

Government Response: The Firefighters' Pensions (Remediable Service) (Wales) Regulations 2023

Technical Scrutiny point 1: The Welsh Government notes that the Committee has raised a number of individual points under this heading. Each point has been addressed individually below:

- The Welsh Government accepts that “a’r swm amgen” could instead have read “ac mae’r swm amgen”, however we consider the words used are suitably clear for the reader.
- The Welsh Government agrees that the Welsh and English texts in regulation 29(1)(a) differ grammatically and that the Welsh text is the preferred drafting. That said, we consider the meaning of the English drafting is clear and the legal effect of the provision is consistent with the Welsh version.
- The Welsh Government agrees that including the words “wedi bod” would be a direct translation of the English text, but consider that the “wedi bod” is implied by “pe bai” and that the Welsh text is suitably clear.
- The Welsh Government agrees that the cross reference in regulation 41(4) should read “adran 86(1)” and not “adran 89(1)”. This will be amended at the next available opportunity.
- The Welsh Government agrees that the English and Welsh texts in regulation 46 differ. The English text is correct and the Welsh text will be amended at the next available opportunity.
- The Welsh Government agrees that in regulation 65(4) of the Welsh text “gwasanaeth adferadwy” should read “gwasanaeth rhwymedïol”. This will be amended at the next available opportunity.

Technical Scrutiny point 2: The Welsh Government acknowledges that it would be of greater assistance to a reader if the footnote signposting the definition of the term “end of the section 6 election period” were located at the first instance of the term’s use, rather than the second instance.

It is the Welsh Government’s view though, that the while such signposting provides a helpful aid to the reader, the reader does not need it by way of explanation to understand the meaning of this term. When considering the meaning of a particular term in these regulations, the reader will have regard to the general interpretation provisions at regulation 2. Consequently, the reader will be aware from regulation 2(3) that they must have regard to terms defined in Chapter 1 of Part 1 of the Public Service Pensions and Judicial Offices Act 2022 in order to understand a number of terms used in these regulations.

Technical Scrutiny point 3: The Welsh Government’s view is that it is clear, in the context of regulation 22, that the Act being referred to in relation to the second mention of “section 29(2)” in regulation 22(2) is the WRPA 1999 as this Act is referred to earlier

in the provision. Additionally, “section 29(2) of WRPA 1999” is referred to five times in regulation 22 and “section 29(3) of WRPA 1999” is referred to twice. No other Act is referred to in that regulation.

Technical Scrutiny point 4: The Welsh Government appreciates that regulation 32 does not specify the exact matters which may tend to satisfy a scheme manager as to the likelihood of a remedy member having previously entered into an added years pension arrangement, had the age-based discrimination not occurred.

The power to make provision for remedial arrangements to purchase added years in a member’s legacy pension scheme is conferred by section 25(1) of the Public Service Pensions and Judicial Offices Act 2022. Where a responsible authority (in this case the Welsh Ministers) wish to make such provision, section 25(3) of that Act requires such provision to only allow a remedy member to enter into such arrangements “if the scheme manager is satisfied that it is more likely than not that, but for a relevant breach of a non-discrimination rule, M would, during the period of M’s remediable service in the employment or office, have entered into the same or similar arrangements”.

The Welsh Government’s view is that it is appropriate that the scheme manager be given discretion in these circumstances. The factors which go to satisfying the scheme manager of the likelihood of a remedy member’s past actions may be dependent upon the personal circumstances of the individual concerned. The individual scheme managers will likely hold records on the particular remedy member, and be best placed to determine what, if any, further information might be needed from the remedy member in any particular case.

Merit Scrutiny point 5: The Welsh Government notes that these regulations are to be reported under Standing Order 21.3(ii), on the basis that they make retrospective provision. The Welsh Government notes that such provision is a necessary consequence of the retrospective effect of the Public Service Pensions and Judicial Offices Act 2022.

Merit Scrutiny point 6: The Welsh Government acknowledges that these regulations make complex technical provision. The Welsh Government has sought to balance the accessibility of these regulations for the lay reader, with the efficacy of their provisions in the context of a complicated retrospective pensions remediation exercise which have an impact on a number of statutory pension schemes.

The making of these regulations follows a 12-week public consultation period. The consultation document was drafted in a way to make it accessible to ordinary scheme members, for instance by using plausible illustrative examples and including a full glossary of technical terms; this approach was warmly welcomed by both employers and firefighters’ representative bodies. During that period numerous stakeholders and individual scheme members engaged with the consultation. Comments received

during that period enabled the Welsh Government to improve the drafting of these Regulations.

Nevertheless, the Welsh Government appreciates that the complexity of the remediation exercise, together with requirements imposed directly by the Public Service Pensions and Judicial Offices Act 2022 and the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022, may render these Regulations to be less easily accessible to lay readers than other instruments.

In respect of the Committee's specific point about references to "WRPA 1999", the Welsh Government's view is that the footnote signposting the definition of the term does indeed assist the reader, and hence the accessibility of these particular provisions. Such signposting in these regulations is considered particularly appropriate on the basis that a reader must have regard to the Public Service Pensions and Judicial Offices Act 2022 in any event if they are to fully understand the operation of this remediation exercise.