

# Constitutional and Legislative Affairs Committee

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Meeting Venue:

**Committee Room 2 – Senedd**

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Meeting date:

**12 January 2015**

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Meeting time:

**14.30**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



For further information please contact:

**Gareth Williams**

Committee Clerk

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## Agenda

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**1 Introduction, apologies, substitutions and declarations of interest**

**2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3** (Pages 1 – 5)

**CLA(4)–01–15 – Paper 1 – Statutory instruments with clear reports**

Negative Resolution Instruments

**CLA473 – The Non–Domestic Rating Contributions (Wales) (Amendment) Regulations 2014**

Negative procedure; Date made: 28 November 2014; Date laid: 3 December 2014;

Coming into force: 31 December 2014.

**CLA474 – The Water Industry (Undertakers Wholly or Mainly in Wales) (Information about Non–owner Occupiers) Regulations 2014**

Negative procedure; Date made: 2 December 2014; Date laid: 3 December 2014;  
Coming into force: 1 January 2015.

**CLA475 – The Rural Development Programmes (Wales) Regulations 2014**

Negative procedure; Date made: 8 December 2014; Date laid: 9 December 2014;  
Coming into force: 1 January 2015.

**CLA476 – The Firefighters' Pension (Wales) Scheme (Amendment) Order 2014**

Negative procedure; Date made: 8 December 2014; Date laid: 10 December 2014;  
Coming into force: 31 December 2014.

**CLA478 – The Firefighters' Compensation Scheme (Wales) (Amendment) Order 2014**

Negative procedure; Date made: 8 December 2014; Date laid: 10 December 2014;  
Coming into force: 31 December 2014.

**CLA479 – The Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014**

Negative procedure; Date made: 8 December 2014; Date laid: 10 December 2014;  
Coming into force: 1 January 2015.

**Affirmative Resolution Instruments**

**CLA480 – The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2015 (Pages 6 – 9)**

Affirmative procedure; Date made: Not stated; Date laid: 11 December 2014; Coming into force in accordance with regulation 1(2).

**CLA(4)–01–15 – Paper 2** – Letter from Minister for Public Services, 17 November 2014

**CLA(4)–01–15 – Paper 3** – Letter from Chair to the Minister for Public Services, 1 December 2014

**3 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3**

## Negative Resolution Instruments

**CLA477 – The Firefighters’ Pension Scheme (Wales) (Amendment) Order 2014** (Pages 10 – 93)

Negative procedure; Date made: 8 December 2014; Date laid: 10 December 2014; Coming into force: 31 December 2014.

**CLA(4)–01–15 – Paper 4 – Report**

**CLA(4)–01–15 – Paper 5 – Order**

**CLA(4)–01–15 – Paper 6 – Explanatory Memorandum**

## Affirmative Resolution Instruments

**CLA485 – The Non–Domestic Rating (Multiplier) (Wales) (No.2) Order 2014** (Pages 94 – 114)

Affirmative procedure; Date made: 23 December 2014; Date laid: 23 December 2014; Coming into force in accordance with article 1.

**CLA(4)–01–15 – Paper 7 – Report**

**CLA(4)–01–15 – Paper 8 – Order**

**CLA(4)–01–15 – Paper 9 – Explanatory Memorandum**

**CLA(4)–01–15 – Paper 10 – Letter from the Minister for Public Services, 23 December 2014**

**4 Subsidiarity Monitoring Report May to December 2014** (Pages 115 – 123)

**CLA(4)–01–15 – Paper 11 – Subsidiarity Monitoring Report May to December 2014**

**5 Papers to note** (Pages 124 – 139)

**CLA(4)–01–15 – Paper 12 – Written Statement: Amendment to the Infrastructure Bill providing powers for the Welsh Ministers to make provision by way of building regulations for off–site carbon abatement measures**

**CLA(4)–01–15 – Paper 13 – Written Statement: Publication of the report following the Independent Review of the Role and Functions of the Children’s Commissioner for Wales**

**CLA(4)-01-15 – Paper 14 – Planning (Wales) Bill, Letter from the Minister for Natural Resources, 2 December 2014**

**6 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

(vi) the committee is deliberating on the content , conclusion or recommendation of a report it proposes to publish; or is preparing itself to take evidence from any person;

**Forward Work Programme (Pages 140 – 141)**

**CLA(4)-01-15 – Paper 15 – Forward Work Programme**

**Draft Report Planning (Wales) Bill (Pages 142 – 190)**

**CLA(4)-01-15 – Paper 16 – Draft Report**

**CLA(4)-01-15 – Paper 17 – Legal Advice Note**

# Agenda Item 2

## Constitutional and Legislative Affairs Committee Statutory Instruments with Clear Reports 12 January 2015

### **CLA473 – The Non-Domestic Rating Contributions (Wales) (Amendment) Regulations 2014**

**Procedure:** Negative

These Regulations amend the Non-Domestic Rating Contributions (Wales) Regulations 1992 (S.I. 1992/3238) (“the 1992 Regulations”).

Under Part II of Schedule 8 to the Local Government Finance Act 1988 (c. 41) (“the 1988 Act”), billing authorities (in Wales, county and county borough councils) are required to pay amounts (called non-domestic rating contributions) to the Welsh Ministers. The 1992 Regulations contain rules for the calculation of those contributions for Welsh billing authorities.

These Regulations amend those rules for the financial years beginning on or after 1 April 2015 by substituting paragraph 3 of Schedule 1 to the 1992 Regulations. The percentage amounts in respect of discretionary relief in paragraph 3 are unchanged; the amendments are consequential on, and take account of, amendments to section 47 of the 1988 Act made by section 69 of the Localism Act 2011 (c. 20).

These Regulations also substitute a new Schedule 4 (Adult Population Figures).

## **CLA474 – The Water Industry (Undertakers Wholly or Mainly in Wales) (Information about Non-owner Occupiers) Regulations 2014**

### **Procedure: Negative**

These Regulations apply in relation to services provided by an undertaker whose area is wholly or mainly in Wales.

Under section 144C(2) of the Water Industry Act 1991 (c.56), an owner of residential premises who does not live in those premises is under a duty to arrange for the undertaker to be given information about the occupiers of the premises. Section 144C(3) of that Act provides that a failure by the owner to provide the information will result in the owner becoming jointly and severally liable with the occupiers for water and sewerage charges.

These Regulations make provision about the information that is to be given about the occupiers and about timing and procedure in connection with the provision of that information.

## **CLA475 – The Rural Development Programmes (Wales) Regulations 2014**

### **Procedure: Negative**

In order to implement the reform of the Common Agricultural Policy a new suite of EU legislation has come into force. That new EU legislation covers the issue of how assistance is to be granted from the European Agricultural Fund for Rural Development.

These Regulations are required so that the new EU legislation can operate in practice in Wales. These Regulations are a technical step required to enable the Wales Rural Development Programme 2014–2020 (the RDP) to be implemented.

Without these Regulations, the Welsh Ministers would not have powers to receive, pay or recover any financial assistance under the RDP.

Among other things, the Regulations allow the Welsh Ministers to:

- Approve operations for the receipt of financial assistance
- Pay financial assistance to beneficiaries
- Revoke, withhold or recover financial assistance
- Authorise persons to exercise powers of entry and enforcement

#### **CLA476 – The Firefighters’ Pension (Wales) Scheme (Amendment) Order 2014**

##### **Procedure: Negative**

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. 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.

#### **CLA478 – The Firefighters’ Compensation Scheme (Wales) (Amendment) Order 2014**

##### **Procedure: Negative**

This Order amends Schedule 1 to the Firefighters’ Compensation Scheme (Wales) Order 2007 (S.I. 2007/1073 (W. 111)) in which is set out the compensation scheme for firefighters and dependants of firefighters in Wales (“the Compensation Scheme”).

Article 3 of the Order contains transitional provisions in relation to the amendments made by article 2 of, and paragraphs 6 and 7 of the Schedule to, this Order – they provide for the Compensation Scheme in its unamended form to continue to apply in certain circumstances.

**CLA479 – The Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014**

**Procedure:** Negative

These Regulations provide for the implementation of EC Regulations relating to administration of the Common Agricultural Policy. These Regulations revoke and replace current Welsh regulations in this area, as part of EU-wide reform.

Part 2 of these Regulations provide for (among other things): (i) the final date on which applications for payments can be made by farmers, (ii) the minimum size of agricultural area in respect of which an application can be made, (iii) recovery of payments, (iv) powers of entry and enforcement, and (v) offences and penalties.

Part 3 of, and Schedules 1 and 2 to, these Regulations impose minimum standards of good agricultural and environmental condition on beneficiaries of payments. For example, there are standards relating to protection of groundwater, minimum soil cover and heather burning.

**CLA480 – The Council Tax Reduction Schemes (Prescribed Requirements and default Scheme (Wales) (Amendment) Regulations 2015**

**Procedure:** Affirmative

These Regulations uprate certain figures used to calculate an applicant's eligibility for, entitlement to, and level of, a reduction under a Council Tax Reduction Scheme. The regulations relate to both the Council tax Reduction Schemes and Prescribed Requirements (Wales Regulations 2013 and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013 (hereafter together referred to as the "2013 Regulations").

The uprated figures relate to:-



- Non-dependent reductions – adjustments to the maximum reduction relating to adults living with the applicant who are not dependents of the applicant;
- The applicable amount – i.e the amount against which an applicant's income is compared to determine the amount of the reduction to which the applicant is entitled;
- The disregard applicable when calculating a person's income.

Further amendments are made to the 2013 Regulations which:–

- Remove the requirement for a Local authority to publish a draft scheme in consequence of amendments made to the prescribed requirements;
- Incorporate the introduction of shared parental leave and statutory shared parental pay into the rules for calculating entitlement to a reduction;
- Provide that being entitled to an income-based Jobseeker's Allowance will no longer grant access to a Council Tax Reduction for jobseeker's who are nationals of the European economic Area;
- Make minor consequential amendments to in relation to definitions around Employment and support allowance and references to Universal Credit.

## Agenda Item 2.7

Leighton Andrews AC / AM

Y Gweinidog Gwasanaethau Cyhoeddus

Minister for Public Services



Llywodraeth Cymru  
Welsh Government

David Melding AM  
Chair, Constitutional & Legislative Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

17 November 2014

Dear David,

I am writing in relation to the Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2015 ("the uprating Regulations"). These Regulations are required to amend the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013 to uprate the financial figures in line with cost-of-living increases. In addition to the uprating, these Regulations will make other minor amendments to the 2013 Regulations.

The calculation of the uprating is dependent on financial figures set out in the Chancellor's Autumn Statement, as well as the uprating schedule produced by the Department of Work and Pensions, for interrelated social security benefits, for example, Child Benefit and Savings Credit.

The Autumn Statement is being made on 3 December 2014 and we have been provisionally advised the uprating schedule will not be published by DWP before 4 December. Consequently, I will not be able to lay the amending Regulations until 5 December at the earliest. This means a plenary debate could not be held, in accordance with Standing Orders, until 27 January 2015.

Whilst this does not present issues in relation to the Regulations themselves, it does pose practical challenges for Local Authorities as they must incorporate the uprated financial figures into their Council Tax Reduction Schemes via full Council no later than 31 January, in order for the uprated figures to have effect in the proceeding year.

There are no provisions to allow Local Authorities to make in-year changes to their Schemes. Therefore, there is no mechanism to ensure a Local Authority adopts the uprated financial figures if a Council meeting to adopt its Scheme is held in advance of the Assembly debating the amending Regulations. This poses the risk that not all Local Authorities will use the uprated figures, meaning applicants from different areas may be treated differently and some applicants will be made worse off if cost of living increases are not reflected.

Local Authorities have been made aware of the timescales for making the amending Regulations and have been asked to ensure they have arrangements in place to incorporate the uprated financial figures into their adopted Schemes. However, in order to facilitate their preparations and to ensure all Local Authorities are able to adopt the uprated figures, I would be grateful if the Constitutional and Legislative Affairs Committee would be willing to consider and report on the Regulations ahead of 27 January, to enable an earlier plenary debate to be arranged. You kindly facilitated such preparations for the purposes of uprating the 2014-15 Regulations.

The amending Regulations are a short set of Regulations and my officials would be happy to engage with yours to support the scrutiny process. I would also be happy to share a copy of the draft Regulations with the Committee which I anticipate will be available by 5 December, although these may only contain provisional figures, depending on when the uprating schedule is published by DWP.

Members may also wish to be aware, due to the timing of the Autumn Statements, it is likely we will face a similar situation in future years when uprating the Council Tax Reduction Scheme Regulations.

*Yours sincerely,  
Leighton Andrews*

**Leighton Andrews AC / AM**  
**Y Gweinidog Gwasanaethau Cyhoeddus**  
Minister for Public Services

**Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol**  
**Constitutional and Legislative Affairs Committee**

Leighton Andrews AM  
Minister for Public Services  
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5th Floor, Tŷ Hywel  
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CF99 1NA

Cynulliad  
Cenedlaethol  
Cymru  
National  
Assembly for  
Wales



1 December 2014

Dear Leighton

**The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales)(Amendment) Regulations 2015**

Thank you for your letter of 17 November, which we considered at our meeting on 24 November 2014.

As we have made clear in the past, we are always prepared to work flexibly to assist the Welsh Government, balancing that approach with our obligation to scrutinise legislation effectively and in an open and transparent way.

In order to provide the best chance of reporting early in January, it would be helpful if your lawyers could share, on a confidential basis, the current draft of the regulations with our lawyers in the Commission as soon as possible. This approach is one we have been using regularly to good effect with Welsh Government lawyers generally over the last few years, as it has proven to facilitate and improve the efficiency of the scrutiny process.

In light of the final paragraph of your letter and our report of May 2013, *Inquiry into the Council Tax Reduction Schemes Regulations*, it would be helpful to know what progress you consider has been made in securing improvements to the engagement between the Welsh Government and Department of Work and Pensions, particularly with a view to ensuring that you can provide us with drafts of the regulations, with or without the appropriate figures, at the earliest opportunity.

Bae Caerdydd  
Caerdydd  
CF99 1NA

Cardiff Bay  
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Ffôn / Tel: 029 2089 8154  
E-bost / Email: [gareth.williams@wales.gov.uk](mailto:gareth.williams@wales.gov.uk)

I am copying this letter to the Chair of the Communities, Equality and Local Government Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Melding', with a long, sweeping horizontal stroke extending to the right.

**David Melding AM**  
**Chair**

# Agenda Item 3.1

## Constitutional and Legislative Affairs Committee Draft Report

CLA(4)–01–15

### CLA477 – The Firefighters’ Pension Scheme (Wales) (Amendment) Order 2014

This Order amends Schedule 1 to the Firefighters’ Pension Scheme (Wales) Order 2007. The amendments—

- (a) make minor corrections to the New Firefighters’ Pension Scheme (Wales) (“the Scheme”) set out in that Schedule;
- (b) amend the Scheme to provide those persons who were employed in Wales as retained firefighters during the period from 1 July 2000 to 5 April 2006 inclusive with access to a pension scheme for that period;
- (c) introduce new provisions.

#### Procedure: Negative

#### Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Paragraph (b) of the definition of ‘volunteer firefighter’ on page 11 does not read correctly as it refers to “firefighting (whether instead of, or in addition to, engaging in firefighting).” It appears that additional words, such as those included in the definition of ‘retained firefighter’ on the following page, should have been included.

[Standing Order 21.2(vi) – defective drafting]

#### Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

#### Legal Advisers

## Constitutional and Legislative Affairs Committee

**December 2014**

### **Government's Response**

It is accepted that there has been an error as described in the Report. We will draw this to the attention of fire and rescue authorities and firefighters' representatives and make the correction in the next available order amending the pension scheme.

**2014 No. 3254 (W. 330)**

**FIRE AND RESCUE  
SERVICES, WALES**

**PENSIONS, WALES**

**The Firefighters' Pension Scheme  
(Wales) (Amendment) Order 2014**

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends Schedule 1 to the Firefighters' Pension Scheme (Wales) Order 2007. The amendments—

- make minor corrections to the New Firefighters' Pension Scheme (Wales) (“the Scheme”) set out in that Schedule;
- amend the Scheme to provide those persons who were employed in Wales as retained firefighters during the period from 1 July 2000 to 5 April 2006 inclusive with access to a pension scheme for that period;
- introduce new provisions.

Except as mentioned below the Order has effect from 1 April 2014. Power to give the Order retrospective effect is conferred by section 34 of the Fire and Rescue Services Act 2004.

The amendments made by paragraphs 3(5), 7(3) and 9(8)(a) of the Schedule are to make minor changes to the Scheme and have retrospective effect from 1 July 2013.

A minor change made by paragraph 2(2) is to ensure that those who took up employment as a firefighter before 6 April 2006 and were either not eligible to be a member of the Firefighters' Pension Scheme 1992 or made an election not to pay pension contributions required by that scheme, are treated as a firefighter member of the Scheme when automatically enrolled into that Scheme. This amendment has retrospective effect from 31 December 2012.



Part 2 of the Scheme (membership, cessation and retirement) is amended to enable eligible retained firefighters to join the Scheme from the date their service began or from 1 July 2000 if later. The normal retirement age and normal benefit age of special members differ from those for ordinary members (*paragraph 2 of the Schedule to the Order*).

Part 3 of the Scheme (personal awards) is amended (*paragraph 3*). First, a new rule 1A is inserted in setting out the conditions for a special member to receive a special member's ordinary pension; and new rule 2A sets out the conditions for receipt of a retrospective award on ill-health retirement. Other rules in Part 3 are amended so as to apply to special members.

Secondly, a correction is made so that it is clear which pensionable service can count for the additional pension benefit: long service increment in rule 7A (*paragraph 3(10)(a)*). The amendment only includes service with a Welsh Fire and Rescue Authority and has retrospective effect from 1 July 2013.

Thirdly, a new rule 7B is inserted (*paragraph 3(11)*) 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 paragraph 3(10)(b), (c) and (d) and paragraph 3(11) in relation to paragraphs (3) and (4) of the new rule 7B amend the method of uprating additional pension benefit for the long service increment (rule 7A of Part 3) and continuing professional development (rule 7B) from a specific index, retail price index, to 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 effect from 11 April 2011 but otherwise the amendments relating to the new rule 7B have retrospective effect from 1 July 2013.

Part 4 of the Scheme (survivors' pensions) is amended so as to apply to special members (*paragraph 4*).

Part 5 of the Scheme (awards on death) is adapted for special members and a new rule 1A is inserted providing for death grant for the limited period (*paragraph 5*).

Parts 6 of the Scheme (pension sharing on divorce), 8 (determination of questions and appeals), 9 (review, withdrawal and forfeiture of awards) and 10 (qualifying service and pensionable service) are amended in respect of special members. A new rule 2A is inserted in Part 10 which sets out the periods of service which may be accrued as special pensionable service by special members on payment of the mandatory special period pension contributions or the special pension contributions (*paragraphs 6, 7, 8 and 9*).

Part 11 of the Scheme (pensionable pay, pension contributions and purchase of additional service) is amended. The definition of pensionable pay is amended to include payments which are pensionable under additional pension benefit (new rule 7B) and provides that payments which are not within the definition of pensionable pay in rule 1(1)(a) as amended, or additional pension benefits payable for long service or in respect of a firefighter's continual professional development, should remain pensionable whilst the firefighter continues to receive them (*paragraph 10(2)*). The payments treated as final pensionable pay are amended to exclude additional pension benefit payments payable within rule 7B of Part 3 (*paragraph 10(3)(a)*). These amendments have retrospective effect from 1 July 2013.

In respect of special members a new rule 5A is inserted in Part 11 which provides for the purchase of service during the limited period and new rules 6A and 6B are inserted which set out the periods of payment for different types of special member (*paragraph 10(3)(b) et seq*).

