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Welsh Government Consultation – summary of responses

Consultation Response to Pension Entitlements for Retained Firefighters 2023

January 2024

Mae'r ddogfen hon ar gael yn Gymraeg hefyd / This document is also available in Welsh
Rydym yn croesawu gohebiaeth a galwadau ffôn yn Gymraeg / We welcome correspondence and telephone calls in Welsh

Overview

This document provides a summary of the responses to our consultation 'Pension Entitlements for Retained Firefighters 2023', including the Welsh Government's response to them.

Action Required

This document is for information only.

Further information and related documents

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

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Additional copies

This summary of response and copies of all the consultation documentation are published in electronic form only and can be accessed on the Welsh Government's website.

Link to the consultation documentation: [Pension Entitlements for Retained Firefighters 2023](#)

Contents

Consultation Process	4
Summary of Consultation Responses	5
Part 1 – Extending Access to Firefighter Pensions for Retained Duty System	
Firefighters	5
Details of Eligibility and Remedy Period.....	5
Proposed Remedy.....	8
Contributions	9
The Options Exercise	11
Part 2 – Proposed Amendments to the Firefighters’ Compensation Scheme (Wales)	
Order 2007 in respect of Secondary Contracts	12
Miscellaneous Issues	15
Other Amendments	19
Next Steps.....	20
Annex 1 – List of Respondents	21

CONSULTATION PROCESS

1. A twelve-week consultation began on 14 July 2023 and was open for responses until 06 October 2023. The consultation contained 9 questions, with options to respond to those questions by completion of an online form or by e-mail. The consultation document was available on the Welsh Government website.

2. The consultation, which included a draft statutory instrument, specifically focussed on:

the ***Firefighters' Pension Scheme 2007*** about pension rights for RDS firefighters. It set out proposals to provide access to firefighter pensions for Retained Duty System (RDS) firefighters with service between 7 April 2000 and 5 April 2006 (to include access relating to RDS service before 7 April 2000).

the ***Firefighters' 2007 Compensation Scheme*** in respect of secondary contracts. It set out proposals to amend the 2007 firefighters' compensation scheme so that it treats injuries sustained under certain secondary contracts more fairly.

3. The Welsh Government received 14 responses to the consultation. Those 14 responses came from the following:

Three from Fire and Rescue Authorities in Wales (FRAs),
Two from other trade unions and other organisations representing firefighters,
One from a pension software provider,
Eight from individuals.

4. A full list of respondents is available at Annex A.

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

6. The Welsh Government published its Integrated Impact Assessment alongside the consultation document. The overall policy position set out in the consultation document remains the same and has formed the basis of the final Order. Therefore, no changes have been made to the Integrated Impact Assessment as originally published. The document can be found [here](#).

SUMMARY OF CONSULTATION RESPONSES

7. 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 them.

PART 1 – EXTENDING ACCESS TO FIREFIGHTER PENSIONS FOR RETAINED DUTY SYSTEM FIREFIGHTERS

DETAILS OF ELIGIBILITY AND REMEDY PERIOD

Question 1 – Do you agree with the eligibility criteria set out at paragraphs 12-17.

8. 11 out of 14 respondents agreed with the eligibility criteria proposed in the consultation, one respondent noting that the criteria proposed for the firefighter pension scheme in Wales was consistent with the criteria set out in the Memorandum of Understanding agreed between the Fire Brigades Union, the Fire and Rescue Services Association, the Local Government Association, and the Home Office in respect of the pension scheme in England (“the English MOU”). One respondent felt that it was useful that the draft Order itself set out the steps an FRA must have complied with to determine an option was appropriately provided in the first options exercise.

9. One respondent did not agree but did not provide any other information. Two respondents provided further details regarding their concerns with the proposals:-

- One felt that the criteria should be broadened to include all those who were eligible to join the modified scheme during the first options exercise but did not do so, and not just those who were not given that opportunity for some reason. It was suggested that proof that an FRA wrote to an individual during the first options exercise was not evidence that an individual had received that correspondence or that the information provided about a member's choices, benefits and the repayment process was always complete and accurate,
- A further respondent indicated that those with service between 7 April 2000 and 6 April 2006 (whether as an RDS or wholetime firefighter) whose uninterrupted service prior to 7 April 2000 included a period of RDS service should be eligible, claiming that that the English MOU did not specify that

service between these dates must be RDS service, and also arguing that this would be consistent with the judgment in O'Brien v Ministry of Justice. The respondent argued that periods of concurrent RDS and wholetime service should be treated as one. The respondent also suggested that instead of being given the option of joining the 2007 scheme for their service up to 2022, individuals should instead be given a choice mechanism (similar to that introduced for age discrimination remedy¹) which would enable them to choose between purchasing 2007 modified scheme benefits or 1992 scheme benefits.

