



Welsh Government
Consultation Document

Consultation on amendments to firefighter pension schemes in Wales

- **Survivor benefits under The 1992 Firefighters' Pension Scheme and 2007 Compensation Scheme, and other minor amendments to the 1992 and 2007 Firefighters' Pension Schemes.**
- **Minor amendments to the 2015 Firefighters' Pension Scheme and Transitional Arrangements.**

Date of issue: 28 September 2017

Action required: Responses by 21 December 2017

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview	<p>We are consulting on amendments to the 1992 Firefighter Pension Scheme and 2007 Compensation Scheme which would allow surviving spouses or civil partners of qualifying firefighters to retain their entitlement to a survivors' pension should they remarry or enter into a new civil partnership.</p> <p>The consultation also covers proposed minor amendments to the 1992, 2007 and 2015 Schemes.</p>
How to respond	<p>To respond to this consultation, please complete the online form which can be accessed here:</p> <p>Alternatively, respondents may use the separate response form provided, which can be emailed to fire@gov.wales</p> <p>or sent to the address below.</p> <p>The closing date for responses is Thursday 21 December 2017</p>
Further information and related documents	<p>Large print, Braille and alternative language versions of this document are available on request.</p> <p>Consultation web address: https://consultations.gov.wales/consultations/amendments-firefighter-pension-schemes-wales</p>
Contact details	<p>For further information:</p> <p>Fire Services Branch Community Safety Division Welsh Government Rhydycar Merthyr Tydfil CF48 1UZ</p> <p>email: fire@gov.wales</p> <p>Tel: 0300 062 8226</p>
Data protection	<p>How the views and information you give us will be used</p> <p>Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.</p>

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

CONSULTATION ON AMENDMENTS TO:-

- **SURVIVORS' BENEFITS UNDER THE 1992 FIREFIGHTERS' PENSION SCHEME AND 2007 COMPENSATION SCHEME, AND OTHER MINOR AMENDMENTS TO THE 1992 AND 2007 FIREFIGHTERS' PENSION SCHEMES**
- **MINOR AMENDMENTS TO THE 2015 FIREFIGHTERS' PENSION SCHEME AND TRANSITIONAL ARRANGEMENTS**

INTRODUCTION

1. This consultation seeks views on amendments to the various firefighter pension schemes and the 2007 Firefighters' Compensation scheme. The most significant proposed changes would amend the 1992 Scheme and the Compensation Scheme to allow surviving spouses and civil partners of qualifying firefighters to keep their benefits should they remarry or enter into a new civil partnership. Other proposed changes are to amend minor errors in the schemes. They also clarify the transitional provision made by the Firefighters' Pension (Wales) Scheme (Amendment and Transitional Provisions) Order 2016 to make it clear that they do not apply to employer contributions or to additional pension benefit contributions.
2. More details of the proposed amendments are set out below.

THE DRAFT FIREFIGHTERS' PENSION SCHEMES AND COMPENSATION SCHEME (WALES) (AMENDMENT) ORDER 2018 (Annex 2)

Survivors' Benefits under the 1992 Firefighters' Pension Scheme and the Compensation Scheme

3. In the event of a member's death, the 1992 Scheme provides for the payment of certain benefits and awards to that member's spouse or civil partner ('survivors' benefits). Separately, the Compensation Scheme, which applies to all members (or those eligible to be members) of the firefighters' pensions schemes, provides compensation in the case of firefighters who die or are injured on duty. In the case of death, the spouses, civil partners or dependents of such persons receive compensation: the Scheme provides awards (known as Special or Augmented awards) for spouses and civil partners of all firefighters who die in certain circumstances.
4. Surviving spouses and civil partners of firefighters in the 1992 Scheme currently lose their survivors' benefits if they remarry or enter a new civil partnership. However, Fire and Rescue Authorities (FRAs) have discretion to pay the whole or part of the benefit as they see fit if that marriage or civil partnership subsequently comes to an end. Similar provisions also apply to any benefits paid under the Compensation Scheme to the surviving spouses and civil partners of 1992 Scheme members (or the survivors of those who were eligible to join the 1992 Scheme but chose not to).
5. The Welsh Government believes these provisions, many of which predate devolution, are unjustifiably harsh. They penalise the bereaved partners of firefighters simply for forming a new permanent relationship. In doing so, they may discriminate unreasonably on the grounds of marital status. This is because bereaved people who are single, or who enter a new relationship without marrying or forming a civil partnership, suffer no loss of benefits. The provisions may also discriminate indirectly on the grounds of

religious belief, where such belief precludes cohabitation without marriage or civil partnership. The case for change is particularly strong in light of the high risks of death which firefighters face as an everyday part of their jobs. We have therefore produced draft legislation to amend the 1992 Scheme and the Compensation Scheme to allow survivors of qualifying firefighters to keep their benefits if they remarry or enter into a new civil partnership.

