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WELSH STATUTORY INSTRUMENTS

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**2015 No. 622**

**The Firefighters' Pension Scheme (Wales) Regulations 2015**

**PART 3**

**Scheme membership**

**CHAPTER 1**

**Eligibility for active membership**

**Scheme employment**

**15.**—(1) For the purposes of these Regulations, a person is in scheme employment if that person is employed as a firefighter by an authority and satisfies the requirement in paragraph (2) or paragraph (3).

(2) A person who took up employment on or after 1 April 2015 satisfies the requirement in this paragraph where that person's role on taking up employment includes—

- (a) resolving operational incidents; or
- (b) leading and supporting others in the resolution of operational incidents.

(3) A person who is a transition member satisfies the requirement in this paragraph.

(4) The employer of a person in scheme employment is referred to in these Regulations as the “scheme employer”.

**Eligible persons**

**16.**—(1) For the purpose of this Part, an eligible person is a person who is eligible to be an active member of this scheme.

(2) A person who is in service in a scheme employment (P) is an eligible person in relation to that employment unless in relation to service in that employment—

- (a) P is a protected member of the 1992 Scheme or the NFPS; or
- (b) P is a member of any other pension scheme and the authority employing P pays contributions to that scheme in respect of P.

(3) P remains an eligible person whilst on reserve forces service leave.

**Service in two or more scheme employments**

**17.** If a person is in service in two or more scheme employments, regulation 16 (eligible persons) applies separately in relation to each employment (whether or not the employment is with the same authority).

## CHAPTER 2

### Pensionable service

#### Application of Chapter

**18.**—(1) This Chapter applies in relation to a continuous period of service in a scheme employment.

(2) If a person is in service in two or more scheme employments at the same time, this Chapter applies separately in relation to each of the employments (whether or not the employment is with the same authority).

#### Interpretation of Chapter

**19.** In this Chapter—

“automatic re-enrolment date” (“*dyddiad ailgofrestru awtomatig*”), in relation to a person in service in a scheme employment, means a date determined under regulation 12 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010<sup>(1)</sup>;

“continuous period of service” (“*cyfnod di-dor o wasanaeth*”), in relation to scheme employment, means a period of service in scheme employment disregarding any gap in service not exceeding five years;

“first eligible day of service” (“*diwrnod cymwys cyntaf o wasanaeth*”) means the day on which a person becomes an eligible person in relation to that service.

#### Automatic enrolment

**20.**—(1) Where a person (P) who is in pensionable service<sup>(2)</sup> under the scheme moves from one scheme employer to another but remains in scheme employment, P continues in pensionable service under the scheme.

(2) A person (P) who is not in pensionable service under the scheme immediately before P’s first eligible day of service in a scheme employment begins pensionable service under this scheme on P’s first eligible day of service in that employment unless—

- (a) regulation 24 (opting out before the end of the first three months) applies; or
- (b) P is a transition member with continuity of service and paragraph (3) applies.

(3) This paragraph applies if—

- (a) P’s first eligible day of service in the scheme employment is the day after P’s closing date; and
- (b) on P’s closing date—
  - (i) P was in service in the same employment, and
  - (ii) P had opted out of the 1992 Scheme or the NFPS, as the case may be, in relation to that service.

#### Opting into this scheme

**21.**—(1) A person (P) who, in relation to a scheme employment, is an eligible person but is not in pensionable service under this scheme may opt to become an active member of this scheme in relation to service in that employment.

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(1) [S.I. 2010/772](#). Regulation 12 was amended by [S.I. 2012/215](#).

(2) See section 37 of the 2013 Act for the meaning of “pensionable service”.

(2) The option under this regulation may only be exercised by notice to the scheme manager in a form required by the scheme manager (“opt-in notice”).

(3) A person who exercises the option under this regulation in relation to service in a scheme employment opts into this scheme in relation to service in that employment with effect from the date on which the opt-in notice is received by the scheme manager.

(4) The option under this regulation is taken to be exercised on that date.

(5) If P opts into this scheme in relation to an employment, P becomes an active member of this scheme in relation to that employment at the beginning of the first pay period beginning after the date on which the option is exercised or at such other time as the scheme manager considers appropriate.

### **Automatic re-enrolment**

**22.**—(1) This regulation applies if, on the automatic re-enrolment date, an eligible person (P) in relation to service in a scheme employment is not in pensionable service under this scheme in relation to service in that employment.

(2) On the automatic re-enrolment date, the scheme manager must enrol P in this scheme in relation to service in that employment if the employer is required under section 5 of the Pensions Act 2008<sup>(3)</sup> (automatic re-enrolment) to make arrangements for P to be an active member of a pension scheme.

### **Opting out of this scheme**

**23.**—(1) A person (P) opts out of this scheme in relation to service in a scheme employment if P opts not to be an active member of this scheme in relation to that service.

(2) P may only exercise the option by notice to the scheme manager in a form required by the scheme manager (“opt-out notice”).

(3) The option is taken to be exercised on the date on which the opt-out notice is received by the scheme manager.

### **Opting out before the end of the first three months**

**24.**—(1) This regulation applies if a person (P) opts out of this scheme in relation to a continuous period of service in scheme employment before the end of three months after—

- (a) P’s first day of a continuous period of service in scheme employment; or
- (b) the automatic re-enrolment date.

(2) If paragraph (1)(a) applies, P is taken never to have been in pensionable service under this scheme in relation to that continuous period of service in scheme employment.

