

WELSH GOVERNMENT EQUALITY IMPACT ASSESSMENT

CONSULTATION ON REMEDYING AGE DISCRIMINATION IN FIREFIGHTERS' PENSIONS IN WALES 2023

1. All public sector pensions in the UK were reformed in 2014-15, with the general aim of reducing the cost to the public purse. Those closest to retirement at that time were, though, “protected” and allowed to remain as members of their existing and generally more beneficial schemes for the rest of their careers.

2. For the Firefighters’ Pension Scheme (Wales), this meant:

- Active members who, on 1 April 2012, were in the 1992 Scheme or 2007 Scheme (Special) and aged 45 or over would remain in the 1992 Scheme or 2007 Scheme (Special).
- Active members who, on 1 April 2012, were in the 2007 Scheme (Standard) and aged 50 or over would remain in the 2007 Scheme (Standard).
- There would be a further period of tapered protection for up to 4 years for scheme members. Members who were within 4 years of qualifying for transitional protection, as of 1 April 2012, would have limited protection so that, on average, for every month closer to qualifying for transitional protection, they gain about 53 days of protection. The period of protected service for any member under these tapering arrangements would finish by 31 March 2022. At the end of their protected period, they would be transferred into the 2015 Scheme. These members fall into two categories:
 - a. 1992 members and 2007 (Special) members who on 1 April 2012 were aged 41 – 45 years.
 - b. 2007 (Standard) members who on 1 April 2012 were aged 46 – 50 years.

3. That approach was the subject of legal challenge on the grounds of unlawful age discrimination. In December 2018, the Court of Appeal found that it did amount to such discrimination against younger, “unprotected” employees, who were employed on 1 April 2012 but who were too young to qualify for protection. Anyone joining the Fire and Rescue Service after this date (which will include the youngest firefighters currently employed) has suffered no detriment and is not entitled to a remedy

4. The proposals set out in the attached consultation and in the accompanying draft regulations (The Firefighters’ Pensions (Remediable Service) (Wales) Regulations 2023) are part of a package of measures to rectify the position, and are required by the ***Public Sector Pensions and Judicial Offices Act 2022*** (“the 2022 Act”), and subsequent ***HM Treasury Directions***. Elements of the Act and Directions are prescriptive and the Welsh Ministers are obliged to implement the position in a specified way. The consultation explains where amendments to the scheme regulations are required by HM Treasury and set out the detail of proposals

on matters where the Welsh Ministers have some discretion. This Equality Impact Assessment focusses on the latter.

5. An Equality Impact Assessment was completed for both the 2022 Act and HM Treasury's subsequent Directions. Copies of those assessments can be found [here](#) for the 2022 Act and [here](#) for the Directions.

6. There are three broad elements to the Treasury's reform package:

- a. Transferring all remaining members of legacy schemes into the 2015 Scheme on 1 April 2022 so that all active members no matter what their age are now in the 2015 scheme. This has already been done, under the Firefighters' Pension Scheme (Wales) (Amendment) Regulations 2022.
- b. Reverting affected members into their legacy schemes for the remedy period from 1 April 2015 (which is the date that the majority of members originally transferred to the 2015 scheme but some members nearest to retirement age were able to remain in the legacy scheme), to 1 April 2022 (when all members no matter what their age were transferred into the 2015 scheme) and dealing with the consequences of that; and
- c. Establishing the mechanisms by which affected members can choose, at the point of retirement (or immediately, if they have already retired), the scheme which applies to their service during the remedy period, and providing for the consequences.

7. The consultation, regulations and therefore this Equality Impact Assessment deal with issues relating to b and c above. Because the consultation is fundamentally about remedying age discrimination much of its content contains details of the impact for this protected characteristic. This EIA therefore does not seek to repeat those details but rather summarises the key proposals and impacts with references to the key sections of the consultation document itself for any further detail required.

Analysis of Relevant Data

8. The Government Actuary's Department has provided an analysis to support Welsh Ministers, in considering the impact of the policy proposals set out below. A copy of the full report is attached to this document. Some key data are:

- Of the 2,774 active members of the firefighters' pension schemes in 2016, 69% are eligible for retrospective remedy including 40% who were unprotected because they were under the protection age criteria, and 29% were protected members who will now be given the same remedy choices as unprotected members to ensure that further age discrimination is not inadvertently introduced.
- Members eligible to choose between legacy and reformed scheme benefits are slightly older than the overall active membership. Those not eligible to choose between legacy and reformed scheme benefits are generally younger than the

overall active membership but that is because they were not employed within the fire and rescue service at the relevant dates.