Welsh Government Response:

10. We are not aware of any major issues or concerns that have been raised about the accuracy or quality of information in cases where it was provided by FRAs to individuals as part of the first options exercise either during its implementation in 2015-16, or since then. Templates were provided to the three FRAs in Wales for the various stages of communication with individuals to ensure a standard consistent approach was applied, and FRAs used the calculator provided by the Government Actuary's Department to establish the details of contributions owed by individuals. Our legislation for the second options exercise, also provides for an appeals process where an FRA determines that it did not notify a person of their entitlement in the first options exercise, but the person does not believe that is the case.

11. The issues of whether those who left employment as a retained firefighter before 7 April 2000, and whether wholetime and RDS service can be aggregated for pension purposes, are currently subject to litigation and it would not be appropriate to comment further at this stage, or to amend our proposals in advance of judgment or settlement in those cases.

12. After considering the responses received, we are content that the proposed eligibility criteria set out in the consultation remain appropriate. The final Order will reflect that position.

Question 2 - Do you agree that the proposed arrangements should include the option to purchase uninterrupted RDS service in the modified scheme between 31 March 2015 and 31 March 2022, irrespective of whether that is provided for through these provisions or separate regulations made under the PSPJO Act 2022?

13. All 14 respondents agreed that eligible members should also be given the opportunity to purchase pension rights in the modified element of the 2007 scheme between 31 March 2015 and 31 March 2022.

14. One respondent noted that, as the second options exercise and age discrimination remedy exercises were running concurrently, it may be difficult to ensure the necessary deadlines were met.

¹ [Age Discrimination Remedy Consultation](#)
[The Firefighters' Pensions \(Remediable Service\) \(Wales\) Regulations 2023 \(legislation.gov.uk\)](#)

15. One respondent indicated that linking pension purchased for this period to eligibility under the third condition of section 1(5)(b) of the Public Service Pensions and Judicial Offices Act 2022 would remove unnecessary additional administrative burdens and the exercise of local discretions which could lead to variations in approach.

16. One respondent noted three categories of RDS firefighters eligible to take part in the second options exercise that interacted with age discrimination remedy: those who already had special membership in the 2007 scheme; those that had standard membership in the 2007 scheme; and those that did not have membership in any of the schemes. Those in the first category would automatically revert into the modified scheme as their legacy scheme under the age discrimination remedy, but those in the second and third categories would also need to be provided for. In particular, the respondent pointed out that those with current standard membership in the 2007 scheme would revert to that scheme as part of age discrimination remedy, and those that were not a member of any pension scheme who made an application to reinstate the 2015-2022 period as special membership would be refused because the reason for opting not to take up special membership was not a relevant breach of a non-discrimination rule.

Welsh Government Response:

17. Our consultation document indicated our intention that eligible individuals would be able to purchase pension for uninterrupted service in the modified scheme up to 31 March 2022, either through the second options exercise or age discrimination remedy regulations made under the Public Service Pensions and Judicial Offices Act 2022 (the 2022 Act). We were though clear that work was still being undertaken to clarify the precise mechanism that would apply for service during the period 1 April 2015 to 31 March 2022.

18. We have since clarified that we cannot make provision for this period as part of the second options exercise because the Public Service Pensions Act 2013 prevents benefits being provided for in the 2007 scheme after 31 March 2015, except in respect of age discrimination remedy under the 2022 Act.

19. The Firefighters' Pensions (Remediable Service) (Wales) Regulations 2023 which were made on 4 September do, however, provide for the age discrimination remedy to extend to individuals who are eligible to take part in the second options exercise in the particular circumstances set out in paragraph 16 above. All the respondents that provided detailed responses to this question appeared to acknowledge that position, and their comments were based on how the age discrimination remedy provisions and the second options exercise would work together effectively.

20. The Welsh Government recognises the importance of the interaction between both remedy exercises. The second options exercise will need to be implemented first to ensure an individual is placed in the modified section of the 2007 scheme to ensure that the correct legacy scheme is used for roll-back or the purchase of opted out service under age discrimination remedy provisions. We acknowledge that could potentially create some timing issues, for instance in respect of the timing of the

issue of a first remediable service statement under the age discrimination remedy, and statutory timeframes for making decisions about opting in under the 2022 Act. However, the age discrimination remedy scheme regulations referred to above provide flexibility around all of these timings which scheme managers can use to ensure that member information and choices are made in the correct order.

