

**EXPLANATORY MEMORANDUM TO THE FIREFIGHTERS' PENSION SCHEME (WALES) (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) REGULATIONS 2015; THE FIREFIGHTERS' COMPENSATION SCHEME AND PENSION SCHEME (WALES) (AMENDMENT) ORDER 2015; THE FIREFIGHTERS' PENSION (WALES) SCHEME (CONTRIBUTIONS) (AMENDMENT) ORDER 2015**

This combined Explanatory Memorandum has been prepared by the Department of Local Government and Communities and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Firefighters' Pension Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015, the Firefighters' Compensation Scheme and Pension Scheme (Wales) (Amendment) Order 2015 and the Firefighters' Pension (Wales) Scheme (Contributions) (Amendment) Order 2015. I am satisfied the benefits of making these Statutory Instruments outweigh any costs.

**Leighton Andrews AM**  
**Minister for Public Services**  
**DATE**

## **Description**

1. The making of the Firefighters' Pension Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015 and the Firefighters' Compensation Scheme and Pension Scheme (Wales) (Amendment) Order 2015 to (a) provide transitional arrangements for members who transfer to the new Firefighters' Pension Scheme (Wales) 2015 from 1 April 2015 onwards and to amend the 2007 Compensation Scheme to make provision for members of the Firefighters' Pension Scheme 2015 and (b) amend the new Firefighters' Pension Scheme 2007 in respect of special members of the modified 2007 Scheme and to amend the Firefighter Pension Scheme 1992.

2. The third instrument, the Firefighters' Pension (Wales) Scheme (Contributions) (Amendment) Order 2015, substitutes the table of firefighter contributions under the 1992 Pension Scheme to provide an annual one per cent uplift in the pay bands until 2018

## **Matters of special interest to the Constitutional and Legislative Affairs Committee**

3. In most cases the policy approach to the Welsh Ministers' making of instruments under the above provisions (and, to a similar extent, that of the Scottish Ministers) has been to replicate the provision which is made for England. The main exception has been in relation to the regulations making the first scheme under the Public Service Pensions Act 2013 (2013 Act) where two features of the new scheme differ from the England scheme. However, these statutory instruments, which deal with the transition of existing unprotected scheme members into a new 2015 Scheme, do not depend at all on the design of that new Scheme.

4. Thus, the final versions of the instruments made in England have been replicated with the only amendments made in Wales being to reflect the Welsh SI format and to provide for gender-neutral drafting. This has meant significant delays in introducing the statutory instruments as the final English statutory instruments were not available to the Welsh Government until 6 March 2015. In order for these to be in force for 1 April 2015 it is necessary to breach the 21 day rule. The Presiding Officer has been notified of the breach by letter. The Treasury have advised that if the Orders were brought into force on a date later than the 1 April 2015, under Section 18(1) of the 2013 Act this would mean that all scheme members would stop accruing pension benefits in the old Schemes. That would mean that members would need to be auto-enrolled into the new Pension Scheme by the next day – including those who have protected rights to remain in their current Scheme.

5. Some of provisions in the Firefighters' Compensation Scheme and Pension Scheme (Wales) (Amendment) Order 2015 have retrospective effect. These are explained in paragraphs 42-46 of this Memorandum and replicate similar provisions made in England and in Scotland.

## Legislative background

6. The Firefighters' Pension Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015 are made under sections 1(1) and (2), 2(1), 3(1), (2), (3)(a) and (c), (6) and (7), 18(5) and (6), paragraph 6(b) of Schedule 2, Schedule 3 and paragraphs 1(2)(ii), 2(2)(ii) and 5(1) of Schedule 7 to the 2013 Act and deal with the benefits of firefighters who are members of the Firefighters' Pension Scheme 1992 ("the 1992 Scheme") or the Firefighters' Pension Scheme 2007 ("the 2007 Scheme") and subsequently under the 2015 Scheme.

7. The main provisions for the 2015 Scheme are set down in the Firefighters' Pension Scheme (Wales) Regulations 2015 (SI 2015/622 (W. 50)). In addition, the Firefighters' Pension Scheme (Wales) (Consequential Provisions) Regulations 2015 made additional provisions in relation to certain taxation matters.

