

EXPLANATORY MEMORANDUM AND REGULATORY IMPACT ASSESSMENT TO THE FIREFIGHTERS' PENSION (WALES) SCHEME (AMENDMENT) ORDER 2009

1. This Explanatory Memorandum and Regulatory Impact Assessment has been prepared by the Social Justice and Local Government Division and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

2. Description

2.1 The Firefighters' Pension (Wales) Scheme (Amendment) Order 2009 amends the Firefighters' Pension Scheme 1992 as it has effect in Wales ("the 1992 FPS"). The 1992 FPS is set out in Schedule 2 to the Firefighters' Pension Scheme Order 1992. It is now a closed scheme: those entering the fire and rescue service on or after 6 April 2006 may become members of the New Firefighters Pension Scheme. The amendments provide for additional pension benefit for long service and in respect of continual professional development, and entitle a regular firefighter (a firefighter who is neither a retained nor a volunteer firefighter) with at least 30 years' service at the age of 55 to two pensions in certain circumstances. The amendments are described in more detail below under the heading "Purpose and intended effect of the legislation".

3. Matters of special interest to the Subordinate Legislation Committee

Amendments to the 1992 FPS

3.1 The Firefighters' Pension (Wales) Scheme (Amendment) Order 2009 (FPS Order 2009) amends the 1992 FPS (set out in Schedule 2 to the Firemen's Pension Scheme Order 1992) as it has effect in Wales. The amendment that introduces new rule B5A: entitlement to two pensions (made by article 2 and paragraph 1 of the Schedule) has effect from 1 April 2007. The other amendments have effect from 1 July 2007. Further detail of the amendments is contained under the 'Purpose and intended effect of the legislation' paragraph.

4. Legislative Background

4.1 The 1992 FPS is set out in Schedule 2 to the Firemen's Pension Scheme Order 1992 (SI 1992/129). The Scheme was re-named the Firefighters' Pension Scheme by SI 2004/2306. The 1992 FPS is now a closed scheme; those entering the fire and rescue service on or after 6 April 2006 may become members of the NFPS. The Order amending the 1992 FPS is made under section 26 of the Fire Services Act 1947. That section was saved from the repeals of that Act by the 2004 Act. Power to give retrospective effect is conferred by section 12 of the Superannuation Act 1972, as applied by section 16(3) of that Act.

5. Purpose and intended effect of the legislation

Amendments to the FPS

- 5.1 The amendment that introduces new rule B5B relates to the discontinuance, with effect from the end of June 2007, of long service increments payable to firefighters who have at least 15 years' continuous service at that point. The amount of the increment, which was pensionable, was frozen, with effect from 7 November 2003, at the annual rate of £990 and reduced, with effect from 1 October 2006, to an annual rate of £495 (but some fire and rescue authorities made compensatory interim and transitional payments).
- 5.2 The effect of the amendment that introduces the related new rule G1(7A) is that the pension of a regular firefighter who was entitled to a long service increment and either retires or becomes entitled to a deferred pension after 30 September 2006 but before 1 October 2007 will be calculated (in accordance with rule G1(3)) without regard to the reduction in the annual rate.
- 5.3 The effect of the amendment that introduces new rule G1 (7B) is that the pension of a regular firefighter who was entitled to a long service increment (or a compensatory interim or transitional payment) and either retires or becomes entitled to a deferred pension on or after 1 October 2007 will be calculated (in accordance with rule G1(3)) either with regard to the amount credited under new rule B5B and without regard to the firefighter's actual long service increment (and any compensatory interim or transitional payment) or with regard to the firefighter's actual long service increment (and any compensatory interim or transitional payment) and without regard to the amount credited under new rule B5B, according to whichever rule produces the more beneficial result for the firefighter.
- 5.4 Other amendments are consequential on the introduction by the National Joint Council for Local Authority Fire and Rescue Services, with effect from 1 July 2007, of a new scheme of payments in respect of continual professional development. Under that scheme the payments are subject to annual review and therefore temporary in nature. For that reason, they would not ordinarily be regarded as pensionable for the purposes of the Scheme. However, the amendments have the effect of making the payments part of pensionable pay. This attracts, among other provisions, those of rule G2 of the Scheme, which require the making of pension contributions in respect of pensionable pay. But the amendment that introduces new rule G1(7C) provides for additional pension benefit credited in respect of continual professional development to be disregarded for the purposes of determining the amount of average pensionable pay (on which the amount of the ordinary pension is based).