Part 12 of the Scheme (transfers into and out of the Scheme) is amended in respect of special members. In particular, a new chapter 3A and rule 11A are inserted which permit a deferred member of the Firefighters' Pension Scheme 1992 who joins this Scheme as a special firefighter member to request a transfer value payment to be made in certain circumstances to the member's special membership of this Scheme. A new chapter 6 and rule 16 are inserted allowing conversion of membership from special membership to standard membership and from standard membership to special membership. A new rule 17 is inserted which enables a standard member of this Scheme in respect of service which they would otherwise be able to reckon as

special pensionable service, who joins this Scheme as a special firefighter member, to convert their standard membership of this Scheme to their special membership on payment of the additional pension contribution (*paragraph 11*).

Part 13 of the Scheme is amended to require 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 part of that individual's pension under rule 3 (withdrawal of pension during service as a firefighter) of Part 9 (review, withdrawal and forfeiture of awards) (*paragraph 12*). These amendments have retrospective effect from 1 July 2013.

A new Annex ZA is inserted which provides for the calculation of the commuted portion of pensions by special members (*paragraph 14*). A new Annex AB1 is inserted which provides for the calculation of pension contributions for special members (*paragraph 16*). Annex 1 is also amended in relation to special members (*paragraph 17*).

Amendments made to Annex 2 (appeals to board of medical referees) enable—

- the board to reconsider its decision where the parties agree that it has made a material error of fact;
- the authority to recover some or all of the expenses of the board where the appellant has withdrawn the appeal or requested the date for an interview or examination to be cancelled or postponed less than 22 working days before the date appointed (*paragraph 18*).

These amendments have retrospective effect from 1 July 2013.

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).

**2014 No. 3254 (W. 330)**

**FIRE AND RESCUE  
SERVICES, WALES**

**PENSIONS, WALES**

**The Firefighters' Pension Scheme  
(Wales) (Amendment) Order 2014**

*Made* 8 December 2014

*Laid before the National Assembly for Wales*  
10 December 2014

*Coming into force* 31 December 2014

This Order is made in exercise of the powers conferred by sections 34, 60 and 62 of the Fire and Rescue Services Act 2004<sup>(1)</sup>.

Before making this Order, and in accordance with section 34(5) of that Act, the Welsh Ministers consulted such persons as they considered appropriate.

The Welsh Ministers make the following Order:

**Title and commencement**

**1.**—(1) The title of this Order is the Firefighters' Pension Scheme (Wales) (Amendment) Order 2014.

(2) Subject to paragraph (3) this Order comes into force on 31 December 2014.

(3) The amendments made by article 2 and the Schedule have effect from 1 April 2014 but the provisions listed in the first column of the table below

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(1) 2004 c. 21. Powers under sections 34 and 60 of the Fire and Rescue Services Act 2004 are now vested in the Welsh Ministers so far as they are exercisable in relation to Wales. They were previously vested in the National Assembly for Wales by section 62 of the Fire and Rescue Services Act 2004. By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c. 32), they were transferred to the Welsh Ministers.

(and described in the second column) have effect from the corresponding date in the third column—

<b>Paragraph of the Schedule to this Order</b>	<b>Description</b>	<b>Taking effect date</b>
2(2)	which relates to rule 1 (scheme membership) of Part 2 of the Scheme	31 December 2012
3(5)	which inserts new rule 2A (restrospective award on ill-health retirement) in Part 3 of the Scheme	1 July 2013
3(10)(a)	which substitutes wording in paragraph (2) of rule 7A (additional pension benefit: long service)	1 July 2013
3(10)(b) to (d)	which relates to rule 7A (additional pension benefit: long service) of Part 3 (personal awards) of the Scheme	11 April 2011
3(11)	which substitutes for rule 7B (additional pension benefit: continual professional development) of Part 3 of the Scheme, rule 7B (additional pension benefit)	11 April 2011, in relation to paragraph (3) of rule 7B and the definitions of “beginning date” and “following relevant tax year” in paragraph (6) of rule 7B.  Otherwise, 1 July 2013
7(3)	which relates to rule 5 (appeals on other issues) in Part 8 of the Scheme	1 July 2013
9(8)(a)	which relates to	1 July 2013

	paragraph (5) of rule 6 of Part 10 of the Scheme	
10(2)	which relates to rule 1 (pensionable pay) of Part 11 of the Scheme	1 July 2013
10(3)(a)	which relates to rule 2 (final pensionable pay) of Part 11 of the Scheme	1 July 2013
12	which inserts a new paragraph (11) in rule 2 (payments and transfers into Firefighters' Pension Fund) of Part 13 of the Scheme	1 July 2013
18	which relates to Annex 2 (appeals to board of medical referees)	1 July 2013

### **Amendment of the Firefighters' Pension Scheme (Wales) Order 2007**

2. Schedule 1 to the Firefighters' Pension Scheme (Wales) Order 2007<sup>(1)</sup> is amended in accordance with the Schedule to this Order.

### **Transitional provisions: transfers into Firefighters' Pension Fund**

3.—(1) The amendment made by article 2 and paragraph 12 of the Schedule to this Order to rule 2 (payments and transfers into Firefighters' Pension Fund) of Part 13 (Firefighters' Pension Fund) does not have effect in relation to a person who had entered into a contract of employment with a fire and rescue authority before 1 July 2013.

(2) In a case to which paragraph (1) applies, rule 2 of Part 13 of the New Firefighters' Pension Scheme (Wales), in the form in which it had effect before 1 July 2013, continues to have effect in relation to such a person.

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(1) S.I. 2007/1072 (W. 110) as amended by S.I. 2009/1225 (W. 108), 2010/234, 2012/972 (W. 127), 2013/735 (W. 87), 2013/1577 (W. 145) and 2014/523 (W. 64).

*Leighton Andrews*

Minister for Public Services, one of the Welsh  
Ministers

8 December 2014

Amendment of Schedule 1 to the  
Firefighters' Pension Scheme (Wales)  
Order 2007

**Amendment of Part 1 (title and interpretation)**

**1.**—(1) Part 1 is amended as follows.

(2) In rule 2 (interpretation) in paragraph (1)—

(a) at the appropriate places insert—

““the 2004 Act” (*“Deddf 2004”*) means the Finance Act 2004(1);”;

““actuary” (*“actiwari”*) means a fellow of the Institute and Faculty of Actuaries;”;

““child’s pension” (*“pensiwn plentyn”*) means a pension under rule 6 (child’s pension) of Part 4 (survivors’ pensions);”;

““initial date” (*“dyddiad cychwynnol”*) means 1 January 2015;”;

““IQMP” (*“YMCA”*) means an independent qualified medical practitioner;”;

““limited period” (*“cyfnod cyfyngedig”*) means the period beginning on 1 July 2000 or if later, the date falling before 6 April 2006 on which the person was first employed as a retained firefighter and ending on the earliest of—

(a) the date on which that person joined this Scheme as a special member or as a standard member in respect of service which the member could otherwise reckon as special pensionable service,

(b) the date, if applicable, on which the person ceased to be employed as a retained or regular firefighter; and

(c) 31 March 2015;”;

““lump sum contribution” (*“cyfraniad ar ffurf cyfandaliad”*) means the lump sum payable under paragraphs (1) to (13) of rule 6A of Part 11;”;

““mandatory special period” (*“cyfnod arbennig gorfodol”*) means that part of a person’s service during the limited period beginning on the date selected by the person before 6 April 2006 and ending on the earliest of—

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(1) 2004 c. 12.



- (a) the date on which the person joined this Scheme as a special member or as a standard member in respect of service which the person could otherwise reckon as special pensionable service,
- (b) the date, if applicable, on which the person was dismissed or retired from employment as a regular or retained firefighter; and
- (c) 31 March 2015;”;

““mandatory special period pension contributions” (“*cyfraniadau pensiwn cyfnod arbennig gorfodol*”) means the special pension contribution payable in respect of a special member’s service during the mandatory special period under rule 6A of Part 11 together with any interest payable in respect of that contribution in accordance with rule 6A(13);”;

““ordinary pension” (“*pensiwn cyffredin*”), in relation to a standard member, means a pension referred to in rule 1 of Part 3 (personal awards);”;

““Scheme Actuary” (“*Actiwari’r Cynllun*”) means the actuary appointed by the Welsh Ministers to provide actuarial advice and to carry out any statutory functions set out in the Scheme;”;

““scheme chargeable payment” (“*taliad trethadwy o’r cynllun*”) has the meaning given in section 241 of the 2004 Act;”;

““special deferred member” (“*aelod gohiriedig arbennig*”) has the meaning given in rule 1A(5) to (8) of Part 2;”;

““special eligibility conditions” (“*amodau cymhwyster arbennig*”) has the meaning given in rule 2A of Part 2;”;

““special firefighter member” (“*aelod-ddiffoddwr tân arbennig*”) has the meaning given in rule 1A(1) to (4) of Part 2;”;

““special membership” (“*aelodaeth arbennig*”) means membership of this Scheme as a special firefighter member, special deferred member or special pensioner member as the case may be;”;

““special member” (“*aelod arbennig*”) means a special firefighter member, a special deferred member or a special pensioner member;”;

““special member’s ordinary pension” (“*pensiwn cyffredin aelod arbennig*”) means a pension of the description referred to in rule 1A of Part 3;”;

““special pension contribution” (*“cyfraniad pensiwn arbennig”*) means the pension contribution set out in rule 3(1A) of Part 11;”;

““special pensionable retained service” (*“gwasanaeth wrth gefn pensiynadwy arbennig”*), in relation to a retained firefighter who is a special member and any period of special pensionable service, means the same proportion of whole-time service as that which the firefighter’s actual pensionable pay for that period bears to the firefighter’s reference pay for that period;”;

““special pensionable service” (*“gwasanaeth pensiynadwy arbennig”*) is to be construed in accordance with rules 2A to 5 of Part 10;”;

““special pensioner member” (*“aelod-bensiynwr arbennig”*) has the meaning given in rule 1A(9) to (13) of Part 2;”;

““standard member” (*“aelod safonol”*) means a member of this Scheme other than a special member;”;

““standard membership” (*“aelodaeth safonol”*) means membership of this Scheme as a standard member;”;

““volunteer firefighter” (*“diffoddwr tân gwirfoddol”*) means a person employed by an authority—

- (a) as a volunteer firefighter but not as a regular firefighter or as a retained firefighter;
  - (b) on terms under which the firefighter is, or may be required to, engage in firefighting (whether instead of, or in addition to, engaging in firefighting);
  - (c) otherwise than in a temporary capacity; and
  - (d) who is obliged to attend at such times as the officer in charge considers necessary, and in accordance with the orders that the firefighter receives.”;
- (b) in the definition of “child” (*“plentyn”*) for “or a pensioner member” substitute “a pensioner member or a special member”;
- (c) at the end of the definition of “opt in” (*“dewis ymuno”*) insert—
- “or, in the case of a special firefighter member means making an election under rule 6A of Part 11 to pay the mandatory special period pension contributions;”;
- (d) in the definition of “pensioner” (*“pensiynwr”*), after ““pensioner member”

(“*aelod-bensiynwr*”)” insert “or “special pensioner member” (“*aelod-bensiynwr arbennig*”);

- (e) for the definition of “retained firefighter” (“*diffoddwr tân wrth gefn*”) and “volunteer firefighter” (“*diffoddwr tân wrth gefn*”) substitute—

““retained firefighter” (“*diffoddwr tân wrth gefn*”) means a person employed by an authority—

- (a) as a retained firefighter, but not as a regular firefighter or as a volunteer firefighter;
- (b) on terms under which the firefighter is, or may be, required to engage in firefighting or, without a break in continuity of such employment, may be required to perform other duties appropriate to the firefighter’s role as firefighter (whether instead of, or in addition to, engaging in firefighting);
- (c) otherwise than in a temporary capacity; and
- (d) who is obliged to attend at such times as the officer in charge considers necessary, and in accordance with the orders that the firefighter receives;”.

- (3) In rule 2, after paragraph (3) insert—

“(4) References in this Scheme to a firefighter member, a deferred member or a pensioner member include references to a special firefighter member, a special deferred member or a special pensioner member, respectively, unless the contrary intention is shown.”

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

**2.—**(1) Part 2 is amended as follows.

- (2) In rule 1 (scheme membership), for paragraph (2A) substitute—

“(2A) Where a person who—

- (a) having taken up employment as a firefighter before 6 April 2006;
- (b) having continued in such employment until his or her automatic enrolment date;
- (c) having made an election not to pay contributions under the 1992 Scheme or not being eligible to be a member of the 1992 Scheme; and

- (d) having not otherwise elected to become a member of this Scheme,

is automatically enrolled in this Scheme, that enrolment constitutes an election to become a firefighter member of this Scheme.”

(3) In paragraph (4) of rule 1 (scheme membership), after “pensionable service” insert “or special pensionable service”.

(4) After rule 1 insert—

### **“Special membership**

**1A.**—(1) Subject to paragraphs (2) to (5) and (15), a firefighter member of any of the following descriptions is also a special firefighter member of this Scheme—

- (a) a person who—
  - (i) having taken up employment as a retained firefighter before 6 April 2006;
  - (ii) having continued in such employment until the date of the person’s election; and
  - (iii) having elected<sup>(1)</sup>, within the period required by rule 6B(1), or 6B(12) as the case may be, of Part 11, to pay the mandatory special period pension contributions;
- (b) a person who—
  - (i) having taken up employment as a retained firefighter before 6 April 2006;
  - (ii) having continued in such employment until a date on or after 6 April 2006;
  - (iii) having, immediately after the termination of such employment, taken up employment as a regular firefighter and continued in that employment until the date of his or her election; and
  - (iv) having elected, within the period required by rule 6B(1) of Part 11, or 6B(12) as the case may be, to pay the mandatory special period pension contributions.

(2) Where a special firefighter member makes a contributions election in respect of the member’s special membership and ceases to be a special member, the member may again

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(1) See rule 6B(10) of Part 11 for date when an election takes effect.

become a firefighter member (but not a special member) by virtue of rule 6 of this Part, which shall apply to the member with the omission of the word “again”.

(3) A special firefighter member who is treated as having ceased to make mandatory special period pension contributions in accordance with rule 6B(5)(c) of Part 11 ceases to be a special firefighter member and becomes a special deferred member.

(4) A special firefighter member who is entitled to reckon a period as special pensionable service pursuant to rule 5 of Part 10 and resumes service immediately after that period remains a special firefighter member.

(5) A special firefighter member who would be entitled to reckon a period as special pensionable service pursuant to rule 4 of Part 10 (reckoning of unpaid period of absence) if the member elected to purchase additional service during that period under rule 4(1) of that Part and subsequently paid the special pension contribution in respect of that period, but does not so elect or pay that special pension contribution, remains a special firefighter member if the member resumes service immediately after that period.

(6) Subject to paragraph (15), a person who satisfies the conditions in paragraph (7) is a special deferred member of this Scheme.

(7) The conditions are that the person—

- (a) took up employment as a retained firefighter before 6 April 2006;
- (b) was employed as a retained firefighter on or after 1 July 2000;
- (c) resigned or was dismissed from that employment before the date that the person’s election under rule 6A of Part 11 to pay the mandatory special period pension contributions took effect;
- (d) was younger than 55 on the date of the resignation or dismissal;
- (e) is not entitled to an ill-health award under rule 2 or 2A of Part 3; and
- (f) has elected, within the period required by rule 6B(1), or 6B(12) as the case may be, of Part 11 to pay the mandatory special period pension contributions.

(8) Subject to paragraph (15), a person who—

- (a) satisfies the requirements of paragraph (1)(a);

- (b) has joined this Scheme as a standard member in respect of service which the person would otherwise be entitled to treat as special pensionable service before electing to join this Scheme as a special member; and
- (c) does not elect to convert the person's standard membership to the person's special membership,

is a special deferred member of this Scheme.

(9) A person who was a special firefighter member of this Scheme immediately before paragraph (1) of rule 3 of Part 3 applied to the person is then a special deferred member of this Scheme.

(10) Subject to paragraph (15), a person who satisfies all of the conditions in paragraph (11) and who satisfies at least one of the conditions in paragraph (12) is a special pensioner member of this Scheme.

(11) The conditions are that the person—

- (a) took up employment as a retained firefighter before 6 April 2006;
- (b) was employed as a retained firefighter on or after 1 July 2000;
- (c) retired from that employment before the date that the person's election under rule 6A of Part 11 to pay the mandatory special period pension contributions took effect;
- (d) has elected, within the period required by rule 6B(1), or 6B(12) as the case may be, of Part 11, to pay the mandatory special period pension contributions.

(12) The conditions are that the person—

- (a) retired having attained the age of 55;
- (b) was dismissed or retired by reason of permanent disability and the conditions of rule 2A of Part 3 (retrospective award on ill-health retirement) are capable of being satisfied; or
- (c) has attained the age of 60.

(13) Subject to paragraph (15), a person of any of the following descriptions is also a special pensioner member of this Scheme—

- (a) a person who was a special firefighter member of this Scheme immediately before the person retired and to whom rule 1A of Part 3 applies;
- (b) a person who was a special deferred member of this Scheme immediately

before the person retired and who satisfies the requirements of paragraph (4) of rule 3 of Part 3;

- (c) a person who was a special firefighter member of this Scheme immediately before the person left his or her employment by reason of permanent disablement and is entitled under rule 2 (award on ill-health retirement) of Part 3 (personal awards) to a lower tier ill-health pension or a higher tier ill-health pension.

(14) A person who was a special deferred member of this Scheme immediately before the person's 60th birthday is a special pensioner member after that date.

(15) A person who was employed as a retained firefighter and to whom paragraph (1) of rule 2 of Part 8 of the Compensation Scheme applies (award to or in relation to a retained firefighter) may not be a special member of this Scheme."

(5) After rule 2 (eligibility conditions) insert—

#### **"Special eligibility conditions**

**2A.**—(1) A special firefighter member is eligible for a special member's ordinary pension or a pension under rule 2 (award on ill-health retirement) or rule 3 (deferred pension) of Part 3 as a special member under this Scheme if—

- (a) the member pays the special pension contribution; and
- (b) an eligibility condition is satisfied.

(2) A special deferred member or a special pensioner member is eligible for a special member's ordinary pension or a pension under rule 2 (award on ill-health retirement) or rule 2A (retrospective award on ill-health retirement) if an eligibility condition is satisfied.

(3) A special deferred member who was a special firefighter member immediately before the member satisfied the requirements of paragraph (1) of rule 3 of Part 3 and in respect of whom an eligibility condition is satisfied is entitled to a special member's ordinary pension.

(6) In paragraphs (1) and (2) of rule 3 (normal retirement age and normal benefit age), after "members" in each place where it occurs insert "who are not special firefighter members".

(7) After paragraph (2) of rule 3 (normal retirement age and normal benefit age) insert—

“(3) The normal retirement age of special firefighter members, or for persons who joined this Scheme as special pensioner members, is 55.

(4) The normal benefit age of special firefighter members, or of special deferred members, is 60.”

### **Amendment of Part 3 (personal awards)**

**3.**—(1) Part 3 is amended as follows.

(2) In rule 1 (ordinary pension) for paragraph (2) substitute—

“(2) This rule does not apply to—

- (a) a firefighter member whose notice of retirement states that the member is retiring for the purpose of taking up employment with another authority; or
- (b) subject to rule 18 of Part 12, a special firefighter member in respect of special pensionable service.”

(3) After rule 1 insert—

### **“Special member’s ordinary pension**

**1A.**—(1) Subject to paragraph (2), this rule applies to a member of this Scheme who is a special member and who satisfies one of the special eligibility conditions and retires or has retired.