8. The Firefighters' Compensation Scheme and Pension Scheme (Wales) (Amendment) Order 2015 is made under the following powers:

- Sections 34 and 60 of the Fire and Rescue Services Act 2004 ("the 2004 Act") allows the Welsh Ministers, by order, to make provision for a pension scheme for firefighters.
- Section 34 of the 2004 Act also allows the Welsh Ministers, by order, to make a scheme for the payment of compensation to, or in respect of, firefighters who have been injured or who have died. Section 34(3) provides that an order under that section may take effect from a date which is earlier than that on which the order is made.

9. This Order complies with section 34, which was amended by the 2013 Act with the insertion of sub-paragraph (1A) which introduces a restriction (pursuant to sections 18 and 19 of the 2013 Act) on benefits provided under existing schemes for firefighters regarding the payment of pensions, allowances and gratuities to or in respect of persons who are or have been employed by a fire and rescue authority and persons who die or have died while so employed.

10. The Firefighters' Pension (Wales) Scheme (Contributions) (Amendment) Order 2015 is made under Section 26 of the Fire Services Act 1947 which enables the Welsh Ministers to establish a pension scheme, by order, for the payment of pensions, allowances and gratuities to employees of fire brigades and includes provision for the making of employee contributions.

11. The Firefighters' Pension Scheme 1992 was established under this power and is set out in Schedule 2 to the Firemen's Pension Scheme Order 1992 (S.I. 1992/129). In relation to Wales the name of the scheme was changed to the Firefighters' Pension Scheme by article 4(1) of S.I. 2004/2917. The Fire Services Act 1947 was repealed by sections 52 and 54 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c.21). Subsections (1) to (5) continue to have effect

in relation to England, Scotland and Wales for the purposes of the Firefighters' Pension Scheme 1992 by virtue of S.I.2004/2917 and S.I. 2004/2918.

12. These Regulations and Orders will follow the negative resolution procedure.

### **Purpose & intended effect of the legislation**

#### **• The Firefighters' Pension Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015**

13. Both the 1992 and the 2007 Schemes calculated pensions on a final salary basis, that is, the amount of pensionable salary earned at the point of retirement. As required by the 2013 Act, the 2015 Scheme is a career average scheme, under which pensions are calculated on the basis of the average salary earned over the course of pensionable service.

14. The aim of these Regulations is to set out how members move from a final salary Scheme (ie, the 1992 or 2007 Schemes) to the career-average 2015 Scheme. In particular, the Regulations protect the rights that members have accrued in the 1992 and 2007 schemes, ensuring that these rights will be correctly represented and administered from the time that the member joins the 2015 Scheme under the Firefighters' Pension Scheme (Wales) Regulations 2015 (WSI 2015/622 (W. 50)).

15. Welsh Fire and Rescue Services Circular (W-FRSC(2015)04) issued on 16 February 2015 set out the design for the 2015 Scheme and stated that there would be full statutory protection for accrued rights for all members as follows:

- All accrued rights are protected and those past benefits will be linked to final salary when members leave the Firefighters' Pension Scheme 2015.
- For members of the 1992 scheme the Welsh Government will further meet:
  - (a) Members' expectation of double accrual for service accrued under the Firefighters' Pension Scheme 1992; so that a member's full continuous pensionable service upon retirement will be used to calculate an averaged accrual rate up to a maximum accrual rate of 1/45th.
  - (b) Members' expectation of being able to access their 1992 scheme benefits when they retire at that scheme's 'ordinary pension' age (i.e. from age 50 with 25 or more years pensionable service), subject to abatement rules for that scheme.
- Pensionable service for the purpose of calculating the ordinary pension age will include any continuous pensionable service accrued under both the 1992 scheme and the 2015 scheme members' expectation of an actuarially assessed commutation factor for benefits accrued under the 1992 Scheme.

16. The Firefighters' Pension Scheme (Wales) Regulations 2015 set out the conditions for full and tapered protection for members of the 1992 and 2007 schemes, and detailed when those members should transfer into the 2015 Scheme. These Regulations address the remaining issues, describing how those members will access their accrued rights. The purpose of the Regulations is to resolve matters arising from the accrual of pension in both one of the final salary schemes and in the career-average Firefighters' Pension Scheme 2015.

**Active and deferred membership (New paragraphs 34, 35 and 36 of Schedule 2 of the 2015 Regulations; Rules 1C and 4 of Part 2 and Rules 3 and 4 of Part 3 of the 2007 Order; and Rules A3, A13A, B1A, B1B, B5 and F2 of the 1992 Order)**

17. These provisions determine when a member is active or deferred in each of the 1992, 2007 and 2015 schemes, having participated in more than one of those schemes.

