
EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Firefighters' Pension (Wales) Scheme (set out in Schedule 2 to the Firemen's Pension Scheme Order 1992) as it has effect in Wales ("the Scheme"). Some of the amendments introduce new provisions. Other amendments make corrections.

Except as mentioned below this Order has retrospective effect from 1 July 2013. Power to give the Order retrospective effect is conferred by section 12 of the Superannuation Act 1972, as applied by section 16(3) of that Act.

In this note, unless indicated otherwise, references to a paragraph are references to paragraphs in the Schedule to this Order and references to rules and Parts are references to rules and Parts of the Scheme.

Paragraph 1 makes amendments to Part A. Paragraph 1(b) omits rule A14 (compulsory retirement on grounds of efficiency) and rule A15 (compulsory retirement on grounds of disablement). Rules A4 to A8 and A12 are also omitted.

Paragraph 2(a) amends rule B1 so that a chief fire officer, who is appointed after 1 July 2013, is no longer required to obtain the permission of the fire and rescue authority before retiring.

Paragraph 2(e) amends the formula for the calculation of pension where a person is entitled to an ill-health award or deferred pension and benefits from the entitlement to two pensions.

Paragraph 2(f)(i) makes minor corrections to rule B5B so that it is clear which pensionable service can count for the long service increment additional pension benefit. The amendment only include services with a Welsh Fire and Rescue Authority.

Paragraph 2(g) inserts a new rule B5C which extends additional pension benefit so that it covers—

- payments to reward additional skills and responsibilities outside the requirements of the firefighter member's duties under the contract of employment but which are within the wider functions of the job;
- any additional pay received whilst on temporary promotion or whilst temporarily carrying out the duties of a higher role;
- any non-consolidated performance related payment.

Any payments in respect of a firefighter member's continuing professional development continue to be covered by additional pension benefit.

The amendments made by paragraphs 2(f)(ii), (iii) and (iv), and 2(g) in relation to paragraphs (3) and (4) of the new rule B5C, amend the method of uprating additional pension benefit for the long service increment (rule B5B) and continuing professional development (rule B5C) from using a specific index, the retail price index, to using an index in accordance with the Pensions (Increase) Act 1971. There is a specific provision to provide that the consumer price index is used for the tax year 2010/2011. These amendments have retrospective effect from 11 April 2011.

The amendments made by paragraph 2(i) to rule B7 (commutation general provision) confer a discretion on a fire and rescue authority to permit the commutation of a pension for a lump sum in excess of two and quarter times the full amount of the pension in all cases where they have had regard to the economical, effective and efficient management of their functions and the costs likely to be incurred in the particular case. Where the authority exercises this discretion an amendment by

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paragraph 14(iv) to rule LA2 inserting new paragraph (10) requires the authority to make a transfer into the Firefighters' Pension Fund of an amount equal to the increase in the commuted lump sum.

Paragraph 4 substitutes a new rule D5 (child's allowance: limitations and duration).

Paragraph 5 makes various amendments to Part E (awards on death — additional provisions).

Paragraph 6 amends Part F (pensionable service and transfer values) and in particular inserts new rule F1A (reckoning of service for purposes of awards) which repeats most of the provisions of the omitted rule A7.

Paragraph 7(a) amends the definition of pensionable pay in rule G1(1) to include payments which are pensionable under additional pension benefit (new rule B5C(1)) and provide that average pensionable pay is calculated without including any additional pension benefit payable under rule B5C. Rule G1 is also amended by the insertion of a new paragraph (9) to provide that payments which are not within the definition of pensionable pay in rule G1(1)(a) as amended, other than additional pension benefits payable for long service or in respect of a firefighter's continual professional development, should remain pensionable only whilst the firefighter continues to receive them.

Paragraph 7(d) inserts rule G2B (aggregate pension contributions for the purposes of awards) which repeats most of omitted rule A8 (aggregate pension contributions for purposes of awards) with some amendments.

Paragraph 8 inserts a new rule and substitutes 2 new rules in Part H (determination of questions and appeals). These enable—

- the review of medical opinion where there is new evidence (rule H1A: review of medical opinion);
- improve the procedure of an appeal (new rule H2: appeal to medical referee);
- remove the right of appeal to the Crown Court or Sheriff and replace it with arrangements implemented for dispute resolution by the fire and rescue authority under section 50 of the Pensions Act 1995 (rule H3: appeals on other issues).

Paragraph 9 amends the provisions in Part I (servicemen) to reflect changes in the relevant legislation.

Paragraph 12(b) amends rule K1A to remove a deferred member's entitlement to the early payment of a deferred pension where the member has become capable of undertaking regular employment. Paragraph 12(c) substitutes a new rule K4 which extends the fire and rescue authority's power to withdraw or abate pension so this applies when a pensioner takes up employment in any role with an authority. This amendment has retrospective effect from 25 September 2009.

Paragraph 14(a)(iv) inserts a new paragraph (9) in rule LA2 (special payments and transfers into Firefighters' Pension Fund). This requires a fire and rescue authority to transfer into the Firefighters' Pension Fund an amount equal to the amount of pension paid to a person in respect of whom the authority choose not to exercise its discretion to withdraw or abate the permitted amount of the individual's pension under rule K4 (withdrawal of pension whilst employed by a fire and rescue authority). This amendment does not have effect in relation to a pensioner who took up employment before the date on which this Order comes into force.

Paragraph 15(f), (j) and (k) amends the definition of "retained firefighter" and "volunteer firefighter" so that they are now defined separately.

Paragraph 20(b) is consequential on the amendments made to the New Firefighters' Pension Scheme (Wales) by [S.I. 2014/3254 \(W.330\)](#) which provide those persons who were employed in Wales as retained firefighters between 1 July 2000 and 6 April 2006 with access to a pension scheme for that period. Paragraph 20(b) amends Part 4 of Schedule 6 to the Scheme. The amendment is to provide a different amount of transfer value where the member of the Scheme meets certain requirements.

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Paragraph 23 amends Part 1 (appeal to board of medical referees) of Schedule 9 (appeals) to the Scheme by the substitution of new paragraphs for paragraphs 1(1), 2, 8(2) and 8(2A) and the insertion of a new paragraph 2B and 6A. These amendments to procedures of the board enable the board to review its decision where there has been a material error of fact, to appoint a reviewing member to ensure it has all documents required before a hearing and also to increase the grounds on which the authority may require the appellant to pay some or all of the board's costs. Paragraph 23(2) omits Part 2 (appeal tribunals) which is consequential on the amendment of rule H3 (appeals on other issues).

The Welsh Ministers' Regulatory Impact Assessment Code for Subordinate Legislation has been considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of this Order.

A copy of the assessment can be obtained from the Fire Branch, Department for Local Government and Communities, Welsh Government, Rhydycar Business Park, Merthyr Tydfil, CF48 1UZ (telephone 0300 0628219).