

EXPLANATORY MEMORANDUM TO THE FIREFIGHTERS' PENSION SCHEME (WALES) (CONSEQUENTIAL PROVISIONS) 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) (Consequential Provisions) Regulations 2015. I am satisfied the benefits of making the Regulations outweigh any costs.

Leighton Andrews AM
Minister for Public Services

23 February 2015

Description

1. These Regulations modify how primary legislation on pensions legislation applies to the new firefighter pension scheme, to ensure that certain current members of public service pension schemes can join new pension schemes as active members, whilst retaining certain benefits in their existing schemes, under The Public Services Pensions Act 2013 (2013 Act).

Matters of special interest to the Constitutional and Legislative Affairs Committee

2. There are no issues of special interest for the Constitutional and Legislative Affairs Committee.

Legislative background

3. Firefighters' pensions are the only public-sector pensions devolved to Wales. While the design and operation of pension schemes for Welsh firefighters is a matter for the Welsh Ministers, the overall policy framework is set by the UK Government and in UK legislation, in particular the Public Service Pensions Act 2013 (the 2013 Act).
4. By virtue of sections 1(1) and (2)(f), 2(1) and 3(1), (2), (3)(a) and (4) of, and paragraph 6(b) of Schedule 2 to, the 2013 Act, the Welsh Ministers have power to make regulations, in respect of the new firefighter pension scheme, to make consequential provision amending any primary legislation passed before or in the same session as that Act, as well as any consequential provision amending any secondary legislation. The Regulations make such consequential provision in relation to both primary and secondary legislation.
5. The Regulations are subject to the affirmative resolution procedure.

Purpose & intended effect of the legislation

6. The Firefighters' Pension Scheme (Wales) (Consequential Provisions) Regulations 2015 ("the Regulations") make consequential provision in relation to the new public service pension scheme for firefighters under the Public Service Pensions Act 2013 (c.25). They modify the effect of other statutory provisions in their application to the new firefighters' pension scheme.

Certification provisions for contracting-out

7. Some employers choose to set up company pension schemes to provide a pension which replaces all, or part, of the additional State Pension provided the scheme meets minimum standards known as the Reference Scheme Test. This is known as "contracting-out" of the additional State Pension. Individuals who are members of a contracted-out scheme and their employers pay lower National

Insurance contributions. This arrangement is known as the National Insurance rebate. The UK Government intends that the new schemes, like the existing schemes, should be contracted-out of the additional State Pension, until contracting-out ends in April 2016. Part 2 of the Regulations deals with contracting-out under the Pension Schemes Act 1993 (c.48) ("the 1993 Act") for the period from 1 April 2015 to 5 April 2016, inclusive. Certain procedural requirements are disapplied that would otherwise apply by virtue of the Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172): for example, formal notices to earners. New schemes must still meet the requirements in section 9 of the 1993 Act: in particular, they must satisfy the Reference Scheme Test.

Provisions about pensionable service and early leavers

8. The effect of the 2013 Act and scheme Regulations is that existing schemes must close, and current members (except for specific protected groups) transfer into new schemes. However, these transferring members will retain certain benefits in their existing scheme (described in the Regulations as their "old scheme"). Although they will accrue new benefits in the new scheme only, the member will, strictly speaking, belong to both schemes at once. Part 3 only applies in respect of the firefighters' pension schemes when a member of the old scheme benefits from the "final salary link" (see Schedule 7 to the 2013 Act) which means that the final salary in their new scheme will be used to determine their final salary for the purposes of their old scheme.
9. Part 3 of the Regulations reflects the policy intention that those with ongoing service in an old scheme and a new scheme should generally (subject to certain conditions) be treated as if they remained active members for particular purposes or in "pensionable service" for their old schemes until their pensionable service in their new scheme is terminated. The objective is to prevent them from being treated as deferred members in respect of certain rights that are inconsistent with them remaining in service with the same employer in a successor pension scheme.
10. The 1993 Act contains provisions about occupational pension schemes – not only public service schemes – including as to their contracting-out of the additional state pension (see Part 3 of the 1993 Act); and as to members who leave their scheme before retirement age ("early leavers") (Part 4 of the 1993 Act).
11. For the purposes of the 2013 Act and scheme Regulations, a number of those provisions need to be modified in relation to a member of an old scheme who transfers to a new scheme and benefits from the final salary link.
12. One reference to "pensionable service" in Part 3 of the 1993 Act, which concerns certification requirements for contracted-out pension schemes, is modified so that the person is treated as having a single period of pensionable service in one scheme.
13. There are further provisions in Part 4 of the 1993 Act, which concern the rights of early leavers. Chapter 1 provides for preservation of benefits and sets out the

principle of short service benefit for those persons. The Regulations provide that a person will not have access to short service benefit until pensionable service terminates in the new scheme, rather than when the person transfers into the new scheme. Certain provisions will apply as though the old scheme and the new scheme were a single scheme.