(2) This rule does not apply to a special firefighter member whose notice of retirement states that the member is retiring for the purpose of taking up employment as a firefighter with another authority.

(3) Where a special member to whom this rule applies—

- (a) is not entitled to an ill health award under rule 2 or 2A;
- (b) attains or has attained the age of 55; and
- (c) retires,

the member is entitled to a special member’s ordinary pension.

(4) A special member who is not entitled to a special member’s ordinary pension under paragraph (3) or an ill health award under rule 2 or 2A is entitled to a deferred pension.

(5) Where a special member to whom this rule applies becomes entitled to a special member’s ordinary pension in respect of service as a retained firefighter, the special member’s ordinary pension must be calculated by



multiplying the member's final pensionable pay by the member's special pensionable retained service and dividing the resultant amount by 45.

(6) Where a special member to whom this rule applies has special pensionable service as a regular firefighter accrued whilst the member was a special member, the member becomes entitled on retiring to a special member's ordinary pension calculated by multiplying that part of the member's special pensionable service which is attributable to the member's service as a regular firefighter by the member's final pensionable pay and dividing the resultant amount by 45.

(7) Where paragraph (6) applies, the amount calculated under that paragraph must be added to the amount calculated under paragraph (5).

(8) Where a person joins this Scheme as a special pensioner member and is entitled to a pension under this rule, the authority must pay to the member a lump sum equal to the value, together with interest, of the pension payments ("the past pension payments") which the member would have received up to the date of payment of the lump sum if at the date of the member's retirement the member had been a member of this Scheme who had made contributions equivalent to the member's contributions under rules 6A and 6B of Part 11 and must thereafter pay the member a special member's ordinary pension.

(9) The interest payable in accordance with paragraph (8) is payable as follows—

- (a) for the purposes of calculating interest under this paragraph it must be assumed that the past pension payments were payable from the date that the member reached normal retirement age;
- (b) interest starts to accrue from the date that the first past pension payment would have been made in accordance with sub-paragraph (a) and ceases to accrue on the date of payment of the lump sum in accordance with paragraph (8) of this rule;
- (c) interest must be calculated by applying the past interest rate to the past pension payment compounded monthly between the month each past pension payment would have been made in accordance with sub-paragraph (a) until the date of payment of the lump sum,

and for the purposes of this rule “past interest rate” (“*cyfradd llog gyt*”) is a rate equivalent to the interest available on the most recent issue of five-year fixed interest savings certificates from National Savings and Investments available on the 15th day of each month which would have been applicable to the period when the past pension payment in question would have been made in accordance with sub-paragraph (a).”

(4) In rule 2 (award on ill-health retirement)—

(a) for paragraph (2) substitute—

“(2) Every firefighter member to whom this rule applies and who satisfies—

(a) in the case of a firefighter member other than a special firefighter member, an eligibility condition;

(b) in the case of a special firefighter member, one of the special eligibility conditions,

is entitled, on retiring, to a lower tier ill-health pension calculated in accordance with paragraph 1 of Annex 1 to this Scheme.”; and

(b) in paragraph (4) for “The amount of the higher tier ill-health pension” substitute “The amount of the higher tier ill-health award”.

(5) After rule 2 insert—

**“Retrospective award on ill-health retirement**

**2A.**—(1) This rule applies to a person who elects to join this Scheme as a special deferred member or a special pensioner member and who had been dismissed on the grounds of ill-health or had retired from employment as a retained firefighter before 6 April 2006.

(2) A person to whom this rule applies may apply to the authority which last employed the person as a retained firefighter to be assessed by an IQMP selected by it to determine whether the person was permanently incapable of performing the duties of a firefighter on the date on which the person was dismissed on the grounds of ill-health or retired and whether the person has become capable of performing those duties since that date.

(3) An application under paragraph (2) must be made during the period of three months beginning with the day on which the notice was served by the authority under rule 5A(13) (purchase of service during the limited period) of Part 11.

(4) The authority must obtain a written opinion from an IQMP on whether the person was at the date of the dismissal or retirement

permanently incapable of performing the duties of a firefighter and if so, whether the person has become capable of performing those duties since that date.

(5) The authority must determine whether the person is entitled to a retrospective award for ill-health retirement on the basis of the written opinion of the IQMP and may only determine that a person is entitled to an award where the IQMP gives an opinion that the person was permanently incapable of performing the duties of a firefighter on the date of the dismissal or retirement and has not become capable of performing those duties since that date.

(6) The IQMP must certify in their opinion under paragraph (4)—

- (a) that the IQMP has not previously advised, or given their opinion on, or otherwise been involved in, the particular case for which the opinion has been requested, and
- (b) that the IQMP is not acting, and has not at any time acted, as the representative of the employee, the authority, or any other party in relation to the same case.

(7) Where the IQMP has given an opinion under paragraph (4), it shall be subject to review under rule 3 (review of medical opinion) of Part 8 (determination of questions and appeals) and to the outcome of an appeal under rule 4 (appeals against decisions based on medical advice) of Part 8.

(8) An IQMP's opinion under paragraph (4) is binding on the authority unless it is superseded by the IQMP's response under rule 3 of Part 8 or the outcome of an appeal under rule 4 of Part 8 as mentioned in paragraph (7).

(9) If—

- (a) the person concerned wilfully or negligently fails to submit to medical examination by the IQMP selected by the authority, and
- (b) the IQMP is unable to give an opinion on the basis of the medical evidence available,

the authority may make a decision on the issue on such other medical evidence as they think fit, or without medical evidence.

(10) If the authority determine that the person is entitled to a retrospective award following ill-health retirement, they must give written notice to the person within 14 days of their determination together with a copy of the IQMP's opinion.

(11) Where the authority do not determine that the person is entitled as mentioned in paragraph (10) to a retrospective award following ill-health retirement, they must—

- (a) give written notice to the person within 14 days of their determination;
- (b) provide the person with a copy of the IQMP's opinion; and
- (c) inform the person that the person can apply for a review of that opinion under rule 3 (review of medical opinion) or appeal against that decision under rule 4 (appeals against decisions based on medical advice) of Part 8 (determination of questions and appeals).

(12) Where a person has satisfied one of the special eligibility conditions and the authority have determined that the person is entitled to a retrospective award following ill-health retirement, the authority must pay to the person a lump sum equal to the value, together with interest, of the payments of higher tier ill-health pension ("past pension payments") which the person would have received up to the date of payment of the lump sum if at the date of the dismissal or retirement the person had been a member of this Scheme who had made contributions equivalent to the person's contributions under rule 6A of Part 11 and must thereafter pay the person a higher tier ill-health pension.

(13) The interest payable in accordance with paragraph (12) is payable as follows—

- (a) for the purposes of calculating interest under this paragraph it is assumed that the past pension payments were payable from the date that the member would have first received payment of higher tier ill-health pension if, at the date of the dismissal or retirement, the member had been a member of this Scheme;
- (b) interest starts to accrue from the date that the first past pension payment would have been made in accordance with sub-paragraph (a) and ceases to accrue on the date of payment of the lump sum in accordance with paragraph (12) of this rule;
- (c) interest must be calculated by applying the past interest rate to the past pension payment compounded monthly between the month each past pension payment would have been made in

accordance with sub-paragraph (a)  
until the date of payment of the lump  
sum,

and for the purposes of this rule “past interest rate” is a rate equivalent to the interest available on the most recent issue of five-year fixed interest savings certificates from National Savings and Investments available on the 15th day of each month which would have been applicable to the period when the past pension payment in question would have been made in accordance with sub-paragraph (a).

(14) A member of this Scheme entitled to a retrospective award under this rule is not entitled to an ordinary pension or a special member’s ordinary pension in respect of the same special pensionable service.”

(6) In rule 3 (deferred pension)—

(a) in paragraph (1) for “This rule applies” substitute “Subject to paragraph (7), this rule applies”;

(b) after paragraph (6) insert—

“(7) In the case of a firefighter member who is a special firefighter member, paragraph (1) applies with the substitution, in sub-paragraph (a), of “one of the special eligibility conditions” for “an eligibility condition” and with the substitution in paragraph (3) of “forty-five” for “sixty” and “special pensionable service” for “pensionable service”.”

(7) In paragraph (1) of rule 5 (pension on member-initiated early retirement), after “firefighter member” insert “other than a special firefighter member”.

(8) In rule 6 (pension on authority-initiated early retirement), after paragraph (2) insert—

“(3) This rule does not apply to a firefighter member who is a special firefighter member.”

(9) In rule 7 (entitlement to two pensions)—

(a) in paragraph (1) for “Subject to paragraph (6)” substitute “Subject to paragraphs (6) and (9)”;

(b) after paragraph (8) insert—

“(9) In the case of a special member, this rule applies with the substitution of “45” for “60” in paragraphs (3), (4) and (7), with the substitution of “special pensionable service” for “pensionable service” wherever it occurs and with the substitution of “1A” for “1” in paragraph (5).”

(10) In rule 7A (additional pension benefit: long service)—

- (a) in paragraph (2) for the words after the formula substitute—

“Where—

A is the number in years (counting part of a year as the appropriate fraction) by which the member’s continuous pensionable service in the employment of an authority and subsequent continuous pensionable service in the employment of another authority in Wales 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 the member’s continuous pensionable service in the employment of an authority and subsequent continuous pensionable service in the employment of another authority in Wales up to and including 30 June 2007, exceeds 20 but does not exceed 30.”;

- (b) in paragraph (3) for “Where” substitute “Until 11 April 2011, where”;

- (c) after paragraph (3) insert—

“(3A) On and after 11 April 2011, the amount of additional pension benefit (as calculated in accordance with paragraph (2) and paragraph (3) and, if applicable, paragraph (3B) and this paragraph) is to be increased on the first Monday of the following relevant tax year by the same amount as any increase which would have applied if that additional pension benefit were a pension to which the Pensions (Increase) Act 1971 applied and the beginning date for that pension were 1 July of the tax year immediately before the relevant tax year.

(3B) For the avoidance of doubt, the increase of additional pension benefit in the tax year 2010/2011 is to be increased by the same percentage as the percentage increase in the Consumer Prices Index in September 2010 with effect from Monday 11 April 2011.”; and

- (d) in paragraph (5) for “paragraph (3)” substitute “paragraphs (3) and (3A)”, and at the appropriate place insert—

““the beginning date” (“*y dyddiad cychwyn*”) means the date on which the pension is treated as beginning for the purposes of section 8(2) of the Pensions (Increase) Act 1971;”;

““following relevant tax year” (“*blwyddyn dreth berthnasol ddilynol*”) means the tax year after the relevant tax year, in relation to

which the member is not a pension member or a deferred member;”.

(11) For rule 7B (additional pension benefit: continual professional development) substitute—

**“Additional pension benefit**

**7B.**—(1) Where an authority determines that the benefits listed in paragraph (5) are pensionable, and in any added pension benefit year pays any such pensionable benefits to a firefighter member, the authority must credit the firefighter member with an amount of additional pension benefit in respect of that year.

(2) Subject to paragraphs (3) and (4), the amount of additional pension benefit in respect of that year must be determined on 1 July immediately following the year in question in accordance with guidance and tables provided by the Scheme Actuary and separate guidance and tables must be provided for special members.

(3) The amount of additional pension benefit determined in accordance with paragraph (2) must be increased on the first Monday of the following relevant tax year by the same amount as any increase which would have applied if that additional pension benefit were a pension to which the Pensions (Increase) Act 1971 applied and the beginning date for that pension were 1 July of the tax year immediately before the relevant tax year.

(4) For the avoidance of doubt, the increase of additional pension benefit in the tax year 2010/2011 must be increased by the same percentage as the percentage increase in the Consumer Prices Index in September 2010 with effect from Monday 11 April 2011.

(5) The benefits referred to in paragraph (1) are—

- (a) any allowance or supplement to reward additional skills and responsibilities that are applied and maintained outside the requirements of the firefighter member’s duties under the contract of employment but are within the wider functions of the job;
- (b) the amount (if any) paid in respect of a firefighter member’s continual professional development;
- (c) the difference between the firefighter member’s basic pay in their day to day role and any pay received whilst on temporary promotion or where the

member is temporarily required to undertake higher role;

- (d) any performance related payment which is not consolidated into the member's pay.

(6) In this rule—

“additional pension benefit year” (*“blwyddyn budd pensiwn ychwanegol”*) means the period of 12 months beginning with 1 July in which a firefighter is in receipt of any of the benefits listed in paragraph (5);

“the beginning date” (*“y dyddiad cychwyn”*) means the date on which the pension is treated as beginning for the purposes of section 8(2) of the Pensions (Increase) Act 1971;

“following relevant tax year” (*“blwyddyn dreth berthnasol ddilynol”*) means the tax year after the relevant tax year, in relation to which the member is not in receipt of a pension under this Scheme or entitled to a deferred pension under rule 3 of Part 3;

“relevant tax year” (*“blwyddyn dreth berthnasol”*) means a tax year in relation to which—

- (a) the amount of a firefighter member's pension benefits determined under this rule for the purposes of this Scheme is taken into account for tax purposes; and
- (b) the firefighter member is not in receipt of a pension under this Scheme or entitled to a deferred pension under rule 3, and

“tax year” (*“blwyddyn dreth”*) means the period of 12 months beginning with 6 April.

(12) In rule 9 (commutation: general)—

- (a) in paragraph (2) for “The lump sum” substitute “Subject to paragraph (2A), the lump sum”;

- (b) after paragraph (2) insert—

“(2A) In the case of a pension payable in respect of a special pensioner member the lump sum must be calculated by multiplying the amount of the person's pension represented by the commuted portion at the date of retirement by the factor specified in the table in Annex ZA by reference to the person's age.”;

- (c) in paragraph (4) for “The commuted portion” substitute “Subject to paragraph (4A), the commuted portion”;



(d) after paragraph (4) insert—

“(4A) In the case of a special member, the commuted portion must not exceed—

(a) the amount calculated in accordance with paragraph (4); and

(b) the maximum amount which would enable a lump sum to be paid to the member without incurring a scheme chargeable payment,

whichever is lower.”;

(e) after paragraph (8) insert—

“(8ZA) In relation to a pension payable to a person who joins this Scheme as a special pensioner member, paragraphs (6) and (7) of this rule have effect as if references to the day of retirement and the effective date were references to the date on which the pension comes into payment.”;

(f) after paragraph (8C) insert—

“(8D) Where paragraph (8B) applies and the person entitled to that other pension is a special pensioner member, paragraph (8B) applies with the substitution of “special pensionable service” for “pensionable service”.

#### **Amendment of Part 4 (survivors’ pensions)**

**4.—**(1) Part 4 is amended as follows.

(2) In paragraph (1) of rule 1 (pensions for surviving spouses, civil partners and nominated partners)—

(a) in sub-paragraph (a), after “member” insert “, other than a special firefighter member,”;

(b) after sub-paragraph (a) insert—

“(aa) a special firefighter member who satisfies one of the special eligibility conditions and dies while employed by an authority; or”;

(c) in paragraph (1)(b)(iii), after “rules 1,” insert “1A,” and after “2” insert “2A,”.

(3) In rule 2 (amount of survivor’s pension: general) after paragraph (3) insert—

“(4) In the case of a firefighter member who is a special firefighter member, this rule applies with the substitution in paragraph (1)(a) of “one of the special eligibility conditions” for “an eligibility condition”.”

(4) In rule 3 (amount of survivor’s pension: special cases)—

(a) in paragraph (1) for “for each year by which the survivor’s age exceeds, by more than twelve years, that of the deceased” substitute

“for each year by which the deceased’s age exceeds, by more than twelve years, that of the survivor”;

- (b) in paragraph (3), after “condition” insert “or, in the case of a special member, satisfies a special eligibility condition”.

(5) In rule 6 (child’s pension), in paragraph (a), after “eligibility conditions” insert “or, in the case of a special member, satisfies a special eligibility condition”.

#### **Amendment of Part 5 (awards on death)**

**5.**—(1) Part 5 is amended as follows.

(2) In rule 1 (death grant)—

- (a) in paragraph (2), for “(3) to (5)” substitute “(2A) to (5)”;

(b) after paragraph (2) insert—

“(2A) In the case of a firefighter member who is a special firefighter member, paragraph (2) applies with the substitution of “twice” for “three times”.”;

(c) in paragraph (3)—

- (i) for “Where” substitute “Subject to paragraph (3A), where”; and

- (ii) for “the product of the following formula is greater than three times that of” substitute “the product of the following formula is an amount greater than three times”;

(d) after paragraph (3) insert—

“(3A) In the case of a firefighter member who was a special firefighter member, paragraph (3) applies with the substitution of “twice” for “three times”, of “2” for “3” and “special pensionable service” for “pensionable service” where appropriate in the formula.”;

(e) in paragraph (4), for “Where the deceased” substitute “Subject to paragraph (4A), where the deceased”;

(f) after paragraph (4) insert—

“(4A) In the case of a firefighter member who was a special firefighter member, paragraph (4) applies with the substitution in sub-paragraph (a) of “twice” for “three times”, of “2” for “3” and “special pensionable service” for “pensionable service” where appropriate in the formula.”;

(g) in paragraph (5) for “Where the deceased” substitute “Subject to paragraph (5A), where the deceased ”;

(h) after paragraph (5) insert—

“(5A) In the case of a firefighter member who was a special firefighter member, paragraph (5) applies with the substitution, in sub-paragraph (b)(i), of “twice” for “three times” and with the modifications to paragraphs (3) and (4) applied by paragraphs (3A) and (4A).”

(3) After rule 1 (death grant) insert—

**“Death grant for limited period**

**1A.—**(1) This rule applies where a person—

- (a) was employed as a retained firefighter on or after 1 July 2000; and
- (b) continued in such employment until the person died before 6 April 2006.

(2) Where the deceased was married, or a member of a civil partnership, at the time of death, the spouse or civil partner may apply in writing to the authority for a death grant and any such application must be made during the period ending on 31 December 2015.

(3) Subject to paragraph (4), where the deceased was not married, or a member of a civil partnership, at the time of death or where the person’s spouse or civil partner has died since the person’s death, a child of the deceased may apply in writing to the authority for a death grant and any such application must be made during the period ending on 31 December 2015.

(4) A person is not eligible for a child’s death grant under this rule if the person would not have been eligible for a child’s pension by virtue of anything in rule 7 of Part 4 at the time of the death of the deceased.

(5) The authority must request from the person making the application under paragraph (2) or (3) such information required to enable the authority to determine the deceased’s pensionable pay, or, where no information is provided, the authority must determine the amount of pensionable pay from their records.

(6) The amount of the death grant is to be equal to the product of 2.5 and the amount of pensionable pay which the authority determine the deceased received in the deceased’s last year of service.

(7) Where the authority determine that a death grant is payable, the authority must pay the death grant during the period of three months beginning with the date on which the application for a death grant was received.

(8) Subject to paragraph (9) the authority may pay the death grant, in whole or in part, to such person or persons as the authority think fit.

(9) The authority must not pay any part of the death grant to a person who is convicted of the murder or manslaughter of the deceased, but this is subject to paragraph (10).

(10) Where a conviction of the description mentioned in paragraph (9) is quashed on appeal, the authority may, if they have not then paid the death grant in full, pay all or part of it to the person whose conviction is quashed.

(11) Where this rule applies, there is no entitlement to a death grant under rule 1 (death grant) or a post-retirement death grant under rule 2 of this Part or to a survivor's pension or a bereavement pension or a child's pension under Part 4 (survivors' pensions)."

#### **Amendment of Part 6 (pension sharing on divorce)**

**6.—**(1) Part 6 is amended as follows.

(2) In rule 1 (pension credit member's entitlement to pension) in paragraph (1)(a) after "sixty five", insert "or the age of sixty where the pension debit member is a special member."