(3) If paragraph (1)(b) applies, P is taken not to have been in pensionable service under this scheme in relation to that period of service during the period referred to in paragraph (1)(b).

(4) This regulation does not require the scheme manager to pay P any additional amount which becomes payable by P in respect of national insurance contributions because P has not after all been an active member of this scheme during any period.

### **Opting out after the first three months**

**25.**—(1) This regulation applies if a person (P) opts out of this scheme in relation to a continuous period of service in scheme employment three months or more after P’s—

- (a) first day of a continuous period of service in scheme employment; or

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(3) 2008 c. 30.

- (b) automatic re-enrolment date.
- (2) If P exercises the option under paragraph (1)(a) or (b), P ceases to be in pensionable service under this scheme in relation to that continuous period of service in scheme employment—
  - (a) on the first day of the first pay period beginning on or after the date on which the option is exercised; or
  - (b) if the scheme manager considers that day inappropriate, on the first day of any later pay period which the scheme manager considers appropriate.

## CHAPTER 3

### Pensionable pay

#### **Pensionable pay**

**26.**—(1) For the purpose of calculating a member’s pension or other benefits under this scheme, the member’s pensionable pay is—

- (a) the member’s pay received for the performance of the duties of the member’s role except any allowance or emoluments paid to that member on a temporary basis;
- (b) the member’s permanent emoluments (including, in the case of a retained firefighter, any retaining allowance);
- (c) the amount foregone where a member has agreed to surrender the right to receive any part of that member’s pensionable pay in exchange for the provision by the employer of any non-cash benefit; and
- (d) the amount paid to the member for continued professional development which the scheme manager determines is pensionable.

(2) The payments in paragraph (1) do not include any payment made by an employer to a member who is on reserve forces service leave.

#### **Meaning of “assumed pensionable pay”**

**27.**—(1) For any period in which the circumstances specified in paragraph (2) apply to an active member of this scheme, the member is treated as receiving pensionable pay (“assumed pensionable pay”) equal to the pensionable pay that the member would have received if those circumstances had not applied.

- (2) The circumstances are that the member is—
  - (a) on secondment to a different employer under an arrangement providing for the member to continue to be an active member of this scheme in respect of the member’s service although the member is paid for that member’s service by the other employer;
  - (b) on sick leave or injury leave on reduced pay or, where the member has paid the contributions required by regulation 120(2) (contributions during absence from work due to illness or injury), is not receiving pay;
  - (c) receiving pay or statutory pay whilst on adoption leave, additional adoption leave, additional maternity leave, parental leave or additional paternity leave;
  - (d) on ordinary adoption leave, ordinary maternity leave or paternity leave;
  - (e) not receiving pay or statutory pay during part or all of the duration of the period of additional adoption leave, additional maternity leave or additional paternity leave and has paid member contributions in respect of that period;
  - (f) on unpaid leave for a period that does not exceed five years, in circumstances that the scheme manager has agreed can count for the purposes of this paragraph, and has paid

contributions required by regulation 120(4) (contributions during absence from work due to authorised absence);

- (g) absent on reserve forces service leave; or
- (h) absent due to a trade dispute and has paid contributions required by regulation 120(3) (contributions during absence from work due to trade dispute).

(3) Paragraph (2)(g) does not apply in respect of any period of service which qualifies the member for benefits under any occupational pension scheme in respect of that service.

(4) Where the circumstances in paragraph (2) apply to a member (P) who was employed as a retained firefighter or volunteer firefighter immediately before those circumstances applied and P's pensionable service for that period was 365 days or more, the amount of P's assumed pensionable pay is calculated by dividing the total amount of P's pensionable pay received for that service during the period of 365 days ending with the last day of continuous pensionable service before those circumstances applied, by 365 and multiplying by the number of days in which the circumstances in paragraph (2) applied.

(5) Where the circumstances in paragraph (2) apply to a member (P) who was employed as a retained firefighter or volunteer firefighter immediately before those circumstances applied and P's pensionable service for that period was less than 365 days, the amount of P's assumed pensionable pay is calculated by dividing the total amount of P's pensionable pay received for that service during that period of continuous pensionable service before those circumstances applied, by the number of days of that service and multiplying by the number of days in which the circumstances in paragraph (2) applied.

## CHAPTER 4

### Membership

#### Active membership

**28.** A person (P) is an active member of this scheme if—

- (a) P is in pensionable service under this scheme;
- (b) P is not in pensionable service whilst on unpaid sick leave or on unpaid child-related leave or on a trade dispute where P had been an active member immediately before that leave or trade dispute began;
- (c) P is on unpaid authorised absence and the scheme manager permits P to be treated as an active member; or
- (d) P is on reserve forces service leave and P was an active member immediately before that leave began.

#### Deferred membership

**29.** A person (P) is a deferred member of this scheme in relation to a continuous period of pensionable service if P—

- (a) ceases to be an active member of this scheme in relation to that period of service before P claims a pension under this scheme in respect of that period of pensionable service;
- (b) is not a pensioner member of this scheme in relation to that period of service; and
- (c) has at least three months qualifying service or a transfer value payment otherwise than from another occupational pension scheme has been accepted by this scheme in relation to P.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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### **Pension credit member**

**30.** A person is a pension credit member of this scheme if that person has been given a pension credit in the scheme as a consequence of a pension debit created under section 29 of the WPRA 1999 in relation to a member of this scheme.