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GWASANAETHAU TÂN AC ACHUB, CYMRU
PENSIYNAU, CYMRU

Gorchymyn Cynllun Pensiwn y
Dynion Tân (Cymru) (Diwygio) 2009

Gwnaed - - - - *13 Mai 2009*
Gosodwyd gerbron Cynulliad
Cenedlaethol Cymru - - *15 Mai 2009*

Yn dod i rym yn unol ag erthygl 1(2)

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddwyd i'r Ysgrifennydd Gwladol yn adran 26(1) i (5) o Ddeddf Gwasanaethau Tân 1947(1) ac adran 12 o Ddeddf Blwydd-daliadau 1972(2), fel y'u cymhwysir gan adran 16(3) o'r Ddeddf honno(3), ac a freinir yn awr ynddynt hwy(4), yn gwneud y Gorchymyn canlynol:

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- (1) 1947 p.41, diddymwyd gan adran 52 o Ddeddf y Gwasanaethau Tân ac Achub 2004 (p.21) ac Atodlen 2 i'r Ddeddf honno. Mae is-adrannau (1) i (5) o adran 26 yn parhau mewn grym, at ddibenion y cynllun a sefydlwyd o dan yr adran honno fel Cynllun Pensiwn y Dynion Tân ac a welir yng Ngorchymyn Cynllun Pensiwn y Dynion Tân 1992 (O.S. 1992/129), gan Orchymyn Deddf y Gwasanaethau Tân ac Achub 2004 (Cynllun Pensiwn y Dynion Tân) (Cymru) 2004 (O.S. 2004/2918 (Cy.257)). Newidiwyd enw'r cynllun i Gynllun Pensiwn y Dynion Tân (Cymru) gan erthygl 4(1) o'r Gorchymyn hwnnw. Diwygiwyd y Cynllun ymhellach gan Orchymyn Pensiwn Dynion Tân (Cymru) (Diwygio) 2006 (O.S. 2006/1672 (Cy.160)) a Gorchymyn Cynllun Pensiwn y Dynion Tân (Cymru) (Diwygio) 2007 (O.S. 2007/1074 (Cy.112)). Diwygiwyd adran 26 o Ddeddf 1947 gan adran 1 o Ddeddf y Gwasanaethau Tân 1951 (p.27), adran 42 o Ddeddf Lluoedd Arfog Wrth Gefn ac Atodol (Amddiffyn Buddiannau Sifil) 1951 (p.65), adran 33 o Ddeddf Lladrad 1968 (p.60) ac Atodlen 3 i'r Ddeddf honno, adrannau 16 a 29 o Ddeddf Blwydd-daliadau 1972 (p.11) ac Atodlen 8 i'r Ddeddf honno, adran 100 o Ddeddf Nawdd Cymdeithasol 1973 (p.38), ac Atodlen 27 i'r Ddeddf honno, adran 1 o Ddeddf Nawdd Cymdeithasol (Darpariaethau Canlyniadol) 1975 (p.18) ac Atodlen 1 i'r Ddeddf honno, adran 32 o Ddeddf y Llysoedd Ynadon 1980 (p.43), adran 1 o Ddeddf Pensiynau'r Heddlu a'r Dynion Tân 1997 (p.52) ac Atodlen 25 i Ddeddf Partneriaeth Sifil 2004 (p.33), ac erthygl 2 o Orchymyn Nawdd Cymdeithasol (Addasu Deddf y Gwasanaethau Tân 1947) 1976 (O.S. 1976/551).
- (2) 1972 p.11; diwygiwyd adran 12 gan Ddeddf Pensiynau (Darpariaethau Amrywiol) 1990 (p.7).
- (3) Mae adran 16 yn parhau mewn grym at ddibenion Cynllun Pensiwn y Dynion Tân (a ailenydd yn Gynllun Pensiwn y Dynion Tân (Cymru) gan Orchymyn Deddf y Gwasanaethau Tân ac Achub 2004 (Cynllun Pensiwn y Dynion Tân) (Cymru) 2004 (O.S. 2004/2918 (Cy.257))).
- (4) Diddymwyd Deddf y Gwasanaethau Tân 1947 ("Deddf 1947") gan adran 52 o Ddeddf y Gwasanaethau Tân ac Achub 2004 (p.21) ("Deddf 2004") ac Atodlen 2 i'r Ddeddf honno. Parhawyd i gadw mewn grym swyddogaethau'r Ysgrifennydd Gwladol o dan is-adrannau (1) i (5) o adran 26 o Ddeddf 1947, at ddibenion y cynllun a sefydlwyd o dan yr adran honno fel Cynllun Pensiwn y Dynion Tân ac a welir yng Ngorchymyn Cynllun Pensiwn y Dynion Tân 1992 (O.S. 1992/129), gan adran 36 o Ddeddf 2004 ac O.S. 2004/2918 (Cy.257) a wnaed o dan y Ddeddf honno. Yr oedd pwerau yr Ysgrifennydd Gwladol o dan adran 36 o Ddeddf 2004 yn arferadwy gan Gynulliad Cenedlaethol Cymru yn rhinwedd adran 62 o Ddeddf 2004. Trosglwyddwyd swyddogaethau Cynulliad Cenedlaethol Cymru i Weinidogion Cymru o dan adran 162 o Ddeddf Llywodraeth Cymru 2006 a pharagraff 30 o Atodlen 11 i'r Ddeddf honno.

