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Llywodraeth Cymru
Welsh Government

Welsh Government Consultation Document

Consultation on amendments to firefighter pension schemes in Wales
2020

Date of issue: 10 July 2020

Action required: Responses by 2 October 2020

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

Overview

We are consulting on amendments to the Firefighters' Pension (Wales) Scheme (the 1992 Scheme) and the Firefighters' Compensation Scheme (Wales) 2007 (the 2007 Compensation Scheme) following the Supreme Court ruling in the case of Walker v Innospec, which has resulted in necessary changes to survivor benefits for civil partners and same sex spouses. We also believe that the Supreme Court ruling in the case of McLaughlin has affected the pension entitlements of children of unmarried parents and amendments to the 2007 Compensation Scheme) are required as a result.

The consultation also covers proposed unrelated amendments to the 1992 Scheme, the New Firefighters' Pension Scheme (Wales) (the 2007 Scheme), and the Firefighters' Pension Scheme (Wales) 2015 (the 2015 Scheme) in respect of the calculation of split pensions, pension sharing on divorce, special member commutation factors and club transfer value payments.

How to respond

To respond to this consultation, please complete the online form which can be accessed here:

<https://gov.wales/amendments-firefighter-pension-schemes-wales-2020>

Alternatively, respondents may use the separate response form provided, which can be emailed to fire@gov.wales or sent to the address below.

The closing date for responses is 2 October 2020

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Insert any references to the internet, documents or information which might be useful to consultees e.g. consultation web address, detailed appendix to consultation

Contact details

For further information:

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Email: fire@gov.wales

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General Data Protection Regulation (GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, 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. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

e-mail:

Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or
0303 123 1113

Website: <https://ico.org.uk/>

CONSULTATION ON AMENDMENTS TO:

- **The Firefighters' Pension (Wales) Scheme (the 1992 Scheme) and the Firefighters' Compensation Scheme (Wales) 2007 (the 2007 Compensation Scheme) resulting from the Supreme Court judgment in the case of Walker v Innospec.**
- **The 2007 Compensation Scheme resulting from the Supreme Court ruling in the case of McLaughlin v Northern Ireland Department of Communities.**
- **The 1992 Scheme and the New Firefighters' Pension Scheme (Wales) 2007 (the 2007 Scheme) in respect of the calculation of split pensions, pension sharing on divorce and special member commutation factors.**
- **The Firefighters' Pension Scheme (Wales) 2015 (the 2015 Scheme) in respect of club transfer value payments.**

INTRODUCTION

1. This consultation seeks views on various amendments to the various firefighter pension schemes and the 2007 Compensation Scheme in Wales. The proposals would amend the scheme regulations to equalise survivor benefits (that is, benefits following the death of a scheme member) in some circumstances for civil partners and same sex spouses, and children. This follows the Supreme Court judgments in the cases of Walker v Innospec¹ and McLaughlin² respectively. We are also proposing a number of other unrelated amendments to the scheme regulations to ensure legislation is updated in line with existing guidance and practice.
2. At the time this consultation paper was published, the courts were yet to determine the remedy for the claimants in another pensions case, Sargeant and others v Home Secretary and others³. While the implications of that case may be wide-ranging, we do not believe that the amendments we propose here are likely to be affected by it. However if that is not so, we will revisit and revise these proposals accordingly.
3. Further details of the proposed amendments are set out below. A summary is also provided at Annex 1 for ease of reference.

Survivor benefits under the 1992 Scheme and the 2007 Compensation Scheme

Equalising survivor benefits for civil partners and same sex spouses

4. Following introduction of civil partnerships in 2005, the 1992 Scheme was amended to provide civil partners of scheme members with a survivor's pension. This was calculated in line with widowers' benefits, on the basis that only the scheme member's pensionable service from 6 April 1988 counted for the purposes of calculating a survivor's pension. The same applies to same sex spouses following

¹ [2017] UKSC 47

² [2018] UKSC 48

³ 2018 EWCA Civ 2844

the introduction of same sex marriage in 2014. Therefore, in the event of a scheme members' death, civil partners and same sex spouses would only be entitled to a survivor's pension based on the members' pensionable service since 6 April 1988. Similar provisions also apply to the 2007 Compensation Scheme

5. The Supreme Court judgment in Walker v Innospec held that civil partners and same sex spouses should be entitled to the same survivor benefit entitlement as those provided to survivors of opposite sex marriages. This means survivors' pensions must be based on full pensionable service and not restricted to entitlement from 1988 or any other fixed date.
6. We have produced draft regulations to ensure both the 1992 Scheme and 2007 Compensation Scheme comply with this ruling. This removes the 1988 limitation date, and would bring the benefits payable to survivors of civil partnerships and same sex marriages into line with the benefits payable to survivors of opposite sex marriages. The amendments are being backdated to 5 December 2005, the date that civil partnerships were introduced.
7. Part 3 (provision relating to same sex couples) of Schedule 1 to the 1992 Scheme dis-applies the part of the Marriage (Same Sex Couples) Act 2013 that effectively equates same sex marriage with opposite sex marriage. Following the introduction of the Civil Partnership (Opposite-sex Couples) Regulations 2019, which allow civil partnerships to be formed by opposite sex couples, it is no longer appropriate to equate an opposite sex civil partnership with a same sex marriage or civil partnership and we therefore propose to remove this provision. This amendment is being backdated to 13 March 2014, the date that same sex marriages were introduced.