21. One respondent referred to the ability to opt-in to special membership of the 2007 scheme under the age discrimination remedy being limited by a requirement to evidence that their decision to opt-out was linked to age discrimination in the 2015 scheme. We understand that to be the case in England; however, there are no such limitations in the Welsh Regulations. To clarify, any firefighter who meets the eligibility criteria in section 1 of the 2022 Act will be entitled to opt-in to the relevant legacy scheme for the remedy period. That includes retained firefighters who fall under the £10,000 per annum salary threshold for auto-enrolment in the pension scheme. Our regulations make provision about some of the procedures that must be followed to make an opt-in election. However, whilst the 2022 Act provides for scheme regulations to include certain conditions under which an application may be refused, the Welsh Government did not include any such conditions in the scheme regulations.

22. Our legislation will therefore reflect that the second options exercise will cover the period up to 31 March 2015.

PROPOSED REMEDY

Question 3 - Do you agree with the assumption that we have proposed for historic service, pay and grade?

23. 13 of the 14 respondents agreed with the assumptions proposed in the consultation document in respect of historic service, pay and grade, in particular:-

- that where no proof of service could be provided by the FRA or the individual then the FRA may determine the person did not have any entitlement to join the modified scheme for that period,
- that if relevant pay data wasn't available, it should be assumed that an RDS firefighter earned 25% of the reference pay of a wholetime firefighters for any relevant year, and
- that in the absence of other evidence, it should be assumed that an individual was a competent firefighter for the purpose of estimating pensionable pay.

24. One respondent noted that a further assumption may be required for whole-time reference pay prior to the earliest date that pay scales are available. The same respondent pointed out that the consultation document referred to the assumed role being that of a competent firefighter, although the draft order itself only included reference to "firefighter" and suggested that including competent firefighter in the regulations themselves would provide greater clarity.

25. One FRA respondent noted that no pre-2000 pay or service information was available and that the default assumptions would be used in all cases unless individuals could provide evidence to the contrary.

Welsh Government Response:

26. We note that the majority of respondents agreed with the proposals set out in the consultation and we therefore plan to implement the proposals as set out in the consultation with the following adjustments:-

- where an authority does not hold pay records and has to determine pensionable pay from other records or local experience - if this determination indicates an amount lower than 25%, then 25% becomes the default, but where this determination indicates that average pay is greater than 25% then the higher amount can be used,
- adjusting the provisions to indicate that 25% of reference pay relates to a competent firefighter.

27. We note the comment made by one respondent regarding the earliest date that pay scales are available from and will work with FRAs on a solution for any cases that emerge where calculations include periods where appropriate pay scales are not available.

CONTRIBUTIONS

Question 4 – How far do you agree with our proposal to spread periodic contributions for post 2000 service over 10 years and for pre-2000 by 10 years plus half the length of pre-2000 service that they have opted to purchase?

28. 11 out of the 14 respondents agreed with our proposal to spread periodic contributions for post 2000 service over 10 years and for pre-2000 by 10 years plus half the length of pre-2000 service that they have opted to purchase. One of those respondents noted that the proposed approach was consistent with the approach taken for the first options exercise, although another respondent commented that the payback period was overly generous, in instances where the amount owed by the members was very small. Another respondent, while supporting the proposal, believed the proposed period for pre-2000 service was not sufficient and should be set at 20 years.

29. One respondent said that the proposal seemed complicated and raised concerns about the additional software development and cost implications this might require. The same respondent proposed an alternative solution which was to provide members ten years to repay post-July 2000 service purchased and 20 years to re-pay both pre- and post-July 2000 service purchased. The respondent further suggested that members be given a settlement option if they wished to repay at a given point.

30. One respondent questioned whether the proposed approach was equal and fair. One respondent did not provide a view.

Welsh Government Response

31. We note respondents' overall agreement to the approach set out in our consultation for the repayment of contributions. We also, however, note some respondents' concerns regarding the repayment by instalments of small amounts, but alternatively that the spread of periodic payments for pre 2000 service is not long enough.