Enwi, cychwyn a chymhwyso

1.—(1) Enw'r Gorchymyn hwn yw Gorchymyn Cynllun Pensiwn y Dynion Tân (Cymru) (Diwygio) 2009.

(2) Daw'r Gorchymyn hwn i rym ar 9 Mehefin 2009, ond—

(a) mae'r diwygiad a wneir gan erthygl 2 a pharagraff 1 o'r Atodlen i'r graddau y mae a wnelo â'r rheol newydd B5A (yr hawlogaeth i ddau bensiwn) yn cael effaith o 1 Ebrill 2007; a

(b) mae'r diwygiadau eraill yn cael effaith o 1 Gorffennaf 2007.

(3) Mae'r Gorchymyn hwn yn gymwys o ran Cymru.

Diwygio Gorchymyn Cynllun Pensiwn y Dynion Tân 1992

2. Diwygir Atodlen 2 i Orchymyn Cynllun Pensiwn y Dynion Tân 1992(5) (y nodir Cynllun Pensiwn y Dynion Tân (Cymru) ynddi) yn unol â'r Atodlen i'r Gorchymyn hwn.

13 Mai 2009

Brian Gibbons
Gweinidog dros Gyfiawnder Cymdeithasol a
Llywodraeth Leol, un o Weinidogion Cymru

(5) O.S. 1992/129; a ddiwygiwyd gan O.S. 1997/2309 a 2851, 1998/1010, 2001/3649 a 3691, 2004/1912, 2006/1672 (Cy.160) a 2007/1074 (Cy.112). Gwnaed y Cynllun o dan adran 26 o Ddeddf y Gwasanaethau Tân 1947 (p.41). Diddymwyd y Ddeddf honno gan adran 52 o Ddeddf y Gwasanaethau Tân ac Achub 2004 (p.21) ("Deddf 2004") ac Atodlen 2 i Ddeddf 2004. Mae is-adrannau (1) i (5) o adran 26 yn parhau mewn grym, at ddibenion y cynllun a sefydlwyd o dan yr adran honno fel Cynllun Pensiwn y Dynion Tân, gan adran 36 o Ddeddf 2004 ac O.S. 2004/2918 (Cy.257) a wnaed o dan y Ddeddf honno. Newidiwyd enw'r cynllun, mewn perthynas â Chymru, gan erthygl 4(1) o O.S. 2004/2918 (Cy.257).