18. For members of the 2007 Scheme other than special members, the Regulations ensure that if a member ceases to have active membership in the 2015 Scheme but returns after a gap of not more than five years, their previous 2015 Scheme service and any connected 2007 Scheme service will no longer be deferred. Instead, it will be treated as active for certain purposes and as continuous with any new 2015 Scheme service. If a member re-joins and the gap in membership exceeds five years, the earlier membership in both the 2015 Scheme and the 2007 Scheme will remain deferred and the new membership in the 2015 Scheme is treated as a separate pension entitlement.

19. A different approach applies in respect of 1992 Scheme members and special members of the 2007 Scheme, as the 1992 Scheme is closed to re-joiners. As a consequence, the member is not treated as active for certain purposes in the 1992 Scheme once they leave pensionable service in the 2015 Scheme. In such instances they would become a deferred member of the 1992 Scheme. If the member elects to re-join a firefighters' pension scheme while still transitionally or fully protected, they would join the 2007 Scheme, rather than the 2015 Scheme. However, a member of the 1992 Scheme who is in continuous pensionable service in that Scheme before the transition date and remains in continuous pensionable service in the 2015 Scheme until they leave pensionable service or retire, is treated as an active member of the 1992 Scheme for certain purposes.

**End of active membership in one of the final-salary schemes (Amended Parts A and B of Schedule 2 to the 1992 Order and amended Parts 2 and 3 of Schedule 1 to the 2007 Order)**

20. These provisions ensure that the transitional protections set out in the 2015 Regulations are reflected in the 1992 and 2007 Scheme Orders. The transitional protections set out when a member of the 1992 and 2007 schemes must move into the 2015 Scheme, or else become a deferred member of their scheme.

**Qualifying for benefits (New paragraphs 40 and 41 of Schedule 2 of the 2015 Regulations; amended Rule 1 of Part 10 of the 2007 Order and amended Rule F2 of the 1992 Order)**

21. Two years' membership of the 1992 Scheme is the minimum amount required in order to qualify for benefits in that scheme. The equivalent provision in the 2007 and 2015 schemes is three months. In considering whether a 2015 scheme member with service in either the 2007 or 1992 scheme qualifies for benefits in either the member's previous scheme or in the 2015 Scheme, any linked 1992, 2007 and 2015 Scheme service is to be taken into account. For qualifying purposes, transferred-in service in the 1992 or 2007 Scheme is counted on the same basis as before 1 April 2015.

**Accrual rate (New paragraphs 31 and 34 of Schedule 2 of the 2015 Regulations and new Part 2A of Schedule 2 of the 1992 Order)**

22. At present 1992 Scheme members can benefit from "double accrual", which takes effect after 20 years' service. Members of the 2015 Scheme with 1992 Scheme benefits who remain in continuous pensionable service in the 2015 Scheme, will have those benefits calculated on the basis of the accrual rate that they would have received had they remained in the 1992 Scheme until retirement. This is achieved by taking into account the pensionable service accrued in the 2015 Scheme. For example, if a member accrued 30 years' continuous service between the 1992 and 2015 Scheme, their accrual rate for any service accrued under the 1992 Scheme will be calculated on the basis of 1/45<sup>th</sup> of pensionable salary for each year of such service. A formula that provides for this effect is set out in new Part 2A of Schedule 2 to the 1992 Scheme.

**Final pensionable pay (New paragraphs 32, 33, 34, 42 and 43 of Schedule 2 of the 2015 Regulations; amended Rule 2 of Part 11 and Rule 8 of Part 12 of the 2007 Order; and Rules B1A, B5A, G1 of the 1992 Order)**

23. Schedule 7 to the 2013 Act requires that the old scheme retirement pension is calculated using earnings at retirement or upon leaving the new scheme so enabling the old scheme pension rights to be honoured in full ("the final salary link"). Paragraphs 42 and 43 of schedule 2 provide that this right may only be exercised once and that any subsequent period of employment and scheme membership will not lead to a recalculation of any old scheme pension that is in payment.

24. Where a member of the 2015 Scheme has service that is continuous from the 1992 or 2007 Scheme, the member's final pensionable pay is used. Service is still regarded as "continuous" so long as any break in service is no more than five years, or if any longer, spent in pensionable public service. Provided that continuity of service is maintained in this way, benefits relating to the member's earlier scheme will be linked to their final salary when the member ceases active membership of the 2015 Scheme.