- 5.5 The amendment to rule G3 of the Scheme ensures that a person cannot make an election to discontinue pension contributions only in respect of additional pension benefit under new rule B5C.

6. Implementation

- 6.1 It is intended that these Orders will come into force on 9 June 2009. There are no significant implications if this date is not met as the amendments and new provisions in the Order will have retrospective effect as detailed in the 'Purpose and Intended Effect of Legislation' paragraphs.

7. Consultation

- 7.1 All of the amendments have been the subject of extensive consultation with the Firefighters' Pension Committee, on which there are representatives of both the employers and the employees. In addition, regular updates have been given to members of the 1992 FPS through circulars. A 6 week consultation on the Order was undertaken between 26 February and 10 April between the three FRAs, pension administrators and others with an interest. No responses were received.
- 7.2 The amendments are not contentious and the new provisions that protect the pensionability of the long service increment and give pension benefits based on continual professional development have been widely welcomed.

8. Regulatory Impact Assessment

Options

Option 1: Do Nothing

- 8.1 If the Orders was not made, it will mean that the latest statutory position relating to pensions in the rest of the UK will not be reflected in Wales and that different arrangements will therefore be in place in Wales. This will have the effect that Wales could be outside of existing club arrangements meaning that firefighters who transfer between Fire and Rescue Authorities across borders may not be able to transfer their pension rights, leaving them at a disadvantage to their UK counterparts.

Option 2: Make the Legislation

- 8.2 If the Order was made, the amendments will provide for additional pension benefit for long service and in respect of continual professional development and entitle a regular firefighter with at least 30 years' service at the age of 55 to two pensions in certain circumstances. They will also ensure that firefighters in Wales have parity with the rest of the firefighters in the UK.

9. Benefits

- 9.1 The principal amendments affecting the 1992 FPS are the new Additional Pension Benefit (APB) arrangements for CPD allowance and for Long Service Increment (LSI). In addition, the 1992 FPS is being amended to provide for two pensions (split pensions) to give pension protection where the pensionable pay of a scheme member reduces prior to retirement.

10. Costs

- 10.1 There are no additional costs for Fire and Rescue Authorities in respect of the associated pension benefits. The costs of the CPD scheme are being met from within the spend on the former LSI payments, which means that there should be no additional pension costs from giving firefighters Additional Pension Benefits on CPD and LSI payments.

11. Competition Assessment

N/A

12. Consultation

12.1 With Fire Pensions Committee

All of the amendments have been the subject of extensive consultation with the Firefighters' Pension Committee, on which there are representatives of both the employers and the employees and devolved administrations.

12.2 With Stakeholders

A 6 week consultation on the Order was undertaken between 26 February and 10 April between the three FRAs, pension administrators and others with an interest. No responses were received.

13. Post Implementation Review

There is no intention to review the requirements and expectations in the Order in the short term. The National Joint Council has set the level of continual professional development allowance at a rate that utilises the full cost savings from the discontinuance of the long service increment.

14. Summary

- 14.1 The principal amendments affecting the 1992 FPS are the new Additional Pension Benefit (APB) arrangements for CPD allowance and for Long Service Increment (LSI). In addition, the 1992 FPS is being amended to provide for two pensions (split pensions) to give pension

protection where the pensionable pay of a scheme member reduces prior to retirement.