

## **Explanatory Memorandum to the Firefighters' Pension Schemes (Miscellaneous Amendments) (Wales) Regulations 2024**

This Explanatory Memorandum has been prepared by the Education, Culture and Welsh Language Group and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Cabinet Secretary's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Firefighters' Pension Schemes (Miscellaneous Amendments) (Wales) Regulations 2024. I am satisfied that the benefits justify the likely costs.

**Jayne Bryant MS**  
**Cabinet Secretary for Housing and Local Government**  
**23 September 2024**

## **PART 1**

### **1. Description**

#### 1.1 These Regulations:

- ensure that firefighters' pensions in the Firefighters' Pension Scheme (Wales) 2015 are revalued by the correct rate in respect of 2021 and 2022, by remedying issues arising as a consequence of HM Treasury's Public Service Pensions Revaluation Orders for those two years.
- make minor correcting amendments to the Firefighters' Pensions (Remediable Service) (Wales) Regulations 2023 and the Firefighters' Pension Scheme (Wales) Order 2007.

### **2. Matters of special interest to the Legislation, Justice and Constitution Committee**

#### 2.1 The Committee reported on:

- the Firefighters' Pensions (Remediable Service) (Wales) Regulations 2023 ([SL\(6\)381](#)), and
- the Firefighters' Pension Schemes and Compensation Scheme (Amendment) (Wales) Order 2024 ([SL\(6\)441](#)).

2.2 Regulations 4 and 5 address a number of the scrutiny points raised by the Committee in their reports on those instruments.

2.3 Regulation 3 has retrospective effect. This is unavoidable: it corrects an error made by HM Treasury which affected the calculation of accrued pension for the years 2021 and 2022. That error came to light after the relevant calculations had been made and can only be corrected retrospectively.

### **3. Legislative background**

#### 3.1 These Regulations are subject to the negative procedure. They amend:

- the Firefighters' Pension Scheme (Wales) 2015 ("the 2015 Pension Scheme"), set out in the Firefighters' Pension Scheme (Wales) Regulations 2015, to correct an issue with the valuation of pension rights for 2021 and 2022,
- the Firefighters' Pensions (Remediable Service) (Wales) Regulations 2023 ("the 2023 Remediable Service Regulations") to make some minor corrections, and
- the New Firefighters' Pension Scheme (Wales) ("the 2007 Pension Scheme"), set out in Schedule 1 to the Firefighters' Pension Scheme (Wales) Order 2007 to make a minor correction to some of the Welsh

text which was inserted into it by the Firefighters' Pension Schemes and Compensation Scheme (Amendment) (Wales) Order 2024.

### ***Legislative background to regulation 3, regarding scheme valuations***

3.2 The Firefighters' Pension Scheme (Wales) Regulations 2015 are "scheme regulations" for the purposes of section 1(1) of the Public Service Pensions Act 2013. Sections 2 (together with paragraph 6(6) of Schedule 2) and 3 give the Welsh Ministers the power to make and amend scheme regulations relating to firefighters employed by fire and rescue authorities in Wales.

3.3 Accrued pensions of active members of the 2015 Pension Scheme are revalued annually in accordance with orders made by HM Treasury under section 9 of the Public Service Pensions Act 2013. The revaluations for 2021 and 2022 were provided for in the Public Service Pensions Revaluation Order 2021 and the Public Service Pensions Revaluation Order 2022.

3.4 Sections 1(1) and (2)(f), and 2(1) (together with paragraph 6(b) of Schedule 2), section 3(1), (2) and (3)(a) and (b) of the 2013 Act give the Welsh Ministers the power to amend the 2015 Scheme to introduce an "index supplement" to remedy the issues created by the 2021 and 2022 HM Treasury revaluation orders.

### ***Legislative background to regulation 4, regarding the 2023 Remediable Service Regulations***

3.5 The Firefighters' Pensions (Remediable Service) (Wales) Regulations 2023 are also "scheme regulations" for the purposes of section 1(1) of the 2013 Act. As with the 2015 Pension Scheme, the Welsh Ministers may amend them by regulations. In addition, they make provision under Chapter 1 of Part 1 of the Public Service Pensions and Judicial Offices Act 2022 as "scheme regulations" for the purposes of section 37 of that Act.