25. Where the “final salary link” applies, there is a requirement in the 2013 Act that the member’s “pensionable pay” in the 2015 Scheme is not less generous than it would have been in their previous scheme. This includes certain allowances and supplements that would previously have been deemed to be pensionable and could also apply if the member has seen a reduction in salary. The Regulations, therefore, ensure that a member is not disadvantaged if the definition of final salary used to determine their benefits would have been higher in their original scheme than under the 2015 Scheme.

26. When a decrease in pay occurs before the member becomes a member of the 2015 Scheme and pay does not again rise above that high point, final pensionable pay is determined using the member’s 1992 or 2007 scheme pensionable pay and rules. When the decrease occurs after transition, the member’s pensionable pay in the last year of service before the decrease occurred is used. When a member joins the 2015 Scheme, but does not re-join the scheme in time to retain continuity of service, final pensionable pay would be that at the point of deferment from the member’s original membership.

**Additional pension (New paragraphs 31 and 34 of Schedule 2 of the 2015 Regulations; Rule 7 of Part 11 of the 2007 Order and Rules B5D, G2A, G7 and G8 of the 1992 Order)**

27. If a member has already arranged to purchase additional service or increased benefits in the 1992 or 2007 scheme, the arrangement will remain valid even after the member transfers to the 2015 Scheme provided that they had remained in continuous pensionable service in the 2015 Scheme if they were members of the 1992 Scheme, or if they were members of the 2007 Scheme who had continuity of service. These members will continue to pay additional contributions on the same basis as they did before transferring from their final-salary scheme.

**Transfer of final-salary benefits (New paragraphs 44, 45 and 46 of Schedule 2 of the 2015 Regulations and amended Rules 1, 8, 9 and 10 of Part 12 of the 2007 Order)**

28. These provisions are necessary to cater for individuals wishing to transfer in membership of another public service pension scheme, which has accrued on a final-salary basis. Upon joining, although their active membership may be in the 2015 Scheme, the transferred-in amount should be transferred into the 2007 Scheme. This is because the 2015 Scheme is operated wholly on a career-average basis and does not provide for final salary pensions.

**Authority-initiated early retirement (Amended Regulation 71 of the 2015 Regulations and Rule 6 of Part 3 of the 2007 Order)**

29. Where a firefighter with 2007 Scheme membership is subject to authority initiated early retirement in the 2015 Scheme, the employing authority must at the same time consider using the equivalent provisions in the 2007 Scheme.

**Refunds of contributions (New paragraph 39 of Schedule 2 of the 2015**

## **Regulations)**

30. If a member with existing 2007 Scheme service ceases active membership after transferring to the 2015 Scheme, contributions are refunded if the member has in total less than three months' qualifying service across both schemes and any further contributions for additional service cease to be payable.

### **Ill-Health (Regulations 60, 68, 74, 75, 78A and 80A of the 2015 Regulations, new paragraphs 22, 23, 24, 25, 37 and 38 of Schedule 2 of the 2015 Regulations; new paragraph 2A of Part 12 and Annex 1 of the 2007 Order; and Rules B3, B7 and F9 of the 1992 Order)**

31. These Regulations set down how the ill-health benefits of individuals who have participated in the 2015 Scheme and in one of the final-salary schemes should be determined.

32. The Transitional Regulations provide that where a 2015 Scheme member who was previously in the 1992 or 2007 scheme becomes entitled to a lower-tier ill-health pension, their entitlement is paid from the 2015 Scheme. However, to ensure that connected service in the 1992 or 2007 Scheme is also recognised, an equivalent amount of benefit is calculated in accordance with the rules of their earlier scheme, and this 'equivalent amount' is paid from the 2015 Scheme. Commuted lump sums are paid and determined on the same basis.

33. Any entitlement to a higher tier pension is calculated in accordance with the 2015 Scheme. However, the higher tier enhancement is applied to the lower tier pension, including the "equivalent amount" calculated in accordance with the member's earlier scheme rules, but "adjusted" so that added pension is not taken into account.

34. As the member's 1992 or 2007 scheme pension is left in their previous scheme, it is possible for that pension to be transferred to another pension scheme, even if they are already receiving ill-health benefits from the 2015 Scheme in respect of their prior scheme service. Consequently, if that pension is transferred out to another pension scheme, the corresponding 'equivalent portion' of ill-health pension is deducted from the ill-health pension being paid out of the 2015 Scheme.