(3) In rule 3 (commutation of part of pension credit benefits)—

(a) in paragraph (7), for "When a person's notice" substitute "Subject to paragraphs (7A) to (7C), when a person's notice";

(b) after paragraph (7) insert—

"(7A) Where the pension debit member in relation to the pension to be commuted under paragraph (1) is a special member, the lump sum must be calculated under paragraphs (7B) and (7C) and sub-paragraph (b) of paragraph (7) does not apply.

(7B) Subject to paragraph (7C), the lump sum must be calculated by multiplying the amount of the person's pension represented by the commuted portion at the time when the pension becomes payable under rule 1 by the factor specified in the table in Annex ZA by reference to the person's age at that time.

(7C) The lump sum payable under paragraph (7B) must be reduced to the extent necessary to prevent the payment of it resulting in a scheme chargeable payment."

#### **Amendment of Part 8 (determination of questions and appeals)**

**7.—**(1) Part 8 is amended as follows.

(2) In rule 1 (interpretation) omit—

""IQMP" ("YMCA") means independent qualified medical practitioner; and"

(3) In rule 5 (appeals on other issues), for “the Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996” substitute “the Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008”.

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

8.—(1) Part 9 is amended as follows.

(2) In rule 4 (withdrawal of early payment of deferred pension) after “sixty five” insert “or the age of sixty in the case of a special member”.

**Amendment of Part 10 (qualifying service and pensionable service)**

9.—(1) Part 10 is amended as follows.

(2) In rule 1 (qualifying service)—

(a) at the end of paragraph (f) omit the word “and”;

(b) after paragraph (g) insert—

“(h) any period of service during the limited period in respect of which the person has paid the mandatory special period pension contributions; and

(i) any period of service as a retained firefighter before 1 July 2000 which, if it had been a period of service during the limited period in relation to which mandatory special period pension contributions had been paid, would have been qualifying service in accordance with paragraph (h).”

(3) In paragraph (1) of rule 2 (reckoning of pensionable service)—

(a) for “Subject to paragraph (6)” substitute “Subject to paragraph (6) and rule 2A”;

(b) after sub-paragraph (f) insert—

“(g) any period of service treated as accrued in accordance with rule 16 of Part 12.”

(4) After rule 2 (reckoning of pensionable service) insert—

**“Reckoning of special pensionable service**

2A.—(1) Subject to paragraph (6), for the purposes of this Scheme, the special pensionable service of a special member accrues as special pension contributions or mandatory special period pension contributions are paid, and consists of—

- (a) any period in respect of which the member has paid special pension contributions as a special firefighter member;
- (b) subject to paragraph (4), any period during the limited period which the member is entitled to reckon as special pensionable service under rule 6A (election to purchase service during the limited period) of Part 11;
- (c) any period which the member is entitled to reckon as special pensionable service under rule 5 (reckoning of maternity, paternity and adoption leave, etc) of this Part or rules 5, and 6 to 9 of Part 11;
- (d) any period of special pensionable service taken into account for the purposes of a lower tier ill-health award under rule 2 of Part 3 where—
  - (i) the award is cancelled under rule 2 of Part 9; and
  - (ii) the member remains a member of this Scheme (whether or not as an employee of the authority which made the award);
- (e) where the special member has transferred-in pensionable service from another pension scheme, the period of special pensionable service calculated in accordance with rule 11(1) (calculation of transferred-in pensionable service) of Part 12;
- (f) where the person was a member of the 1992 Scheme and the period of service used for determining eligibility to an award under that Scheme was transferred to the person's special membership of this Scheme under rule 11A of Chapter 3A of Part 12, that period of service;
- (g) where the person was a standard member of this Scheme and converted the pensionable service accrued as a standard member of this Scheme to the person's membership of this Scheme as a special member, the special pensionable service that person is treated as having accrued under rule 17 or 18 of Part 12;
- (h) where a member has two pensions with special pensionable service in relation to the second pension under rule 7 of Part 3 (entitlement to two pensions),

the period of special pensionable service taken into account in calculating the first pension under that rule;

- (i) any period of absence without pay in respect of which the person has paid special pension contributions in accordance with rule 4 of Part 10.

(2) Subject to paragraph (3), the special pensionable service of a special member may not exceed 30 years.

(3) A special firefighter member may not buy additional service, except service during the limited period, if that service would increase the member's special pensionable service to more than 30 years by normal retirement age.

(4) Any additional period of service purchased or in the process of being purchased under Part 11 is reckonable as special pensionable service where the appropriate special pension contributions are paid; but where only a portion of the special pension contributions payable in respect of a period of additional service have been paid, only the equivalent portion of the period is reckonable as special pensionable service.

(5) Subject to paragraph (6), an additional period of service purchased under Part 11 is to be taken into account for the purposes of determining—

- (a) the amount of pension payable to the special firefighter member or to that member's survivors; and
- (b) the amount of service a special firefighter member has or may accrue in the Scheme.

(6) An additional period of service purchased under rule 5 of Part 11 is not to be taken into account in assessing—

- (a) the amount of the higher tier ill-health pension included in a higher tier ill-health award under Part 3; or
- (b) the amount of a death grant under rule 1 of Part 5.

(7) Subject to rule 18 of Part 12 (converting membership from standard membership to special membership – special pensioner members), a period of service which is reckonable as special pensionable service is not reckonable as pensionable service under rule 2 of Part 10.”

(5) In rule 3 (non-reckonable service), after “not reckonable as pensionable service” insert “or as special pensionable service”.

(6) In rule 4 (reckoning of unpaid period of absence), after “reckon as pensionable service” insert “or as special pensionable service”.

(7) In rule 5 (reckoning of maternity, paternity and adoption leave, etc), after paragraph (3) insert—

“(4) If the firefighter member was a special firefighter member immediately before any period which the member is entitled to reckon under this rule, the member is entitled to reckon that period as special pensionable service.”

(8) In rule 6 (calculation of pensionable service)—

(a) in paragraph (5), for “(A/B) x 365,” substitute “A/B”; and

(b) after paragraph (6) insert—

“(7) Where the firefighter member is a special firefighter member, this rule applies with the substitution of “special pensionable service” for “pensionable service” and with the substitution of “rule 2A(2) and (3)” for “rule 2(2) and (3)”.

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

**10.**—(1) Part 11 is amended as follows.

(2) In rule 1 (pensionable pay)—

(a) in paragraph (1)—

(i) for “Subject to paragraph (3)” substitute “Subject to paragraphs (3) and (6)”;

(ii) in sub-paragraph (a) omit “other than payments in respect of the firefighter member’s continual professional development (see rule 7B of Part 3), and”; and

(iii) after paragraph (a) insert—

“(aa) the amount (if any) of any benefits which are pensionable under rule 7B(1) of Part 3, and”;

(b) after paragraph (5) insert—

“(6) Where before 1 July 2013 and after that date, any allowance or supplement is being paid to a firefighter member which an authority treats as pensionable, but is not—

(a) pensionable pay within the meaning of paragraph (1)(a);

(b) additional pension benefit under rule 7A of Part 3 (long service); or



- (c) a payment in respect of a firefighter's continual professional development under rule 7B,

that allowance or supplement must continue to be treated as pensionable for so long as the firefighter receives it without any break in payment.”

(3) In rule 2 (final pensionable pay)—

- (a) in paragraph (1A), for “an amount in respect of the firefighter member’s continual professional development (see rule 7B of Part 3),” substitute “an amount payable to the firefighter member in respect of the benefits within rule 7B of Part 3”.

(b) after paragraph (7) insert—

“(8) In the case of a special member, paragraph (2)(b) applies with the substitution of “special pensionable service” for “pensionable service”.

(9) In the case of a person who joined this Scheme as a special deferred member or a special pensioner member, the person’s final pensionable pay is the amount determined by the authority and set out in the notice given by the authority under rule 5A(13) of this Part.”

(4) In rule 3 (pension contributions)—

- (a) in paragraph (1), for “A firefighter member” substitute “Subject to paragraph (1A), a firefighter member”;

(b) after paragraph (1) insert—

“(1A) A firefighter member who is a special member must pay pension contributions to the authority at the rate of 11% of the member’s pensionable pay in respect of a period ending on 31 March 2012 and in respect of any period commencing on or after 1 April 2012, at the percentage rate of the member’s pensionable pay for the period in question specified in the Table in Annex AB1.”; and

- (c) in paragraph (2), after “paragraph (1)” insert “or (1A)”.

(5) In rule 4 (optional pension contributions during maternity and adoption leave)—

- (a) in paragraph (1)(a), after “pensionable service under rule 2 of Part 10” insert “or as special pensionable service under rule 2A of Part 10”;
- (b) in paragraph (5), after “pensionable service” insert “or as special pensionable service”.

(6) In rule 5 (purchase of additional service) after paragraph (6) insert—

“(7) In the case of a special firefighter member—

- (a) this rule applies—
  - (i) in paragraph (2)(c) with the substitution of “thirty years special pensionable service” for “forty years’ pensionable service”;
  - (ii) in paragraph (3) with the substitution of “special pensionable service” for “pensionable service” and “thirty years” for “forty years”;
- (b) in relation to paragraph (4)(a) the Scheme Actuary must provide different tables for special members and in paragraph (4)(b) the determination by the Scheme Actuary must take account of the purchase being made by a special member.”

(7) After rule 5 insert—

**“Purchase of service during the limited period**

**5A.**—(1) A person who satisfies the conditions specified in paragraph (2) may, in accordance with the following provisions of this Chapter, elect to pay pension contributions in respect of the person’s service during the limited period.

(2) The conditions are that—

- (a) the person is entitled to join this Scheme as a special member;
- (b) the service is—
  - (i) as a retained firefighter; or
  - (ii) as a regular firefighter where the person took up employment after 5 April 2006 as a regular firefighter immediately after the termination of the person’s employment as a retained firefighter; or
  - (iii) with the agreement of the authority, as a regular firefighter, but not as a retained firefighter, where the person had been employed by an authority as a retained firefighter and then required by that authority after 5 April 2006 to remain in employment as a retained firefighter whilst taking up employment as a regular firefighter.

(3) Where paragraph (1) applies—

- (a) subject to rule 6A(11) of this Part, mandatory special period pension contributions must be paid in respect of the person's service during the mandatory special period; and
- (b) mandatory special period pension contributions must be paid for the period required by rule 6A(12) of this Part, where a person has elected to transfer their accrued rights in the 1992 Scheme to their special membership,

but the period of service referred to in subparagraph (a) or (b) does not, subject to rules 11A or 18 of Part 12, include any period of service in respect of which the person paid pension contributions under the 1992 Scheme or under this Scheme as a standard member.

(4) Within two months of the initial date, the authority must use reasonable endeavours to notify all those existing employees and former employees who may be entitled to join this Scheme as a special member that they may be so entitled.

(5) Within two months of receiving the notification in paragraph (4), or if no notification has been received, within four months of the initial date, a person may apply to the authority by which the person was employed in service falling within paragraph (2) above for a statement of the service in respect of which the person may become entitled to pay contributions under this rule and the mandatory special period pension contributions which the person would be required to pay in respect of it.

(6) An application under paragraph (5) must be in writing and must state—

- (a) the date on which the applicant took up employment as a retained firefighter;
- (b) where the applicant has left that employment, the date on which they left;
- (c) where the applicant took up employment as a regular firefighter, the date on which they took up that employment;
- (d) if the applicant joined this Scheme as a standard member or joined the 1992 Scheme, the date on which they joined the Scheme and, if it was the case, the date on which they made an election not to pay pension contributions under rule 5 of Part 2 of this Scheme or under

rule G3 of the 1992 Scheme (as the case may be).

(7) An authority must determine the period of the person's service during the limited period from their records.

(8) Where an authority are not able to determine the period of the person's service during the limited period from their records, the person may provide the authority with documents to assist them to determine the person's period of service during the limited period and the authority must determine the period of the person's service from those documents.

(9) Where an authority are not able to determine the period of the person's service during the limited period and the authority do not hold records of that person's pay for that period, and the person cannot provide the authority with the necessary documents, the authority may estimate the person's pensionable pay for that period from the records which they hold and may in particular estimate this on the basis of the average of recent pay data for retained firefighters at the same station or stations as that at which the person was based for the relevant period.

(10) Where the authority have estimated the pay of a person in accordance with paragraph (9), the authority must determine that person's period of pensionable service during the limited period.

(11) Where the service is as a retained firefighter, the authority must determine the person's retained pensionable service during the limited period by calculating the same proportion of whole-time service as that which the person's actual pensionable pay or, as the case may be, the person's pensionable pay as estimated by the authority under paragraph (9), bears to the person's reference pay for each year of service during that period.

(12) The authority must calculate the amount of the special pension contributions payable in respect of special pensionable service during the limited period by applying a rate determined by the Scheme Actuary having regard to the rate required by paragraph (1A) of rule 3 (pension contributions) for the appropriate period for the person's pensionable pay.

(13) Within four months of receiving an application under paragraph (5), the authority must give the applicant a notice setting out the period of service during the limited period which the applicant may purchase, the amount

of special pension contributions payable in respect of the mandatory special period, the amount of special pension contribution payable in respect of the remainder of the applicant's service during the limited period, the pensionable pay and in appropriate cases the final pensionable pay which the authority have determined was paid during the limited period.

(14) Where it is not reasonably practicable to comply with any requirement set out in this rule within the period specified, the authority or applicant as the case may be must comply with that requirement as soon as reasonably practicable after the end of that period."

(8) In rule 6(1) (election to purchase additional service) for "An election" substitute "Subject to rule 6A, an election".

(9) After rule 6 insert—

**"Election to purchase service during the limited period**

**6A.—**(1) A person who intends to join this Scheme as a special pensioner member must elect to pay mandatory special period pension contributions in respect of the person's service during the mandatory special period.

(2) A special pensioner member must pay the mandatory special period pension contributions by way of a lump sum contribution which the special pensioner member may request the authority to deduct from any lump sum which they are entitled under this Scheme—

(a) pursuant to a notice to commute a portion of their pension under rule 9 (commutation: general) of Part 3;

(b) under paragraph (8) of rule 1A (special member's ordinary pension) or under paragraph (12) of rule 2A (retrospective award on ill-health retirement) of Part 3.

(3) A person who intends to join this Scheme as a special deferred member must elect to pay mandatory special period pension contributions in respect of the person's service during the mandatory special period.

(4) The mandatory special period pension contributions may be paid by periodic contributions which must be calculated in accordance with tables provided by the Scheme Actuary so as to discharge the person's liability over a period of 10 years or may be paid by way of a lump sum contribution.

(5) A special deferred member must cease to pay periodic contributions referred to in paragraph (4) on the date on which the member's special deferred pension becomes payable, and may then pay within three months of that date a lump sum of an amount equivalent to the contributions which would otherwise be paid calculated in accordance with tables provided by the Scheme Actuary.

(6) Where paragraph (5) applies, a special deferred member may pay all or part of the lump sum required by that sub-paragraph by deduction from any lump sum which the member may be entitled to receive pursuant to a notice to commute a portion of the member's pension under rule 9 (commutation: general) or rule 10 (commutation: small pensions) of Part 3.

(7) Subject to sub-paragraphs (11) and (12), a person who intends to join this Scheme as a special firefighter member must elect to pay mandatory special period pension contributions in respect of the member's service during the mandatory special period.

(8) The mandatory special period pension contributions may be paid by periodic contributions which must be calculated in accordance with tables provided by the Scheme Actuary so as to discharge the member's liability over a period of 10 years or may be paid by way of a lump sum contribution.

(9) If a special firefighter member makes a contributions election, or retires, the member must cease to pay periodic contributions and the member may then pay within three months of the date of the contributions election a lump sum of an amount equivalent to the contributions which would otherwise be paid calculated in accordance with tables provided by the Scheme Actuary.

(10) Where paragraph (9) applies so that a lump sum may be payable as a result of the member's retirement, the member may pay all or part of the lump sum required by that sub-paragraph by deduction from any lump sum which the member may be entitled to receive pursuant to a notice to commute a portion of his or her pension under rule 9 (commutation: general) or rule 10 (commutation: small pensions) of Part 3.

(11) A special firefighter member who elects under paragraph (5) of rule 11A of Part 12 to transfer the member's accrued rights in the 1992 Scheme to the member special membership of this Scheme must pay mandatory special period pension contributions for the period of the

member's service during the mandatory special period from the later of the date on which the member's pensionable service under the 1992 Scheme ended and 1 July 2000.

(12) A special firefighter member who elects under paragraph (5) of rule 16 of Part 12 to convert the member's accrued rights as a special firefighter member to standard membership, must pay mandatory special period pension contributions for the period of the member's service during the mandatory special period before 6 April 2006 and from that date must pay pension contributions as if the member had been a standard member until the date on which the member joined this Scheme as a standard member.

(13) Interest is payable in respect of the special pension contribution required to be paid in respect of a special member's service during the mandatory special period as follows—

- (a) for the purposes of calculating interest under this paragraph, it is assumed that in respect of the mandatory special period pension contributions were payable by monthly periodic contributions from the first pay date following the start of the mandatory special period;
- (b) interest starts to accrue from the date that the first monthly contribution would have been paid in accordance with sub-paragraph (a) and ceases to accrue on the date that the lump sum contribution or final periodic contribution is paid in accordance with paragraphs (2), (4), (5) and (8) of this rule;
- (c) in relation to mandatory special period pension contributions which are paid by lump sum contribution, interest must be calculated by applying the past interest rate to the contribution payable in accordance with rule 3(1A) of Part 11 compounded monthly between the month each contribution would have been made in accordance with sub-paragraph (a) until the calculation date;
- (d) in relation to mandatory special period pension contributions which are paid by periodic contribution—
  - (i) interest must be calculated as for a lump sum contribution under sub-paragraph (c);
  - (ii) the amount of interest payable must then be adjusted in

accordance with tables provided by the Scheme Actuary so as to allow for interest at the future interest rate in relation to the period from the calculation date to the date that the contribution is paid, so as to discharge liability over a period of ten years;

(e) for the purpose of this rule—

“calculation date” (“*y dyddiad cyfrifo*”) means—

- (i) in the case of a lump sum contribution, the date when the lump sum is paid; and
- (ii) in the case of payment of the mandatory special period pension contribution by periodic contribution, the date when the member joined this Scheme as a special member;

“future interest rate” (“*cyfradd llog y dyfodol*”) is a rate equivalent to 1.5% plus the FTSE Actuaries UK Gilt 10 years yield index less the average of the FTSE Actuaries UK Index-linked Gilt 5 to 15 years index with assumed inflation rates of 0% and 5%; and

“past interest rate” (“*cyfradd llog gynr*”) is a rate equivalent to the interest available on the most recent issue of five-year fixed interest savings certificates from National Savings and Investments available on the 15th day of each month which would have been applicable to the period in question.

#### **Election to purchase service during the limited period: supplemental provision**

**6B.**—(1) Subject to paragraph (12), an election under rule 6A must be made by giving written notice to the authority during the period of four months beginning with the date on which the authority gave notice under rule 5A(13).

(2) In preparing the tables required by paragraphs (5) and (9) of rule 6A the Scheme Actuary must have regard to the rate of contribution referable to the period in respect of which the contribution relates and must use such other factors as the Scheme Actuary considers appropriate.

(3) The period of a person’s service referred to in paragraphs (1), (3) or (7) of rule 6A is that part of the service set out in the authority’s notice to the person under rule 5A(13) in respect



of which the person elects to pay mandatory special period pension contributions from a date selected by the person before 6 April 2006, or which applies under rule 6A(11), and ending on the earliest of the date on which the person joined this Scheme as a special member or a standard member, the date, if applicable, on which the person was dismissed or retired from employment as a regular or retained firefighter and 31 March 2015.