14. Chapter 2 of Part 4 concerns the revaluation of a person's benefits during the period between the person leaving their occupational scheme and reaching normal pension age. The requirements of that Chapter should not apply to someone's old scheme benefits when the person transfers into the new scheme but remains in service in the new scheme whilst the final salary link applies. Instead, the amount of their old scheme benefits will be determined in accordance with the scheme rules and the member's final salary in the new scheme. The Regulations provide that old scheme benefits are not to be revalued under Chapter 2 whilst the person remains in pensionable service in the new scheme. This is to ensure that their old scheme benefits are not effectively revalued twice.
15. Chapter 3 of Part 4 concerns "anti-franking", or the protection of increases in guaranteed minimum pensions which contracted-out schemes had to provide until 1997. For this purpose, the Regulations provide that the "cessation date" when a person ceases to be in contracted-out employment under the old scheme (and from which point guaranteed minimum pensions may need to be increased) is treated as the date when the person leaves their new scheme, and not the date when they transfer from the old scheme to the new scheme. The Regulations include a subsequent modification of the definition of "cessation date" in section 87 of the 1993 Act, which will take effect when that definition is amended by the Pensions Act 2014 (c.19) as part of the abolition of contracting-out.
16. Chapter 4 of Part 4 concerns cash equivalent transfers for early leavers. The Regulations provide that a person will not acquire the statutory right to a cash equivalent under the old scheme until pensionable service terminates in the new scheme, rather than when the person transfers into the new scheme.
17. There are also modifications to the Occupational Pension Schemes (Transfer Values) Regulations 1996 (S.I. 1996/1847) which were made under that Chapter, to enable scheme managers in certain circumstances to delay transfers of preserved benefits until the transition member has left new scheme employment. This is designed to restrict transfers out (from either scheme) by a person who has voluntarily opted out of membership of the new scheme, but remains in employment.

Ill-health benefits

18. The UK Government has chosen to adopt a 'single source model' for the payment of ill-health pensions in the new schemes. Under the single source model, all payments of ill-health pension will be made from the new pension scheme during the period between retirement and the scheme member reaching normal pension age in the old scheme. This model delivers certainty over the ill health pensions that are payable to members with service in both schemes, and

prevents the administrative difficulty of performing two parallel ill-health calculations.

19. Accordingly, the pension payable to the scheme member from the new scheme will contain 3 elements:

- (1) An element in respect of the lower tier ill-health pension entitlement in respect of service in the old scheme;
- (2) A pension in respect of service in the new scheme; and
- (3) In the case of upper tier ill-health pensions, an uplift.

20. When the person receiving an ill-health pension from the new scheme reaches their normal pension age in the old scheme, then the first element will cease to be paid out of the new scheme and the element in respect of the lower tier ill-health pension entitlement from their old scheme pension will come into payment from the old scheme. They will see no difference in the amount that they receive.

21. Part 4 of the Regulations modifies the tax regime in order to correct some unintended consequences.

22. Under the current legislation, element (1) would count as an increase in the value of the pension over the pension input period. If that increase meant that the amount of the annual allowance for the pension input period was exceeded, then a tax charge would arise. Regulation 14 modifies the application of the current legislation to remove element (1) from the calculation of the pension input period during the pension input period in which the member takes ill-health retirement.

23. Under the current legislation, the initial value of the ill-health pension elements (1), (2), and in cases of serious ill-health, (3) – would be measured against the lifetime allowance. However, when the member taking ill-health retirement reaches the normal pension age under the new scheme, the current legislation would measure the element in respect of the lower tier ill-health pension entitlement from the old scheme coming into payment against the member's remaining lifetime allowance, notwithstanding that element (1) will cease to be paid from the new scheme. If that second measurement results in the total amount of pension exceeding the lifetime allowance, then a tax charge will arise. Regulation 13 modifies the application of the current legislation to ensure that the payment of the element in respect of the lower tier ill-health pension entitlement paid from the old scheme will not count against the lifetime allowance.

24. Accordingly, both regulations operate so that a member will not suffer any unexpected tax consequences as a result of the way the Government has chosen to structure the ill-health provisions of the new scheme.