35. When a member who has moved into the 2015 scheme from either the 1992 or 2007 scheme reaches the Normal Pension Age in their previous scheme, the 'equivalent amount' ceases to be payable from the 2015 Scheme and is replaced by a continued pension from the member's previous scheme payable from normal pension age.

36. There are special provisions to deal with the cases where any member is being considered for an ill-health award at the time of their transition.

37. Members with 1992 Scheme service who are awarded a lower-tier ill-health pension which is payable under the 2015 Scheme as an 'equivalent amount' will continue to be able to commute a proportion of these those benefits



to a lump sum under the 1992 Scheme terms, using actuarially neutral factors. Any connected 2015 Scheme service will count towards determining whether the member can commute the maximum 25% of their 1992 Scheme pension if they retire before age 55.

**Death benefits (Amended Regulations 87, 95, 102 and 105, and new paragraphs 26, 27, 28, 29 and 30 of Schedule 2 of the 2015 Regulations and Rules C1, D1, E1, E3, E4 and E8A of the 1992 Order)**

38. Under the 2015 Scheme, survivor benefits are provided in the form of surviving partners' pension, bereavement pension, children's pension and lump sum death benefits, which reflects similar provision in the 2007 Scheme. Surviving partners of all 2015 Scheme members who are not deferred members of the 1992 or 2007 scheme, who die in pensionable service in the 2015 Scheme, will have their benefits determined under the 2015 Scheme. Similarly, where these members die in service and have eligible children, they will also receive benefits under the 2015 Scheme, rather than under the member's previous scheme. However, if the individual was a deferred member of the 1992 or 2007 scheme, the survivor will receive deferred survivor benefits in accordance with those scheme rules. The provisions for lump sum death payments are no less than they would have been under the 1992 or 2007 scheme.

• **The Firefighters' Compensation Scheme and Pension Scheme (Wales) (Amendment) Order 2015**

39. This Order amends Schedule 1 to the Firefighters' Compensation Scheme (Wales) Order 2007 (SI 2007/1073 (W. 111)) which provides a compensation scheme for firefighters and dependants of firefighters in Wales ("the Compensation Scheme") in consequence of the coming into force of the 2015 Scheme.

40. This Order also amends Schedule 1 to the Firefighters' Pension Scheme (Wales) Order 2007 (SI 2007/1072 (W. 110)). The amendments:

- clarify provisions in the 2007 Scheme;
- extend the period that members can elect to join the modified schemes, by identifying eligible members and extending the period for which they can make an election to pay additional pension contributions during the specified period in respect of their service during the specified period;
- clarify provisions relating to the payment of interest in respect of contributions payable during the period 6 April 2006 and the date that an eligible individual joined the standard 2007 Scheme;
- amend the commutation factors table set out in Annex ZA of the 2007 Scheme to reflect the commutation factors as on 31 March 2014;
- update provisions and terminology as a consequence of the coming into force of the 2015 Scheme;
- revise the 2007 Scheme pensionable pay bands to include a 1% annual uprating for the next four years from 1 April 2015.

41. The amendments update provisions as a consequence of the coming into force of the 2015 Scheme, to ensure that members of the 2015 Scheme, firefighters eligible to be members of the 2015 Scheme, and their qualifying survivors, receive compensation awards in the event of a qualifying injury or death in service in accordance with the Compensation Scheme.

42. Retained Duty System (RDS) firefighters are a group that is distinctly identifiable from regular firefighters in that they only attend a fire station when they receive an emergency callout or undertake other activities. They were historically precluded from membership of the 1992 Scheme but have been entitled to join the 2007 Scheme since 6th April 2006.

43. Following a series of appeals by retained firefighters to the Employment Tribunal and the House of Lords claiming access to the 1992 Scheme under the Part time Workers (Prevention of Less Favourable Treatment) Regulations (S.I.2000/1551), the 2007 Scheme was amended in December 2014 to introduce a 'modified section'. This is known as the "Modified Scheme" and provides individuals employed as retained firefighters during the period 1 July 2000 and 5 April 2006, with an opportunity to purchase pension benefits in respect of this employment. The benefits provided by the Modified Scheme are comparable to those that are available to members of the 1992 Scheme. Fire and rescue authorities have until 31 December 2015 to undertake and conclude, an options exercise to identify all those former and current employees with an entitlement to join the Modified Scheme; inform them of this entitlement to join; provide a quote advising them of the costs of purchasing their past service; and ultimately enrol those individuals who then elect to join into the Modified Scheme.