(4) Where a person is required under paragraph (2), or has chosen under paragraphs (4) or (8) of rule 6A, to pay a lump sum contribution and this sum has not been paid within six months of the person's election under paragraphs (1), (4) or (8), or such longer period as the authority may notify in writing to the person, the election under paragraphs (1), (4) or (8) (as the case may be) must be treated as not having been made.

(5) Where a person has chosen under paragraphs (4) or (8) of rule 6A to pay periodic contributions—

- (a) where the first contribution has not been paid within three months of the election under paragraphs (4) or (8), or such longer period as the authority may notify in writing to the person, the election must be treated as not having been made;
- (b) where three or more consecutive periodic contributions have not been paid and the amount remains outstanding, the authority must require, by written notice, the special member to pay the outstanding periodic contributions within a period of 28 days beginning with the date the notice is served on the special member, and to resume the periodical contributions;
- (c) if payment of the outstanding amount is not made within that period, or if a subsequent periodic contribution is not made within 28 days of it being due, the special member must be treated as having ceased to pay mandatory special period contributions from the date that the last contribution was received and may not resume payment of such contributions.

(6) Subject to paragraphs (8) and (11), where paragraphs (5) or (9) of rule 6A apply, and the special deferred member or special firefighter member, as the case may be, does not pay the lump sum within the period specified in that

paragraph, the period of service purchased must be treated as if it were the period ascertained in accordance with the formula—

$$A \times (B/C)$$

where—

A is the number of 45ths of special pensionable service which the member elected to purchase,

B is the period in respect of which mandatory special period pension contributions have been made in accordance with the election, and

C is the period in respect of which mandatory special period pension contributions would have been made in accordance with the election.

(7) In the case of a firefighter to whom paragraph (11) of rule 6A applies—

- (a) the pension contribution as a standard member during the limited period must be calculated as though these were mandatory special period pension contributions under paragraph (8) of rule 6A;
- (b) where paragraph (9) of rule 6A applies, and the special firefighter member does not pay the lump sum within the period specified in that paragraph, the period of service purchased as a standard member must be treated as if it were the period ascertained in accordance with the formula—

$$A \times (B/C)$$

where—

A is the number of 60ths of pensionable service as a standard member which the member elected to purchase,

B is the period in respect of which pension contributions as a standard member have been paid during the limited period, and

C is the period in respect of which mandatory special period pension contributions would have been made in accordance with the election.

(8) Where periodic contributions cease as mentioned in paragraphs (5) or (9) of rule 6A when a pension becomes payable, the pension must not be paid until the earlier of the date on which the lump sum mentioned in that paragraph has been paid or the special member has given notice that they will not pay the lump

sum or the period mentioned in that paragraph has expired.

(9) Where service is purchased by the payment of periodic contributions under paragraphs (4) or (8) of rule 6A, the service accrues at the end of each year in accordance with the contributions paid.

(10) An election under rule 6A—

- (a) takes effect on the day on which the notice of the election is received by the authority; and
- (b) is irrevocable once the lump sum has been paid or, as the case may be, the first periodical contribution has been paid.

(11) Where the special member dies before the mandatory special period pension contributions due in accordance with rule 6A have been paid, those contributions must be treated as paid and service during the mandatory special period must be treated as special pensionable service.

(12) Where it is not reasonably practicable to comply with the requirement in paragraph (1) within the period specified, the election must be given by written notice as soon as reasonably practicable after the end of that period but in any event may not take effect after 31 December 2015.”

(10) In rule 7 (duration of periodical contributions and premature cessation)—

- (a) in paragraph (3), after “Where a sub-paragraph of paragraph (2) applies” insert “and the additional service is not special pensionable service”;
- (b) after paragraph (3) insert—

“(3A) Where a sub-paragraph of paragraph (2) applies and the additional service is special pensionable service, paragraph (3) applies with the substitution of the following for the definition of “A”—

““A” is the number of 45ths of additional special pensionable service which the special member elected to purchase.””;

- (c) in paragraph (4)—

(i) after sub-paragraph (a) insert—

“(aa) where the person qualifies for a special member’s ordinary pension, as part of the special pensionable service on which the special member’s ordinary pension is calculated;”;

- (ii) in sub-paragraph (b), after “pensionable service” insert “or special pensionable service”; and
  - (d) in paragraph (5), after “pensionable service” insert “or special pensionable service”.
- (11) In rule 8 (discontinuance and resumption of periodical contributions)—
- (a) in paragraph (4) for “The period of additional service” substitute “Subject to paragraph (4A), the period of additional service”;
  - (b) after paragraph (4) insert—
 

“(4A) Where the firefighter member is a special member, in paragraph (4) “A” is the number of 45ths of additional special pensionable service which the special member elected to purchase.”
- (12) In rule 9(1) (periodical contributions in respect of periods of unpaid service or absence), after “pensionable service” insert “or special pensionable service”.
- (13) In rule 10 (effect of purchasing additional service by lump sum payment), in paragraphs (1) and (2), after “pensionable service” insert “or special pensionable service”.

**Amendment of Part 12 (transfers into and out of the Scheme)**

- 11.**—(1) Part 12 is amended as follows.
- (2) In rule 2(3) (entitlement to transfer value payment), after “pensionable service” insert “or special pensionable service”.
  - (3) In rule 4(5)(b) (applications for transfer value payments), after “pensionable service” insert “or special pensionable service”.
  - (4) In rule 6 (calculating amounts of transfer value payments)—
    - (a) in paragraph (1), after “the guarantee date” insert “and different guidance and tables must be provided for standard and special members”;
    - (b) in paragraph (4), after sub-paragraph (b) insert—
 

“, and
    - (c) any mandatory special period pension contributions.”
  - (5) In rule 8(3) (applications for acceptance of transfer value payment from another scheme), after “pensionable service” insert “or as special pensionable service”.
  - (6) In rule 9 (procedure for applications under rule 8)—

- (a) in paragraph (1)(c) for “paragraph (2)” substitute “paragraphs (2) to (4)”;
- (b) in paragraph (2) for “In the case” substitute “Subject to paragraph (4), in the case”;
- (c) after paragraph (2) insert—

“(3) Where the application under rule 8 is made by a special firefighter member who was not already a member of this Scheme when that member elected to become a special firefighter member, sub-paragraph (c) of paragraph (1) and paragraph (2) do not apply.

(4) In the case of a person referred to in paragraph (3) and in the case of a transfer value payment to be made under public sector transfer arrangements, the application under rule 8 must be made by that person during the period of twelve months beginning with the day on which the authority gave the applicant the notice required by rule 5A(13) of Part 11.”

(7) In rule 10(2) (acceptance of transfer value payments), after “pensionable service” insert “or special pensionable service”.

(8) In rule 11 (calculation of transferred-in pensionable service)—

- (a) in paragraph (1), after “pensionable service” insert “or special pensionable service”;
- (b) after paragraph (4) insert—

“(4A) The Scheme Actuary must provide different guidance and tables for the purpose of this rule in the case of special members.”

(9) After Chapter 3 insert—

#### “CHAPTER 3A

#### TRANSFERS TO SPECIAL MEMBERSHIP

#### **Transfer of accrued rights under the 1992 Scheme to special membership of this Scheme**

**11A.**—(1) A person who is a deferred member of the 1992 Scheme and took up employment as a retained firefighter immediately after the termination of the person’s employment as a regular firefighter and who is entitled to join this Scheme as a special firefighter member, may apply in writing to the authority by which the person is employed for a statement of the amount of service to be treated as accrued if the person were to elect to transfer the person’s accrued rights under the 1992 Scheme to the person’s special membership of this Scheme.

(2) Where the application under paragraph (1) is made at the same time as an application under

rule 5A(5) (purchase of service during the limited period) of Part 11 the authority must provide a statement of the amount of service to be treated as special pensionable service if the applicant were to elect to transfer the applicant's accrued rights under the 1992 Scheme to the applicant's special membership of this Scheme at the same time as the authority give the notice under rule 5A(13) of Part 11.

(3) Where an application under paragraph (1) is not made at the time specified in paragraph (2), it must be made during the period of 12 months beginning with the day on which the authority gave the applicant the notice required by rule 5(13).

(4) Where paragraph (3) applies to the application, the authority must provide a statement of the amount of service to be treated as special pensionable service if the applicant were to elect to transfer the applicant's accrued rights under the 1992 Scheme to the applicant's special membership of this Scheme within three months of the date of the application.

(5) A person who receives a statement under paragraph (2) or (4) may elect to transfer the person's accrued rights under the 1992 Scheme to the person's special membership of this Scheme.

(6) Where the application is made within the time specified in paragraph (2) and the election to transfer accrued rights in the 1992 Scheme is made at the same time as the election to pay mandatory special period pension contributions under rule 6A of Part 11, the period of the applicant's pensionable service accrued under the 1992 Scheme must be treated as special pensionable service accrued in this Scheme.

(7) Where the application is made within the period specified in paragraph (3), a transfer value must be accepted under the public sector transfer arrangements and the period of special pensionable service which the member shall be entitled to count must be calculated in accordance with those arrangements.

(8) An election under paragraph (5) is made by giving written notice to the authority and takes effect on the day on which the notice is received by the authority."

(10) In rule 12 (transfer of pension history between Welsh authorities) after "pensionable service" insert "or special pensionable service".

(11) After Chapter 5 insert—

## “CHAPTER 6

### CONVERTING MEMBERSHIP BETWEEN STANDARD AND SPECIAL MEMBERSHIP

#### **Converting membership from special membership to standard membership**

**16.**—(1) A person who is entitled to join this Scheme as a special firefighter member and is a standard member of this Scheme in respect of service which the person would otherwise be able to reckon as special pensionable service may apply in writing to the authority for a statement of the amount of service to be treated as accrued if the person converted the person’s special membership to standard membership of this Scheme.

(2) Any application under paragraph (1) must be made at the same time as an application under rule 5A(5) (purchase of service during the limited period) of Part 11.

(3) At the same time as the authority give the notice under rule 5A(13) of Part 11, the authority must provide a statement of the additional service to be treated as pensionable service if the person converted their special membership to standard membership.

(4) For the purpose of calculating the pensionable service that a person would be treated as having accrued in this Scheme as a standard member on the conversion of the person’s accrued rights as a special firefighter member, the authority must apply the conversion factors set out in the tables in Annex 3 applying the factors to the age the person was on 6 April 2006.

(5) Where the applicant elects in writing to convert special membership to standard membership, the election must be made at the same time as the election to purchase service during the limited period under paragraphs (1), (3) or (7) of rule 6A of Part 11 and may not be made at any other time.

(6) An authority must not accept a person’s election to convert membership from special membership to standard membership if the aggregate of—

- (a) the pensionable service treated as accrued; and
- (b) the prospective pensionable service, on the assumption that the person continues to be a standard member of this Scheme until he or she reaches normal retirement age,

would exceed 40 years by the time of his or her 60th birthday.

(7) When the payments required by rule 6A(12) of Part 11 have been made—

- (a) the additional pensionable service notified by the authority under paragraph (3) must be added to the pensionable service as a standard member;
- (b) from the date the authority add that service, the member ceases to be a special firefighter member.

(8) An election under paragraph (5) is made by giving written notice to the authority and takes effect on the day on which the notice is received by the authority.

### **Converting membership from standard membership to special membership**

**17.**—(1) This rule applies—

- (a) to a person who is entitled to join this Scheme as a special firefighter member and who is a standard member of this Scheme;
- (b) in respect of pensionable service which the person would be entitled to treat as special pensionable service.

(2) A person to whom this rule applies may apply to the authority for a statement of the amount of service which the person would be entitled to treat as special pensionable service if the person converted standard membership to special membership and the amount of the payments required by sub-paragraphs (b) and (c) of paragraph (5).

(3) An application under paragraph (2) must be made in writing at the same time as an application under rule 5A(5) (purchase of service during the limited period) of Part 11.

(4) At the same time as the authority give the notice under rule 5A(13) of Part 11, the authority must provide—

- (a) a statement of the amount of service to be treated as special pensionable service if the applicant were to elect to convert the applicant's accrued rights as a standard member to the applicant's special membership;
- (b) a statement of the amount of the payments required by paragraph (5).

(5) Where the member elects to transfer the member's accrued rights as a standard member



of this Scheme to the member's special membership—

- (a) the member may only make the election at the same time as the member makes an election to pay mandatory special period pension contributions under rule 6A of Part 11;
- (b) the member must pay an amount representing the difference between the pension contribution under rule 3(1) of Part 11 which the member has paid as a standard member and the pension contribution required to be paid as a special member under paragraph (1A) of that rule;
- (c) the member must pay interest on the amount payable under sub-paragraph (b) in accordance with paragraph (13);
- (d) the member must pay those amounts in the same manner in which the member chooses to pay mandatory special period pension contributions under rule 6A of Part 11.

(6) When the payments required by paragraph (5) have been paid, and subject to paragraph (7), the member's pensionable service as a standard member is converted to special pensionable service.

(7) Where a member's pensionable service includes a period ("the transferred-in period") which the member is entitled to count as pensionable service in accordance with rules 10 and 11 of this Part, the transferred-in period is converted to special pensionable service in accordance with guidance and tables provided by the Scheme Actuary for the purposes of this paragraph.

(8) Subject to paragraph (9), where rule 6A(3) (election to purchase service during the limited period) of Part 11 applies, and the member does not within the period specified in that paragraph pay a lump sum equivalent to the balance of the payment referred to in paragraph (5)(b), ascertained in accordance with tables provided by the Scheme Actuary, the period of service as a standard member converted to special pensionable service is treated as if it were the period ascertained in accordance with the formula—

$$A \times (B/C)$$

where—

A is the period of service as a standard member which the member elected to convert,

B is the period of that service in respect of which the payment referred to in paragraph (5)(b) has been paid, and

C is the period of that service in respect of which the payment referred to in paragraph (5)(b) would have been paid in accordance with the member's election.

(9) Where the special member dies before the payment referred to in paragraph (5)(b) has been made in full, it is treated as having been made in full and the period of service as a standard member which the member had elected to convert is treated as special pensionable service.

(10) This paragraph applies where a special member's pensionable service as a standard member has been converted to special pensionable service in accordance with this rule and—

- (a) where the member is required to make the payment referred to in paragraph (5)(b) by lump sum, the lump sum has not been paid within six months of the election under paragraph (5) or such longer period as the authority may notify in writing to the person; or
- (b) where the member is required to make the payment by periodic contribution, three or more consecutive periodic contributions have not been paid and the amount remains outstanding.

(11) Where paragraph (10) applies in the circumstances referred to in paragraph (10)(a)—

- (a) the election to convert is treated as having been revoked; and
- (b) any contributions that the member has paid must be credited against the mandatory special period pension contributions payable by the member.

(12) Where paragraph (10) applies in the circumstances referred to in paragraph (10)(b)—

- (a) the authority must require, by written notice, the member to pay the outstanding amount within a period of 28 days beginning with the date the notice is served on the member, and to resume the periodical contributions;
- (b) if payment of the outstanding amount is not made within that period, or if a subsequent periodic contribution is not made within 28 days of it being due,

the election to convert is treated as revoked; and

- (c) any contributions that the member has paid must be credited against the mandatory special period pension contributions payable by the member.

(13) Interest on the amount referred to in paragraph (5)(b) (“the relevant amount”) is calculated as follows—

- (a) for the purposes of this paragraph, it is assumed that the pension contributions due under rule 3(1A) of Part 11 (pension contributions) were payable at the same time as the contributions which the member paid under rule 3(1) of that Part;
- (b) interest starts to accrue on the relevant amount from the beginning of the period of pensionable service which is to be treated as special pensionable service in accordance with this rule and ceases to accrue on the calculation date;
- (c) where the relevant amount is to be paid by lump sum, interest is calculated by applying the past interest rate to that amount compounded monthly between the month each contribution under rule 3(1A) of Part 11 would have been made in accordance with sub-paragraph (a) until the calculation date;
- (d) where the relevant amount is to be paid by periodic contribution—
  - (i) interest is calculated as for a lump sum payment under sub-paragraph (c);
  - (ii) the amount of interest payable is then adjusted in accordance with tables provided by the Scheme Actuary so as to allow for interest at the future interest rate in relation to the period from the calculation date to the date that the contribution is paid, so as to discharge liability over a period of ten years;
- (e) for the purpose of this rule—

“calculation date” (*“dyddiad cyfrifo”*) means—

  - (i) in the case of a lump sum contribution, the date when the lump sum is paid; and

- (ii) in the case of payment of the relevant amount by periodic contribution, the date when the member joined this Scheme as a special member;

“future interest rate” (“*cyfradd llog y dyfodol*”) is a rate equivalent to 1.5% plus the FTSE Actuaries UK Gilt 10 years yield index less the average of the FTSE Actuaries UK Index-linked Gilt 5 to 15 years index with assumed inflation rates of 0% and 5%;

“past interest rate” (“*cyfradd llog gynt*”) is a rate equivalent to the interest available on the most recent issue of five-year fixed interest savings certificates from National Savings and Investments available on the 15th day of each month which would have been applicable to the period in question.

(14) An election under paragraph (5) must be made by giving written notice to the authority and takes effect on the day on which the notice is received by the authority.

### **Converting membership from standard membership to special membership – special pensioner members**

**18.—**(1) This rule applies—

- (a) to a person who is entitled to be a special pensioner member and who is in receipt of an ordinary pension, a higher tier ill-health pension or a lower tier ill-health pension;
- (b) in respect of pensionable service which the person would be entitled to treat as special pensionable service.

(2) A person to whom this rule applies may apply to the authority for a statement of the amount of pensionable service which the member would be entitled to treat as special pensionable service and the amount of the payments required by sub-paragraphs (b) and (c) of paragraph (5).

(3) An application under paragraph (2) must be made in writing at the same time as an application under rule 5A(5) (purchase of service during the limited period) of Part 11.

(4) At the same time as the authority give the notice under rule 5A(13) of Part 11, the authority must provide—

- (a) a statement of the amount of pensionable service which may be

treated as special pensionable service;  
and

- (b) a statement of the amount of the payments required by paragraph (5).

(5) Where the member elects to have pensionable service treated as special pensionable service—

- (a) the member may only make the election at the same time as the member makes an election to pay mandatory special period pension contributions under rule 6A of Part 11;
- (b) the member must pay an amount representing the difference between the pension contribution under rule 3(1) of Part 11 which the member has paid as a standard member and the pension contribution required to be paid as a special member under paragraph (1A) of that rule;
- (c) the member must pay interest on the amount payable under sub-paragraph (b) in accordance with paragraph (12);
- (d) the member must pay that amount by lump sum payment.

(6) When the payment required by paragraph (5) has been paid, and subject to paragraph (7)—

- (a) the member's pensionable service as a standard member must be treated as special pensionable service;
- (b) the member must continue to receive the member's ordinary or ill-health pension in respect of the member's pensionable service as a standard member;
- (c) the member must, in addition, receive the member's special member's ordinary pension or ill-health pension in respect of the member's special pensionable service as a special member but the special member's ordinary pension or ill-health pension in respect of the member's special pensionable service is reduced in accordance with tables produced by the Scheme Actuary so that the total amount of pension that the member receives in accordance with sub-paragraph (b) and this sub-paragraph does not exceed the amount the member would have received as a special member if—

- (i) the member had not been an ordinary member of the Scheme; and
- (ii) all of the member's service from the start of the mandatory special period to the date that the member's special member's ordinary pension or ill-health pension, as the case may be, becomes payable and which is eligible to be treated as special pensionable service, was treated as special pensionable service.

