



Welsh Government Consultation – Summary of Responses

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

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

Welsh Government consultation response on amendments to firefighter pension schemes in Wales.

Survivor benefits under the 1992 Firefighters' Pension (Wales) 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.

Audience	All organisations with an interest in firefighter pension schemes in Wales, including Firefighters, the three Welsh Fire and Rescue Authorities and the firefighters' unions.
Overview	This document provides a summary of the consultation responses including the Welsh Government's response to them.
Action required	None - for information only
Further information	Enquiries about this document should be directed to: Kerry Citric Fire Services Branch Education and Public Services Welsh Government Rhydycar Merthyr Tydfil CF48 1UZ Tel: 0300 062 8226
Additional copies	This document can be accessed from the Welsh Government's website at: https://consultations.gov.wales/consultations/amendments-firefighter-pension-schemes-wales
Related documents	Consultation on amendments to firefighters' pension schemes in Wales published in September 2017. The Firefighters' Pension Schemes and Compensation Scheme (Wales) (Amendment) Order 2018 and the Firefighters' Pension Scheme (Wales) (Amendment) Regulations 2018.

1. Introduction

The Welsh Government has consulted on two draft statutory instruments (“SIs”) amending firefighters’ pension and compensation provisions.

SI 1 - The draft Firefighters’ Pension Schemes and Compensation Scheme (Wales) Amendment Order 2018 proposes amendments to:-

- The Firemen’s Pension Scheme Order 1992 (“the 1992 Order”), which governs the Firefighters’ Pension (Wales) Scheme 1992 (“the 1992 Scheme”);
- The Firefighters’ Compensation Scheme (Wales) Order 2007 (“the Compensation Order”), which governs the Firefighters’ Compensation Scheme (Wales) (“the Compensation Scheme”);
- The Firefighters’ Pension Scheme (Wales) Order 2007 (“the 2007 Order”), which governs the Firefighters’ Pension Scheme 2007 (“the 2007 Scheme”);
and
- The Firefighters’ Pension (Wales) Scheme (Amendment and Transitional Provisions) Order 2016

The most significant of the proposed changes would amend the 1992 Scheme and the 2007 Compensation Scheme to allow surviving spouses and civil partners of qualifying firefighters who die as a result of injuries sustained on duty to retain their benefits should they remarry or enter into a new civil partnership.

Other proposed amendments include clarification that the transitional provisions made by the Firefighters’ Pension (Wales) Scheme (Amendment and Transitional Provisions) Order 2016 do not apply to employer contributions or to additional pension benefit contributions, and other minor amendments to both the 1992 and 2007 Schemes.

The consultation document also referred to further articles that would be included in the Order post consultation to amend the 2007 Order following a 2017 Supreme Court ruling¹. These articles will remove the requirement of the 2007 Scheme for scheme members to nominate a cohabiting partner to be eligible to receive survivor benefits. Given that those amendments will merely reflect the judgment of the Supreme Court, no consultation on this element of the Order was undertaken.

SI 2 - The draft Firefighters’ Pension Scheme (Wales) Amendment Regulations 2018 makes minor amendments to the Firefighters’ Pension Scheme (Wales) Regulations 2015.

2. Consultation Process

A 12 week consultation began on 28 September 2017 and was open for responses until 21 December 2017. The consultation document concluded with 6 questions, with options to respond to those questions by email, online or by post. The consultation document was available on the Welsh Government website.

The consultation, which included the draft SIs, specifically invited views on:-

¹ **Brewster**, Re Application for Judicial Review [2017] UKSC 8. 8 Feb 2017

- Potential options regarding retention of survivors' benefits on remarriage or forming new civil partnerships.
- Proposed amendments set out in articles 2, 4(2) and 4(3) of the Firefighters' Pension Schemes and Compensation Scheme (Wales) (Amendment) Order 2018 which would amend the 1992 Scheme and the 2007 Compensation Scheme.
- Articles in the draft Firefighters' Pension Schemes and Compensation Scheme (Wales) Amendment Order 2018 which relate to the Firefighters' Pension Scheme (Amendment and Transitional Provisions) (Wales) Order 2016 and other minor amendments. The proposed changes seek to clarify provisions in the 2016 Order which relate to Pension Contributions Holiday.
- Draft regulations in The Firefighters' Pension Scheme (Wales) (Amendment) Regulations 2018 which would amend minor errors and ambiguities within the Firefighters' Pension Scheme (Wales) Regulations 2015 and the Firefighters' Pension Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015.

The Welsh Government received 3 responses to the consultation, from Mid and West Wales Fire and Rescue Authority, North Wales Fire and Rescue Authority and South Wales Fire and Rescue Authority.

The Welsh Government welcomes the responses to the consultation and would like to thank those who responded.

3. Summary of consultation responses

The Welsh Government has considered the responses to the consultation. This document provides a summary of the responses received to each of the specific questions and the Welsh Government's response to these.

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?

One FRA indicated that it supported the proposal to allow survivors of qualifying firefighters to keep their benefits if they were to remarry or enter into a new civil partnership.

The Welsh Government provided four potential options for how to make the changes retrospective, as follows :-

Option 1 - introduce a provision that would reverse the existing provision completely with no qualifying date. This would mean all those who had had their benefits withdrawn would have them restored and backdated 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.

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. Those who had remarried or entered into a new civil partnership before that date would receive nothing.

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. Those who have already remarried or entered into a new civil partnership would receive nothing.

All three FRAs agreed that Option 2 would provide the most balanced approach between fairness and cost effectiveness. One FRA, however, raised concerns that re-instating benefits only from a set date (in this case April 2015) would not provide consistency with the recent Supreme Court rulings in the cases of Walker² and Brewster. (In those cases, the Court held that the pension schemes concerned had discriminated on grounds of sexual orientation and marital status, respectively, and ordered that pension entitlement should be fully backdated.) The same FRA also commented however that it would not want any decision to impact on the cost cap mechanism.