Question 1: To what extent do you agree that the draft regulations achieve the aim of equalising survivor benefits for survivors of civil partnerships and same sex marriages?⁴

Question 2: Are you aware of any equality issues not covered here?

Question 3: Do you have any other views on the amendments set out in the draft regulations?

Removing limitations on survivors' benefits payable to children

8. All firefighter pension schemes in Wales currently provide that children of pension scheme members are entitled to a survivor benefit where there is no surviving spouse or partner. However, on review it has been identified that the 2007 Compensation Scheme does not currently make equal provision for children of unmarried parents. Part 4, rule 3 of the 2007 Compensation Scheme provides

⁴ See regulation 4 (1992 Scheme) and regulation 11 (2007 Compensation Scheme) of the draft regulations.

that a child's allowance or gratuity should not be paid to certain categories, including:-

- a child born after a scheme member's retirement whose parents were not married while the member was a serving firefighter.
- step-children where the marriage takes place after retirement.
- a child who has been adopted after retirement.

9. The Supreme Court ruling in the case of McLaughlin held that denying benefits payable to (or on behalf of) children based on their parents' marital status was unlawful. Whilst the McLaughlin judgment relates to social security benefits rather than pension benefits, the Welsh Government believes that the current limitations within the 2007 Compensation Scheme could also be considered discriminatory. We also believe that it is wrong to deny benefits to children because of the marital status of their parents, over which they have no control.
10. The provisions of the 1992 Scheme initially contained similar limitations to those outlined above. However, these were replaced in 2014⁵. The 2007 Scheme and the 2015 Scheme do not contain a limitation on entitlement either. The Welsh Government therefore proposes that the 2007 Compensation Scheme should be amended to ensure consistency across the pension schemes. This would remove discrimination against children of unmarried couples in compliance with the Supreme Court ruling. It would also eliminate the differential treatment currently applied to dependent, step and adopted children, which again we find impossible to justify.
11. This change would be backdated to the date from which the provision had effect, 1 April 2006.

Question 4: Do you agree that the amendments set out in the draft regulations comply fully with the Supreme Court judgment in the case of McLaughlin?⁶

Question 5: Are you aware of any equality issues not covered here?

Other unrelated amendments required to the pension schemes

12. A number of other unrelated amendments are required to the firefighters' pension schemes in order to ensure consistency.

⁵ S.I. 2014/3242

⁶ See regulation 12 of the draft regulations.

1992 Scheme and 2007 Scheme

Split Pensions

13. Currently both schemes allow a “two pension” option if a firefighter has a reduction in pensionable pay when taking up a different role. This enables pension rights before the reduction in pay to be “preserved”. We propose amending scheme rules to clarify that where a firefighter has an entitlement to two pensions under the 1992 Scheme or the 2007 Scheme, the amount of the first pension is up-rated annually (as if subject to the Pension (Increase) Act 1971) from the time of the reduction in pay until retirement.⁷
14. The amendments to the 1992 Scheme also make clear that if after the calculations for two pensions have been carried out, a member would, after all, be better off with a conventional single pension calculated in the normal way, then this is the pension to which they should be entitled. However, currently the wording incorrectly states that this should happen if the total of the pensions “exceeds” that of the single pension. The proposed amendment therefore makes it clear that the two pensions should not be awarded if their total “is lower than” the single pension. Other minor updates to Rule B5A of the 1992 Scheme are also proposed.⁸
15. The proposed changes to the 1992 Scheme are backdated to 1 April 1997 (the date that Rule B5A was introduced) and the proposed changes to the 2007 Scheme are backdated to 6 April 2006 (the effective date of the 2007 Scheme).

Pension sharing on divorce

16. On divorce from a pension scheme member, spouses or civil partners can be awarded part of their pension as a credit. The 1992 Scheme and 2007 Scheme do not take account of changes to the related legislation on pension sharing. Amendments are therefore required to update an out-of-date statutory reference and ensure that pension credit members continue to commute their benefit as permitted by the trivial commutation lump sum limit as set out in the Finance Act 2004.

