

## **Explanatory Memorandum to The Firefighters' Pension Scheme (Wales) (Amendment) Regulations 2022.**

This Explanatory Memorandum has been prepared by the Department for Education and Public Services and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

### **Deputy 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) (Amendment) Regulations 2022**. I am satisfied that the benefits justify the likely costs.

**Hannah Blythyn MS**  
**Deputy Minister for Social Partnership**

**22 March 2022**

## **PART 1**

### **1. Description**

The Public Service Pensions and Judicial Offices Act 2022 (“the Act”) addresses age discrimination in public service pension schemes. Section 88 (Restriction of existing schemes) of the Act, amends sections 18 and 31 of the Public Service Pensions Act 2013 and closes the legacy schemes to further accrual from 1 April 2022.

The Act, which follows the judgment in the case of Sargeant and others v London Fire Commissioner and others, removes the age discrimination from the main public service pension schemes which had occurred in the introduction of the 2015 pension schemes across the UK.

The Firefighters’ Pension Scheme (Wales) (Amendment) Regulations 2022 (“the Regulations”) provide arrangements to transfer all active members from the legacy schemes - the scheme established by the Firemen’s Pension Scheme Order 1992 (“the 1992 Scheme”) and the scheme established by the Firefighters’ Pension Scheme (Wales) Order 2007 (“the 2007 Scheme”) - to the Firefighters’ Pension Scheme (Wales) 2015 (“the 2015 Scheme”), which is governed by the Firefighters’ Pension Scheme (Wales) Regulations 2015 from 1 April 2022.

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

In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Firefighters’ Pension Scheme (Wales) (Amendment) Regulations 2022 came into force less than 21 days after the instrument had been laid. This legislation is necessary to align with the requirements of the Act, and seeks to address the age discrimination which occurred in the introduction of the 2015 schemes when older members were offered transitional protections that allowed them to stay in their legacy schemes for longer than other, younger members. The regulations were required to come into force before 1 April 2022 – otherwise, affected firefighters would no longer be able to accrue pension in the legacy schemes, but would be prevented from joining the new scheme from that date. They were, though, dependent on the Act receiving Royal Assent, which did not take place until 10 March.

The regulations are subject to the consent of the Treasury. This requirement was created by section 94 of the Act, and was the subject of a statement under Standing Order 30 made by the Deputy Minister for Social Partnership on 12 August 2021. As occupational pensions are a reserved matter, a legislative consent motion was not required.

The process for giving consent is a matter for the Treasury. In this case, it has been signified by two of the Lords Commissioners of the Treasury signing the instrument.

### **3. Legislative background**

The Regulations make provision, consequential on the Public Service Pensions and Judicial Offices Act 2022, to transfer all members of the 1992 Scheme and the 2007 Scheme to the 2015 Scheme, from 1 April 2022.

The powers of the Welsh Ministers to make the Regulations are conferred by sections 1(1) and (2)(f), 2(1), and 3(1), (2)(c) and (3)(a) of the Public Service Pensions Act 2013 (“the 2013 Act”), as amended by the Act.

In accordance with section 21 of the 2013 Act, the Welsh Ministers have consulted such persons (or the representatives of such persons) as appear to the Welsh Ministers likely to be affected by these Regulations.

In accordance with section 3(5) of the 2013 Act, the Regulations are made with the consent of the Treasury.

This instrument is subject to the negative resolution procedure.

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

The Regulations amend the Firefighters’ Pension Scheme (Wales) Regulations 2015, which set out the 2015 Scheme. The purpose of the Regulations is to amend the transitional provisions in the 2015 Scheme to transfer “protected members” into the 2015 Scheme as of 1 April 2022 and to provide an ill-health “underpin” for members transferring from the 1992 Scheme.

