

## **REGULATORY APPRAISAL**

### **FIRE AND RESCUE SERVICES, WALES**

#### **THE FIRE AND RESCUE SERVICES ACT 2004 (CONSEQUENTIAL AMENDMENTS) (WALES) ORDER 2005**

##### **Purpose and intended effect of the measure**

1. The Fire and Rescue Services Act 2004 received Royal Assent on 22 July 2004, and most of the provisions were commenced in Wales on 10 November 2004. This Order makes consequential amendments. It replaces existing references to “fire authorities”, “fire Brigades” and “the Fire Services Act 1947” with references to the "Fire Rescue Authorities and "the Fire and Rescue Services Act 2004", respectively.
2. This Order ensures that Fire Rescue Authority (FRA) employees are able to continue to exercise powers enabled under other items of legislation and previously exercisable by Fire Brigade employees as Brigades no longer exist.

##### **Risk Assessment**

3. There is no risk associated with the making of this Order as the consequential amendments refer to the changes of names and references in existing secondary legislation.

##### **Options**

###### Option 1: Do Nothing

4. This will mean that the latest statutory position will not be reflected in Wales.

###### Option 2: Make the Legislation

5. Legislation is needed to update references in other legislation and ensure that FRA employees are able to continue to exercise powers enabled under other items of legislation and previously exercisable by Fire Brigade employees, as Brigades will be replaced by FRAs. Furthermore the Order updates references to the Fire Service Act 1947 to replace it with the Fire and Rescue Services Act 2004, which has wider ranging powers and replaced much of the provisions contained within the 1947 Act. Enabling FRAs to continue to exercise their statutory powers under the 2004 Act in association with the various pieces of legislation contained within the Order (i.e. Tribunals and Inquiries Order 1975.)

##### **Benefits**

6. This Order merely updates existing references to “fire authorities”, “fire brigades” and “the Fire Service Act 1947” in current Secondary Legislation. The benefit will be to keep existing Legislation extant.

### **Costs**

7. There are no additional financial implications for the Assembly or others arising from the making of this Order, as the consequential amendments refer to the changes of names and references in existing secondary legislation.

### **Competition Assessment**

8. There are no issues of competition associated with this Order.

### **Consultation**

#### With Stakeholders

9. Although there was no formal public consultation on this Order the views of the three Fire and Rescue Authorities in Wales and the Welsh Local Government Association were sought. This took place between 28 July 2005 and the 19 August 2005.
10. One response was received from the North Wales Fire Authority. The reply to the consultation response is attached at Annex 1. The draft Order has been amended in light of some of those comments.

#### With Subject Committee

11. This Order was notified to the Social Justice and Regeneration Committee on 18 May 2005 via the forthcoming list of legislation (SJR 008-05(p.4) Annex1) and ever since. The Order was not identified for detailed scrutiny.

### **Summary**

12. This Order makes consequential amendments predominately to secondary legislation in relation to Wales, in particular updating existing references to "fire authorities", "fire brigades" and "the Fire Services Act 1947".

**Awdurdod Tân ac Achub | North Wales**  
**Gogledd Cymru | Fire and Rescue Authority**

Ian Miller MA(Oxon), FRSA  
Clerc i'r Awdurdod  
Neuadd y Sir, Rhuthun  
Sir Ddinbych LL15 1YN  
Ffôn: 01824 706128 Ffacs: 01824 707446  
e-bost: ian.miller@sirddinbych.gov.uk



Ian Miller MA(Oxon), FRSA  
Clerc to the Authority  
County Hall, Ruthin  
Denbighshire LL15 1YN  
Telephone: 01824 706128 Fax: 01824 707446  
e-mail: ian.miller@denbighshire.gov.uk

*Handwritten: 17/8 Copied to Andy R. 17/8*

Alison P. Thomas,  
Fire and Rescue Service Unit,  
Social Justice and Regeneration Department,  
Welsh Assembly Government,  
Cathays Park,  
CARDIFF  
CF10 3NQ

Our Ref: IRM/KOW

Date: 16 August, 2005

Direct tel: 01824 706128

Dear Alison,

**Draft Fire and Rescue Services Act 2004 (Consequential Amendments)  
(Wales) Order 2005**

Thank you for your letter of 27 July to the Chief Fire Officer. We welcome the opportunity to comment on the draft because there are a number of errors in it, and questions that need to be posed about its intended effect.

The annex contains our detailed comments.

