighter Pension Scheme Advisory Board for Wales. The Board is also a forum for detailed collective discussion of matters relating to firefighters’ pensions, including these regulations, which were drawn to the specific attention of the Board, and discussed by it on several occasions. The membership of the Board includes all the employers and recognised representative bodies of firefighters in Wales, namely:

- Mid and West Wales Fire and Rescue Authority
- North Wales Fire and Rescue Authority
- South Wales Fire and Rescue Authority
- Fire and Rescue Services Association
- Fire Brigades Union
- Fire Leaders Association



- Fire Officers Association

A statement in accordance with section 21(2) will be published shortly.

### **Merit Scrutiny point 3:**

An Equality Impact Assessment was undertaken for the draft regulations and overall policy as set out in the consultation published on 25 October, and this was referred to in the Integrated Impact Assessment published alongside the consultation. The overall policy position set out in the consultation document remained the same following consideration of the issues raised in the consultation responses received, and formed the basis of the final regulations. Therefore no changes were made to the Integrated Impact Assessment as originally published. The Summary of Consultation Responses sets out in more detail the consideration that was given to the equalities issues raised and the reasons for not changing the original policy position.

### **Merit Scrutiny point 4:**

The primary decision for not undertaking a Regulatory Impact Assessment was based on the fact that the legislation imposes negligible costs, savings, benefits or dis-benefits on the public, private, charities and the voluntary sector or society in general. In specific respect of the Welsh Ministers' regulatory impact assessment code for subordinate legislation, as the regulations make provision consequential on the Public Service Pensions and Judicial Offices Act 2022, the following exemption applies to the regulations:

*"Where the subordinate legislation is a Commencement Order or Commencement Regulations or Regulations which also make consequential provision or savings (provided the savings are not made by imposing an additional cost on an alternative party), etc."*

## **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**4 April 2022**