They are as follows:

- a) Regulations 2 to 5 make provision in relation to members of the 1992 Scheme who transfer to the 2015 Scheme on 1 April 2022, where a fire and rescue authority in Wales had decided prior to transfer, to obtain the written opinion of an independent qualified medical practitioner in regard to a potential ill-health award. If it is subsequently decided that an ill-health award is payable then provision is made for the award to be at least equal to that which the member would have received had the decision on their ill-health award been made under the 1992 Scheme on 31 March 2022.
- b) Regulation 6(2)(a) provides that the definition of “closing date” in Schedule 2 (which is the last day of membership of the 1992 Scheme or 2007 Scheme) is 31 March 2022 for fully protected members.

- c) Regulation 6(2)(b) amends the definition of “transition date” in Schedule 2 to stipulate that the first day of membership of the 2015 Scheme is 1 April 2022 for fully protected members.
- d) Regulation 6(3) removes the power for scheme managers to set an end date for tapered protection (under which members join the 2015 Scheme on a phased basis) after 31 March 2022, and stipulates that all periods of tapered protection are to end on or before that date.
- e) Regulation 6(4) is consequential on regulation 2(2)(a) and provides that fully protected members of the 1992 Scheme or 2007 Scheme cease to be members of those schemes on 31 March 2022.
- f) Regulation 6(5) amends paragraph 31(2) of Schedule 2 so that no new elections to purchase additional service under the 2007 Scheme may be made after 31 March 2022.
- g) Regulation 6(6) omits paragraphs 37 and 38 of Schedule 2 so that members who are awaiting a decision on whether they are entitled to an ill-health award under the 1992 Scheme or the 2007 Scheme on 1 April 2022 are transitioned to the 2015 on that date.

## 5. Consultation

Section 21(1) of the Public Service Pensions Act 2013 requires the authority responsible for making the regulations (in this case, the Welsh Ministers) to consult those who are likely to be affected by them, and/or their representatives, before making any regulations.

An 8 week consultation ran from 25 October 2021 to 20 December 2021 on the draft regulations. The consultation was drawn to the attention of a wide audience of key stakeholders including scheme managers and administrators, the Firefighters’ Pension Scheme Advisory Board for Wales and representative organisations and trade unions representing Fire and Rescue Services staff. Eight responses were received.

There was broad agreement that the draft regulations fulfilled the requirements set out in the Bill: to close schemes and allowed for the transfer of members into the 2015 scheme.

However, there were two particular areas of comment:-

- **Impact of higher normal pension age in the 2015 Scheme** - Responses from employee representatives expressed concern about the ability of firefighters, particularly female firefighters, to work to a normal pension age of 60 given the high fitness standards in the 2015 Scheme.

However, the closure of legacy schemes and the 2015 Scheme’s normal pension age of 60 are mandated in non-devolved primary legislation. It is not

possible for these regulations, or any regulations made by the Welsh Ministers, to address such concerns.

- **Eligibility for ill-health retirement members** – The consultation document did not set out specific criteria for eligibility for the underpin, but did refer to criteria currently used for the handling of ill-health member legacy to 2015 Scheme transfers. Members eligible under that arrangement are those where a Fire and Rescue Authority decides, prior to the transfer date that their case will be referred to an Independent Qualified Medical Practitioner. Employee representatives made the case for a broader approach for processing ill-health retirement cases, under which the ill-health retirement process would be taken to have started when the member concerned suffered the injury or condition which led to their retirement.

No issues were raised with the underpin mechanism itself in the consultation responses received. However, detailed drafting of the provisions to establish the underpin has revealed that ill-health benefits for those in the transfer group will always be as least as generous under the 2015 Scheme as they would have been in the 2007 Scheme. As a result, the Regulations only make provision for an ill-health underpin for 1992 Scheme members.

The consultation documents and a summary of the responses are available at: <https://gov.wales/amendments-firefighters-pension-schemes-wales-2021>

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

A Regulatory Impact Assessment has been considered, but has not been conducted in this instance. That is because the Regulations will not introduce any additional costs to charities, the private or voluntary sector. The financial implications for Fire and Rescue Authorities will, overall, be marginally positive, as employer contributions under the 2015 Scheme are lower than under the 1992 Scheme from which most members will transfer. This is in line with the policy set out in the Welsh Ministers' code of practice for carrying out regulatory impact assessments for subordinate legislation.