(7) Where a member's pensionable service includes a period ("the transferred-in period") which the member is entitled to count as pensionable service in accordance with rules 10 and 11 of this Part, the transferred-in period is converted to special pensionable service in accordance with guidance and tables provided by the Scheme Actuary for the purposes of this paragraph.

(8) Subject to paragraph (9), where rule 6A(5) or (9) (election to purchase service during the limited period) of Part 11 applies, and the member does not within the period specified in that paragraph pay a lump sum equivalent to the balance of the payment referred to in paragraph (5)(b), ascertained in accordance with tables provided by the Scheme Actuary, the period of service as a standard member converted to special pensionable service is treated as if it were the period ascertained in accordance with the formula—

$$A \times (B/C)$$

where—

A is the period of service as a standard member which the member elected to convert,

B is the period of that service in respect of which the payment referred to in paragraph (5)(b) has been paid, and

C is the period of that service in respect of which the payment referred to in paragraph (5)(b) would have been paid in accordance with the election.

(9) Where the special member dies before the payment referred to in paragraph (5)(b) has been made in full, it must be treated as having been made in full and the period of service as a standard member which the member had elected to convert must be treated as special pensionable service.

(10) This paragraph applies where—

- (a) a member's pensionable service as a standard member has been converted to special pensionable service in accordance with this rule; and
  - (b) the lump sum due in respect of the amount payable in accordance with paragraph (5)(b) has not been paid within six months of the election under paragraph (5) or such longer period as the authority may notify in writing to the person.
- (11) Where paragraph (10) applies—
- (a) the election to convert must be treated as having been revoked; and
  - (b) any amount that the member has paid in respect of the amount due under paragraph (5)(b) must be credited against the mandatory special period pension contributions payable by the member.
- (12) Interest on the amount referred to in paragraph (5)(b) ("the relevant amount") is calculated as follows—
- (a) for the purposes of this paragraph, it is assumed that the pension contributions due under rule 3(1A) of Part 11 (pension contributions) were payable at the same time as the contributions which the member paid under rule 3(1) of that Part;
  - (b) interest starts to accrue on the relevant amount from the beginning of the period of pensionable service which is to be treated as special pensionable service in accordance with this rule and ceases to accrue on the calculation date;
  - (c) where the relevant amount is to be paid by lump sum, interest is calculated by applying the past interest rate to that amount compounded monthly between the month each contribution under rule 3(1A) of Part 11 would have been made in accordance with sub-paragraph (a) until the calculation date;
  - (d) where the relevant amount is to be paid by periodic contribution—
    - (i) interest is calculated as for a lump sum payment under sub-paragraph (c);
    - (ii) the amount of interest payable is then adjusted in accordance with tables provided by the Scheme Actuary so as to allow for interest

at the future interest rate in relation to the period from the calculation date to the date that the contribution is paid, so as to discharge liability over a period of ten years;

(e) for the purpose of this rule—

“calculation date” (“*dyddiad cyfrifo*”) means—

- (i) in the case of a lump sum contribution, the date when the lump sum is paid; and
- (ii) in the case of payment of the relevant amount by periodic contribution, the date when the member joined this Scheme as a special member;

“future interest rate” (“*cyfradd llog y dyfodol*”) is a rate equivalent to 1.5% plus the FTSE Actuaries UK Gilt 10 years yield index less the average of the FTSE Actuaries UK Index-linked Gilt 5 to 15 years index with assumed inflation rates of 0% and 5%;

“past interest rate” (“*cyfradd llog gyt*”) is a rate equivalent to the interest available on the most recent issue of five-year fixed interest savings certificates from National Savings and Investments available on the 15th day of each month which would have been applicable to the period in question.

(13) An election under paragraph (5) must be made by giving written notice to the authority and takes effect on the day on which the notice is received by the authority.”

#### **Amendment of Part 13 (firefighters’ pension fund)**

**12.** In Part 13 (Firefighters’ Pension Fund), in rule 2 (payments and transfers into Firefighters’ Pension Fund), after paragraph (10) insert—

“(11) Where an authority exercises their discretion not to withdraw or abate the whole or any part of a pension under rule 3 (withdrawal of pension during service as a firefighter) of Part 9 (review, withdrawal and forfeiture of awards), the authority must in the financial year in which payment is not withdrawn or abated, transfer into the FPF an amount equal to the amount of pension paid during that financial year to that person which might have been abated or withdrawn.”



### **Amendment of Part 14 (payment of awards)**

**13.**—(1) Part 14 is amended as follows.

(2) In rule 1 (authorities responsible for payment of awards)—

- (a) in paragraph (1) for “An award” substitute “Subject to paragraph (3), an award”;
- (b) after paragraph (2) insert—

“(3) An award payable to or in respect of a special member by reason of the member having been employed as a retained firefighter is payable by the authority by whom the member was employed, or, in the case of a special member whose contracts of employment as a retained firefighter are treated as one employment in accordance with rule 4(2) of this Part, the authority which last employed the member.”

(3) In rule 4 (pensions under more than one contract of employment)—

- (a) renumber the existing paragraph as “(1)”;
- (b) at the end insert—

“(2) Where a person is, or is eligible to be, a special member of this Scheme in respect of more than one contract of employment (whether with the same or different authorities) the person may elect to treat those employments as one employment.

(3) An election under paragraph (2) must be made by giving notice in writing to the authority which last employed the person at the same time as the application under rule 5A(5) of Part 11.”

**Annex ZA – commuted portion: special members****14.** Before Annex A1 insert—**“Annex ZA Part 3, rule 9(2A) and Part 6, rule 3(7B)****Commuted portion: special members**

Years	<i>Age in years and completed months on day pension commences</i>											
	0	1	2	3	4	5	6	7	8	9	10	11
Below 50	23.4											
50	22.4	22.3	22.3	22.3	22.3	22.2	22.2	22.2	22.2	22.1	22.1	22.1
51	22.1	22.0	22.0	22.0	22.0	21.9	21.9	21.9	21.9	21.8	21.8	21.8
52	21.8	21.7	21.7	21.7	21.7	21.6	21.6	21.6	21.6	21.5	21.5	21.5
53	21.5	21.4	21.4	21.4	21.3	21.3	21.3	21.3	21.2	21.2	21.2	21.1
54	21.1	21.1	21.1	21.1	21.0	21.0	21.0	20.9	20.9	20.9	20.9	20.8
55	20.8	20.8	20.8	20.8	20.7	20.7	20.6	20.6	20.6	20.5	20.5	20.5
56	20.4	20.4	20.4	20.4	20.3	20.3	20.3	20.2	20.2	20.2	20.1	20.1
57	20.1	20.0	20.0	20.0	19.9	19.9	19.9	19.8	19.8	19.8	19.7	19.7
58	19.7	19.6	19.6	19.6	19.5	19.5	19.5	19.4	19.4	19.4	19.3	19.3
59	19.3	19.2	19.2	19.2	19.1	19.1	19.1	19.0	19.0	19.0	18.9	18.9
60	18.9	18.8	18.8	18.8	18.7	18.7	18.6	18.6	18.6	18.5	18.5	18.5
61	18.4	18.4	18.4	18.4	18.3	18.2	18.2	18.2	18.1	18.1	18.1	18.0
62	18.0	18.0	17.9	17.9	17.8	17.8	17.8	17.7	17.7	17.7	17.6	17.6
63	17.5	17.5	17.5	17.5	17.4	17.4	17.3	17.3	17.2	17.2	17.2	17.1
64	17.1	17.1	17.0	17.0	16.9	16.9	16.9	16.8	16.8	16.8	16.7	16.7
65	16.6	”										

**Amendment of Annex A1 (pension contributions)****15.**—(1) Annex A1 is amended as follows.

(2) For paragraph 5 substitute—

“5. Pensionable pay in the first column of the Table below does not include payments made to a firefighter member by the authority in respect of any benefits which are pensionable under rule 7B(1) of Part 3, but those payments must be included in the member’s pensionable pay for the purposes of the application of the rate specified in the second column.”

**Annex AB1 – pension contributions for special members****16.** After Annex A1, insert—**“Annex AB1 Part 11, rule 3(1A)****Pension contributions for special members**

**1.** The rate of the pension contribution mentioned in rule 3(1A) of Part 11 is that specified in the Table below by reference to the amount of the pensionable pay of the special firefighter member in the first column of the Table and by reference to the appropriate period.

**2.** The amount of pensionable pay of a retained firefighter for the purpose of the first column of the Table is that firefighter’s reference pay.

3. The amount of pensionable pay of a part-time regular firefighter for the purpose of the first column of the Table is the amount of pensionable pay of a whole-time regular firefighter of equivalent role and length of service.

4. Where there has been a permanent material change to the terms and conditions of a firefighter member's employment which affects the member's pensionable pay, from the date of that change pensionable pay is calculated by reference to the revised amount.

5. In relation to any period before 1 July 2013, pensionable pay in the first column of the Table below does not include any payments made to a special firefighter member by the authority in respect of the member's continual professional development, but those payments must be included in the member's pensionable pay for the purposes of the application of the rate specified in the second or third column, as the case may be.

6. In relation to any period which commences on or after 1 July 2013, pensionable pay in the first column of the Table below does not include any payments made to a special firefighter member by the authority in respect of any benefits which are pensionable under rule 7B(1) of Part 3, but those payments must be included in the member's pensionable pay for the purposes of the application of the rate specified in the second or third column, as the case may be.

<i>Pensionable pay</i>	<i>Contribution rate from 1 April 2012 to 31 March 2013 (percentage of pensionable pay)</i>	<i>Contribution rate from 1 April 2013 to 31 March 2014 (percentage of pensionable pay)</i>	<i>Contribution rate from 1 April 2014 (percentage of pensionable pay)</i>
Up to and including £15,000	11.0%	11.0%	11.0%
More than £15,000 and up to and including £21,000	11.6%	11.9%	12.2%
More than £21,000 and up to and including £30,000	11.6%	12.9%	14.2%
More than £30,000 and up to and including £40,000	11.7%	13.2%	14.7%
More than £40,000 and up to and including £50,000	11.8%	13.5%	15.2%
More than £50,000 and up to and including £60,000	11.9%	13.7%	15.5%
More than £60,000 and up to and including £100,000	12.2%	14.1%	16.0%
More than £100,000 and up to and including £120,000	12.5%	14.5%	16.5%
More than £120,000	13.0%	15.0%	17.0%”

#### **Amendment of Annex 1 (ill health pensions)**

17. In Annex 1 after paragraph 3 insert—

“4. Where a special deferred member or a special pensioner member is entitled to a retrospective award on ill-health retirement, paragraph 2 applies with the substitution of “45” for “60”, “thirty” for “forty” and “special pensionable service” for “pensionable service”.

**5.**—(1) Where the person entitled to a lower tier ill-health pension or a higher tier ill-health pension is a special member, who is not also a standard member, paragraphs 1 and 2 apply with the substitution of “forty-five” for “sixty”, “45” for “60”, “thirty” for “forty” and “special pensionable service” for “pensionable service”.

(2) Where a person to whom sub-paragraph (1) of this paragraph applies is a retained firefighter, sub-paragraph (3) of paragraph 1 applies with the insertion after “actual annual pensionable pay” of “during the firefighter’s special pensionable service”.

**6.** In the case of a person who joined this Scheme as a special pensioner member or a special deferred member the person’s final pensionable pay is the amount determined by the authority and set out in the notice given under rule 5A(13) of Part 11.”

#### **Amendment of Annex 2 (appeals to board of medical referees)**

**18.**—(1) In Annex 2—

- (a) in sub-paragraph (3)(a) of paragraph 4, after “desirable” insert “so as to provide the board with sufficient information”;
- (b) after paragraph 8 insert—

“**8A.**—(1) Where the parties have received a copy of the report supplied under paragraph 8 and the parties agree that the board has made an error of fact which materially affects the board’s decision, the authority must within 28 days of receipt of the report—

- (a) supply the Welsh Ministers with two copies of a statement agreed between the parties setting out—
  - (i) the error of fact;
  - (ii) the correct fact, and
- (b) invite the board to reconsider its decision.

(2) The Welsh Ministers must within 14 days of receipt of the statement supply a copy of it to the board.

(3) As soon as reasonably practicable after receiving the statement, the board must reconsider its decision.

(4) Within 14 days of that reconsideration the board must—

- (a) give written notice to the Welsh Ministers that it has confirmed its decision, or revised its decision (as the case may be), and
- (b) if it has revised its decision, supply the Welsh Ministers with a written report of its revised decision.

(5) The Welsh Ministers must supply to the appellant and the authority a copy of the written notice confirming the board’s decision, or a copy of the written report of the board’s revised decision (as the case may be).”;

- (c) for sub-paragraph (3) of paragraph 10 substitute—

“(3) Where—

- (a) the appellant gives notice to the board—
  - (i) withdrawing the appeal;
  - (ii) requesting cancellation of, postponement of, or adjournment of the date appointed for an interview or medical examination under paragraph 6(2), andthe notice is given less than 22 working days before the date appointed under paragraph 6(2), or
- (b) the appellant’s acts or omissions cause the board to cancel, postpone or otherwise adjourn the date appointed under paragraph 6(2) less than 22 working days before the date so appointed,

the authority may require the appellant to pay them such sum, not exceeding the total amount of the fees and allowances payable to the board under paragraph 9(1), as the authority think fit.”

### **Annex 3 – converting membership from special membership to standard membership**

19. After Annex 2 insert the following—

#### **“Annex 3 Part 12, rule 16(4)**

Converting membership from special membership to standard membership

Table A

#### **Conversion factors**

<i>Age at entry</i>	<i>Age 55 or under</i>	<i>Age 56</i>	<i>Age 57</i>	<i>Age 58</i>	<i>Age 59</i>	<i>Age 60</i>
25 and below	140%	139%	138%	136%	135%	133%
26	138%	139%	138%	136%	135%	133%
27	136%	137%	138%	136%	135%	133%
28	133%	135%	136%	136%	135%	133%
29	130%	132%	133%	134%	135%	133%
30	127%	129%	130%	132%	133%	133%
31	124%	126%	128%	129%	130%	131%
32	120%	123%	125%	126%	127%	129%
33	116%	119%	121%	123%	125%	126%
34	112%	115%	118%	120%	122%	123%
35	107%	111%	114%	116%	118%	120%
36	107%	106%	109%	112%	115%	117%
37	107%	106%	105%	108%	111%	113%
38	107%	106%	105%	103%	106%	109%
39	107%	106%	105%	103%	102%	105%
40 and above	107%	106%	105%	103%	102%	100%

Table B

#### **Conversion factors for added 60ths**

	<i>Age 55 or under</i>	<i>Age 56</i>	<i>Age 57</i>	<i>Age 58</i>	<i>Age 59</i>	<i>Age 60</i>
	107%	106%	105%	103%	102%	100%”

**Explanatory Memorandum to the Firefighters' Pension (Wales) Scheme (Amendment) Order 2014, the Firefighters' Pension Scheme (Wales) (Amendment) Order 2014, and the Firefighters' Compensation Scheme (Wales) (Amendment) Order 2014**

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 (Wales) Scheme (Amendment) Order 2014 and the Firefighters' Pension Scheme (Wales) (Amendment) Order 2014 and the Firefighters' Compensation Scheme (Wales) (Amendment) Order 2014. I am satisfied the benefits of making the Orders outweigh any costs.

**Leighton Andrews**

**Minister for Public Services  
8 December 2014**

## **Description**

1. The making of 3 Orders to amend the Firefighters' Pension (Wales) Scheme ("the 1992 Pension Scheme"), the New Firefighters' Pension Scheme 2007 ("the 2007 Pension Scheme") and the Firefighters' Compensation Scheme (Wales) 2007 ("the 2007 Compensation Scheme").

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

2. The Committee will wish to note that neither the Firefighters' Pension (Wales) Scheme Order 1992 nor the Firefighters' Compensation Scheme (Wales) Order 2007 was created bilingually and hence the form of the 2014 Orders amending those earlier orders.

## **Legislative background**

3. The former National Assembly for Wales was authorised to amend the 1992 Firefighters' Pension Scheme in relation to Wales (see section 26 of the Fire Services Act 1947, section 12 of the Superannuation Act 1972 as applied by section 16(3) of the 1972 Act, and sections 36 and 62 of the Fire and Rescue Services Act 2004 (the 2004 Act)).

4. The former National Assembly for Wales was authorised to bring into operation one or more (new) schemes making provision for the payment of pensions, allowances and gratuities for persons employed by fire and rescue authorities in Wales (sections 34 and 62 of the 2004 Act).

5. The powers of the National Assembly for Wales were transferred to the Welsh Ministers by paragraph 30 of schedule 11 to the Government of Wales Act 2006.

6. Under the 2004 Act, the Welsh Ministers made –

(a) the Firefighters' Pension Scheme (Wales) Order 2007. That Order established a new pension scheme for firefighters employed in the fire and rescue service in Wales. The 1992 Scheme was closed to those who joined the Service on or after 6 April 2006; and

(b) the Firefighters' Compensation Scheme (Wales) Order 2007. This new Scheme superseded corresponding provisions set out in Schedule 2 to the Firemen's Pension Scheme Order 1992.

7. These 2014 Orders will follow the negative resolution procedure.

In respect all three schemes, the legislation authorises the back-dating of the coming into effect of the provisions –

(a) in respect of the 1992 Pension Scheme, by virtue of section 12(1) of the Superannuation Act 1972; and

(b) in respect of the 2007 Pension and Compensation Schemes, by virtue of section 34(3) of the 2004 Act.

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

8. These 2014 Orders make amendments as follows-

(a) the Firefighters' Pension (Wales) Scheme (Amendment) Order 2014 ("the 1992 Scheme amending Order") amends the 1992 Pension Scheme which is contained in Schedule 2 to the Firefighters Pension Scheme Order 1992 (SI 1992/129);

(b) the Firefighters' Pension Scheme (Wales) (Amendment) Order 2014 (the 2007 Scheme amending Order) amends the 2007 Pension Scheme which is contained in Schedule 1 to the Firefighters' Pension Scheme (Wales) Order 2007 (SI 2007/1072 W.110); and

(c) the Firefighters' Compensation Scheme (Wales) (Amendment) Order 2014 ("the Compensation Scheme amending Order") amends the 2007 Compensation Scheme which is contained in Schedule 1 to the Firefighters Compensation Scheme (Wales) Order 2007 (SI 2007/1073 W.111).

9. These Orders make provision for access to a pension scheme for Retained Duty System (RDS) firefighters employed by a fire and rescue authority in Wales between 1 July 2000 and 5 April 2006 inclusive. RDS firefighters are a group different from regular firefighters in that they only attend a fire station when they receive an emergency call-out or other activities. They have historically been precluded from membership of the 1992 Pension Scheme but have been entitled to join the 2007 Pension Scheme since 6 April 2006.

10. Following the introduction of the Part-Time Workers (Prevention of Less Favorable Treatment) Regulations 2000, approximately 12,000 RDS firefighters submitted Employment Tribunal claims seeking equal treatment with whole-time regular firefighters. The Employment Tribunal subsequently decided under the terms of the Part-Time Workers Regulations that retained firefighters were entitled to equal treatment with whole-time members of the 1992 Pension Scheme on the pension's aspects of the claim. The Department for Communities and Local Government in the UK Government was given responsibility for negotiating the terms of a Settlement with the Fire Brigades Union.

11. These Orders reflect the settlement made and the manner in which it should be implemented: they make amendments to both the 1992 and the 2007 Pension Schemes and the 2007 Compensation Scheme in order to provide retained firefighters, employed by Welsh FRAs between 1 July 2000 and 5 April 2006 inclusive, with access to a modified section (the "modified scheme") of the 2007 Pension Scheme. This provides similar, albeit not identical, pension benefits as those provided under the 1992 Pension Scheme. They also provide for policy changes following on from Lord Hutton's report on public service pension schemes



as part of an ongoing programme of modernisation of the firefighter pension schemes.

