

Constitutional and Legislative Affairs Committee Report

CLA522 - The Firefighters' Pension Scheme (Wales) Transitional and Consequential Provisions) Regulations 2015

These Regulations make transitional provisions for a member of the Firefighters' Pension Scheme 1992 and a member of the New Firefighters' Pension Scheme (Wales) 2007 who are no longer able to remain active members of those Schemes following the transitional provisions of Schedule 2 to the Firefighters' Pension Scheme (Wales) Regulations 2015.

The amendments to the Schedule also make consequential amendments in connection with Schedule 7 (final salary link) to the Public Service Pensions Act 2013.

Procedure: Negative

1. Technical Scrutiny

Under Standing Order 21.2(vi) the Assembly is invited to pay special attention to the following point:-

The enabling powers under Section 3 (6) and (7) of the Public Services Pensions Act 2013 have inaccurately been described. The correct reference should refer to Section 3 (5) and (6) of the 2013 Act, namely that its drafting appears to be defective or it fails to fulfil statutory requirements

2. Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3(ii),, namely that it is of political or legal importance or gives rise to issues public policy likely to be of interest to the Assembly.

Section 11A(4) of the Statutory Instruments Act 1946, as inserted by paragraph 3 of Schedule 10 to the Government of Wales Act 2006 (which affords the rule that statutory instruments come into force at least 21 days from the date of laying) is breached for the introduction of the above-mentioned statutory instrument.

In a letter dated 31 March 2015 to the Presiding Officer, the Welsh Government said:

“... the Welsh Ministers have already made regulations establishing a new Pension Scheme for firefighters, from 1 April this year. This Scheme differs in two critical areas from that to be established in England. However, the Regulations referred to in this correspondence, which deal with the transition of existing unprotected scheme members into a new 2015 Scheme, do not depend at all on the design of that new Scheme. Furthermore, these Regulations deal in large measure with the terms of the Firefighters’ Pension Scheme 1992, which predates devolution and on which there is little policy or legal expertise outside the UK Government.

Thus, the final versions of the Instruments made in England have been replicated with the only amendments made in Wales being to provide a Welsh language text, to reflect the Welsh SI format and to provide for gender-neutral drafting. This has meant significant delays in introducing the regulations as the final English regulations were not available to Welsh Government until 6 March 2015. In order for these to be in force for 1 April 2015 it is necessary to breach the 21 day rule. If the Orders were brought into force on a date later than 1 April 2015, under Section 18(1) of the 2013 Act this would mean that all scheme members would stop accruing pension benefits in the old Schemes. That would mean that members would need to be auto-enrolled into the new Pension Scheme by the next day including those who have protected rights to remain in their current Scheme.”

3. Government Response

The error is acknowledged. The error is technical in nature and does not give rise to any issue in the operation of the various pension schemes. Regulations correcting the error will be made as soon as practicable.

4. Committee Consideration

The Committee considered the instrument at its meeting on 27 April 2015 and reports to the Assembly in line with the reporting points in sections 1 and 2 above.