The fact that the proposal is limited to survivors of firefighters who died as a result of an injury received in the exercise of their duties, or whilst travelling to or from work was noted. One FRA suggested that the proposed amendments should be extended to all surviving spouses and civil partners and that Option 3 would be more cost effective in that case. Another advocated that all pension scheme members should be treated “equally and consistently with current Treasury policy” but did not specify what that policy was, or any detail about how this should be applied in this particular case.

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

No specific comments were made in respect the amendments set out in the Order other than those already raised under Question 1.

Question 3 – Do you have any views on the other Articles in the draft Firefighters’ Pension Schemes and Compensation Schemes (Wales) 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?

Respondents noted the minor amendments contained in The Firefighters’ Pension Schemes and Compensation Schemes (Wales) Order 2018 but had no particular comments or views on the proposals.

² Walker (Appellant) v Innospec Limited and others (Respondents) [2017] UKSC 47

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?

Respondents agreed with the proposed amendments contained in The Firefighters’ Pension Scheme (Wales) (Amendment) Regulations 2018.

It was felt appropriate that members being considered for ill-health retirement at the time of transition should remain members of their original scheme until the process was concluded. Respondents also agreed that members who transitioned from the 1992 to the 2015 Scheme should retain entitlement to commute part of their ill–health pension, completing the legal provisions which already put in place arrangements for those transitioning from the 2006 to 2015 scheme.

It was suggested that the Firefighters’ Pension Scheme Advisory Board for Wales should continue to monitor and evaluate all ill health cases and associated pressures upon the firefighter pension schemes.

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.

No comments were made.

Question 6 – We have asked a number of questions, but are there any other issues you would like to raise in this area?

One FRA raised a concern that both the Equality Impact Assessments that accompanied the consultation did not accurately reflect the function of the Firefighters’ Pension Scheme Advisory Board for Wales.

4. Welsh Government Response

The Welsh Government welcomes the responses received to the consultation and would like to thank those who contributed.

Respondents’ key comments related to proposals for survivor benefits which focussed on amendments to allow surviving spouses and civil partners of firefighters who die as a result of duty to retain their benefits should they remarry or enter into a new civil partnership.

We note that, with some qualification, respondents indicated that they were most supportive of Option 2, which was also the Welsh Government’s preferred Option and the basis for the relevant articles in the draft Order.

We acknowledge the view that, to fully eliminate any possible discrimination on the grounds of marital status, further amendments to the 1992 scheme would be required to prevent the removal of survivor pension benefits on remarriage or a new civil partnership for the spouses or civil partners of all deceased firefighters (not only those who died in the line of duty in the circumstances set out in the draft Order). This view relates to matters that are

outside the specific scope of the consultation. However the Welsh Government notes the issues raised and will consider these separately and in more detail in due course.

In addition, one respondent suggested that there should be consistency in terms of the retrospection applied across scheme changes relating to survivor benefits, citing the recent Supreme Court judgments in the cases of Brewster and Walker. The Welsh Government has considered this view carefully. Indeed, Option 1 in the original consultation document provided full retrospection to the point at which benefit was removed. This was not, however, our preferred option because of the potential for it to impose 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. However, we did indicate that this could be viable if it were clear that the retrospective cost burdens were limited or manageable. As a result of consultation responses we have reviewed the cost of complete retrospection to surviving partners with Fire and Rescue Authorities. We believe those costs (to two of the FRAs; there appear to be no affected cases in the third) to be over £200,000 at current prices. The Welsh Government has concluded that such costs would not be limited or manageable at a time when budgets for front-line services are under significant pressure. Therefore, we will not pursue Option 1.

It is important to note that the judgments in Brewster and Walker held that the pension schemes concerned had discriminated unlawfully on grounds of marital status and sexual orientation, respectively. As such, the scheme rules were held by the Court to be, and always to have been, unlawful; and they (and similar rules in other pension schemes) need to be amended accordingly, with full retrospection. There is no sense of that in this case. Rather, we are seeking to remove what we believe is the harsh treatment of those who have been bereaved when firefighters die as a result of an injury received while on duty or sustained while on a journey necessary to enable them to report for duty or return home after duty. There have been no claims of unlawful discrimination, nor any judgment holding that the scheme rules are, and always have been, unlawful.

The Welsh Government will therefore continue with the proposals to adopt Option 2 as set out in the consultation document. As a result, the only changes to the draft Firefighters' Pension Schemes and Compensation Scheme (Wales) Amendment Order 2018 relate to amendments to the 2007 Scheme to reflect the Brewster judgment. This will mean removing the requirement for scheme members to nominate a cohabiting partner to be eligible to receive survivor benefits. 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 effect. The consultation document explained that there would be no consultation on this amendment given that we will merely be reflecting the judgment of the Supreme Court.

No particular issues were raised as part of the consultation about the other proposed amendments to the 1992, 2007 and 2015 schemes. The Welsh Government therefore intends to continue with the introduction of the Firefighters' Pension Scheme (Wales) (Amendment) Regulations 2018 and the Firefighters' Pension Schemes and Compensation Scheme (Wales) (Amendment) Order 2018 subject to the amendments referred to above.

References to the role of the Firefighters' Pension Scheme Advisory Board for Wales in the Equality Impact Assessment were meant to provide a brief summary of the Board's functions. In light of the concern raised about the accuracy of the description however, this has been amended to more accurately reflect the role of the Board as specified in the Firefighter's Pension Scheme (Wales) Regulations 2015.