- Members expected to be most likely to benefit from being offered a choice of benefits in the remedy period are younger than the eligible member population. However, given that this policy decision aims to ensure all eligible members are treated in the same way as those members closest to retirement (i.e. Protected members), this was to be expected.
- Women made up 4% of active membership of the firefighter schemes in March 2016. The percentage of the members not eligible to choose between reformed and legacy scheme benefits over the Remedy Period who are female is slightly higher than the percentage of female members eligible to make this choice. This is because the proportion of recent recruits who are female is increasing.
- Neither the Welsh Government nor GAD hold firefighter pension scheme data in respect of any of the other protected characteristics (disability, race, religion or belief, gender reassignment, pregnancy and maternity, sexual orientation, or marital or civil partnership status). Nevertheless, the impact of the proposals on members and their survivors with these protected characteristics have been considered as part of the EIA and are reflected in the analysis below.

Individual Policy Proposals

Scheme membership (setting out those that are eligible for retrospective remedy) (See paragraphs 22-38 of the Consultation Document)

9. The 2022 Act itself sets out those individuals that are entitled to remedy, and the process for reverting those members to the legacy schemes for the remedy period between 2015-2022. The remedy regulations will include 2 additional proposals:

- To qualify for entitlement to remedy a firefighter would need to have been employed on 1 April 2012 and also 1 April 2015 (or have a gap in service of less than 5 years on either or both of these dates). For those that have multiple contracts with the same employer during the remedy period (say a whole-time and Retained Duty System contract) we propose that meeting the criteria in one of those contracts provides entitlement to remedy under the other contract too.
- Members who opted out of the 2015 scheme during the remedy period will be entitled to opt back into their legacy scheme retrospectively for the remedy period. We do not propose that members should be required to prove that they opted out of the scheme because of the discrimination that occurred as that would place an unfair burden on both members and scheme managers.

10. All of the remedies, including the two proposals above, seek to remove the age discrimination that resulted from previous legislation. The proposals above and

throughout will therefore have a positive impact on younger members of the firefighter schemes as long as they meet the employment eligibility requirements set out in the 2022 Act. However, there is no specific impact in respect of the above proposals. Anybody who has multiple contracts of employment with the same employer and anybody who is eligible for remedy by their employment status but opted out of the scheme are entitled to the remedy above regardless of their age or gender. We do not believe that members with any of the other protected characteristics are adversely, or otherwise, impacted by these proposals.

Contributions (see paragraphs 39-62 of the Consultation Document)

11. All active members of all firefighters' pension schemes are obliged to pay contributions into them, in return for the benefits they will receive in retirement. The employee contribution rates vary according to salary level and differ between the three schemes. As a general principle, the aim is to ensure that members pay the contributions they would have paid had they never left the legacy scheme. Where there is a deficit in contributions, the member will need to repay that to the scheme manager; and where there is a surplus, the scheme manager will need to repay that to the member.

12. Our proposals for doing so include:

- When calculating a member's contributions surplus or deficit scheme managers should be required to apply a member's entitlement to a contributions holiday (see paragraph 46 of the consultation document).
- Scheme managers would be required to repay surpluses in contributions to a relevant member as a single lump sum only but scheme members with a contributions deficit should be allowed to choose whether to repay it as a lump sum or (if the deficit is at least £100) in instalments over a period of up to 10 years.
- Scheme members who are entitled to a refund of remedy period contributions should be entitled to waive it, to avoid having to repay it on retirement. This is proposed because there are some circumstances where members are likely to choose 2015 scheme rather than legacy scheme benefits at retirement. For instance a member who is reverted to the 2007 scheme when remedy is implemented and who accepts a contributions refund and later chooses 2015 scheme benefits at retirement would be required to repay contributions on retirement, plus interest.
- Scheme members who have already retired either on age or ill-health grounds will have their benefits adjusted depending on their immediate choice. Any contributions deficit or surplus will be included in this calculation so that the member will have one correction made to their benefits.

13. We do not believe that proposals to make good employee contributions for access to benefits in an alternative scheme will have a negative impact on any of the

protected characteristics. Younger firefighters who will now become entitled to legacy scheme membership for the remedy period will have to pay owed contributions for that benefit but that will merely put them on an equal footing with existing older “protected” firefighters who have already made such contributions. The proposals allow for these repayments to be spread over a period of up to 10 years to reduce any financial hardship.