ATODLEN

Erthygl 2

DIWYGIO CYNLLUN PENSIWN Y DYNION TÂN (CYMRU)

1. Yn Rhan B (dyfarndaliadau personol), ar ôl rheol B5 (pensiwn gohiriedig), mewnosoder—

“Entitlement to two pensions

B5A.—(1) A regular firefighter who—

- (a) on taking up a different role; or
- (b) becoming entitled to a different rate of pay in his existing role,

suffers a reduction in the amount of his pensionable pay such that the amount to be taken into account in the calculation of the pension to which he will be entitled at normal pension age is less than it would otherwise have been, is entitled to two pensions.

(2) The amounts of the pensions shall be those found by applying the formulae set out in paragraphs (3) and (4) but, where the aggregate of those amounts exceeds that of the single award to which the firefighter would be entitled under paragraph (6) if he were to give notice under that paragraph or under paragraph (7) if he were to make an election under rule G3, his entitlement shall be to an amount equal to the amount of that single award.

(3) The amount of the first pension is that found by applying the formula—

$$A \times \frac{B}{C} \times \frac{D}{60}$$

where—

A is the firefighter's average pensionable pay for the year ending with his last day of service at the higher rate of pay;

B is the firefighter's pensionable service up to that day;

C is the firefighter's total pensionable service; and

D is the total number of 60ths that would have been used in the calculation of his single award had he given the instruction referred to in paragraph (6).

(4) The amount of the second pension is that found by applying the formula—

$$E \times \frac{F}{C} \times \frac{D}{60}$$

where—

C and D have the same meanings as in paragraph (3);

E is the firefighter's average pensionable pay for the year ending with his last day of service; and

F is—

(a) where the aggregate of—

- (i) the pensionable service used to ascertain the value of B in his case for the purpose of the formula in paragraph (3); and

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(ii) his pensionable service for the period commencing with his first day of service at the lower rate of pay and ending with his last day of service, exceeds 30, the difference between B and 30;

(b) in any other case, his pensionable service for the period commencing with his first day of service at the lower rate of pay and ending with his last day of service.

(5) Subject to paragraph (6), the pensions become payable on the date on which a pension would have become payable to the firefighter in whichever of the circumstances referred to in rules B1, B2, B3 and B5 applies in his case.

(6) A firefighter who is entitled to two pensions under this rule may, before leaving the employment of the fire and rescue authority by which he is employed, by written notice instruct the authority to make a single award which shall be calculated in accordance with whichever of rules B1, B2, B3 and B5 is applicable in his case.

(7) Where a firefighter who would be entitled to two pensions under paragraph (1) makes an election under rule G3, he shall be entitled instead to a single pension, calculated as if it were a deferred pension to which he was entitled under rule B5.

(8) In paragraph (1), "role", in relation to a firefighter, means the role in which he is for the time being employed, being a role set out in "Fire and Rescue Services Rolemaps" issued by the National Joint Council for Local Authority Fire and Rescue Services in August 2005(6).

Additional pension benefit: long service increment

B5B.—(1) A regular firefighter who—

(a) in respect of a period that includes 30 June 2007 is entitled to a long service increment or to an interim or transitional payment connected with long service, and

(b) on or after 1 October 2007—

(i) retires from employment as a regular firefighter, or

(ii) becomes entitled to a deferred pension under rule B5,

shall be credited with an amount of additional pension benefit.

(2) Subject to paragraph (3), the amount of additional pension benefit is that calculated in accordance with the formula—

$$\frac{A + (B \times 2) \times \pounds 990}{60}$$

where—

A is the number in years (counting part of a year as the appropriate fraction) by which the firefighter's pensionable service up to and including 30 June 2007 exceeds 15 but does not exceed 20; and

B is the number in years (counting part of a year as the appropriate fraction) by which his pensionable service up to and including 30 June 2007 exceeds 20.

