

Consultation on amendments to Firefighter Pension Schemes in Wales 2020

SECTION 1. 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 McLaughlin² 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

¹ [2017] UKSC 47

² [2018] UKSC 48

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.

A. CHILDREN'S RIGHTS IMPACT ASSESSMENT

1. Describe and explain the impact of the proposal on children and young people.

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

The Supreme Court ruling in the case of McLaughlin held that denying benefits payable to (or on behalf of) children based on their parents' marital status was unlawful. Whilst the McLaughlin judgment relates to social security benefits rather

than pension benefits, the Welsh Government believe that the current limitations within the 2007 Compensation Scheme could also be considered discriminatory. We also believe that it is wrong to deny benefits to children because of the marital status of their parents, over which they have no control.

Amending the 2007 Compensation Scheme would remove discrimination against children of unmarried couples in compliance with the Supreme Court ruling. It would also eliminate the differential treatment currently applied to dependant, step and adopted children.

2. Explain how the proposal is likely to impact on children's rights.

As referred to above the Supreme Court held in the case of McLaughlin that it was unlawful to deny a child benefits payable to (or on behalf of) children based on their parents' marital status. This clearly discriminates against the child for his/her parents' life choices, over which a child plainly has no control. All firefighter pension schemes in Wales provide that dependent children of scheme members are entitled to a survivors' benefit where there is no surviving spouse or civil partner. However, the 2007 Compensation Scheme does not allow for payment where a child is born to unmarried parents, to a step child where their marriage has taken place after retirement or to a child which has been adopted after retirement.

This clearly breaches Article 2 and arguably Article 27 of the United Nations Convention on the Rights of the Child. Equalising entitlement to these children will ensure that a child in this situation is not adversely affected as a result of factors over which they have no control.