Choice mechanisms (Paragraphs 63-89 of the Consultation Document)

14. The 2022 Act requires that there are two types of choice:

- a. An **immediate choice**, made shortly after these regulations come into force, for entitled members who have already retired (or who have already died); and
- b. A **deferred choice** for entitled active or deferred members. For active members, this is to be made on retirement; for deferred members, it is to be made when their scheme benefits become payable – normally at state pension age.

15. The proposals in the consultation document and in the draft regulations set out the process that should be put in place by scheme managers to enable members to make that choice in a timely and appropriate way.

16. This choice mechanism will be available to all members who are eligible for remedy. That includes younger scheme members who were not originally protected under the 2015 scheme transitional protection arrangements and older firefighters who were protected. This is to ensure that, by correcting one form of discrimination, against younger firefighters we do not inadvertently introduce another form of discrimination against older firefighters. We do not believe that members with any of the other protected characteristics are adversely, or otherwise, impacted by these proposals.

Ill health retirement (See paragraphs 90-106 of the Consultation Document)

17. All three firefighter pension schemes make provision allowing those who have to take ill health retirement (“IHR”) to have early access to their pensions, often on enhanced terms. However, other key ill health provisions of the three schemes differ. The 1992 Scheme is generally the most generous because it has a lower threshold in terms of the determination of permanent disablement and assessment to undertake other employment.

18. Under the 1992 Scheme, a member would be deemed to be “permanently disabled” (and thus entitled to at least a lower-tier ill health pension) if her or his incapacity was likely to endure until at least the normal pension age of 55 in that Scheme. Under the 2007 and 2015 Schemes, the incapacity must be likely to endure until at least those Schemes’ normal pension age of 60.

19. These differences mean that ill health retirements which took place during the remedy period will need to be reconsidered. Retrospectively reverting affected members to their legacy schemes means that cases that did occur should have been assessed against legacy scheme IHR criteria rather than 2015 Scheme criteria.

20. Our proposals are that:

- entitled members who were granted IHR during the remedy period should be reassessed against the criteria of their legacy scheme or 2015 Scheme as the case may be, and offered an immediate choice between the entitlements that result; but that they cannot have an automatic right to be re-employed. That is because there is no practical way of achieving this. Several years may have passed, during which the member was receiving pension benefits; they may no longer have the requisite standard of fitness, training or knowledge to serve as a firefighter, even if vacancies were available. While it remains open to a scheme manager to offer re-employment if appropriate, we do not think it would be sensible to try to guarantee that right in scheme regulations.
- scheme managers should not be required to re-examine cases where entitled members were not granted IHR and continued in employment. That is because it would be impossible to retrospectively correct the position. Reassessment under 1992 scheme criteria could potentially indicate that a member would have been entitled to IHR under that scheme. However such members will have continued to work, to earn salary and to make pension contributions to the 2015 Scheme in the interim, and it would be practically impossible to reverse that position.
- Scheme managers should re-examine cases where affected members whose legacy scheme is the 1992 Scheme were not granted IHR but were dismissed on related grounds of poor fitness and/or attendance, and offer an immediate choice between a 1992 Scheme ill health pension and a deferred 2015 Scheme pension to any member who is found to have qualified for IHR under the former Scheme.

21. Under all of the schemes, ill health retirement is only granted where a scheme member has a long-term medical condition or impairment which prevents her or him from working as a firefighter (or at all). In many cases, this may amount to a disability within the meaning of the Equality Act 2010. Our proposals would ensure the best possible outcome for such cases, meaning they have an overall positive impact on scheme members who have a relevant disability.

22. The proposals are intended to redress previous potentially unfair treatment of members suffering from ill-health which resulted from the overall age discrimination identified by the Courts. They will therefore have a positive impact on younger members who have become entitled to remedy by putting them in the same position, as far as possible, as older members.

23. We do not believe that members with any of the other protected characteristics are adversely, or otherwise, impacted by these proposals.

Survivors and survivor benefits (See paragraphs 107-131 of the Consultation Document)

24. All firefighters' pension schemes offer benefits to close relatives of scheme members who die, whether during or after active service. Such beneficiaries are normally spouses, partners or dependent children of the scheme member, and are known collectively as "survivors". The remedy we propose in the consultation affects survivors and their benefits in similar ways to scheme members themselves.