32. On the issue of the repayment period for pre-2000 service, our original proposal was that special members' and special deferred members' instalments would be spread over a period of 10 years plus half the length of the pre-1 July 2000 service that they have opted to purchase. This would mean that a member who joined the service in 1970 and was still employed as an RDS firefighter would be able to spread the pay back of periodic contributions by 25 years (10 years plus half of the 30-year service prior to 2000). But we acknowledge that members with service from 1980 onwards would benefit more from a 20-year repayment period, and we accept that the majority of members who are still special members or special deferred members would fall into this category, as the majority of individuals who have pre-1980 service would fall into the special pensioner category of members. We also agree that spreading very small payments over too many years could become a burden to scheme members as well as place an additional administrative burden on scheme managers and administrators. A more reasonable position would be to allow for the terms of repayment to be set by the FRA with the agreement of the member. We therefore plan to amend the provisions that were proposed in the consultation to reflect the following position regarding periodic payments.

33. The payment period will be set by scheme managers with the agreement of the scheme member, but within the following limits:

- Payments under £100 must be made as a lump sum.
- Periodic payments for the purchase of post-2000 service must be made within 10 years of such an agreement.
- Periodic payments for the purchase of pre-2000 service must be made within 20 years, or 10 years plus half the period of the length of pre-2000 service, whichever is the longer.

34. We are content that our existing proposals on lump sum payments are consistent with the approach that we have taken in our age discrimination remedy, and in the first options exercise, and we do not plan to make any adjustments to these.

35. We accept that our proposal will require a change in the software used by scheme managers and administrators, but do not believe that this is particularly complex: the only key difference between our plans and those being implemented elsewhere is the repayment period. Calculations for the flexible repayment of contributions period will be supported by a GAD calculator.

36. Subject to changes explained above, we will therefore proceed to implement the proposals in the consultation document.

THE OPTIONS EXERCISE

Question 5 - Do you agree that the new options exercise should be completed within 18 months (with flexibility included to go beyond that in exceptional cases as described in paragraph 72).

37. Nine out of the 14 respondents supported the proposals in the consultation document. One of those respondents noted that the timing was consistent with the approach taken for the first options exercise. Although one of those respondents agreed with our proposals, this was on the basis that evidence of the contact made with the individual, and their reply, was recorded. Two of those respondents welcomed the flexibility provided to the FRA or individual, where it is not reasonably practicable to comply with the timetable.

38. Two respondents supported the proposals in principle but raised issues relating to the respective stages of the second options exercise and believed they should be amended / strengthened. These included:-

- Draft rule 6C(14) should be amended to clarify that the election may also take effect after 30 June 2025 if the Fire and Rescue Authority did not use reasonable endeavours to notify the individual,
- the timescales for the second and third stages should be reversed. That is, the individual should submit an expression of interest within three months, and the FRA should be given six months to provide the statement of service.

39. Two respondents did not agree with the proposals. One of those respondents believed the issue had taken long enough to resolve. The other respondent believed that for those already in the scheme after the first options exercise, there should be no need to indicate interest in joining the scheme; the application should be automatic.

40. One respondent highlighted the impact the timelines may have on resources to implement the proposals, alongside the age discrimination remedy. The respondent added that further clarification was needed in respect of the evidence required by each party, in the event of a dispute.

Welsh Government Response:

41. We note that the majority of respondents agree with the overall approach set out in our consultation for implementing the second options exercise.

42. We acknowledge the comments about the respective timings of the exercise. Our proposals clearly need to work in practice and therefore we are sympathetic to the issues that have been raised. The scheme rules provide a timetable for FRAs to follow that will ensure the second options exercise is implemented within 18 months, although the rules do also provide some flexibility

where it would not be reasonably practicable to complete the exercise within those 18 months. On the issue of provisions that enable elections to take effect after 30 June 2025 in cases where an eligible individual did not receive a notification from the authority, we agree that Rule 6B(14) might suggest a different approach should be applied for individuals where an authority did or did not use reasonable endeavours to notify an eligible person. This is not our intention and as such we have amended Rule 6B(14) to remove reference to an authority's reasonable endeavours. The requirement on FRAs to contact members is covered elsewhere in the provisions under Rule 5B. The dates referred to in the draft Order that we consulted on have been updated throughout to reflect the slightly later coming into force date for the final Order. This means that the 30 June 2025 date referred to above has now been amended to 31 July 2025.

43. We do not agree with the suggestion that those that bought past service under the first options exercise should be taken to have automatically applied for the second one. Individuals' circumstances may very well have changed in the intervening years, and whether to apply must always be a member's personal decision. So, we believe it appropriate to contact all eligible members to confirm their choice.