44. This Order extends the time available to fire and rescue authorities to complete the options exercise by 2 months, meaning that the new deadline will be 29 February 2016.

45. The Modified Scheme requires the application of interest to any retrospective pension or lump sum paid, and on any employee contributions paid in respect of purchasing past service. The current provisions regarding individuals who elect to convert special service to their standard membership, and are required to buy any break in scheme membership between 6 April 2006 and the date they joined the standard 2007 Scheme, did not address the interest payable during this period. Amending the 2007 Scheme provisions is required to reflect the original policy intention.

46. The amendments to the 2007 Scheme also correct a number of small errors in the commutation factor tables that apply to special members who retire. These corrections ensure that the original policy intention to provide special members with fixed commutation factors – that reflect those in the 1992 Scheme as at 31 March 2014 – is achieved.

## **Changes to the compensation scheme (Schedule 1)**

### **Amendment of Part 1 (interpretation)**

47. Part 1 provides definitions for specific terminology used within the Scheme's regulations. Paragraph 4 of Schedule 1 to this Order amends this part to:

- provide definitions for the additional terms used in respect of members of the 2015 Scheme;
- provide for the "normal pension age" in the 2015 Scheme to be determined by the 2013 Act (section 10), which is currently set at 60 years;
- correct an existing error so that it is clear that the "normal pension age" in relation to the 2007 Scheme is 60 years;
- Increase the scope of the definition of "pensionable service" so that it also applies to members of the 2015 Scheme. In addition, the amendments ensures that the provision encapsulates linked service accrued by members of the existing 1992 and 2007 Schemes who subsequently transfer into the 2015 Scheme on or after 1 April 2015;
- increase the scope of the definition of 'relevant service' so that it also applies to those individuals who have an entitlement to join the 2015 Scheme but did not make an election to join, in keeping with the current arrangements for persons who are eligible to be members of the 1992 or 2007 Schemes, who have not joined those schemes.

### **Amendment of Parts 2, 3, and 5 (injury awards and duty related compensation; awards on death)**

48. Paragraphs 5, 6 and 7 of Schedule 1 to this Order amend Parts 2, 3 and 4 of the Compensation Scheme, to ensure the following provisions apply to the members, or eligible members of the 2015 Scheme:

- 'compensation for death or permanent incapacity while on work',
- 'awards on death; spouses and civil partners', and
- 'awards on death; additional provisions.'

49. The amendments also make provision for the commutation of small compensation pensions payable to members of the 2015 Scheme.

### **Amendment of Parts 7 and 7A (servicemen and reservists)**

50. Paragraphs 8 and 9 of Schedule 1 to this Order amend Parts 7 and 7A of the Compensation Scheme to ensure that the compensation provisions relating to armed forces' 'reservists' and 'servicemen' also apply to members of the 2015 Scheme.

### **Amendment of Part 8 (special cases)**

51. Paragraph 10 of Schedule 2 to this Order amends Part 8 of the Compensation Scheme to ensure that the 'special cases' provisions also apply to volunteer members employed on or after 1st April 2015. As such, volunteer firefighters who suffer a qualifying injury on or after 1st April are to be treated as whole-time, regular firefighters for the purposes of calculating an injury award. This reflects the current application for volunteer firefighters in respect of the existing 1992 and 2007 Schemes.

### **Amendment of Part 9 (review, withdrawal and forfeiture of awards)**

52. Paragraph 11 of Schedule 1 to this Order amends Part 9 of the Compensation Scheme to apply the 'review, withdrawal and forfeiture of awards' provisions to members of 2015 Scheme. Part 9 makes provision for the reduction of a 2015 Scheme member's injury award where the permanent disablement that gives entitlement to the injury award has been caused, or contributed to, by the member's own default. This is in line with the current application for existing members of the 1992 and 2007 Schemes.

### **Amendment of Part 10 (payment of awards and financial provisions)**

53. The current 'prevention of duplication' provisions are extended to members of the 2015 Scheme as a result of the amendments at paragraph 12 of Schedule 1 to this Order to Part 10 of the Compensation Scheme. The amendments ensure that where a member of the 2015 Scheme has other separate employments as a firefighter that confer an additional entitlement to join one of the other firefighter pension schemes (namely, any one of the 1992, 2007 or 2015 Schemes), should they subsequently suffer a qualifying injury, they will not receive duplicate injury awards in respect of each employment. This reflects the current application of the provision to members of the existing 1992 and 2007 Schemes.

