



Llywodraeth Cymru
Welsh Government

Welsh Government Integrated Impact Assessment Summary

Title of proposal: Consultation on remedying age discrimination in Firefighters' Pensions in Wales.

Department: Community Safety Division

Cabinet Secretary/Minister responsible: Deputy Minister for Social Partnership

Start Date: 31 March 2023

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What action is the Welsh Government considering and why?

1. The Public Service Pensions Act 2013 (“the 2013 Act”) introduced comprehensive reforms of all public sector pensions in Great Britain. The aim of this was to reduce the cost of such pensions to the public purse by introducing new schemes with a higher normal pension age (NPA) for all public servants, and providing that benefits in those schemes were to be calculated on the basis of career average revalued earnings (CARE) rather than final salary. The 2013 Act required the UK or (as appropriate) devolved governments to make regulations establishing such new schemes with effect from 1 April 2015, at which point existing schemes were closed, so that members could no longer accrue any pension in them. Subsequently, the Welsh Minister’s introduced The Firefighters’ Pension Scheme (Wales) 2015 (“the 2015 Scheme”) governed by the Firefighters’ Pension Scheme (Wales) Regulations 2015¹ (“the 2015 Regulations”), which came into force on 1 April 2015.
2. Section 18 of the 2013 Act allowed regulations to exclude certain categories of workers from the requirement to join the new scheme and allow them to remain in their existing scheme, this is otherwise known as “transitional protection”. Those scheme members closest to retirement age were allowed to remain as members of their existing, and generally more beneficial schemes, for the remainder of their careers. Thus, the 2015 Regulations provided that anyone who was an active scheme member on 1 April 2012 and who was aged 45 or more on that date would remain in their former scheme permanently (“full protection”); and any active scheme member aged between 41 and 44 on that date would transition gradually into the new scheme over a period of five years from 2015 (“tapered protection”).
3. The approach outlined above was subject to legal challenge in the cases of McCloud and others v Lord Chancellor and another and Sargeant and others v London Fire Commissioner and others. The claimants argued that the policy amounted to unlawful direct discrimination on grounds of age (and in Sargeant, indirect discrimination on grounds of gender and race). The Court of Appeal, held in December 2018, determined that age-based transitional protection as implemented was unlawful. The Public Sector Pensions and Judicial Offices Act 2022 was introduced in March 2022 to provide a statutory foundation to remedy age discrimination in public sector pension schemes. As a result of the provisions of the Act, responsible authorities are required to make changes to pension scheme rules. The Welsh Ministers, who are the responsible authority for firefighters’ pensions in Wales, are required to make two sets of regulations in respect of this remedy.
4. The Firefighters’ Pension Scheme (Wales) (Amendment) Regulations 2022 which were laid before the Senedd on 22 March, closed the legacy schemes for all members from 1 April 2022. All remaining members were transferred into the 2015 scheme, thereby removing any ongoing discrimination from that date.
5. This consultation relates to a second set of Regulations which proposes to:-
 - Revert affected members into their legacy schemes for the remedy period, including (if they wish) affected members who have opted out of scheme membership.
 - Establish the choice mechanisms by which (i) affected members can choose, at the point of retirement, the scheme which applies to their service during the remedy period; and (ii) those affected members who have already retired can make such a choice immediately.
 - Make provision for the consequences of returning members to their legacy schemes and the choice mechanisms above, to ensure that the correct scheme rules apply to pension entitlements, benefits, and contributions for the remedy period.

¹ SI 2015 no.622 / W50

6. The proposals have been developed in consultation with the Firefighters' Pension Scheme Advisory Board for Wales, the membership of which includes the three Fire and Rescue Authorities in Wales and the four recognised firefighters' unions and representative bodies.
7. Firefighters' pensions are funded by employer and employee contributions, plus a top-up grant from the Treasury. The effect of these changes is likely to increase the value of many affected members' pensions; but it is also likely to increase the amounts of money which need to be raised from each of these funding sources. The extent of that will depend on decisions by individual members which these proposals will allow them to make.

Conclusion

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

The proposal originates in successful litigation brought by members of the Fire Brigades Union, alleging that they had suffered age discrimination from the preferential treatment afforded to their older colleagues in 2015. The underlying policy has already been the subject of a full Treasury consultation in Autumn 2020, and the proposals have been discussed several times by the Firefighters' Pension Scheme Advisory Board for Wales (which includes the three Fire and Rescue Authorities in Wales and the four recognised firefighters' unions and representative bodies).

What are the most significant impacts, positive and negative?

The proposed amendments have been formulated to rectify and provide redress for age discrimination which has been identified by the courts. We believe that they do so, and in a way which does not have an adverse impact on people because of their age or any other protected characteristic. We have been particularly careful not to give entitlements to affected members which other scheme members do not enjoy, as that could give rise to fresh claims of age discrimination.

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?

The proposed amendments are required by primary legislation to eliminate age discrimination, there are no negative impacts as a result. Due to the technical nature of the amendments, and the limited number of people impacted by the changes (the proposals are limited to firefighters who were employed in the fire and rescue service on 1 April 2012 and also on 1 April 2015) the contribution towards the well-being objectives or goals, or to wider policy objectives is relatively limited. Nevertheless removing age discrimination in the pension scheme contributes to a more equal Wales. The proposals will have a long term impact on eligible firefighters because the changes will alter their long term occupational pension entitlements. The proposals have been developed in collaboration with firefighter employers and employee representatives.

² <https://www.gov.uk/government/consultations/public-service-pension-schemes-consultation-changes-to-the-transitional-arrangements-to-the-2015-schemes>

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

The effects of the proposals are already known, and are necessary to comply with non-devolved primary legislation and the judgment of the Court of Appeal. Any changes to the underlying policy would be a matter for the Treasury and for Parliament. Whilst there will be no formal monitoring, the impact of remedy will continue to be discussed at the Firefighter Pension Scheme Advisory Board for Wales at which employer and employee representative have the opportunity to raise issues regarding the regulations themselves and their practical implementation.

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

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