(3) Where the Retail Prices Index for the month of September preceding the relevant tax year is higher than it was for September 2007, the amount of additional pension benefit

(6) Gellir gweld y ddogfen yn http://www/lge.gov.uk/conditions/firefighters/content/documents/fire_service_rolemaps.pdf

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(as calculated in accordance with paragraph (2) and, if applicable, this paragraph) shall be increased by the same percentage as the percentage increase in the Retail Prices Index.

(4) Any increase in accordance with paragraph (3) shall be applied with effect from the first Monday of the relevant tax year.

(5) In this rule—

“relevant tax year” means a tax year in relation to which—

- (a) the amount of a firefighter’s pension benefits is calculated for the purposes of this Scheme; and
- (b) he is not in receipt of a pension under this Scheme or entitled to a deferred pension under rule B3; and

“tax year” means the period of 12 months beginning with 6 April.

Additional pension benefit: continual professional development

B5C.—(1) A regular firefighter who, in any CPD year beginning with the year commencing on 1 July 2007, receives CPD payments, shall be credited with an amount of additional pension benefit in respect of that year.

(2) Subject to paragraph (3), the amount of additional pension benefit in respect of a CPD year shall be determined on 1 July immediately following the year in question in accordance with guidance and tables provided by the Scheme Actuary.

(3) Where the Retail Prices Index for the month of September preceding the relevant tax year is higher than it was for the month of September in the CPD year in question, the amount of additional pension benefit for that CPD year (as calculated in accordance with paragraph (2) and, if applicable, this paragraph) shall be increased by the same percentage as the percentage increase in the Retail Prices Index.

(4) Any increase in accordance with paragraph (3) shall be applied with effect from the first Monday of the relevant tax year.

(5) In this rule—

“CPD payments”, as regards a firefighter, means payments made to him by his employing authority in respect of his continual professional development;

“CPD year” means a period of 12 months beginning with 1 July in which a firefighter is in receipt of CPD payments;

“relevant tax year” means a tax year in relation to which—

- (a) the amount of a firefighter’s pension benefits is calculated for the purposes of this Scheme, and
- (b) he is not in receipt of a pension under this Scheme or entitled to a deferred pension under rule B5;

and a tax year is a relevant tax year in relation to a particular CPD year if it is the tax year in which CPD payments for that CPD year are taken into account; and

“tax year” means the period of 12 months beginning with 6 April.

Additional pension benefit: supplementary provisions

B5D.—(1) Subject to paragraphs (2) and (3), additional pension benefit under rule B5B or B5C is payable from normal pension age or, in the case of a regular firefighter to whom rule B1 (ordinary pension) applies, from the date of his retirement.

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(2) Where the firefighter resigns or is dismissed or makes an election under rule G3, additional pension benefit is payable at normal benefit age(7); and paragraphs (4) and (5) of rule B5 (deferred pension) shall apply in relation to that benefit as if it were a deferred pension to which he was entitled under that rule.

(3) Where the firefighter is required to retire on grounds of permanent disablement (rule A15), his additional pension benefit is payable immediately.

(4) For the purposes of rules B7 and B8, additional pension benefit shall be treated as if it were a pension payable under this Part.

(5) For the purposes of determining the amount of any survivor's pension under Part C, Part D or Part E or pension credit under Part IA, additional pension benefit shall be treated as if it were a pension payable under this Part.”.