12. The UK and other devolved administrations have consulted on the same proposals and introduced the same amendment orders across the UK, albeit at different times. To ensure continuity across the UK these Orders include a number of retrospective provisions as highlighted below.

13. There are a significant number of amendments, the key areas are as follows:-

### **RDS Firefighters – Modified Pension Scheme**

- *Amendments to the 2007 Pension Scheme*

In general these provisions have effect from 1 April 2014.

Part 1 is amended to ensure references that to firefighter member, deferred member or pensioner member in the standard 2007 Pension Scheme also apply to special members. This will ensure the standard rules of the 2007 Pension Scheme, which are not included within the modified section, will apply to special members of the modified scheme.

Part 2 is amended to set out:

- the qualifying conditions and eligibility criteria for the new categories of membership of the modified scheme (i.e. special firefighter member, special deferred member, and special pensioner member);
- that any special members who make a contributions election (i.e. opt out) will become entitled to a special deferred pension and will not be permitted to re-join the modified scheme. This mirrors the 1992 Pension Scheme which is currently closed to new membership.
- the normal retirement age of 55 years and normal benefit age as 60 years for special members of the modified scheme to reflect the 1992 Pension Scheme.

Part 3 is amended to:

- set out the methodology for calculating a special member's ordinary pension;
- provide for an accrual rate of 1/45th for the modified scheme;
- set out that the ill-health provisions in the modified scheme will reflect those of the standard 2007 Pension Scheme;
- provide for retrospective ill-health pensions for those individuals who have an eligibility to join the modified scheme and who were dismissed on grounds of ill-health, or who retired prior to 6 April 2006 and, as such, never had the opportunity to join either the 1992 or 2007 Pension Schemes and benefit from their ill-health benefits. Entitlement to a retrospective ill-health pension will be subject to confirmation from an Independent Qualified Medical Practitioner (IQMP) that the individual was permanently disabled for performing the duties of a firefighter at the time they left their employment and that they are still permanently disabled on the date of the medical assessment;
- set out the arrangements whereby a special member can commute part of their annual pension for a lump sum.

Part 4 is amended to:

- make provision for survivor benefits in respect of a special member;
- set out that the amount of survivor benefits in respect of a special member will be reduced by 2.5% for each year by which the survivor's age exceeds, by more than 12 years, that of the deceased. This mirrors the standard rules of the 2007 Pension Scheme.

Part 5 is amended to:

- set out that the death grant in respect of a special firefighter member will be two times the deceased's special pensionable pay at the time of his death. This mirrors the death grant provided under the terms of the 1992 Pension Scheme;
- make provision for the payment, on application, of a time limited death grant for the surviving spouse (or child, where there is no surviving spouse) of an individual who would have had an eligibility to join the modified scheme but that they died prior to 6 April 2006. This is to reflect the fact that the deceased individuals never had the opportunity to join the 1992 Pension Scheme and, as such, their survivors never got the opportunity to benefit from the death in service benefits;
- set out that the application for a time limited death grant needs to be made to the employing FRA before 1 April 2015 which is the date when the 2007 Pension Scheme closes to new entrants.

Part 6 is amended to set out:

- that a pension credit member's pension will come into payment from age 60 years, where the pension debit member is a special member of the modified scheme. This mirrors the 1992 Pension Scheme;
- the conditions by which a pension credit member can commute part of their annual pension for a lump sum, where the pension debit member is a special member of the modified scheme. This mirrors the 1992 Pension Scheme.

Part 8 is amended to remove the definition of IQMP as the term is already defined in Part 1.

Part 9 is amended to set out that a special deferred pensioner will not become entitled to the early payment of their pension before age 60 years, unless the employing FRA determines otherwise. This mirrors the 1992 Pension Scheme.

Part 10 is amended to:

- make provision for any period of a special member's service during the limited period where special contributions have been paid to be included as qualifying service. This ensures that these periods will be recognised for the purposes of determining a special member's entitlement to an award;
- set out the periods of service that should be considered as special pensionable service and should be included for the purposes of calculating the special member's pension;
- restrict the accrual of special pensionable service to 30 years. This mirrors the maximum pensionable service that can be accrued in the 1992 Pension Scheme;
- set out the conditions for purchasing additional 1/45ths of special pensionable service.

Part 11 is amended to:

- clarify the final pensionable pay for an individual who joins the modified scheme as a special deferred or special pensioner member. This will enable the calculation of the special member's pension;
- set out the employee contribution rates to be paid by special members of the modified scheme and, as such, the periodical contributions that they need to make as a member of the modified scheme;
- set out the conditions whereby a special member will be able to pay special contributions in respect of service during the limited period and, therefore, take up the opportunity to join the modified scheme;
- set out the prescribed stages by which an employing FRA should implement the Options exercise which will give eligible individuals an opportunity to join the modified scheme;
- provide the employing FRA with discretion to extend the prescribed stages of the Options exercise, where necessary, subject to concluding the exercise by 31 December 2015 set out arrangements by which an employing FRA can calculate special pensionable pay during the period. This will enable the employing FRA to calculate the past service that a special member will be entitled to purchase in the modified scheme;
- set out the conditions by which an eligible individual can elect to join the modified scheme;
- provide arrangements for which special contributions can be paid in respect of a special member's service during the limited period;
- make provision for the pro-rating of a special deferred or special firefighter member's special pensionable service where they do not pay the full amount of special contributions in respect of their election;
- set out that where a special member dies prior to paying the special contributions in respect of their election, it will be taken that all outstanding contributions have been paid.

Part 12 is amended to:

- provide arrangements for transferring pension benefits into and out of the modified scheme;
- provide a bespoke arrangement for transferring service accrued under the 1992 Pension Scheme into the modified scheme. This will ensure that any individual with a deferred 1992 Pension Scheme pension in respect of service that is continuous to their retained service (which provides an entitlement to join the modified scheme), will have the opportunity to transfer that service into the modified scheme at a rate of 1 year in the 1992 Pension Scheme for 1 year in the modified scheme. This will put the member in the position that they should have been had they been able to join the 1992 Pension Scheme for any periods of retained employment since 1 July 2000;
- provide a bespoke arrangement for converting special membership in the modified scheme to membership in the standard 2007 Pension Scheme; and for converting membership in the standard 2007 Pension Scheme to special membership in the modified scheme. This will provide those individuals who have an entitlement to join the modified scheme but who took the opportunity to join the standard Pension 2007 Scheme in respect of their retained service from 6 April 2006, with an opportunity to convert their special membership in the modified scheme to their standard Pension 2007 Scheme membership. It will also provide

an alternative opportunity to convert their standard 2007 Pension Scheme membership to their special membership in the modified scheme. This will ensure that any earlier decision to join the standard 2007 Pension Scheme does not disadvantage them over those individuals who did not join the standard Pension 2007 Scheme from 6 April 2006.

#### *Amendments to the 1992 Pension Scheme*

Schedule 6 is amended to provide for the bespoke arrangements for transferring service accrued under the Pension 1992 scheme to the modified scheme.

#### *Amendments to the 2007 Compensation Scheme*

In general these provisions have effect from 1 April 2006, otherwise from 1 April 2014.

Part 1 is amended to:

- provide definitions for the additional terms used in the modified scheme;
- provide separate definitions to distinguish between a 'RDS firefighter' and a 'volunteer firefighter' (the modified scheme does not apply to volunteer firefighters);
- make it clear that the 2007 Compensation Scheme applies to RDS firefighters;
- correct an existing error that omits the mechanism for determining an individual's pensionable pay where they are neither a member of the 1992 nor 2007 Pension Scheme.

Part 2 is amended to provide prorated injury awards for RDS firefighters to reflect their part-time employment status. RDS firefighters will be treated similarly to part-time regular firefighters for the purposes of receiving compensatory injury awards.

Parts 3, 4 and 5 are amended to make clear that the provisions are applicable to RDS firefighters.

Part 8 is amended to remove the current 'protected right' which provides RDS firefighters employed before 6h April 2006 and who are permanently disabled and retired because of a qualifying injury with a whole-time equivalent injury award. This was to reflect the fact that these individuals did not have access to a pension scheme, and, therefore, ill-health benefits, in respect of their employment as a retained firefighter. The removal of the protected right will ensure that following the introduction of the modified scheme, RDS firefighters will be treated similarly to part-time regular firefighters for the purposes of receiving compensatory injury awards. Transitional protections have been introduced so that the protected rights will continue to apply for any future cases where it is determined that the qualifying injury was sustained prior to the introduction of the modified scheme.

Part 10 is amended to make clear that the provision is applicable to RDS firefighters.

Schedule 1 is amended to correct an existing error that omits the mechanism for determining an individual's pensionable pay where they are neither a member of the 1992 nor 2007 Pension Scheme.

Schedule 2 is amended to:

- provide a mechanism to calculate a special award where the individual is neither a member of the 1992 nor 2007 Pension Schemes;
- provide a mechanism to pro rata special awards in respect of RDS firefighters. This will ensure that RDS firefighters will be treated similarly to part-time regular firefighters.

Schedule 3 is amended to:

- provide a mechanism to calculate a child's special allowance where the individual is neither a member of the 1992 or 2007 Pension Schemes;
- provide a mechanism to pro rata a child's special allowance in respect of RDS firefighters. RDS firefighters will be treated similarly to part-time regular firefighters.

Schedule 4 is amended to:

- provide a mechanism to calculate an adult dependent relative's special pension where the individual is neither a member of the 1992 or 2007 Pension Schemes;
- provide a mechanism to pro rata a dependent relative's special pension in respect of RDS firefighters. This will ensure that RDS firefighters will be treated similarly to part-time regular firefighters.

### **Further amendments to the 1992 and 2007 Schemes**

14. Further amendments to the 1992 and 2007 Orders are part of an ongoing programme of modernisation of the firefighter pension schemes. These include the following amendments:-

#### *The removal of rule A14, compulsory retirement on the grounds of efficiency*

The 1992 Scheme amending Order removes Rule A14 from the 1992 Pension Scheme which currently enables an employer to retire a scheme member on the grounds of efficiency. This ensures that in the future any decision by an employer to compulsorily remove a firefighter from employment is undertaken in accordance with employment and equalities law rather than the terms of the pension scheme. This does not affect the 2007 Pension Scheme as it does not have a corresponding provision. This amendment will apply from 1 July 2013.

#### *Changes to the indexation of additional pension benefits*

The 1992 Scheme amending Order and the 2007 Scheme amending Order amend, respectively, Rules B5B (3) of the 1992 Pension Scheme and Rule 7A(3) of Part 3 of the 2007 Pension Scheme so as to change the method of indexation used for uprating Long Service Increment additional pension benefit (LSI APB) from the Retail Price Index to the amount which would have applied under the Pensions (Increase) Act 1971 if the LSAPB had been a pension to which that Act applied. As consulted on, this will be applied retrospectively to April 2011, to reflect the change in UK Government policy to switch the basis of uprating public service pensions took effect as announced in the 2010 Emergency Budget.

The 1992 Scheme amending Order and the 2007 Scheme amending Order replace, respectively, paragraph (3) in rule B5C of the 1992 Pension Scheme and rule 7B of

Part 3 of the 2007 Pension Scheme to change the method of indexation used for uprating additional pension benefits during the accrual phase from the Retail Price Index to the amount of the increase which would have applied under the Pensions (Increase) Act 1971 if the additional pension benefit had been a pension to which that Act applied. Again, this will be applied retrospectively to April 2011, to reflect the change in UK Government policy to switch the basis of uprating public service pensions took effect as announced in the 2010 Emergency Budget.

*Changes to the maximum commutation payment*

The 1992 Scheme amending Order inserts a new paragraph (5A) in Rule B7 of the 1992 Pension Scheme to confer a new discretion enabling employers to raise the commutation limit for those members who are aged under 55 with less than 30 years' pensionable service so that they can commute up to the maximum of a quarter of their annual pension. This followed representations made by Fire and Rescue Authorities (FRAs) asking for a discretion to disregard the current limit. The 2007 Pension Scheme already permits a member to commute a quarter of their pension.

The 1992 Scheme amending Order amends Rule LA2 of the 1992 Pension Scheme to require the employer to pay the increased lump sum costs into the pension fund when they exercise the discretion to raise the commutation limit. No equivalent amendment is needed for the 2007 Pension Scheme.

These amendments will take effect from 1 July 2013.

*Changes to the definition of pensionable pay*

The 1992 Scheme amending Order and the 2007 Scheme amending Orders replace, respectively, Rule B5C of the 1992 Pension Scheme and Rule 7B of Part 3 of the 2007 Pension Scheme to introduce new powers for employers to make certain temporary allowances and emoluments, which satisfy the prescribed requirements, pensionable under additional pension benefit arrangements. This was in response to concerns about the pension costs associated with employers introducing new temporary allowances under final salary arrangements.

The 1992 Scheme amending Order amends Rule G1 in the 1992 Pension Scheme to provide protection for those members of the 1992 Pension Scheme that are in receipt of temporary emoluments and allowances which are being treated as pensionable pay under the 1992 Pension Scheme on the day before the enabling legislation is made so these will continue to be treated as pensionable pay. This particular protection is not required for the members of the 2007 Pension Scheme as the definition of pensionable pay excludes emoluments and allowances that are temporary.

These amendments will take effect from 1 July 2013

*Amendments to the medical appeals processes*

The 1992 Scheme amending Order introduces new Rule H1A of the 1992 Pension Scheme to provide new arrangements where, with the agreement of both the employer and the appellant, an IQMP can review a previous decision where new medical evidence is presented. This will help reduce instances and costs where a

medical appeal is unnecessary. This is not required for the 2007 Pension Scheme which already contains equivalent provisions.

That Order also introduces a new paragraph 2B in Schedule 9 to the 1992 Pension Scheme to provide a mechanism whereby a reviewing member of the Board of Medical Referees (BMR) can make an initial decision as to whether there is sufficient information to enable the Board to undertake an appeal hearing.

The 1992 Scheme amending Order and the 2007 Scheme amending Order introduces, respectively, a new paragraph 6A in Schedule 9 to the 1992 Pension Scheme and paragraph 8A in Annex 2 of the 2007 Pension Scheme to provide a new arrangement so that where the appellant and authority agree that an error of fact has occurred which has a material significance to the decision, the case can be referred back to the BMR for reconsideration.

These amendments will take effect from 1 July 2013.

#### *Amendments to the non-medical appeals' processes*

The 1992 Scheme amending Order amends Rule H3 of the 1992 Pension Scheme to replace the current arrangement whereby an appeal in respect of a non-medical matter is made to the Crown Court with amendments to enable internal dispute resolution procedures to be set up pursuant to requirements under the Pensions Act 1995. This amendment will ensure that the most appropriate mechanism for appeal is used; ultimately reducing reliance on the Courts and making the appeals process easier to undertake for both scheme member and employer. The 2007 Pension Scheme already makes equivalent provision.

This will take effect from 1 July 2013.

#### *Abatement of pensions*

The 1992 Scheme amending Order amends Rule K4 of the 1992 Pension Scheme to increase the scope of the employer's discretion to abate a member's pension where they are re-employed following retirement.

The new provision will enable the employer to abate the whole or part of a member's pension where they are re-employed in any capacity by any fire and rescue authority. This change will help implement longstanding UK Government policy that pension payments should be abated where a member is re-employed in the public sector and receives a pension and salary exceeding earnings before retirement. This will not apply to the 2007 Pension Scheme as it already includes an equivalent provision. This amendment will apply retrospectively to cases where a retired member is employed on or after 25 September 2009.

The 1992 Scheme amending Order and the 2007 Scheme amending Orders amend, respectively, Rule LA2 of the 1992 Pension Scheme and Rule 2 of Part 13 of the 2007 Pension Scheme to introduce a new requirement for employers to reimburse the pension fund in the instance where they do not exercise the discretion to abate a member's pension on re-employment. This requirement to pay the additional pension costs will apply to new cases where a retired member becomes re-employed on or after 1 July 2013 (by article 3 of the 1992 Scheme amending Order).

### *Technical amendments and alignments with tax legislation and general updating amendments*

The 1992 Scheme amending Order also makes a number of amendments throughout the body of the 1992 Pension Scheme so as to align the scheme's terminology with current tax legislation and to generally update the scheme's statutory references. The provisions concerning alignment with current tax legislation have effect from 11 April 2011.

Equivalent amendments do not need to be made to the 2007 Pension Scheme.

Article 4 of the 1992 Scheme amending Order applies in respect of pensions in payment, and pensions which may become payable in respect of persons who have ceased to be in service or have died before 1st July 2013. The effect of the article is to give a person a right to elect that any amendments in this Order which places them in a worse position shall not apply to them. Any such election must be made within 12 months after the coming into force of the Order.

15. It is intended the Orders will come into force **31 December 2014**

### **Consultation**

16. Two consultations have been undertaken in relation to these amendments with Chief Fire Officers, Chief Executives of local authorities, Welsh Local Government Association (WLGA) and representative bodies including the Fire Brigades Union (FBU). Please refer to the Regulatory Impact Assessment consultation paragraph below for further information.

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

### **RDS Firefighters – Modified Pension Scheme**

#### **a) Options**

**Do Nothing** – RDS firefighters submitted Employment Tribunal claims seeking equal treatment with wholetime firefighters. This was referred to the House of Lords and they decided RDS firefighters were entitled to equal treatment with members of the 1992 scheme. Without this Order the Welsh Government will be in breach of its obligations to ensure RDS staff are provided with comparable terms and conditions to those for wholetime firefighters. It would also mean RDS firefighters in Wales would be in a worse position than those in the rest of the UK.

**Make the Legislation** – The Order will ensure RDS firefighters will be allowed access to a pension scheme with comparable pension rights to those enjoyed by wholetime firefighters.

#### **b) Benefits**



The replies to the consultation have been considered. The main benefits of the terms of access to the pension scheme for eligible retained firefighters in Wales are:

- a uniform accrual rate of 1/45<sup>th</sup>
- a Normal Pension Age of 55 years
- a deferred pension age of 60 years
- fixed commutation factors to reflect the commutation rates in the Firefighters' Pension Scheme 1992 that are applicable on the day before the amending legislation is made
- the contribution rate payable will be calculated at the rate applicable to the Firefighters' Pension Scheme 1992 in respect of the period of service being purchased (i.e. for service before 1 April 2012 the contribution rate will be 11% of pay; for service from 1 April 2012, it will be the relevant tiered contribution rate)
- a death grant of two times pensionable pay
- a time limited retrospective death grant of 2.5 times pensionable pay in respect of those who would have been eligible to be members if they had not died before 6 April 2006
- an opportunity for eligible members to purchase additional pensionable service in 45ths
- the ability for eligible members to convert existing New Firefighters' Pension Scheme (Wales) 2007 service to the proposed new pension arrangements
- a transfer of external pension benefits into the proposed new pension arrangements will be in accordance with the terms of the New Firefighters' Pension Scheme (Wales) 2007
- ill-health pension arrangements, lower and higher tier, will be in accordance with the terms of the New Firefighters' Pension Scheme (Wales) 2007
- the abatement of a member's pension will be in accordance with the terms of the New Firefighters' Pension Scheme (Wales) 2007
- any member who subsequently opts out of the proposed new pension arrangements will not be permitted to re-join those arrangements.

### **c) Costs**

Costs for the firefighter pension scheme in Wales include grant funding through Annual Managed Expenditure (AME) which is used to top-up the difference between scheme income and expenditure, funded by HM Treasury. The introduction of the RDS modified section of the 2007 Pension Scheme is likely to create a scheme deficit as members purchase past service rights. This will be recovered from FRAs over a period of not more than 15 years, and will be determined by subsequent Scheme Valuations. The next valuation will be at 31 March 2016.