Deferred pension age for the uniformed services

25. Part 5 of the Regulations concerns pension age and short service benefits.

26. That Part resolves a conflict between the short service benefit provisions in Chapter 1 of Part 4 of the 1993 Act, and the requirements as to pension age in

section 10 of the 2013 Act, that an active member has a normal pension age of 60 but a deferred member has a pension age set equal to the state pension age.

27. The short service benefit provisions in the 1993 Act operate to ensure that the benefits of a deferred member (short service benefits) are calculated in the same way as the equivalent benefits held by an active member (long service benefits).
28. However, section 10 of the 2013 Act requires different calculations for active and deferred members. For example, an active member aged 61 could take an immediate unreduced pension as they have reached their normal pension age, but a deferred member aged 61 has not reached their deferred pension age and is not entitled to an immediate unreduced pension.
29. The UK Government's policy in relation to active and deferred members of the new scheme is clear. Active members of the firefighters' pension schemes are exempted from the requirement on most other public service pension schemes to have their normal pension age equal to the deferred pension age. This is to reflect the specific occupational requirements of firefighting. However, deferred members of the scheme have left service and so no longer need the protection of the lower pension age put in place for active members to recognise the demands of the occupation.
30. Regulation 15 resolves this conflict by ensuring that any difference in the calculation of the short service benefits of deferred members and the long service benefits of active members resulting from the necessary requirements of section 10 about pension age does not breach the short service benefit provisions in the 1993 Act.
31. The Regulations cross refer to the Firefighters' Pension Scheme (Wales) Regulations 2015, which have not yet been laid. Both sets of Regulations will come into force on 1 April 2015.

Consultation

32. Consultation was undertaken through the Shadow Firefighter Pension Scheme Advisory Board for Wales and was circulated to interested parties such as Chief Fire Officers, Chief Executives of local authorities, Welsh Local Government Association (WLGA) and representative bodies including the Fire Brigades Union (FBU) as well as being hosted on the Welsh Government website.
33. Consultation commenced on 10 December 2014 for four weeks. The consultation sought views on the proposals on consequential changes to finance and wider pensions legislation in relation to the proposed Firefighters' Pension Scheme (Wales) Regulations 2015. Two responses were received in relation to the formal consultation and these are detailed below:-
 - **South Wales Fire and Rescue Service (FRS)** – South Wales FRS did not highlight any particular issues.

- **Fire Brigade Union (FBU)** – The FBU raised 2 main points in relation to Partial Retirement and the 1992 Scheme (made under the Firemen's Pension Scheme Order 1992¹). The FBU raised concern where a member in the 2007 Pension Scheme (made under the Firefighters' Pension Scheme (Wales) Order 2007² would not fully benefit from the partial retirement which is included in the 2015 scheme (to be made under the Firefighters' Pension Scheme (Wales) Regulations 2015. Under the 2007 scheme, the member would have to retire before gaining access to these payments, whereas in the 2015 scheme the payments could be accessed while still continuing in pensionable service. The FBU sought an inter scheme transfer to allow 2007 members to benefit from the partial retirement option. The FBU also raise the issue on protection in the 1992 scheme and stated a further modification was required to the 1992 scheme and the Finance Act 2004 where they are concerned about members of the 1992 scheme with little or no protection who would transfer to the 2015 scheme and would only receive their 1992 scheme benefits when they retire and would be subject to a large actuarial reduction from the 2015 scheme.

34. The Welsh Government has considered the points raised in the consultation responses. Early leavers will be able to transfer their pension to another pension scheme, where this is so permitted by other legislation. Members cannot transfer their pension rights out of the firefighters' pension schemes while they continue to be an active member of that scheme. This is the same policy as applies today. The Regulations recognise the rights of scheme members to move between different pension schemes and scheme members who are not entitled to the final salary link will be able to transfer their old scheme rights out to another eligible pension scheme.
35. The point raised on allowing 1992 scheme members to take their pensions without retiring would substantially increase costs as 1992 scheme pension benefits would come into payment earlier and would be unfunded.
36. The Welsh Government has considered the responses and concluded it was not appropriate to use these Regulations, which are of a consequential nature, to provide unfunded amendments to existing scheme benefits as requested in the consultation response.

Regulatory Impact Assessment

37. The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was 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.
38. The Regulations have no impact on the statutory duties of Welsh Ministers relating to equality of opportunity (section 77 of the Government of Wales Act

¹ SI 1992 no. 129

² SI 2007 no. 1072 (W.110)

2006 (GOWA)), the Welsh language (section 78 GOWA), or sustainable development (section 79 GOWA), and will have no impact on the local government, voluntary sector or business schemes made under sections 73, 74 and 75 of GOWA respectively.