44. We note respondents' comments about the impact on scheme administrators to implement the changes alongside the age discrimination remedy and acknowledge the significant impact that remedying both sets of changes at the same time will have. However, individuals eligible to take part in the second options exercise are entitled to a timely and effective remedy. As set out in our response to Question 2 above, there are also important interactions between the second options exercise and age discrimination remedy that mean that implementation of both must run consecutively to ensure that individuals eligible for both, are given the correct opportunities and benefits.

45. We will therefore proceed to implement the proposals in the consultation document.

PART 2 – PROPOSED AMENDMENTS TO THE FIREFIGHTERS' COMPENSATION SCHEME (WALES) ORDER 2007 IN RESPECT OF SECONDARY CONTRACTS

Question 6 - How far do you agree that we should change the definitions of "firefighter" and of "pensionable pay" in the Compensation Scheme, to ensure that those firefighters who have second contracts are entitled to compensation on the same terms as those who do not?

46. Seven out of 14 respondents fully agreed with the proposals. Two disagreed or partially disagreed but did not set out their reasons. One respondent did not comment on the proposal at all. The remaining four respondents appeared to agree with elements of the proposal but offered further comments.

47. Some respondents disagreed with the proposal to include USAR duties within the role of a regular firefighter as it was suggested that USAR technicians do not undertake this role in accordance with their primary contracts. As a result, they believe that the existing distinction is reasonable based on the contractual position.

48. In addition, the same respondents expressed concern that including USAR duties as part of the role of a regular firefighter would open up potential challenge that USAR technicians should be eligible to become members of the Firefighters' Pension Scheme.

49. A respondent also noted that the proposal to calculate compensation scheme benefits based on substantive wholtime pensionable pay could be disproportionate and potentially introduce inequality, in circumstances where USAR technicians' duties under their primary contracts are at different levels, for example one individual could be employed as a firefighter, while his/her colleague could be employed as Station Manager. In addition, the length of service could differ greatly, as such further consideration should be given to how compensation payments should be calculated.

50. Two FRA respondents also raised the possibility of USAR technicians becoming eligible to join the Local Government Pension Scheme ("LGPS"). This would allow firefighters who undertake USAR duties to contribute to the LGPS based on their USAR service only and in accordance with the LGPS entitlement rules. Concern was raised that providing eligibility for benefits under the 2007 Compensation Scheme could create a situation whereby an individual would be entitled to pension or death benefits from the LGPS based on the secondary contract and pension and compensation based on the primary contract under the 2007 Compensation Scheme, some of which might be duplicated. One FRA respondent also queried whether the Welsh Government would be providing the FRAs with additional funding in respect of the increased participation in the Compensation Scheme by individuals performing USAR duties.

51. One respondent queried whether the proposal to provide compensation scheme benefits to RDS firefighters should be based on the calculation of awards for part time firefighters, so based on full years of service, but using actual part time rather than full time hours.

52. Two respondents suggested that the proposal to provide compensation payments should not be restricted to those cases where an individual's primary contract of employment is with the same FRA with whom they also hold a secondary contract. One respondent suggested that this should be extended to cover wholtime firefighter contracts which were held with another FRA, another suggested they should be extended to cover recompense for any primary employment.

Welsh Government Response:

53. The Welsh Government acknowledges the mixture of responses to this proposal, which included both positive reception, as well as some disagreement with a number of its aspects.

54. We note the view held by some respondents that a firefighter's eligibility for compensation for injuries should be reflected by the contractual position under which they were performing duties when they were injured. However, we consider that would be an artificial distinction in many circumstances, based merely on administrative contractual arrangements. Such a situation risks creating significant unfairness. In the case of USAR technicians, they are, after all, invariably also serving regular, retained or volunteer firefighters. We would not consider it fair, for example, were a regular firefighter with many years' service to be injured while performing duties under a secondary USAR contract and therefore not to receive compensation that he or she would have received had a similar injury been sustained under their regular contract, simply because those duties were performed under a separate contract of employment. We do not consider that this strong imperative for fairness was addressed by respondents who disagreed with the proposal.

55. We note the suggestion that compensation scheme benefits provided to an RDS firefighter should be comparable to benefits calculated for part time firefighters. We are aware that a lack of consistency between the two sets of calculations has been raised as a concern elsewhere in the UK, but this is not a matter that has previously been raised with the Welsh Government. This is not related to the consultation itself, however we will monitor developments elsewhere and act accordingly in due course. The Welsh Government has also noted the suggestion that compensation payments should not be restricted to those cases where an individual's primary contract of employment is with the same FRA with whom they also hold a secondary contract. We do not agree with that. Compensation and pension benefits (including ill health and survivor benefits) for primary service with another employer should clearly fall under the arrangements that an RDS firefighter has with that employer.