2. Yn Rhan G (tâl pensiynadwy a chyfraniadau)—

(a) yn rheol G1 (tâl pensiynadwy a thâl pensiynadwy cyfartalog)—

(i) yn lle paragraff (1) rhodder—

“(1) Subject to paragraph (2), the pensionable pay of a regular firefighter is the aggregate of—

- (a) the amount determined in relation to the performance of the duties of his role (whether as a whole-time or part-time employee); and
- (b) the amount (if any) paid to him in respect of his continual professional development.”;

(ii) ym mharagraff (3), yn lle “paragraphs (5) to (7)”, rhodder “paragraphs (5) to (7C)”; a

(iii) ar ôl paragraff (7) mewnosoder—

“(7A) The average pensionable pay of a regular firefighter who—

- (a) is entitled to a long service increment; and
- (b) retires after 30 September 2006 and before 1 October 2007, or becomes entitled to a deferred pension under rule B5 within that period,

shall be calculated—

- (i) as if his long service increment had accrued at the rate of £990 per annum (disregarding the reduction in the amount of the long service increment that had effect in relation to times on and after 1 October 2006), and
- (ii) disregarding any LS-related payment.

(7B) The average pensionable pay of a regular firefighter who—

- (a) is entitled to additional pension benefit under rule B5B (additional pension benefit: long service increment), and
- (b) retires on or after 1 October 2007,

shall be calculated on the basis of whichever of the following paragraphs yields the greater amount—

- (i) the calculation is made with regard to the amount credited to him under rule B5B, but without regard to his long service increment and any LS-related payment, or

(7) Yn rhinwedd rheol A2(1) o'r Cynllun, a Rhan 1 o Atodlen 1 i'r Cynllun, “oedran buddion arferol” (“normal benefit age”) yw 60.

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(ii) the calculation is made with regard to his long service increment and any LS-related payment, but without regard to the amount credited to him under rule B5B.

(7C) The average pensionable pay of a regular firefighter shall be calculated without reference to any additional pension benefit credited under rule B5C (additional pension benefit: continual professional development).

(7D) In paragraphs (7A) and (7B) "LS-related payment" means an interim or transitional payment made to a regular firefighter in connection with his long service."; a

(b) yn rheol G3 (dewis peidio â gwneud cyfraniadau pensiwn)—

(i) ym mharagraff (1), yn lle "paragraph (8)", rhodder "paragraphs (1A) and (8)"; a

(ii) ar ôl paragraff (1) mewnosoder—

"(A1) An election not to pay contributions may not be made solely in respect of contributions relevant to additional pension benefit under rule B5C (additional pension benefit: continual professional development)."

EXPLANATORY NOTE

(Nid yw'r nodyn hwn yn rhan o'r Gorchymyn)

Mae'r Gorchymyn hwn yn diwygio Cynllun Pensiwn y Dynion Tân (Cymru) (a welir yn Atodlen 2 i Orchymyn Cynllun Pensiwn y Dynion Tân 1992) o ran y modd y mae'n cael effaith yng Nghymru ("y Cynllun"). Mae'r diwygiad sy'n cyflwyno'r rheol B5A newydd: yr hawlogaeth i ddau bensiwn (a wneir gan erthygl 2 a pharagraff 1 o'r Atodlen) yn cael effaith o 1 Ebrill 2007 ymlaen. Mae'r diwygiadau eraill yn cael effaith o 1 Gorffennaf 2007 ymlaen. Rhoddir y pŵer i roi effaith ôl-weithredol gan adran 12 o Ddeddf Blwydd-daliadau 1972, fel y'i cymhwysir gan adran 16(3) o'r Ddeddf honno.