54. The amendments also ensure that, where a 2015 Scheme member dies from the effects of a qualifying injury whilst employed as a regular firefighter and retained firefighter, duplicate survivor benefits will not be payable. Where survivor benefits are payable from both the Compensation Scheme and the 2015 Scheme, only the survivor benefits from the 2015 Scheme will be payable. This reflects the current application of the provisions to members of the existing 1992 and 2007 Schemes in the same position.

### **Amendment of Schedule 1 (injury awards and duty related compensation)**

55. Paragraph 13 of Schedule 1 to this Order amends Schedule 1 to the Compensation Scheme ensure that where an individual is entitled to an injury award but is not an active member of the 2015 Scheme, the award is determined by reference to the person's 'relevant service'. Effectively, this is the service that the person would have accrued if they had become an active member of the 2015 Scheme.

56. The amendment also ensures that any service, in respect of the same/similar employment, prior to 1 April 2015, where the individual had an entitlement to join either the 1992 or 2007 Schemes, is also to be included as relevant service for the purposes of calculating any injury award entitlement. This reflects the current position for those individuals that have elected not to join the 1992 or 2007 Schemes.

#### **Amendment of Schedules 2, 3 and 4 (awards for spouses and civil partners, awards on death)**

57. The provisions in paragraphs 14, 15 and 16 of Schedule 1 to this Order ensure that the 'special pension', 'child's special allowance', and 'adult dependent relative's special pension' provisions apply in respect of deceased members of the 2015 Scheme. It also provides for the calculation of the 'special pension', 'child's special allowance' and 'adult dependent relative's special pension' on the basis of the deceased's relevant service where they had an entitlement to join the 2015 Scheme but did not elect to join. This reflects the current position for those individuals that have decided not to join the 1992 or 2007 Schemes.

#### **Changes to the Modified Section of the 2007 Scheme (Schedule 2)**

##### **Amendment of Part 1 (citation and interpretation)**

58. Paragraph 1 of Schedule 2 to this Order amends the 2007 Scheme to:

- introduce definitions for specific terminology used in respect of the 2015 Scheme;
- make provision for the 'limited period' to end on 1 April 2015 for those individuals that have no transitional protections and that are provisionally enrolled to the Modified Scheme; and for the 'limited period' to end on the date that they join the 2015 Scheme in respect of those provisionally enrolled members who have full or tapered protections;
- to clarify references in the definitions of special deferred member, special eligibility criteria, special firefighter member, and special pensioner member.

##### ***Amendment of Part 2 (scheme membership, cessation and retirement)***

59. The amendments in paragraph 2 of Schedule 2 to this Order permit provisionally enrolled members to temporarily join the Modified Scheme. Part 2 is also amended to provide clarity that the retrospective award on ill-health retirement being referred to is paid under Part 3 of the 2007 Scheme regulations.

##### ***Amendment of Part 11 (pensionable pay, pension contributions and purchase of additional service)***

60. The amendments in paragraph 3 of Schedule 2 to this Order:

- provide clarity that interest should be payable on any pension contributions owing where a special member converts their standard service in the 2007 Scheme to special pensionable service in the Modified Scheme. This provision was previously inadvertently omitted;
- to make provision for individuals that have an eligibility to join the Modified Scheme to be provisionally enrolled for up to a maximum of 2 months, until 29 February 2016, to enable the responsible fire and rescue authority to conclude the options exercise of giving them the opportunity to make an election to join.

### ***Amendment of Part 15 (miscellaneous provisions)***

61. The provisions in paragraphs 4 of Schedule 2 to this Order correct an error in the commutation factors set out in Annex ZA of the 2007 Scheme so that they reflect the commutation factors of the 1992 Scheme as on 31 March 2014.

### **Amendments to the 2007 Scheme contribution bands (Schedule 3)**

62. Paragraphs 5 and 6 of Schedule 2 to this Order sets out the revised 2007 scheme pensionable pay bands including the 1% annual uprating for the next four years from 1 April 2015. The contribution bands for special members have also been uprated. The figures have been rounded down to the nearest pound to simplify the administration of the scheme. These amendments have been made to Annex A1 (pension contributions) and Annex AB1 (pension contributions for special members).