56. In respect of funding, the Welsh Government does not intend to provide any additional funding, as the funding of the scheme is a matter for FRAs.

57. The Welsh Government notes the responses that highlighted the potential eligibility of USAR technicians for the LGPS. We further note that eligibility for that scheme is currently under consideration by a number of FRAs. We have also given further consideration to the proposed mechanism of achieving the overall policy objective by way of amending the definitions of "firefighter" and "pensionable pay" in the 2007 compensation scheme.

58. While we intend to address the core issue of unfairness for those injured under secondary contracts, we recognise, as a result of the two points above, the need to reconfigure the extent of the policy, and the way in which it is to be delivered through the legislation.

59. Consequently, we intend to proceed on the revised basis that an injury sustained in the course of a secondary contract should be treated, for the purposes of the 2007 compensation scheme, as if it were sustained in the exercise of duties under the firefighter's primary contract. Specifically:

- for firefighters with temporary secondary employments as USAR technicians (or with a temporary secondary employment to respond to an emergency of a type mentioned in section 7 of the Fire and Rescue Services Act 2004, or articles 2, 3 or 3A of the Fire and Rescue Services (Emergencies) (Wales) Order 2007) with the same FRA, an injury sustained in the performance of duties responding to such incidents would be treated as if it were an injury sustained under their employment as a regular or retained firefighter;
- for a regular firefighter with a secondary employment with the same FRA as a retained firefighter, an injury sustained in the performance of their retained employment would be treated as if it were sustained under their employment as a regular firefighter. However, this rule is disapplied in the event that an individual's pay and service under their RDS contract would yield greater compensation than pay and service under their wholetime contract. In this situation, compensation scheme benefits should be based on pay and service under the contract that would provide the greatest level of compensation.

60. Therefore, if a regular firefighter with 10 years' service sustains an injury in the exercise of his or her duties under a secondary temporary employment as a USAR technician, with 2 years' service, or a secondary employment as a retained firefighter, also with 2 years' service, with the same fire and rescue authority, then that firefighter would be entitled to compensation awards commensurate with their 10 years' regular service, so long as it would be a qualifying injury and all other relevant requirements are satisfied.

MISCELLANEOUS ISSUES

Question 7 - 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?

61. One respondent suggested that positive and negative effects should be communicated more openly via social media platforms. No further specific comments were made other than recognition that documents will be made available in both English and Welsh, in accordance with Welsh Language Standards.

62. Six respondents did not provide a view.

Welsh Government Response:

63. We note that Fire and Rescue Authorities will continue to communicate with their members in both Welsh and English, in line with the Welsh Language Standards. The Order will also be made in both Welsh and English, except for the amendments to the 1992 Pension Scheme Order and the 2007 Compensation Scheme Order. Those original Orders were made only in English, so can only be amended in English. On the issue of social media communications, we consider this to be an administrative issue and not one that should be reflected in the order itself.

Question 8 – 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.

64. One respondent requested simplified pension statements be made available to make them easier to comprehend. No further specific comments were made in respect of the effect the policy may have on the Welsh Language, other than those already raised under Question 6.

65. Six respondents did not provide a view.

Welsh Government Response:

66. The Welsh Government notes respondents' views on this issue and acknowledges the need for pension scheme members to receive clear and concise information. The precise presentation of information that FRAs are required to provide to members in statements is a matter for the scheme managers. But in sending any communications, scheme managers are required to comply with the Welsh Language Standards, such that if any pension statements are to be made available, they should be made available in both Welsh and English.

67. We consider that scheme managers are best placed to set out the exact wording of pension statements, and that it is not appropriate for that to be set out prescriptively in legislation, other than the parameters of what are required.

Question 9 - We have asked a number of specific questions. Do you have any other comments on our proposals or any related issues which we have not specifically addressed?

68. A number of respondents raised issues with the proposals set out in the consultation. Where we believe these relate to the broad areas already covered in the questions above, we have included and responded to them there. The remaining issues are summarised below :-

69. **Previous optant outs** - Clarity was sought on whether a special member who elected to purchase pension through the first options exercise but subsequently opted out of the scheme, would now be able to purchase all of that opted out service if they were eligible to take part in the second options exercise.

70. **Special/ additional death grant** - One respondent noted that paragraph 1C(2) and 1C(3) of the draft Order provided that an eligible dependent must make an application for an additional death grant on or before 31 December 2024, although the rule applied where the retained firefighter died before 30 June 2025.