6. As this is arguably a continuing injustice to bereaved people, there is a case in principle for making these changes retrospective, ie restoring (and possibly backdating) survivor benefits which have already been withdrawn from people who have remarried or formed new civil partnerships. We describe more detailed options for doing that below :-

Option 1 - introduce a provision that would reverse the existing provision completely with no qualifying date. Survivors' pensions and awards would no longer be withdrawn on remarriage, or registration of a civil partnership, and survivor pensions previously withdrawn at any point would be reinstated, including entitlement to any outstanding injury gratuity, with full backdating to the point of withdrawal.

Option 2 – introduce a provision permitting survivors who remarry or enter into a civil partnership on or after a specified date in the past (1 April 2015) to retain their entitlement to survivors' benefits, and in addition reinstate lost benefits to all survivors who had remarried or entered into a civil partnership before that date, with those benefits being reinstated as from 1 April 2015. This option, however, would not provide for full backdating of entitlement to the point of withdrawal. The Scottish Government has adopted this option for the equivalent scheme in Scotland, and this is broadly the timeframe that the attached draft Order proposes for Wales, although the eligibility criteria are not the same.

Option 3 - allow survivors who remarry or enter into a civil partnership on or after a specified date in the past (1 April 2015) to retain their entitlement. This would benefit those individuals who remarry or enter into a civil partnership after that date. This option would not reinstate any benefits that had already been withdrawn prior to that date, nor would it benefit anyone who remarried or entered a new civil partnership before then. This is the option that the Home Office has consulted on for the equivalent scheme in England.

Option 4 - allow survivors who remarry or enter into a civil partnership on or after a specified date in the future (say 1 April 2018) to retain their entitlement to pension benefits. This rule would benefit those individuals, who remarry or enter into a civil partnership after a set future date, but not those who have already done so by a date in the past, say 1 April 2015, and this option would not reinstate any benefits that have already been withdrawn.

7. Under options 3 or 4, the Order would include a provision saving the FRAs' existing discretion to reinstate payments to a bereaved person who lost them on remarriage or forming a new civil partnership, but whose marriage or civil partnership was later dissolved (or who was bereaved again). Such payments could be backdated to the point of dissolution or bereavement, whenever that occurred. This would be done by including provision in article 4 in the draft Order, which revokes rule 5 of Part 3 of the 2007 Compensation Scheme.

8. To illustrate the differences between these options, the following table uses the examples of three hypothetical bereaved partners who remarry or enter a new civil partnership on (a) 1 July 2012; (b) 1 July 2015; and (c) 1 July 2018.

Date of remarriage / new civil partnership	Current position	Option 1	Option 2	Option 3	Option 4
1 July 2012	Benefits were withdrawn on 1 July 2012	Benefits reinstated and backdated to 1 July 2012	Benefits reinstated and backdated to 1 April 2015	No reinstatement of benefits	No reinstatement of benefits
1 July 2015	Benefits were withdrawn on 1 July 2015	Benefits reinstated and backdated to 1 July 2015	Benefits reinstated and backdated to 1 July 2015	Benefits reinstated and backdated to 1 July 2015	No reinstatement of benefits
1 July 2018	Benefits will be withdrawn on 1 July 2018	Benefits not withdrawn on 1 July 2018	Benefits not withdrawn on 1 July 2018	Benefits not withdrawn on 1 July 2018	Benefits not withdrawn on 1 July 2018

