

EXPLANATORY MEMORANDUM AND REGULATORY IMPACT ASSESSMENT TO THE FIREFIGHTERS' PENSION SCHEME (WALES) (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 Scheme (Wales) (Amendment) Order 2009 amends the Firefighters' Pension Scheme (Wales) Order 2007 ("the NFPS"). The NFPS is set out in Schedule 1 to the Firefighters' Pension Scheme (Wales) Order 2007. The Order corrects errors in the NFPS Order and introduces some new material into the NFPS. 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 NFPS

- 3.1 The Firefighters' Pension Scheme (Wales) (Amendment) Order 2009 (NFPS Order 2009) amends Schedule 1 of the NFPS. Some of the amendments correct errors in the NFPS scheme and also introduce new provisions. The NFPS has effect from 1 April 2006, which is the date from which the Scheme has effect. Power to give the Order retrospective effect is conferred by section 34 of the Fire and Rescue Services Act 2004. The amendments specified in paragraphs 8(a) and 8 (c)(i) of the Schedule to this Order correct cross references. Other amendments, except those made by paragraphs 3 (b), 4 (e) and 9 (a)(i) and (b)(i) and (iii) of the Schedule, correct errors, including errors of omission. Some of those correcting amendments have resulted in the insertion of new rules or paragraphs as detailed under the 'Purpose and intended effect of the legislation' paragraph.

4. Legislative Background

- 4.1 The NFPS is set out in Schedule 1 to the Firefighters' Pension Scheme (Wales) Order 2007. The amendments to this Order are made under section 34 of Fire and Rescue Services Act 2004 (the "2004 Act"), which also confers power to give retrospective effect to those amendments.

5. Purpose and intended effect of the legislation

Amendments to the NFPS

- 5.1 The amendment made by paragraph 4(a) inserts a new paragraph (4) in rule 2 of Part 3 (award on ill health retirement) to provide for the calculation of ill health awards payable in the case of a firefighter member who is entitled to two pensions by virtue of rule 7 of that Part.
- 5.2 The amendment made by paragraph 4 (f)(i) inserts new paragraphs (8A) to (8C) in rules 9 of Part 3 (commutation: general) to provide for account to be taken of any earlier commutation. This is to ensure that any subsequent pension and lump sum is reduced accordingly where an ill health pension or a deferred pension that has been paid early is terminated under Part 9.
- 5.3 The amendment made by paragraph 6(c) inserts new rule 6 in Part 6 (pension sharing on divorce) which allows for the payment of a lump sum death grant where a pension credit member dies before any benefits under the Scheme become payable. The grant is to be paid to the deceased member's personal representatives.
- 5.4 The amendments made by paragraphs 3(b), 4(e) and 9(a)(i) and (ii) of the Schedule reflect policy changes since the introduction of the Scheme. The amendments made by paragraphs 3(b), 4(e), partially, and 9(b)(iii) have effect from 1 April 2007. The others have effect from 1 July 2007.
- 5.5 The amendment made by paragraph 4(e) of the Schedule, in so far as it inserts new rule 7A and so much of new rule 7C as relates to rule 7A, into Part 3 of the Scheme, 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 (with some interim and transitional payment) in respect of a period including 30 June 2007 and who either retires or becomes entitled to an additional pension credit in respect of long service, calculated without regard to the reduction in the annual rate.
- 5.6 The effect of the related amendment made by paragraph 9(b)(iii) of the Schedule, which inserts new rule 2(5A) into Part 11 of the Scheme is that the pension of a firefighter member who is entitled to additional pension benefit under new rule 7A of Part 3 will be calculated either with regard to the amount of additional pension benefit credited to the firefighter member and without regard to the firefighter member's actual long service increment (and any compensatory interim or transitional payment) or with regard to the firefighter member's actual long service increment (and any compensatory interim or transitional payment) and

without regard to the amount credited to the firefighter member under new rule 7A of Part 3, according to whichever rule produces the more beneficial result for the firefighter.

- 5.7 The amendment made by paragraph 4(e) of the Schedule, in so far as it inserts new rule 7B, and so much of new rule 7C as relates to rule 7B, into Part 3 of the Scheme is 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 (CPD). 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.
- 5.8 However, the amendment made by paragraph 9(a)(i) has the effect of making the payments part of pensionable pay. This attracts other provisions, those of rule 3 of Part 11 of the Scheme, which require the making of pension contributions in respect of pensionable pay. But the amendment made by paragraph 9(b)(i) provides for payments in respect of continual professional development to be disregarded for the purposes of determining the amount of final pensionable pay (on which the amount of the ordinary pension is based).
- 5.9 The amendment to rule 2(5) in Part 2 of the Scheme, made by paragraph 3(b) of the Schedule to this Order, ensures that a person cannot make an election to discontinue pension contributions only in respect of additional pension benefit under rule 7B.

6. Implementation

- 6.1 It is intended that this Order 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 NFPS 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 Order 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. It 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 NFPS 2007 are the new Additional Pension Benefit (APB) arrangements for CPD allowance and for Long Service Increment (LSI). The amendments also include a number of corrections identified since the original Order came into force.

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 NFPS 2007 are the new Additional Pension Benefit (APB) arrangements for CPD allowance and for Long Service Increment (LSI). The amendments also include a number of corrections identified since the original Order came into force.