71. **Remediable service statements (RSS)** – One respondent noted the requirement, under the Public Service Pensions and Judicial Offices Act 2022 and

age discrimination remedy regulations, for the provision of remediable service statements by 31 March 2025, or such later day as the scheme manager considers reasonable. The respondent indicated that, for individuals eligible for both the second options exercise and age discrimination remedy, where the second options exercise election needed to be made to determine eligibility for age discrimination remedy, it may not be feasible for the initial RSS to be provided by 31 March 2025, as this was before the 'closing date' of the second options exercise. The respondent felt that it should be acknowledged in legislation or guidance that scheme managers would need to exercise the RSS discretion for members eligible for the second options exercise.

72. **Software Development** – One respondent indicated that there was a clear risk that the final legislation would not be laid with sufficient lead in time for all required software developments to be delivered by the implementation date.

73. **Tax issues relevant to the Second Options Exercise** – One respondent suggested the 'compensation deduction' payable under draft rule 6D to be inserted into Part 11 in respect of tax relief on contributions should extend to take into account the annual allowance impact of backdated pension contributions which could place some members in a less favourable position than they would have been in if the contributions had been paid throughout their service, and also any higher rate of tax incurred as a result of the immediate payment of backdated additional pension benefits which could move a pensioner member into a higher rate tax band as a result.

74. The same respondent questioned why the default tax rate was set at 20% in that same draft rule as this was the current basic rate of income tax rather than the basic rate applicable in certain periods in the past.

75. **Outstanding tax issues from the First Options Exercise** - One respondent pointed out that a mechanism to deal with tax relief on contributions was not included in the first options exercise, and that individuals may not have been able to claim tax relief as a result.

76. **Information requirements** - One respondent suggested that FRAs should be required to use their best not "reasonable" endeavours to notify all individuals eligible to take part in the second options exercise, and that this should include consulting the National Insurance Contributions Office (NICO) or engaging the services of a tracing service. The same respondent believed that an FRA should make enquiries through HMRC about an individual's historic employment data before determining that the person does not have service within the relevant period. They acknowledged though that obtaining data from NICO or from HMRC might be time-consuming and therefore suggested that hard deadlines should not be included in the provisions.

77. The same respondent sought confirmation that the Welsh Government would provide guidance and templates to ensure a consistent approach to implementation.

78. **Governance** – One respondent suggested that the Welsh Government

should require FRAs to report on the progress they are making at appropriate intervals to ensure that the relevant timelines set out in the regulations are adhered to.

79. **Compensation Scheme** - One FRA respondent commented that the proposal could also lead to an anomalous situation, whereby individuals performing duties that were not captured in the Fire and Rescue Services Act 2004, would not be protected under such arrangements, nor should the salary for those activities be pensionable.

Welsh Government Response:

80. On the issue of members who opted out following an election to purchase pension in the first options exercise, we have been clear that any member who is eligible for the second options exercise will be able to purchase any or all of their continuous RDS service, with the sole exception of any service already purchased as part of the first options exercise. It is our position that the ability to purchase service would include any service that the individual opted out of purchasing following the first options exercise.

81. The Welsh Government acknowledges that the deadline for an application for an additional death grant is incorrect and has extended it to 31 July 2025 which is the date that the options exercise ends. The same revised deadline has been included for applications for the special death grant. Since the consultation closed, the Welsh Government has been made aware of broader concerns regarding the eligibility criteria for the special death grant and additional death grant. We propose reviewing these concerns in collaboration with the responsible authorities for the other firefighter pensions schemes in the UK. Rather than delaying the implementation of this second options exercise to do so, and risk complications and timing issues in respect of the interaction with age discrimination remedy, we will continue with our proposals to bring the main provisions for the second options exercise into force on 1 February 2024 and introduce any further revisions relating to death benefits separately, if necessary.

82. On the requirement to provide remediable service statements by the deadlines set out in age discrimination regulations we acknowledge that, for those individuals eligible to take part in the second options exercise, an RSS will need to be issued following an election in that exercise. However, we do not believe that there is any reason to set out further clarification in legislation to provide for this. As acknowledged by the respondent, the regulations already provide for scheme managers to issue an RSS after 31 March 2025, and the response to Question 2 above, sets out clearly how the remedies will need to interact. This matter has also been clarified at the Firefighter Pension Scheme Advisory Board for Wales.