25. There is a higher proportion of male members (96%) who are eligible to choose benefits in the remedy period. We do not have any data about the sexual orientation of this group, or of firefighters generally, but if it is in line with the population as a whole, then the survivors of deceased members are more likely to be their female partners. The remedy proposed in the consultation document and summarised below will though affect the male survivors of female firefighters and same sex partners in the same way. Marital and civil partner status is also affected by the proposals as, in particular, the 1992 Scheme does not pay survivor benefits to cohabiting partners, only to spouses and civil partners, while the 2007 and 2015 Schemes both do.

26. While that approach remains lawful, it can mean that cohabiting partners are denied benefits that would be payable to a surviving spouse or civil partner. Our proposals would eliminate the risk of that for members entitled to remedy, by giving the surviving partner an entitlement to benefits regardless of whether s/he was married to, or in a civil partnership with, the deceased. This risk also disappears for survivors of active members who die in the future, as all firefighters are now members of the 2015 Scheme.

27. All schemes pay benefits to surviving dependent children too, but on different terms and at different rates.

26. More detail on the proposals and their impact are set out below :-

- Where an entitled scheme member dies without making an immediate or deferred choice that choice should instead be made by an "eligible decision-maker". The eligible decision maker will vary depending on whether there are one, or two or more adult survivors, a single child or multiple children survivors in different households. The circumstances and proposed eligible decision maker are set out at paragraph 111 of the consultation document. The decision maker could be the surviving spouse, civil partner, co-habiting partner or the parent or guardians of a surviving child. The proposal is that the 2015 Scheme criteria should be used in all cases to identify the eligible decision-maker. This is because we believe that the 2015 Scheme's broader approach, which includes that a cohabiting partner is an eligible survivor, is more likely to yield a fair result which was more in accordance with the reality of the deceased's domestic circumstances at the point s/he died.
- If there is no agreement on the identity of the eligible decision-maker, or if the eligible decision-maker fails to make a decision by the deadline, the scheme manager must deem that an election for remedy period service in the 2015

Scheme has been made. That is because it pays benefits to a wider range of survivors and often at a higher rate.

- If a scheme member makes a valid immediate or deferred choice before s/he dies, that choice will be honoured and that no survivor would be entitled to revisit it. This is because the choice is primarily that of the scheme member, not her or his survivors, and we believe it should be honoured.
- If a survivor's pension is already in payment then it may need to be adjusted to reflect the choice.
- Historic overpayments of survivor benefits to survivors who are eligible decision-makers should be recovered from them, as should any overpayment of death lump sums recalculated based on the decision-maker's choice. Similarly the eligible decision-maker would be liable to repay a contributions deficit, but would also be entitled to receive any contributions refund. That puts the eligible decision maker in a similar position as a pensioner member of the scheme.
- However overpayments of survivor benefits or death lump sums to other survivors should be written off. That will include past and future overpayments to surviving children who live in different household). That is because it would be unfair to expect those who have no input into the decision to be expected to refund benefits received in good faith and the repayment of which may cause hardship.
- Where an affected member died during the remedy period leaving no-one entitled to a survivor's pension, but with a valid nominee for a 2015 Scheme death lump sum, the scheme manager should simply pay that sum without needing to offer the nominee a choice.

27. We do not believe that members with any of the protected characteristics, other than those referred to in paragraph 25 are adversely, or otherwise, impacted by these proposals.

Added pension benefits (See paragraphs 132-139 of the Consultation Document)

28. Both legacy and the 2015 firefighter pension schemes provide for members to pay additional voluntary contributions to increase their pension benefits. However the terms under which these voluntary contributions are made are different and therefore it is not possible to convert added pension in the 2015 scheme into the legacy schemes. The proposed policy to be set out in scheme regulations is therefore that entitled members who purchased 2015 Scheme additional pension during the remedy period will be able receive a refund of the cost of that, plus interest. However members who are to make an immediate choice will not receive that refund if they make an immediate choice in favour of the 2015 Scheme. Instead they will retain their added pension benefits in the 2015 scheme.

29. Other eligible members would not have this right but would have a right retrospectively to purchase added pension benefits in their legacy schemes during the remedy period, on the same terms as applied to such purchase and with the cost of doing so adjusted for interest.