Mae'r diwygiad sy'n cyflwyno'r rheol B5B newydd yn ymwneud â dirwyn i ben, o ddiwedd Mehefin 2007 ymlaen, y cynyddiadau gwasanaeth hir a oedd yn daladwy i ddiffoddwyr tân a oedd â 15 mlynedd o leiaf o wasanaeth di-dor ar yr adeg honno. Yr oedd maint y cynyddiad, a oedd yn bensiynadwy, wedi ei rewi o 7 Tachwedd 2003 ymlaen, ar y gyfradd flynyddol o £990 ac yna wedi ei leihau, o 1 Hydref 2006 ymlaen, i gyfradd flynyddol o £495 (ond gwnaed taliadau digolledu interim neu drosiannol gan rai awdurdodau tân ac achub). Effaith y diwygiad sy'n cyflwyno'r rheol newydd gysylltiedig G1(7A) yw y bydd pensiwn ddiffoddwr tân rheolaidd, a oedd â hawl i gynyddiad gwasanaeth hir ac sydd naill ai'n ymddeol neu'n dod yn un sydd â hawlogaeth ganddo i bensiwn gohiriedig ar ôl 30 Medi 2006 ond cyn 1 Hydref 2007, yn cael ei gyfrifo (yn unol â rheol G1(3)) heb ystyried y gostyngiad yn y gyfradd flynyddol. Effaith y diwygiad sy'n cyflwyno'r rheol newydd G1(7B) yw y bydd pensiwn ddiffoddwr tân rheolaidd, a oedd â hawl i gynyddiad gwasanaeth hir (neu daliad digolledu interim neu drosiannol) ac sydd naill ai'n ymddeol neu'n dod yn un sydd â hawlogaeth ganddo i bensiwn gohiriedig ar neu ar ôl 1 Hydref 2007 yn cael ei gyfrifo (yn unol â rheol G1(3)) naill ai gan ystyried y swm a gredydir o dan y rheol newydd B5B a heb ystyried cynyddiad gwasanaeth hir gwirioneddol y diffoddwr tân (ac unrhyw daliad digolledu interim neu drosiannol), neu gan ystyried cynyddiad gwasanaeth hir gwirioneddol y diffoddwr tân (ac unrhyw

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daliad digolledu interim neu drosiannol) a heb ystyried y swm a gredydir i'r diffoddwr tân o dan y rheol newydd B5B, yn ôl pa reol bynnag sy'n rhoi'r canlyniad mwyaf buddiol i'r diffoddwr tân.

Mae'r diwygiadau eraill yn ganlyniad cynllun newydd a gyflwynwyd gan y Cydgyngor Cenedlaethol ar gyfer Gwasanaethau Tân ac Achub Awdurdodau Lleol ac a fu mewn grym o 1 Gorffennaf 2007 ymlaen, i wneud taliadau mewn cysylltiad â datblygiad proffesiynol parhaus. O dan y cynllun hwnnw, mae'r taliadau yn ddarostyngedig i adolygiadau blynyddol ac felly yn daliadau dros dro o ran eu natur. Am y rheswm hwnnw ni fyddent, fel arfer, yn cael eu hystyried yn bensiynadwy at ddibenion y Cynllun. Fodd bynnag, effaith y diwygiadau yw gwneud y taliadau hyn yn rhan o'r tâl pensiynadwy. Mae hyn yn cysylltu â darpariaethau eraill, gan gynnwys darpariaethau rheol G2 o'r Cynllun, sy'n gwneud talu cyfraniadau pensiwn yn ofynnol mewn perthynas â thâl pensiynadwy. Mae'r diwygiad sy'n cyflwyno'r rheol newydd G1(7C), fodd bynnag, yn darparu y ceir anwybyddu budd pensiwn ychwanegol a gredydir mewn perthynas â datblygiad proffesiynol parhaus at y diben o ddyfarnu swm y tâl pensiynadwy cyfartalog (y seilir swm y pensiwn cyffredin arno).

Mae'r diwygiad i reol G3 o'r Cynllun yn sicrhau na all person wneud dewisiad i atal talu cyfraniadau pensiwn mewn perthynas, yn unig, â'r budd pensiwn ychwanegol o dan y rheol newydd B5C.

Gellir cael Aseiad Effaith Rheoleiddiol a baratowyd mewn cysylltiad â'r Gorchymyn hwn oddi wrth y Gangen Gwasanaethau Tân ac Achub, Llywodraeth Cynulliad Cymru, Rhyd-y-car, Merthyr Tudful, CF48 1UZ neu drwy ffonio 01685 729227.