3.6 In addition to the powers mentioned above under the 2013 Act, sections 18(1), 19(1), (4) and (5), 21(1) to (3) and 22(1) and (6) of the 2022 Act give the Welsh Ministers the power to make regulation 4 of these Regulations to amend the 2023 regulations.

3.7 To the extent required by section 27 of the 2022 Act, such provision must be made in accordance with the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022.

### ***Legislative background to regulation 5, regarding the 2007 Pension Scheme***

3.8 The 2007 Pension Scheme, as set out in Schedule 1 to the Firefighters' Pension Scheme (Wales) Order 2007, was established by the National

Assembly for Wales under sections 34 (read with section 62) and 60 of the 2004 Act. Those powers (so far as they applied to Wales) were transferred to the Welsh Ministers by virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006.

3.9 The 2007 Pension Scheme was most recently amended by the Firefighters' Pension Schemes and Compensation Scheme (Amendment) (Wales) Order 2024 ("the 2024 Order").

3.10 Section 34(1), (2) and (4), and 60(2)(a) of the 2004 Act give the Welsh Ministers the power to further amend the 2007 Pension Scheme to correct an amendment made by the 2024 Order.

### ***Power to make subordinate legislation in different forms***

3.11 The power to amend the 2007 Pension Scheme under section 34(1), (2) and (4) of the 2004 Act is expressed as an order making power. The power to amend the 2015 Pension Scheme and the 2023 regulations under section 3(1) of the Public Service Pensions Act 2013 is expressed as a power to make scheme regulations.

3.12 Section 39 of the Legislation (Wales) Act 2019 provides that where the Welsh Ministers have a power or duty to make subordinate legislation in the form of regulations, rules or an order made by statutory instrument, they may exercise the power or duty by making the subordinate legislation in any other of those forms by statutory instrument.

## **4. Purpose and intended effect of the legislation**

4.1 Accrued pensions of active members of the 2015 Pension Scheme are revalued annually. The revaluation is done in accordance with an annual order made by HM Treasury under section 9(2) of the Public Service Pensions Act 2013. The increases provided for in the Public Service Pensions Revaluation Order 2021 and Public Service Pensions Revaluation Order 2022 were based on provisional average weekly earnings figures published by the Office for National Statistics in November for each of the respective years.

4.2 These Regulations amend the 2015 Pension Scheme so that the revaluation for both of those years reflects the final December figures published by the Office for National Statistics for each of those years.

4.3 This will have the effect of increasing the revaluation of the pension earnings of affected members by 0.2% for 2020-21, and by 0.4% for 2021-22.

4.4 These Regulations are also intended to address a number of reporting points raised by the Legislation, Justice and Constitution Committee on the Firefighters Pensions (Remediable Service) (Wales) Regulations 2023, and the Firefighters' Pension Schemes and Compensation Scheme (Amendment) (Wales) Order 2024. Specifically, these Regulations address a number of

drafting and translation issues. The amendments do not amount to a change in the underlying policy intention of those instruments.

## Consultation

4.5 Section 34(5) of the 2004 Act requires the Welsh Ministers to consult any persons they consider appropriate before making, varying or revoking an order under section 34 of the 2004 Act.

4.6 The proposed Regulations are “scheme regulations” under the Public Service Pensions Act 2013 (as defined in section 1 of that Act). Section 21(1) requires consultation with persons (or representatives of the persons) who appear to the responsible authority to be likely to be affected by the regulations if they were made.

4.7 The amendments in respect of the annual revaluation of accrued pension will be wholly beneficial to all affected members; they will receive a small increase in accrued pension at no cost to them. The drafting amendments in respect of the Firefighters’ Pensions (Remedial Service) (Wales) Regulations 2023 and the Firefighters’ Pension Schemes and Compensation Scheme (Amendment) (Wales) Order 2024 are minor and technical in nature. Accordingly, the Welsh Government decided not to undertake a full public consultation on these matters. Instead consultation took place with the Firefighters’ Pension Scheme Advisory Board for Wales (SABW). The Board is made up of the three Fire and Rescue Authorities in Wales and the four recognised firefighters’ unions and representative bodies.