83. We note the concern raised regarding sufficient time for software development between the legislation being made and implementation. We have ensured that the deadlines for the exercise have been updated to reflect the different implementation date in Wales. The exercise for the FRAs in Wales, will also be very similar to the exercise for the rest of the UK, with the only key difference being the timings for the repayment of contributions, which are supported by a GAD calculator.

The exercise that is already underway in England and Northern Ireland will therefore have laid the foundation for any software changes for the exercise in Welsh FRAs.

84. On tax issues relating to the second options exercise, the Welsh Government agrees that, rather than applying a basic tax rate of 20% to compensation deduction, the basic taxation rates that applied during the historic period for which pension is being purchased should apply. In addition, where an individual can provide robust evidence to show that they paid a higher rate of tax during the relevant period, then the higher rate will be used to calculate the reduction. These amendments have been included in the legislation. Our consultation set out that there is already some mitigation where an individual purchases their historic service in a single tax year where an individual has unused Annual Allowance from previous tax years. Annual Allowance also increased from £40,000 to £60,000 from 1 April 2023. Tax issues arising from the first options exercise were not the subject of this consultation and are a matter between the employer, the employee and HMRC.

85. We note the suggestions made regarding the steps that FRAs should take to make sure that they notify eligible individuals of their entitlement to take part in the second options exercise but believe that “reasonable endeavours” is the appropriate level of burden in the circumstances, and that the steps each FRA should take are a matter for local consideration, based on local circumstances. FRAs can use any means to locate eligible individuals including using external sources if they choose to. The Welsh Government therefore does not plan to be more prescriptive on this matter.

86. The Welsh Government will ask the Firefighter Pension Scheme Advisory Board for Wales to monitor the implementation of the 2024 Options exercise to ensure that it is delivered on time and to act as a conduit for raising and resolving any problems identified during the process. We are aware that the Local Government Association has already undertaken a considerable amount of work to provide standard templates and guidance to FRAs to provide for consistent implementation across FRAs. This is consistent with the approach used in the first options exercise.

87. Regarding our proposals for the compensation scheme, we note the respondent’s concerns that individuals performing duties that are not statutory duties of the FRA under the Fire and Rescue Services Act 2004, would not be protected. However, we believe that that this position is correct. Our proposals seek to extend rights to compensation to all those contracted to discharge any of an FRA’s core emergency response duties, not any other discretionary work that an FRA might agree to perform. FRAs do not currently provide compensation scheme benefits for duties that are not statutory duties under the Fire and Rescue Services Act 2004, so we do not believe that our proposal would create an anomaly.

OTHER AMENDMENTS

88. During our post-consultation analysis, as well as reviewing the responses that we received to our own consultation, we have also analysed the summary of

responses published by the Home Office and the resultant amendments that the Home Office have made to the provisions of the scheme applicable to FRAs in England. Some of the amendments that the Home Office have included were not issues that were raised in our consultation responses. However, we believe that they should also be included in our final provisions. We discussed these proposals with the Firefighter Pension Scheme Advisory Board for Wales, whose membership includes all of the key employee and employer representatives, prior to their inclusion in the final provisions. The key amendments are as follows :-

- Provision for 25% of wholetime reference pay as the default for calculation of the death grant for the extended limited period.
- Provision for 25% of wholetime reference pay as the default for pre-2000 service where the authority does not hold pay records and they have to determine pensionable pay from other records or local experience. In such a case, where this determination indicates an amount lower than 25%, then 25% becomes the default. In cases where the authority determines from other records or local experience that the amount is higher than 25% then the higher amount can be used.
- Provision for the 30-year maximum service cap not to be breached as a result of added pension purchased in the first options exercise and decisions to purchase further service in the second options exercise.
- Provision to apply interest to the tax relief amount that will be debited off contributions owed by a member (as well as applying interest to contributions owed).
- Provisions in respect of transfers and conversions have now been included as reference in our consultation document. These are consistent with the policy on transfers and conversions for the second options exercise being implemented elsewhere in the UK.

NEXT STEPS

89. The Welsh Government would like to thank all those that responded to the consultation. We will now make and lay the Firefighters' Pension Schemes and Compensation Scheme (Amendment) (Wales) Order 2024 to come into force on 1 February 2024.

ANNEX 1 – LIST OF RESPONDENTS

- Fire and Rescue Services Association
- Fire Brigades Union
- Heywood Pension Technologies
- Mid and West Wales Fire and Rescue Service
- North Wales Fire and Rescue Authority
- South Wales Fire and Rescue Service
- Eight Individual Responses