



Llywodraeth Cymru  
Welsh Government

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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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**TITLE**            **Public Service Pensions and Judicial Offices Bill**

**DATE**            **12 August 2021**

**BY**                **Deputy Minister for Social Partnership**

This written statement is laid under Standing Order 30 – Notification in relation to UK Parliament Bills. It relates to the specific provisions in the Public Service Pensions and Judicial Offices Bill (the Bill), which will modify the Welsh Ministers’ functions, but do not require a Legislative Consent Motion under Standing Order 29 as the Senedd does not have legislative competence in respect of those provisions. The Bill was introduced in the House of Lords on 19 July 2021.

Other provisions in the Bill regarding judicial offices require the legislative consent of the Senedd. The Counsel General has [today] laid a Legislative Consent Memorandum and will consider tabling a Legislative Consent Motion in due course.

Occupational pensions are a reserved matter. However, the Welsh Ministers are the responsible authority for firefighters’ pensions in Wales and have executive functions in that context.

### **Policy Objective**

The policy objectives of the Bill are to address discrimination that arose when existing public service pension schemes were permanently closed to certain members in 2014-2016; to deliver changes to public service pension schemes to ensure that all eligible public service workers have access to defined benefit schemes on a fair and equal basis; to ensure there are no reductions to members’ benefits following completion of the cost control element of the 2016 valuations; to improve the terms for judicial resourcing to support the effective functioning of the judiciary; and to confer powers upon the Treasury to establish a new UK Asset Resolution (UKAR) Limited pension scheme.

### **Relevant provisions in the Bill**

Clause 4 of the Bill defines the meaning of a “Chapter 1” scheme referred to throughout the relevant provisions in the Bill. For clarity a Chapter 1 legacy scheme includes :-

- The Firefighters' Pension (Wales) Scheme (also known as the 1992 Scheme);
- The New Firefighters' Pension Scheme (Wales) (also known as the 2007 Scheme).

A Chapter 1 new scheme includes :-

- The Firefighters' Pension Scheme (Wales) 2015 (the 2015 Scheme).

The Bill makes the following provisions which modify the Welsh Ministers' functions:

**Clause 5 (Election for retrospective provision to apply to opted-out service)**

The Welsh Ministers must make regulations in respect of a Chapter 1 legacy scheme to make allowance for opted-out service between 1 April 2015 and 31 March 2022 to be reinstated.

**Clause 6 (Immediate choice to receive new scheme benefits)**

The Welsh Ministers must make regulations in respect of a Chapter 1 legacy scheme to make provision for a pensioner member or the beneficiary of a deceased member to make an election to receive Chapter 1 new scheme benefits in respect of their service between 1 April 2015 and 31 March 2022 (remediable service).

Clause 7 sets out the timing and procedure in respect of an election made under clause 6 and specifies what such regulations may include. Clause 8 provides that where no election has been made scheme regulations may make provision deeming that an election has been made immediately prior to the end of the election period if certain conditions have been met.

**Clause 9 (Deferred choice to receive new scheme benefits)**

The Welsh Ministers must make regulations in respect of a Chapter 1 legacy scheme that permit an election to be made in relation to the remediable service of individuals who are active or deferred members when clause 2(1) of the Bill comes into force. This is known as the "Deferred Choice Underpin" and allows active and deferred members to make the choice as to whether Chapter 1 legacy scheme or Chapter 1 new scheme benefits are most beneficial for them at the point of retirement.

Clause 10 sets out the timing and procedure in respect of an election made under clause 9 and specifies what such regulations must and may include. Clause 11 provides that scheme regulations made by virtue of clause 9 may make provision about cases where no election has been made before the specified deadlines.

**Clause 16 (Powers to reduce or waive liabilities)**

The Welsh Ministers may make regulations for a Chapter 1 legacy scheme which make provision whereby a liability on an individual to repay overpaid benefits or to pay underpaid contributions is reduced or waived.

**Clause 17 (Pension credit members)**

The Welsh Ministers may make regulations in respect of a Chapter 1 scheme which make provision about the benefits payable to or in respect of a relevant pension credit member and the corresponding pension debit member. NB that a “pension credit member” is a former spouse or civil partner of a scheme member (a “pension debit member”) who is entitled to some of that member’s pension under a divorce settlement.

**Clause 18 (Voluntary contributions)**

The Welsh Ministers may make regulations in respect of a Chapter 1 scheme which make provision about any additional pension benefits that members have obtained by making additional contributions during the remediable period.

**Clause 19 (Transfers)**

The Welsh Ministers may make regulations in respect of a Chapter 1 scheme which make provisions on transfers in from, and out to, other public sector pension schemes or a private sector pension.

**Clause 20 (Further powers to make provision about special cases)**

The Welsh Ministers may make regulations in respect of a Chapter 1 scheme which make further provision about a number of areas where steps may need to be taken by schemes to ensure that schemes operate as intended. This is in order to ensure that members receive the correct legacy or new scheme benefits to that which they would have been entitled in relation to their remediable service.

**Clause 21 (Power to pay compensation)**

The Welsh Ministers may make regulations in respect of a Chapter 1 legacy scheme which make provision under which an employer in relation to the scheme is required to reimburse the scheme manager for compensation paid under clause 21(1).

**Clause 22 (Indirect compensation)**

The Welsh Ministers may make regulations in respect of a Chapter 1 legacy scheme which make provision for scheme managers to give members entitlements to additional benefits where the member may not have been able to access the compensation scheme.