9. These options are, broadly, in decreasing order of generosity: option 1 provides the greatest level of provision, including backdated provision, and option 4 provides the least.
10. On those grounds, option 1 might be seen as the most desirable. Certainly, it fully addresses what might be seen as a historic unfairness to bereaved partners. However, it would impose possibly significant consequential costs on FRAs. This is because special and augmented awards on death as a result of a qualifying injury are funded directly from FRA budgets and not pension funds. The Welsh Government is sceptical about adopting this approach at a time when budgets for front-line services are under significant pressure. However, it could be viable if it were clear that the retrospective cost burdens were limited or manageable.
11. Option 2 would reduce those costs by only backdating withdrawn benefits to 1 April 2015. It would still provide some retrospective benefit to all bereaved partners who have had their benefits withdrawn, while also protecting those benefits for those who remarry or form a new civil partnership in the future. On current evidence, the Welsh Government favours this option.
12. The Welsh Government does not favour options 3 or 4. Option 3 would make an arbitrary distinction between bereaved people based on the date in the past on which they remarried or formed a new civil partnership. Someone who did so on 31 March 2015 would not benefit at all; while someone who did so on 1 April that year would benefit fully. Yet neither could have been aware of this at the time. And option 4 does nothing to correct the harsh treatment of bereaved people up to now: it would only benefit those who remarried or formed a new civil partnership in the future.
13. The Draft Order attached at Annex 2 would make these changes. Similar changes have been made to the equivalent schemes in Scotland by the Scottish Government; the Home Office has consulted on changes in England.

14. Article 2 sets out the circumstances in which a surviving spouse or civil partner's entitlement to a pension or gratuity under Part C of the 1992 Scheme continues following that person's marriage, remarriage, formation of a civil partnership or subsequent civil partnership on or after 1 April 2015. It also reinstates pensions which have been withdrawn due to existing legislation with effect from that date. It sets out that these provisions apply to the spouse or civil partner of a member of the 1992 scheme where that member died as a result of an injury received in the exercise of their duties as a firefighter, or whilst travelling to or from work.
15. The 2007 Compensation Scheme superseded corresponding provisions of the Firefighters' Pension Scheme 1992. Article 4(2) amends the transitional arrangements in article 4 of the 2007 Compensation Scheme Order so that equivalent provision will apply to special and augmented awards under the 1992 Scheme that relate to determinations or decisions made before 1 April 2006 relevant to whether death has been occasioned by a qualifying injury.
16. Article 4(3) of the draft Order revokes rule 5 of Part 3 of the Compensation Scheme so as to allow a person entitled to a pension or gratuity under that scheme to retain it following marriage, remarriage or forming a civil partnership with effect from 1 April 2015. Benefits withdrawn prior to that date due to operation of the scheme are reinstated with effect from that date.

Firefighters' Pension Scheme (Amendment and Transitional Provisions)(Wales) Order 2016 (Pension Contributions Holiday)

17. The above Order corrected an anomaly in the Firefighters' Pension (Wales) Scheme 1992 whereby those members who joined the Fire Service between the ages of 18 and 20 and accrue 30 years pensionable service had to continue paying contributions beyond that point, and until they reach age 50, even though they could not accrue any further pension benefits in return. The Order provided that contributions need not be paid after reaching 30 years' service, and for refunds of any contributions paid after reaching 30 years' service.
18. The proposed provision at Articles 2 and 5 makes it clear that the provisions in the 2016 Order do not apply to employers' contributions or to employees' additional pension benefit contributions.

Other Minor Amendments

19. Other proposed amendments to the 1992 Scheme and the 2007 Pensions Scheme are also set out in the draft Order at Articles 2(2), 2(4), 2(5) and 3. For ease of reference these are detailed at Annex 1.

Firefighters' Pension Scheme 2007: Nomination of Cohabiting Partners

20. Circular W-FRSC(2017) 01, issued by the Welsh Government on 8 March 2017, provided details of the recent Supreme Court ruling in the case of Brewster¹. This held that the Northern Ireland Local Government Pension Scheme had unlawfully denied a cohabiting partner (otherwise eligible under Scheme Regulations) a survivor's pension

¹ [2017] UKSC 8

solely because her deceased partner had allegedly not completed a nomination form in her favour, as the scheme rules required. In light of this judgment, it is highly likely that the courts would find similar provisions in other pension schemes to be unlawful.