*Yours sincerely,*

*Ian Miller*  
Ian Miller  
Clerc/Clerk

17 AUG 2005

Mae croeso i chi gysylltu â'r  
Gwasanaeth yn y Gymraeg neu'r Saesneg  
You are welcome to contact the  
Service in English or Welsh

Numbered references are to articles of the order

**English amendments order = the Fire and Rescue Services Act 2004  
(Consequential Amendments) (England) Order 2004 No 3168**

**Omission #1** Soon after the 2004 Act was passed, attention was drawn to the need to amend the combination scheme orders for North Wales and the other fire authorities in Wales: see Ian Miller's letter of 21 May 2004 to John Bader and again in an e-mail to Francois Samuel on 31 March 2005. The orders confer the official names in Welsh and English on the fire brigade and on the fire authority. Using the North Wales Fire Services (Combination Scheme) Order 1995 No. 3218 as an example, the words "and Rescue" and "ac Achub" need to be inserted at the appropriate points in paragraph 4(1) of the Schedule. Similar amendments may be required in paragraph 5(1). However given that the 2004 Act no longer uses the concept of a fire brigade, and the provisions made by paragraph 5(2) and 5(3) are spent, it may be that the appropriate consequential amendment is perhaps to revoke paragraph 5 in its entirety, together with the definition of "the fire brigade" in paragraph 1 and paragraphs 23 and 24, which seem to contain the only other references to fire brigade.

**Omission #2** Paragraph 81 of Schedule 1 to the 2004 Act amended section 39(1) of the Local Government Finance Act 1992 to specify that combined fire and rescue authorities in England would be major precepting authorities. The Assembly has the power under section 83(2) and (3) of the Local Government Act 2003 to provide for fire authorities in Wales to become major precepting authorities. However there appears also to be a need to amend the reference to "fire authorities" in section 83(2) of the 2003 Act so that it uses the terminology of "fire and rescue authorities". This amendment has not been made by the 2004 Act, although it was drawn to the attention of the ODPM in letters dated 17 February and 2 March 2004 which were copied to John Bader. It therefore seems to require action by the Assembly in the consequential amendments order.

**Omission #3** The Civil Defence (General Local Authority Functions) Regulations 1993 No 1812 continue in force until 14 November 2005: see the third commencement order for the Civil Contingencies Act 2004 in SI 2005/2040. Therefore unless it is the intention not to make this order until 14 November, it would seem necessary to amend the 1993 Regulations. Compare article 30 of the English amendments order.

**General point #1:** there are several amendments that insert the words "in England or Wales, fire and rescue authority" or similar. We would challenge the need to mention England at all. The English amendments order inserts a number of references "in England" and applies in relation to England only. While Wales and England may be a single jurisdiction from the point of view of the courts, the fact that the equivalent order for England does not mention Wales suggests strongly that the Welsh order – which applies only in relation to Wales - does not need to mention England.

13(2)(c) A somewhat bizarre example is the deletion of the words "Wales and" from regulation 5(6)(d) of the 1987 Regulations. The deleted words appear to have been

inserted by article 13(2)(c) of the English amendments order and therefore apply only in England. Similar point on 16(2)(c).

23 The need for the provision in respect of the Channel Tunnel etc Order 1990 No. 2227 is questioned. The 1990 Order is of practical effect in England only. The amendments that have already been made to it by the English amendments order seem to suffice. For example, it treats the tunnel system beyond the frontier as if it were part of Kent. Therefore it is in England, and Welsh fire and rescue authorities can enter arrangements for delivering services in the tunnel system under sections 13, 15 or 16 of the 2004 Act if they so wish.

41 the inserted words should presumably begin "or, in Wales,...". Compare article 43 of the English amendments order!

77(3)(a)(i) The words "England and" have been omitted from the bracketed words by the English amendments order. That order applies in England only and therefore it would seem that the words "England and" are still applicable in Wales and need to be omitted in respect of Wales.

**General point #2:** there are various amendments to secondary legislation throughout the draft Order to insert references to "a part-time fire-fighter employed by a fire and rescue authority". The policy intention appears to be to preserve the disregard for the first element of the earnings of retained fire-fighters in the calculation of their entitlements to benefits etc.

Prior to the Fire and Rescue Services Act 2004, the definition used for a retained fire-fighter was that they were part-time members of a brigade, such as in Schedule 3 to the Council Tax Benefit (General) Regulations 1992, paragraph 6(1)(a) "a part-time fireman in a fire brigade maintained in pursuance of the Fire Services Acts 1947 to 1959".