**Clause 23 (Interest and process)**

The Welsh Ministers may make regulations in respect of a Chapter 1 scheme which make provision about how interest is calculated and paid on amounts that are owed by members to the scheme, by the scheme to members or others, and about the process by which amounts are paid.

**Clause 26 (Remediable service statements)**

The Welsh Ministers must make regulations in respect of a Chapter 1 legacy scheme which make provision requiring the scheme manager to provide information to members with remediable service about their legacy scheme benefits and the benefits that would be available were an election under clause 7 or 11 to be made.

**Clause 28 (Application of chapter to immediate detriment cases)**

The Welsh Ministers may make regulations in respect of a Chapter 1 scheme which make provision in relation to those who have benefitted from an immediate detriment remedy (as defined in clause 29) to ensure that their benefits are not corrected twice by receiving a second opportunity to make an election, whilst ensuring the policy objective of consistent treatment is achieved.

#### **Clause 34 (Scheme regulations)**

This clause includes a substantive provision for the Welsh Ministers to use scheme regulations (as defined under the Public Service Pensions Act 2013 (the PSPA 2013) to amend the Chapter 1 legacy schemes.

#### **Clause 76 (Restriction of existing schemes)**

This clause amends sections 18 and 31 of the PSPA 2013 and closes the legacy schemes to further accrual from 1 April 2022. It retrospectively removes the Welsh Ministers' regulation-making power to make exceptions to section 18(1) of the PSPA 2013, which closed the legacy schemes to further accrual from 1 April 2015.

Clause 77 makes transitional and savings provisions in respect of clause 76, whereby scheme regulations may continue to exercise the powers contained in (repealed) sections 18(5) to 18(8) of the PSPA 2013 to provide exceptions to the closure of legacy schemes on 1 April 2015 only in the narrow circumstances specified by subsection (2).

#### **Clause 79 (Amendments relating to scheme regulations)**

This clause amends section 3 of the PSPA 2013 (which contains a regulation-making power for the Welsh Ministers) to allow the Welsh Ministers to make consequential, supplementary, incidental or transitional provision amending any primary or secondary legislation passed before or in the same session as this Act. Subsections (8) and (9) amend section 23 of the PSPA 2013, which describes the procedure for applying retrospective provision. Where significant changes occur to a member's pension, the Welsh Ministers are required to lay a report before the Senedd but clause 79(8) applies an exemption for the purposes of this Bill.

#### **Clause 80 (Amendments relating to the employer cost cap)**

Clause 80(2) provides that, for cases where the cost of a scheme would otherwise go beyond the cost margins specified by Treasury directions, Treasury directions may require that the steps agreed (or determined) by Welsh Ministers to rectify a breach can only be taken after the scheme actuary has certified that those steps would achieve the target cost for the scheme. This modifies the functions of the Welsh Ministers set out in the Chapter 1 new scheme regulations.

Clause 80(3) provides that scheme regulations made previously by the Welsh Ministers under section 12(6)(a) or (b) of the PSPA 2013 should have no effect, and are to be treated as never having had effect, for a case in which the cost of the scheme goes beyond a margin above the employer cost cap at the 2016 or 2017 valuations. This is to ensure no member benefit reductions are applied.

#### **Clause 83 (Amendments relating to non-scheme benefits)**

This clause removes an exception (under section 3(6)(b) of the PSPA 2013) to the requirement in section 3(5) of the PSPA 2013 for Treasury consent in the making of scheme regulations by the Welsh Ministers. As a consequence, Treasury consent will now be required before the Welsh Ministers make scheme regulations relating to fire and rescue workers.

### **Clause 111 (Regulations and directions)**

This clause provides that regulations made by the Welsh Ministers under any provision of this Act may make consequential, supplementary, incidental, transitional, or saving provision, or different provision for different cases or purposes.

### **Reasons for making these provisions**

The PSPA 2013 introduced reform of all public sector pensions. The Act required the introduction of new schemes with effect from 1 April 2015, with a higher normal pension age, and benefits calculated on career average revalued earnings (“CARE”) rather than final salary. At that point existing schemes would be closed.

Section 18 of the PSPA 2013 allowed regulations to exclude certain categories of workers from the requirement to join the new scheme. An agreement between the Treasury and the TUC proposed that such protection should be available to those closest to retirement age in their existing schemes, and the Firefighters’ Pension Scheme (Wales) Regulations 2015, along with the majority of other public sector scheme regulations, provided for this transitional protection in scheme rules.

These arrangements were challenged by a group of firefighters and separately by a group of judges, and in December 2018 the Court of Appeal found transitional protection arrangements to be unlawful on the grounds of age discrimination.

The Bill seeks to remedy this discrimination across public sector schemes by placing all eligible members back into the position that they would have been in if the discrimination had never occurred. That means placing eligible members back into the legacy schemes for the remedy period (1 April 2015 to 31 March 2022). The Bill also recognises that some members may be better off in the 2015 Scheme, and therefore allows for eligible members to choose between 2015 Scheme or legacy scheme benefits. The Bill also deals with the unintended consequences of such provisions for instance allowing for compensation to be made for the unintended tax consequences of remedy.

The Bill also waives the requirement to act on any 2016 pension valuation cost cap ceiling breaches which occur as a result of remedy costs being built into the valuation process. Scheme regulations require Welsh Ministers to take action to bring the cost of the scheme back to its agreed level where a breach of set cost margins occurs. A ceiling breach would require member benefits or their accrual rate to be reduced. The waiver means this will not be necessary.

I consider that it is appropriate for these provisions to apply in relation to Wales and for them to be included in this Bill.