21. The Firefighters' Pension Scheme 2007 (and as a result 2014 modified scheme) currently provides that, on death of a scheme member, a cohabiting partner would be entitled to a survivor's pension provided the member had completed a nomination form. Circular W-FRSC(2017)05, dated 3 April 2017, indicated that the Welsh Government would amend the 2007 Scheme to reflect the Brewster judgement in due course. This will mean removing the requirement for scheme members to nominate a cohabiting partner to receive survivor benefits; and providing that any person who can show that s/he was in a qualifying relationship with a deceased scheme member at the time of death will be eligible to receive such benefits, regardless of any prior nomination. These provisions will have retrospective effect from the point that the 2007 Scheme came into force.
22. We plan to include such an amendment in the Firefighters' Pensions Schemes and Compensation Scheme (Wales) (Amendment) Order 2018. However we do not believe there is a need to consult on this amendment, given that we will merely be reflecting the judgment of the Supreme Court. Therefore, we will draft the relevant article during the consultation period, and include it in the final order made by the Welsh Ministers.
23. Other firefighters' pension schemes in Wales are not affected by the Brewster judgment. The 1992 Scheme only pays survivor benefits to spouses or civil partners; and the 2015 Scheme pays them to cohabiting partners without any requirement for a nomination form.

THE FIREFIGHTERS' PENSION SCHEME (WALES) (AMENDMENT) REGULATIONS 2018 (Annex 3)

24. Following the introduction of the Firefighters' Pension Scheme for Wales in 2015, a number of minor amendments have been identified in relation to the Firefighters' Pension Scheme (Wales) Regulations 2015, and the provisions governing the transfer of members from the 1992 Scheme and the 2006 Scheme to the 2015 Scheme.
25. The proposals are for the firefighters' pension schemes to be amended as set out in the draft Order at Annex 3 and as follows:-

Regulation 4 of the draft Order amends Regulation 80A of the 2015 Regulations (inserted by Schedule 1 to the Firefighters Pension Scheme (Wales)(Transitional and Consequential Provisions) Regulations 2015). This deals with transition members' entitlement to commute part of any lower tier ill-health pension that they may be awarded into a lump sum. As currently framed, the regulation sets out certain provisions relating to the commutation of a lump sum for members who have transitioned from the 2006 Scheme to the 2015 Scheme. The proposed amendment completes the legal provisions for members who have transitioned from the 1992 Scheme.

Regulation 8(3) amends Paragraphs 37 and 38 of Schedule 2 to the 2015 Regulations (inserted by Schedule 1 of the Firefighters Pension Scheme (Wales)(Transitional and Consequential Provisions) Regulations 2015). These provisions deal with the position of members who are being considered for ill-health retirement by an independent qualified

medical practitioner at the time of their transition date, and who subsequently continue as active members of the 2015 Scheme. Such members join the 2015 Scheme at the time specified under these provisions. Provision about the position of members who are being considered for ill-health retirement by an independent qualified medical practitioner at the time of their transition date, who are subsequently granted an ill-health award and consequently retire requires amendment. Under the proposed amendments to paragraphs 37 and 38, such members would remain in their original pension scheme, avoiding the necessity for a minimal period of membership of the 2015 Scheme. This amendment will take effect from the time the Order at Annex 3 comes into force.

NEXT STEPS

26. The Welsh Government invites consultees' views and any evidence relating to all aspects of this consultation by 21 December 2017. In particular comments are welcomed on the following questions:

Question 1

Paragraph 6 of the consultation document provides 4 potential options regarding retrospective application of the provisions relating to survivors benefits on remarriage or civil partnerships. Do you have any views on these options, including any views on cost implications for FRAs?

Question 2

Bearing in mind your response to Question 1 do you have any views on the amendments set out in Articles 2, 4(2) and 4(3) of the Draft Order at Annex 2 – The Firefighter's Pension Schemes and Compensation Scheme (Wales) (Amendment) Order 2018. These are drafted using the principles set out in option 2 of the consultation?

Question 3

Do you have any views on the other Articles in the draft Firefighter's Pension Schemes and Compensation Scheme (Wales) (Amendment) Order 2018 at Annex 2 which relate to the Firefighters' Pension Scheme (Amendment and Transitional Provisions)(Wales) Order 2016 (Pension Contributions Holiday) and other minor amendments ?

Question 4

Do you have any views on the draft regulations set out in the draft Order at Annex 3 - The Firefighters' Pension Scheme (Wales) (Amendment) Regulations 2018?

Question 5

We do not believe that this policy affects opportunities for people to use Welsh or treats the language less favourably than English, or that it could be reformulated or revised to have positive effects. If you disagree, we would welcome your comments on this issue.

Question 6

We have asked a number of questions, but are there any other issues you would like to raise in this area?