

## **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.