- **The Firefighters' Pension (Wales) Scheme (Contributions) (Amendment) Order 2015**

63. Article 3 of the Order sets out the revised 1992 Scheme pensionable pay bands to include the 1% annual uprating for the next four years from 1 April 2015. The figures have been rounded down to the nearest pound to simplify the administration of the scheme.

64. It is intended that -. (a) the Firefighters' Pension Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015 and the Firefighters' Pension (Wales) Scheme (Contributions) (Amendment) Order 2015 will come into force on 1 April 2015; and  
(b); the Firefighters' Compensation Scheme and Pension Scheme (Wales) (Amendment) Order 2015 will come into force on 31 March 2015;

### **Consultation**

65. Consultation was undertaken for four weeks from 9 February to 9 March 2015 with Chief Fire Officers, Chief Executives of local authorities, Welsh Local Government Association and representative bodies including the Fire Brigades Union, the Retained Firefighters' Union and the Association of Principal Fire Officers. Please refer to the Regulatory Impact Assessment consultation paragraph below for further information.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **a) Options**

**Do Nothing** – The Public Services Pension Act 2013 provides for the establishment of new public service pension schemes from 1 April 2015. The 2013 Act provides that no benefits are to be provided under an existing scheme to or in respect of person in relation to the person's service after the closing date which for these regulations is 31 March 2015. If these statutory instruments were not established then serving firefighters in Wales would not have access to a public service pension scheme.

**Make the Legislation** – The statutory instruments will ensure serving firefighters in Wales are able to access to a pension scheme established under the Public Services Pension Act 2013.

### **b) Benefits**

The Transitional Regulations cover the detailed transitional arrangements for those current firefighter members who transfer across from either the 1992 Scheme or the 2007 Scheme to the 2015 scheme, either on 1 April 2015 or in the subsequent 7 years. In particular the Regulations cover:

- retirement pension
- ill-health benefits
- survivor benefits
- refunds of contributions
- transfers between different pension schemes.

### **c) Costs**

Costs for the firefighters' pension scheme in Wales are covered by employer and employee contributions, along with grant funding through Annual Managed Expenditure (AME) which is used to top up the difference between scheme income and expenditure, funded by HM Treasury. This procedure will not change when the new scheme is introduced from 1 April 2015.

## **Consultation**

66. This was the third consultation in respect of the introduction of the new Firefighters' Pension Scheme in Wales from April 2015 and was published on 9 February 2015 for 4 weeks to 9 March 2015; four responses were received to the consultation. The consultation sought views on whether the draft regulations met the transitional arrangements required to introduce the new scheme including the calculation of ill-health, new and old members' eligibility for compensatory benefits, additional time for enrolment onto the Modified Pension Scheme and proposals to uprate the pensionable pay bands in the 1992 and 2007 in line with the 2015 Scheme.

67. All four respondents were in agreement with each of the areas highlighted within the consultation document. Comments were expressed that the draft Regulations met the policy intention required and the ill health benefits calculations were correct for transition members. In terms of the Compensation

Scheme, all agreed the proposals would allow these benefits to be calculated on a consistent basis.

68. Three of the respondents noted the administrative burden of the Modified Scheme on Fire and Rescue Authorities and so welcomed the proposal to amend the scheme so that all outstanding cases that are still being processed on 31 March 2015 will be provisionally enrolled to the modified scheme on that date. The proposed amendment will provide authorities with an additional 6 months to finalise all those cases where the individual has been provisionally enrolled.

69. All respondents commented that for consistency purposes it would be appropriate for the pay bands for the 1992 and 2007 Schemes to be updated.

### **Welsh Government Response**

70. The Welsh Government has considered the responses to the consultation and remains committed to public service pension schemes which are affordable, sustainable and fair for public service workers. The draft Statutory Instruments attached to the consultation were incomplete at the consultation stage and the policy proposals were detailed within the consultation document. Based on the positive comments received to the consultation, the Statutory Instruments will be introduced as consulted on.

### **Competition Assessment**

71. Not applicable.

### **Post implementation review**

72. The Welsh Government will continue to review the Statutory Instruments, as advised by the Firefighters' Pension Scheme Advisory Board for Wales.

### **Equality Impact Assessment**

73. An equality impact assessment will be published on the Welsh Government Equality and Diversity webpage when the 2015 Scheme regulations are introduced.