30. As with all of the remedy proposals, the proposals for added pension will have a positive impact on younger members of the firefighter schemes as long as they meet the employment eligibility requirements set out in the 2022 Act. Remedy will provide eligible members with access to the same added pension benefits in the legacy schemes as was provided to members previously protected who were closer to retirement. We are proposing that members who are already receiving benefits (generally members who have retired on account of their age or ill-health) and therefore entitled to an immediate choice in respect of whether to accept legacy scheme or new scheme benefits will be given an opportunity to retain their 2015 scheme added pension, whereas this opportunity will not be available to active or deferred members. However active or deferred members will instead have received compensation for any added pension in the new scheme, will also have the opportunity to purchase added pension in the legacy scheme for the remediable period, and will still have an opportunity to purchase added pension in the 2015 scheme in respect of future years' service. On balance we believe that this provides a fair and equitable approach.

31. We do not believe that members with any of the other protected characteristics are adversely, or otherwise, impacted by these proposals.

Divorce and Dissolution (Paragraphs 140-161 of the Consultation Document)

32. When a marriage is ended by a divorce, or a civil partnership is dissolved, pension entitlements can be part of the agreed financial settlement. The person whose pension benefits are being dealt with in this way is known as the *pension debit member*, and the other party to the divorce or dissolution, who is to receive some of the pension debit member's benefits, is the *pension credit member*. The decisions made by the court usually rely on the scheme manager calculating a *cash equivalent transfer value (CETV)*, ie the current value of the member's pension benefits expressed in cash terms.

33. The decisions which entitled members will make as part of the overall age discrimination remedy may change the value of their pension benefits, and as a result CETVs calculated as part of a divorce or dissolution may also need to change. Pension credit members have not experienced any discrimination and are not entitled to remedy themselves, or to make any form of immediate or deferred choice. The proposals set out in respect of pension credit members therefore ensure that the system continues to work fairly. They work by adjusting the pension benefits to both parties. Detailed proposals vary depending on whether the agreement is set out in a pension attachment order, a pension sharing order, or a pension offsetting arrangement, but generally and where possible the proposals recommend that the CETV should be recalculated to reflect both 2015 and legacy scheme benefits and the higher of the two should be used in respect of the pension credit member.

34. There is a higher proportion of male scheme members (96%) who are eligible for age discrimination remedy than female members. That means that the majority of pension debit members will be male. We do not have data about the sexual orientation of this group, or of firefighters generally, but if it is in line with the population as a whole then the majority of pension credit members are more likely to be female. The remedy proposed in the consultation document and summarised below will though equally affect male pension credit members who are the ex-spouse or civil partner of a female firefighter and also to both male and female partners from same sex marriages or civil partnership that have ended in divorce or dissolution.

35. The proposals at para 33 and set out in more detail in the consultation document will have a generally positive affect on people who are divorced regardless of their gender or sexuality. We do not believe that members with any of the other protected characteristics are adversely, or otherwise, impacted by these proposals.

Transfers between schemes (Paragraphs 162-180 of the Consultation)

36. When employees, including firefighters, move between employers which offer different occupational pension schemes, they may have the option of transferring their pension from their old employment into the new employer's scheme, if both schemes are defined benefit schemes and allow for such transfers. The consultation document sets out proposals for recalculating transfers values to take account of legacy scheme benefits. For transfers between the firefighters schemes and other public sector schemes members will generally be given a choice of benefits at retirement. For transfers to schemes outside the public sector the CETV will be recalculated and topped up if necessary. Where this is not possible compensation will be provided.

37. The amendments are aimed at putting affected members back in the same position they would have been if age discrimination had not occurred. Therefore as with all of the amendments there is a positive impact on younger firefighters but also older firefighters as both will have the opportunity to choose the most beneficial benefits including transfers. We do not believe that members with any of the other protected characteristics are adversely, or otherwise, impacted by these proposals.

Human Rights and UN Conventions

38. We do not believe that these proposals will have a positive or negative impact on people's human rights.

Part 2 of the EU-UK Withdrawal Agreement, along with the EEA EFTA Separation Agreement and Swiss Citizens Rights Agreement

39. The provisions we propose would apply equally to all firefighters, of any nationality, employed by Fire and Rescue Authorities in Wales who are eligible to become members of the firefighters' pensions schemes. We therefore do not believe that these proposals impact on the rights of citizens under the above agreements.