



Llywodraeth Cymru
Welsh Government

Welsh Government Integrated Impact Assessment Summary

Title of proposal:

Consultation on amendments to Firefighter Pension Schemes in Wales 2020

Department:

Fire Services Branch, Community Safety Division

Cabinet Secretary/Minister responsible:

Deputy Minister for Housing and Local Government, Hannah Blythyn

Start Date:

10 July 2020

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What action is the Welsh Government considering and why?

The Welsh Government is consulting on various amendments to firefighter pension schemes 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 McLaughlin¹ respectively.

Equalising survivor benefits for civil partners / same sex spouses

Following introduction of civil partnerships in 2005, the Firefighters' Pension (Wales) Scheme (the 1992 Scheme) was amended to provide civil partners of scheme members with a survivor's pension. This was calculated in line with the widowers' benefits on the basis of 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 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 Firefighters' Compensation Scheme (Wales) 2007 (the 2007 Compensation Scheme).

In July 2017, the Supreme Court Judgment in Walker v Innospec held that same-sex spouses should be entitled to the same survivor benefit entitlement as those provided to survivors of opposite sex marriages - i.e. a pension based on full pensionable service, not just service since December 2005 or any other fixed date. The consultation therefore proposes to amend both the 1992 Scheme and 2007 Compensation Scheme to remove the 1988 limitation date in order to comply with the court ruling.

In addition, Part 3 (provision relating to same sex couples) of Schedule 1 to the 1992 Scheme disapplies the part of the Marriage (Same Sex Couples) Act 2013 that effectively equates civil partnership with same 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.

Removing limitations on survivors' benefits payable to children.

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, it has been identified that the 2007 Compensation Scheme does not currently make equal provision for children of unmarried parents, or stepchildren and adopted children.

The Supreme Court judgment in the case of McLaughlin held that denying benefits payable to children based on their parents' marital status was unlawful. The consultation document proposes that the 2007 Compensation Scheme should be amended to ensure consistency across the pension schemes. This would remove discrimination against children and unmarried couples in compliance with the ruling. The amendment would also eliminate the differential treatment currently applied to dependent, step and adopted children.

Other unrelated amendments required to pension schemes

A number of other unrelated amendments are required to the firefighters' pension schemes in order to update the legislation in line with current practice and guidance. These are as follows:-

Changes to the 1992 and 2007 Schemes

Split Pension - Both schemes currently allow a “two pension” option if a firefighter has a reduction in pensionable pay when taking up a different role. The proposed amendment would clarify that where a firefighter has an entitlement to two pensions under the 1992 Scheme or the Firefighters’ Pension Scheme (Wales) 2007 (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 reduction in pay until retirement.

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. The proposed amendment makes it clear that the two pensions should not be awarded if their total is “lower than” the single pension (as well as making other minor updates).

Pension sharing on divorce - 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 Schemes 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.

Changes to the 2007 Scheme

Special Member Commutation Factors – The 2007 Scheme legislation currently only includes commutation factors up to age 65. The Government Actuary’s Department have now provided factors up to age 75 which are required to be incorporated into scheme legislation. The commutation factors as on 31 March 2014 (up to age 65) have been replicated in the substituted table and have not changed.

Changes to the 2015 Scheme

Club transfer value payments - The 2015 Scheme currently provides that firefighters with protected rights in the 1992 Scheme and 2007 Scheme 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.

Conclusion

1. How have people most likely to be affected by the proposal been involved in developing it?

The policy proposals outlined in the consultation document relate to a number of amendments to firefighter pension schemes, including those resulting from Court judgments. The amendments seek to equalise survivor benefits for civil partners / same sex spouses and also equalise entitlement to a survivors' benefit for children born to unmarried parents. A full Equality Impact Assessment has been undertaken which raised no issues. 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.

Member of unions and associations representing firefighters have been informed of the proposals via their attendance at Firefighters' Scheme Advisory Board for Wales meetings.

The proposals outlined in the consultation document mainly affect firefighter pension scheme members, therefore only a small sector of the public will be directly affected by the amendments. All documentation / legislation will be issued in a bilingual format. A Welsh Language Impact Assessment has been undertaken, no issues were raised.

2. What are the most significant impacts, positive and negative?

As referred to above, equalising survivor benefits for both civil partners / same sex spouses seeks to remove the discrimination currently contained within firefighter pension schemes, therefore ensuring adherence to the Equality Act 2010. In addition, removing discrimination against children born to unmarried parents also ensures compliance with the United Nations Convention on the Rights of the Children (UNCRC).

The Integrated Impact Assessment has raised no issues associated with the social well-being of people and communities in Wales or on Wales' cultural well-being or on the Welsh Language. Neither has it raised any issues on the economic well-being of businesses and the public or on the Environment.

We will keep the Integrated Impact Assessment under review when considering the response to the consultation.

3. In light of the impacts identified, how will the proposal:

- maximise contribution to our well-being objectives and the seven well-being goals; and/or,
- avoid, reduce or mitigate any negative impacts?

No impacts have been identified

4. How will the impact of the proposal be monitored and evaluated as it progresses and when it concludes?

We will keep the integrated impact assessment under review as part of the ongoing process of considering the response to the consultation.