2007 Scheme

Special Member Commutation Factors

17. The 2007 scheme legislation currently provides commutation factors (that is, the rates at which pension can be exchanged for a lump sum) up to age 65.

⁷ Regulation 3(b) (1992 Scheme) and regulation 7 (2007 Scheme) of the draft regulations.

⁸ Regulations 3(a), (c) and (d) of the draft regulations.

However, we have become aware that there are some firefighters serving beyond this age. Amendments are therefore required to provide for statutory commutation factors up to age 75. The commutation factors as on 31 March 2014 (up to age 65) have been replicated in the substituted table and have not changed.

2015 Scheme

Club transfer value payments

18. The 2015 Scheme currently provides that firefighters with protected rights in the 1992 Scheme and 2007 schemes are able to transfer pension benefits via club transfer arrangements should they transfer between Fire Services in Wales, England, Scotland or Northern Ireland. However, an error has been identified within the scheme regulations which means members with protected 1992 Scheme rights would have to transfer these to the 2007 Scheme. The Welsh Government accepts, however, that it would be inequitable if existing members of the 1992 firefighters' schemes in England, Scotland and Northern Ireland were not permitted to join the 1992 Scheme in Wales on transferring to a fire and rescue authority in Wales. Amendments are therefore required to correct this error and permit such scheme transfers to take place.

Question 6: Do you have any other views on the amendments set out in the draft regulations?

Question 7: Can you foresee any challenges to the administration of the pension schemes with regard to the proposed draft regulations?

Question 8: We are interested in understanding whether the proposals in this consultation document will have an impact on people with protected characteristics. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation. Do you think that the proposals in this consultation will have any positive or negative impacts on people with protected characteristics? If so, which and why/why not?

Question 9: We would like to know your views on the effects that the above proposals would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 10: Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 11: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

NEXT STEPS

19. The Welsh Government invites consultees' views and any evidence relating to all aspects of this consultation by 2 October 2020

Summary of Proposed Amendments to Firefighter Pension Schemes in Wales

Proposed Amendment	Firefighters' Pension (Wales) Scheme (1992)	New Firefighters' Pension Scheme (Wales) 2007	The Firefighters' Compensation Scheme (Wales) 2007	The Firefighters' Pension Scheme (Wales) 2015
Survivor benefits for same sex couples/ Civil partners.	<p>Draft regulation 4.</p> <p>Equalised for civil partners and same sex spouses. The 1988 limitation date has been removed to allow a same sex survivor entitlement to a survivors' benefit based on a members' full pensionable service.</p>	Not affected	<p>Draft regulation 11.</p> <p>Equalised for same sex spouses and civil partners. The 1988 limitation date has been removed to allow a same sex survivor entitlement to a survivors' benefit based on a members' full pensionable service.</p>	Not affected
Survivor benefits for children born to unmarried parents, step-children and adopted children.	Not affected	Not affected	<p>Draft regulation 12.</p> <p>Proposed amendments remove limitations on the entitlement to an allowance for children of unmarried parents, as well as for dependent, step and adopted children.</p>	Not affected
Split pension entitlement.	<p>Draft regulation 3(b).</p> <p>Amendment to clarify that</p>	<p>Draft regulation 7.</p> <p>Amendment to clarify that</p>	Not affected	Not affected

	<p>where a firefighter has an entitlement to two pensions under the 1992 Scheme, the amount of the first pension is up-rated annually from the date that the firefighter ceased to earn the higher rate pay.</p> <p>Draft regulations 3(a), (c) and (d).</p> <p>Amendments have effect to ensure that a firefighter is not disadvantaged by the provision which allows for two pensions to be awarded, calculated separately, after a significant reduction in pay. Other minor amendments are also proposed.</p>	<p>where a firefighter has an entitlement to two pensions under the 2007 Scheme, the amount of the first pension is up-rated annually from the date that the firefighter ceased to earn the higher rate pay.</p>		
Pension Sharing on divorce.	<p>Draft regulation 5.</p> <p>Amendments have been proposed to</p>	<p>Draft regulation 8.</p> <p>Amendments have been proposed to</p>	Not affected	Not affected

	ensure pension credit members continue to commute their benefit as permitted by the trivial commutation lump sum limit as set out in the Finance Act 2004.	ensure pension credit members continue to commute their benefit as permitted by the trivial commutation lump sum limit as set out in the Finance Act 2004.		
Special member commutation factors	Not affected	Draft regulation 9. Commutation factors have now been increased up to age 75. Amendments are therefore required to update legislation in line with guidance.	Not affected	Not affected
Club Transfer Value Payments.	Not affected	Not affected	Not affected	Draft regulation 14. Amendments have been proposed to correct an error which required members of the 1992 scheme to transfer to the 2007 scheme. The provision has now been amended in line with guidance and current practice.