4.8 Consultation on the Welsh Government’s policy intention of amending the firefighters’ Pension Scheme (Wales) 2015 to increase scheme members’ annual pension uplift to correct an error in HM Treasury’s Revaluation Orders for 2021 and 2022 took place at the Board’s meeting on 28 July 2023.

4.9 All SABW members (both employer and employee) were content with the proposals to correct the error in this way. The following associated issues were raised:

- concerns about the impact the error would have on immediate detriment cases (that is, firefighters who would already have reached the age at which they could retire but for the age discrimination identified in the case of Sargeant) that had already been processed. It was agreed that the FRAs would need to revisit the calculations provided to immediate detriment members as the information they had based their decision on was likely to have been incorrect.
- the cost implications of the error. The Welsh Government indicated that the increased value of pensions resulting from the annual uplift correction would be included in the 2020 pension scheme valuation

process and would be reflected in new employer rates introduced from April 2024.

4.10 Consultation of the minor amendments in respect of errors in the Firefighters' Pensions (Remedial Service) (Wales) Regulations 2023 and the Firefighters' Pension Schemes and Compensation Scheme (Amendment) (Wales) Order 2024, took place at the Board's meeting on 30 April 2024.

4.11 No issues were raised by either employer or employee representatives.

4.12 Regulations 3 and 4 of these Regulations are made with the consent of HM Treasury, in accordance with section 3(5) of the 2013 Act.

### **Impact Assessments**

4.13. The Regulations rectify HMT Revaluation Orders in 2021 and 2022 which used incorrect information. Since both sets of data will increase pension values by the same proportion it is assessed an EQIA is not required.

4.14 In addition, due to the minor nature of the corrective amendments to the Firefighters' Pensions (Remediable Service) (Wales) Regulations 2023 and the Firefighters' Pension Scheme (Wales) Order 2007, it is believed that an EQIA is not required in this instance.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **5. Regulatory Impact Assessment (RIA)**

5.1 This Regulatory Impact Assessment covers Regulation 3 of the Firefighters' Pension Schemes (Miscellaneous Amendments) (Wales) Regulations 2024. The remaining regulations cover minor technical amendments only.

### **6. Options**

6.1 The options available to the Deputy Minister are as follows:

**Option 1. Do Nothing** – Doing nothing would mean that affected members' accrued pensions would remain 0.2% below the correct level for 2020-21 and 0.4% below the correct level for 2021-22.

**Option 2. Make the Legislation** – making the legislation will provide for the correct uplift to be applied thus ensuring that firefighters receive the full accrual that they are entitled to.

## **7. Costs and benefits**

### **Costs**

- 7.1 Regulation 3 will result in a small increase in pension payments to affected members of the 2015 firefighter pension scheme . This is because it has the effect of increasing the revaluation of members' accrued pensions by 0.2% and 0.4% respectively to cover an error made in 2020 and 2021 leading to the uplift being below the correct level. Such payments will materialise when individual affected members retire, which could be at any point over the next 30-40 years. The effect of this on contribution rates (which is likely to be modest) will be covered future valuations of the scheme.
- 7.2 The 2020 Valuation of the Firefighter Pension Schemes in Wales (available [here](#)) includes financial assumptions for revaluation over the whole of the 4 year valuation period, including the corrected CARE Revaluation amendments provided for in these regulations. The impact of the total CARE revaluations across the valuation period (including the adjustment caused by the error) are considered to have a low impact on the employer contribution rate. The employer contribution rate increase for the 2015 firefighter pension scheme (minus ill-health pension contributions) resulting from the full 2020 Valuation is 3.7% of pensionable pay to (from 28.3% to 31%), although this is largely due to factors other than the correction of the above error. The new employer rate has been applied to FRAs in Wales from 1 April 2024.

### **Benefits**

- 7.3 We expect maximum changes in annual pension payments for full scheme membership to be between £25 and £50 per annum at current prices for most members.

## **8. Competition Assessment**

- 8.1 Not applicable.

## **9. Post implementation review**

- 9.1 Any review will be undertaken through future pension scheme valuations undertaken by the Government Actuary's Department and/or the Firefighters Pension Scheme Advisory Board for Wales, at which employer and employee representatives will have the opportunity to raise issues regarding the Order and its practical implementation.