Following the 2004 Act, part-time employees are no different from full-time employees but conditions of service are pro-rata to the whole-time member. Because of the moves to diversify the workforce and remove historic demarcations, there will be increasing numbers of employees who are part time but not undertaking roles akin to those of part-time fire-fighters on the retained duty system. Therefore it seems likely that the suggested amendments will catch more personnel than is intended including, for example, someone who may be working 30 hours every week. Why should a proportion of such an individual's wages be disregarded for the purposes of calculating entitlement to benefit? Such disregards do not apply to part time nurses or part time shop workers.

Moreover there is no concept or definition of "fire-fighter" in the 2004 Act. This terminology is outmoded and inappropriate given that the 2004 Act explicitly confers functions other than fire fighting on fire and rescue authorities. Would it be acceptable that a part-time specialist who dealt only with road traffic accidents or chemical spillages would be treated differently from other colleagues who may be exposed to risks from fighting fires?

Notwithstanding the provision made in the English amendments order, it is suggested that, for the amendments to benefits etc. legislation, the Assembly needs to agree with the Department for Work and Pensions a definition that delivers what is presumed to be the policy intention. Such a definition might be a part-time employee of a fire and rescue authority whose principal work is to undertake functions mentioned in sections 6 to 9 and 11 of the 2004 Act, for whom the number of hours worked are not the same each week or month, and whose pay is determined by the number and length of incidents attended.

That the currently proposed wording is not correct in referring to part-time employment is supported by the amendment made by regulation 3 of the Local Government Pension Scheme and Management and Investment of Funds (Amendment) Regulations 2005 No 2004. This refers to "retained or volunteer membership with a fire and rescue authority...on terms under which the retained or volunteer member is or may be required to engage in fire-fighting". While this retains an inappropriate focus on fire-fighting and introduces the odd concept of "membership with" a fire and rescue authority, it nevertheless acknowledges that it is not possible simply to refer to part-time employment by a fire and rescue authority.

54(a) For similar reasons, we do not believe that the suggested amendment to the Code of Conduct (Non-Qualifying Local Government Employees)(Wales) Regulations 2001 no. 2278 is workable. With the new role maps that are being introduced, it is not possible any more to distinguish between different categories of employees who work for fire and rescue authorities. For example, there may be uniformed staff whose main or sole work is to do with community fire safety rather than dealing with emergencies in the front line. As noted, the expansion of duties of fire and rescue authorities in the 2004 Act means the reference to "firefighters" is inappropriate.

The commencement of the 2004 Act also involved the repeal of the Discipline Regulations under the 1947 Act. It is likely that the designation of fire-fighters as non-qualifying local government employees in respect of the code of conduct arose from the fact that their conduct was – in 2001 - governed by the Discipline Regulations.

It seems therefore that the appropriate consequential amendment to these regulations may be to remove the exemption for fire-fighters, so that they are covered by the code of conduct in the same way as all other employees of fire and rescue authorities.

**General point #3** – the effect of 50 and 64 is to remove fire and rescue authorities in Wales from the framework of best value as operated in England. This is supported. However no provision is made to bring fire and rescue authorities properly within the Welsh framework – they are left in limbo. This is reinforced by the revocation in 73 of the performance indicators for Welsh fire and rescue authorities. The Assembly Government has indicated its intention to consult on performance indicators for fire and rescue authorities. However we question whether it is a correct use of consequential amendment powers to proceed as set out in the order, when there have already been over 12 months since enactment of the 2004 Act, and over 9 months since commencement, for the Assembly Government to specify how the best value regime is to apply.

**General point #4:** while the amendments made by 59 & 62 are correct in principle, it is the opportunity to point out that the provision made in H2 of each Schedule is entirely unnecessary, given that there are combined fire authorities throughout Wales and no indication that an alternative approach will be adopted. Therefore no county or county borough council has or is likely to have functions in respect of the pension scheme.

**Minor drafting points**

11 "and" is missing after "fire" in the substituted words

13(3) the second "of" should be deleted. Compare 16(3).

16(2)(a) the first "and" should be "at"

42(3)(a) It is not clear why the formulation used in 45(3)(a) has not also been used here.

54(b) the missing Welsh words are "awdurdod tân ac achub". Same point in 63(2).

58(1) Committees has only one "s"

59(a) and 62(a) the correct title of the pension scheme is the "Firefighters' Pension (Wales) Scheme". See article 4(1) of SI 2004/2918.

72(2)(a) and (c) The English would be more natural if it referred to "a certain sign" and "a certain diagram".