## **Further amendments to the 1992 and 2007 Schemes**

### **a) Options**

**Do Nothing** - Without these Orders, the Welsh Government will be unable to implement the recommendations from Lord Hutton's report as part of an ongoing programme of modernisation of firefighter pension schemes. It would also mean firefighters in Wales received different and arguably inferior pension benefits from those in the rest of the UK.

**Option 2: Make the Legislation** - These Orders will allow a number of changes to the two Firefighter Pension Schemes including the removal of the rule enabling compulsory early retirement in the interests of efficiency, changes to indexation of additional pension benefits - to the Consumer Prices Index, discretion to permit the maximum payment of commutation, a clearer definition of pensionable pay and widening FRAs discretion to enable abatement of a pension paid to a member of the scheme who is employed in any role by any FRA.

## **b) Benefits**

The replies to this consultation have been considered. Some of the key benefits of the proposed amendments to the schemes include:

- Removal of the rule enabling compulsory early retirement in the interests of efficiency will ensure the Scheme reflects the direction of travel on employment and equalities legislation;
- Changes to indexation will bring a saving to the scheme, as well as reducing administrative burden;
- Commutation rules will remove a disincentive for members to choose to retire early;
- Amendments to pensionable pay will provide a fairer and more proportional approach to financing pensions for the taxpayer;
- Changes to the review of medical opinion (medical appeals) will reduce the need for appeals to decisions made by an Independent Qualified Medical Practitioner to the Board of Medical Referees, or from the Board to the High Court by way of Judicial Review;
- Withdrawal of pension during service as a regular Firefighter (abatement) will protect public funds. This has been amended so that the associated pension fund payment would only apply to cases where the re-employment occurred after the coming into force date of 25 September 2009;
- Amending terminology around pension's tax will simplify Scheme legislation and ensure consistency with HMRC's rules and definitions.

## **c) Costs**

Costs for the firefighter pension scheme in Wales include grant funding through Annual Managed Expenditure (AME) which is used to top-up the difference between scheme income and expenditure, funded by HM Treasury. With this in mind, there is no related revenue or capital expenditure if the recommendations outlined in Option 2 are agreed. As such there will be no impact on any of the Budget Expenditure Lines within the Local Government and Communities Main Expenditure group. Any associated administration costs can be met from within the Local Government and Communities Delegated Running Costs budget.

## RDS Firefighters – Modified Pension Scheme

### Consultation

17. Consultation on the RDS Modified Pension Scheme commenced on 23 August 2013 for six weeks. The consultation sought views on the proposed new terms of access to a pension scheme for retained firefighters' employed by a Fire and Rescue Authority in Wales between 1 July 2000 and 5 April 2006 to provide them with comparable pension rights to those enjoyed by firefighters during the same period. Four responses were received in relation to the formal consultation the key areas detailed below:-

- **North Wales Fire and Rescue Service:** The service commented that guidance would be required, in particular covering actions in the case of benefits awarded under the Compensation Scheme being reversed and therefore potential sums of money being required to repaid because of benefits under the new modified scheme. The service also suggested the proposed new pension arrangements would place a considerable cost burden on the revenue accounts of local FRAs as well as an increase in ill-health benefit claims and possible death grant payments. In addition due to the data retention policy being 7 years, it may be impossible to communicate with the relevant groups as the settlement goes back 13 years.
- **Mid & West Wales Fire and Rescue Service:** The service commented that clear guidance on how contributions would be spread over 10 years and on the calculations to apply to individuals.
- **South Wales Fire and Rescue Service:** The service stated that the initial requirement for contacting the retained firefighters is a substantial administrative burden which falls on the employer. The settlement appears to require information from 13 years ago; which may or may not be in existence. There is potential for great confusion and the expectation that the employer will give individuals detailed pension advice, which the service states is not the employer's role. Greater clarity is required from the Welsh Government over the financial responsibilities which arise from these proposals.

The Welsh Government has considered the responses to the consultation and remains committed to taking forward the amendments as consulted on. Guidance for both employees and employers has been produced and draft versions have been shared with the three Welsh fire services. The Welsh Government has also funded the production of a calculator for FRAs to use in calculating individual entitlements under the scheme. Following discussion with all 3 FRAs through the interim Pension Scheme Advisory Board for Wales, all have identified eligible individuals who would benefit from the scheme in readiness for its introduction.

The Welsh Government understands that FRAs are only required to hold information for 7 years; however, the FRAs will be required to use reasonable endeavours to notify all persons eligible to join the scheme.

The cost of providing a pension is an employer and employee responsibility and the funding of liabilities, whether past or future service, should be met by employers. The liability that arises from the settlement remains a liability to the firefighters' pension scheme which is funded by both employers and employees.

#### **Further amendments to the 1992 and 2007 Schemes**

18. The consultation commenced on 31 October 2011 and closed on 23 January 2012. Four responses were received in relation to the formal consultation and the key areas are detailed below:-

- **Association of Principal Fire Officer (APFO)** – APFOA do not agree to defining Flexible Duty Allowance (FDA) as a temporary payment. APFOA comment the changes to the abatement rule are in direct contrast to Lord Hutton's recommendations. Agree with the majority of other proposed changes.
- **South Wales Fire and Rescue Authority** – South Wales FRA do not agree with defining FDA as a temporary payment. The FRA believes changes to the abatement rule are in direct contrast to Lord Hutton's recommendations. Agree with the majority of other proposed changes.
- **Fire Officers' Association (FOA)**- FOA do not agree to defining FDA as a temporary payment. Agree with the majority of other proposed changes.

Although final policy decisions in respect of firefighters' pensions are for Ministers in each of the four administrations across the UK to make, there is a consensus amongst stakeholders to maintain a uniform approach across schemes. The UK and other devolved administrations have consulted on the same proposals and introduced the same amendment orders across the UK, albeit at different times.

The responses in terms of abatement have been considered further and the Order amends the provision where the associated pension fund payment would only apply to cases, to be consistent across the UK, where the re-employment occurred after 1 July 2013 and, as some FRAs were already doing this where an individual was already in a non-firefighter role from 25 September 2009.

In terms of Flexible Duty Allowance the Order makes provision for this to continue to be treated as pensionable pay if it is a permanent remuneration

Following the consultation exercise, the proposal to amend the scheme to permit members under the age of 50 who have accrued 30 year's service to take a contributions holiday from the time they attain 30 years' reckonable service until they reach age 50 (ie those who joined the Firefighters' Pension Scheme before the age of 20). This proposal is still under consideration and steps have been taken to seek a declaration through the Courts on a UK wide basis in order to provide legal certainty on the position on whether this is discriminatory on the grounds of age.

#### **Competition Assessment**

19. Not applicable.

### **Post implementation review**

20. This will be undertaken through the Pension Scheme Advisory Board for Wales which will be established from April 2015 onwards following the introduction of the Public Service (Firefighters) Pensions (Wales) Regulations 2015.

# Agenda Item 3.2

## Constitutional and Legislative Affairs Committee Draft Report

CLA(4)–02–15

### CLA485 – The Non-Domestic Rating (Multiplier) (Wales) (No. 2) Order 2014

This Order is made under paragraph 5(3) of Schedule 7 to the Local Government Finance Act 1988 (“the Act”). The non-domestic rating multiplier is calculated in each financial year when new lists are not being compiled in accordance with paragraph 3B of Schedule 7 to the Act. 2015 is a year when new lists are not being compiled.

The formula in paragraph 3B of Schedule 7 to the Act includes an item B which is the retail prices index for September of the financial year preceding the year concerned, unless the Welsh Ministers exercise their power under paragraph 5(3) of Schedule 7 to the Act to specify by Order a different amount for item B. If the Welsh Ministers exercise that power in relation to a financial year, the different amount so specified must be lower than the retail prices index for September of the preceding financial year. The retail prices index for September of the preceding financial year is 257.6. This Order specifies that for the financial year beginning on 1 April 2015 the amount for item B is 256.9.

**Procedure: Affirmative**

### Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. The enabling power is correctly cited as paragraph 5(3) of Schedule 7 to the Local Government Finance Act 1988. The procedure applicable to an order made in reliance on that power is specified in sub-paragraph (15) of paragraph 5 as follows –

“An order made by the Welsh Ministers under sub-paragraph (3), in its application to a particular financial year (including an order amending or

revoking another), shall not be effective unless it is approved by resolution of the Assembly before the approval by the Assembly of the local government finance report for the year, or before 1 March in the preceding financial year (whichever is earlier)."

2. The Order made by the Welsh Ministers for the current financial year (The Non-Domestic Rating (Multiplier) (Wales) Order 2014) followed the normal affirmative procedure, subject only to complying with the additional requirement in sub-paragraph (15). The draft Order was approved by the National Assembly before the report was approved, and finally the Order was signed. This is explained in the third paragraph of Part 2 of the Explanatory Memorandum.

3. The fourth paragraph of the Explanatory Memorandum explains that the Welsh Government has revised its interpretation of the requirements of sub-paragraph (3). It now considers that the appropriate procedure is for the Order to be signed before it is approved, which in turn must happen before the Local Government Finance report.

4. The absence of reference to a draft order in sub-paragraph (15) does cast doubt on whether it should be signed before or after it is approved. The essential elements remain signature by one of the Welsh Ministers and approval by the National Assembly and those requirements will have been met regardless of the order in which they occur.

5. Nevertheless, the use of a different procedure from that adopted earlier this year to comply with the same statutory requirements does constitute an **"unusual or unexpected use of the power"** to be reported under Standing Order 21.2 (ii).

6. The different approach gives rise to a further difficulty – whether it will be clear to a reader of the legislation if it is in force or not. Article 1(2) of the Order includes the condition contained in sub-paragraph (15) that approval of the Order must precede approval of the report. Unfortunately, it will not clear from the Order whether that condition has been satisfied.

7. If the Order were made (by being signed by a Minister) after approval had occurred, it would have been possible to include a recital that approval of the Order had preceded approval of the report. The approach taken on this occasion makes that impossible as both approvals lay in the future when the Order was signed. That tends to support the use of the standard affirmative procedure.

8. As drafted, article 1(2) refers the reader to the precondition for approval, leaving unanswered the question of whether that condition has been satisfied. In order to discover the answer, it would be necessary to consult the Assembly's website to check the order in which votes took place. It is not satisfactory that such research should be necessary to ascertain whether the Order is in force. **The Assembly should therefore pay special attention to the Order as "its form or meaning needs further explanation" under Standing Order 21.2(v).**

### Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

### Legal Advisers

Constitutional and Legislative Affairs Committee

December 2014

### Welsh Government Response to CLAC for the Non-Domestic Rating (Multiplier) (Wales) (No. 2) Order 2014

1. The Welsh Government disagrees that this is an unusual or unexpected use of the power. CLA committee agrees that the correct enabling power is cited, that is paragraph 5(3) of Schedule 7 to the Local Government Finance Act 1988 (the 1988 Act). Paragraph 5(3) enables Welsh Ministers to, by order, specify a figure for 'B' which is less than the retail prices index for



September of the financial year preceding the year concerned. That is exactly what the Order does, at article 2.

2. It is accepted that the Order this year is following a different form of affirmative procedure to that followed last year. However, in both cases, the Order will not be effective unless the Assembly approves it, and does so before its approval of the Local Government Finance Report. The only difference is that this year the Welsh Ministers have made the Order before it has been laid. Paragraph 5(15) of Schedule 7 to the 1988 Act provides that “*an order made by the Welsh Ministers ...shall not be effective unless it is approved...*”. Given that paragraph 5(15) refers to an **order made** by the Welsh Ministers, rather than a **draft order**, the Welsh Government has concluded that the 1988 Act prescribes for a rarely used variant of the affirmative procedure, under which the Order is laid after being made by the Welsh Ministers, but cannot come into force unless approved by the Assembly. Statutory Instrument Practice 2006 categorises this procedure as a Class (ii) affirmative procedure (see page 9). The equivalent Order made by the Secretary of State (the Local Government Finance Act 1988 (Non Domestic Rating Multipliers) (England) Order 2014) followed this rarely used variant of the affirmative procedure.
3. The Welsh Government disagrees that the form or meaning of the Order needs further explanation. Article 1(2) provides that the order comes into force the day after the Assembly approves it, provided that the Assembly’s approval of the order takes place before the Assembly’s approval of the Local Government Finance Report. The reader should therefore assume that the Assembly has complied with the statute which requires the approval of the order to be given before the approval of the local government finance report. It is not ideal that in order to be certain, the reader would need to check the Assembly’s order of business on its website, but that is not a fault of the order. Any lack of clarity stems from the primary legislation, as opposed to the secondary legislation made under it. Again, the equivalent Order made by the Secretary of State

referred to above results in such a requirement. We are not aware of any report by the Joint Committee on Statutory Instruments on this Order.

4. Last year was the first time that this power in the 1988 Act had ever been used in England or Wales. The Order was prepared in exceptional haste, following the Autumn statement in December, given the need for it to be approved before the Local Government Finance Report in mid January. This year, the Welsh Government has had more time to prepare for the possibility that such an Order might be needed and has had the opportunity to consider the relevant statutory framework in greater depth, resulting in the slightly different form of affirmative procedure being followed this year.

*Order laid before the National Assembly for Wales under paragraph 5(15) of Schedule 7 to the Local Government Finance Act 1988, for approval by resolution of the National Assembly for Wales.*

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W E L S H   S T A T U T O R Y  
I N S T R U M E N T S

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**2014 No. (W. )**

**RATING AND VALUATION,  
WALES**

**The Non-Domestic Rating  
(Multiplier) (Wales) (No. 2) Order  
2014**

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order is made under paragraph 5(3) of Schedule 7 to the Local Government Finance Act 1988 (“the Act”).

In relation to Wales, the non-domestic rating multiplier is calculated in each financial year when new lists are not being compiled in accordance with paragraph 3B of Schedule 7 to the Act. 2015 is a year when new lists are not being compiled.

The formula in paragraph 3B of Schedule 7 to the Act includes an item B which is the retail prices index for September of the financial year preceding the year concerned, unless the Welsh Ministers exercise their power under paragraph 5(3) of Schedule 7 to the Act to specify by Order a different amount for item B. If the Welsh Ministers exercise that power in relation to a financial year, the different amount so specified must be lower than the retail prices index for September of the preceding financial year. The retail prices index for September of the preceding financial year is 257.6.

This Order specifies that for the financial year beginning on 1 April 2015 the amount for item B is 256.9.

In accordance with paragraph 5(15) of Schedule 7 to the Act, the Order will only come into force if it is approved by a resolution of the National Assembly for Wales (“the Assembly”) before the Assembly

approves the local government finance report for the financial year beginning on 1 April 2015.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Local Taxation Policy Branch, the Local Government Finance and Public Service Performance Division, Welsh Government, Cathays Park, Cardiff CF10 3NQ.

*Order laid before the National Assembly for Wales under paragraph 5(15) of Schedule 7 to the Local Government Finance Act 1988, for approval by resolution of the National Assembly for Wales.*

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W E L S H   S T A T U T O R Y  
I N S T R U M E N T S

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**2014 No. (W. )**

**RATING AND VALUATION,  
WALES**

**The Non-Domestic Rating  
(Multiplier) (Wales) (No. 2) Order  
2014**

*Made* 23 December 2014

*Laid before the National Assembly  
for Wales* 23 December 2014

*Approved by the National Assembly  
for Wales* \*\*\*

*Coming into force in accordance with article 1*

The Welsh Ministers make the following Order in exercise of the powers conferred on the Treasury by paragraph 5(3) of Schedule 7 to the Local Government Finance Act 1988(1) and which are now vested in the Welsh Ministers so far as exercisable in relation to Wales(2).

**Title, application and commencement**

**1.**—(1) The title of this Order is the Non-Domestic Rating (Multiplier) (Wales) (No. 2) Order 2014.

(2) This Order comes into force on the day after the day on which it is approved by a resolution of the

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(1) 1988 c. 41.

(2) The powers under paragraph 5(3) of Schedule 7 to the Local Government Act 1988, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c. 32), the powers are now vested in the Welsh Ministers.

National Assembly for Wales, provided that the approval of the Order is given before the approval by the Assembly of the local government finance report for the financial year beginning on 1 April 2015.

(3) This Order applies in relation to Wales.

**Non-domestic rating multiplier**

2. For the purposes of paragraph 3B of Schedule 7 to the Local Government Finance Act 1988, for the financial year beginning on 1 April 2015, B is specified as 256.9.

*Leighton Andrews*

Minister for Public Services, one of the Welsh Ministers

23 December 2014

## **Explanatory Memorandum to the Non-Domestic Rating (Multiplier) (Wales) (No 2) Order 2014**

This Explanatory Memorandum has been prepared by the Local Government and Communities Department 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 Non-Domestic Rating (Multiplier) (Wales) (No 2) Order 2014. I am satisfied that the benefits outweigh any costs.

Leighton Andrews AM  
Minister for Public Services

23 December 2014

## **1. Description**

This Order sets the increase in the Non Domestic Rate (NDR) Multiplier at 2% for the financial year 2015-16.

Ordinarily the multiplier is increased in line with the Retail Price Index (RPI) figure as at the September preceding the financial year to which the multiplier applies. For 2015-16 this would have been 2.3%.

The multiplier, in combination with the Rateable Value (RV) of a non domestic property, is a key element used in calculating the non domestic rates bill. The effect of the Order is to reduce the increase in the 2015-16 rates bill to be paid by businesses and other non-domestic property owners across Wales.

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

Standing Order 27.7 provides that no motion under Standing Order 27.5 (motion for approval) may be considered in plenary until either (i) the committee responsible for the functions specified in Standing Orders 21.2 and 21.3 and any other committee which has given the notice mentioned in Standing Order 27.8 has reported on the instrument or draft, or 20 days have elapsed since the instrument or draft instrument was laid, whichever is the earlier. It will not be possible for 20 days to have elapsed since the laying date in this instance.

The Chancellor's Autumn Statement announced the imposition of a 2% cap on the increase in the NDR multiplier in England. This statement was made on 3 December. Under the relevant legislation, a multiplier which is set below the level of inflation must be approved by the Assembly in accordance with an affirmative procedure. The relevant legislation provides that the Order under paragraph 5(3) of the Local Government Finance Act 1988 (the 1988 Act) specifying the amount of item B, which is one of the components of the formula in accordance with which the multiplier is calculated, shall not be effective unless it is approved by a resolution of the Assembly before the approval by the Assembly of the local government finance report for the financial year or before 1 March in the preceding financial year, whichever is the earlier. The Local Government settlement debate is scheduled to take place on 13 January 2015. The availability of Assembly members due to the Christmas recess and the rules in the Assembly's Standing Orders governing calculations of periods of time mean that it will not be possible to make the Order available to Assembly Members for a period of 20 days. The Constitutional and Legislative Affairs Committee has been notified of this by letter.

In terms of the procedural requirements for an Order under paragraph 5(3) of the 1988 Act, the Order in respect of the current financial year was made under the usual form of affirmative procedure, whereby it was approved in draft by the Assembly before the Assembly's approval of the Local Government Finance report, following which the Order was made by the Welsh Ministers. However,



in reconsidering the matter, it is considered that paragraph 5(15) of Schedule 7 to the Local Government Finance Act 1988 requires a slightly different, and very unusual, procedure from that which was followed last year.

Paragraph 5(15) provides that an Order made by the Welsh Ministers under sub-paragraph (3), in its application to a particular financial year, shall not be effective unless it is approved by resolution of the Assembly before the approval by the Assembly of the Local Government Finance report for the year, or before 1 March in the preceding financial year (whichever is earlier). It is considered that paragraph 5(15) requires the Order first to be made by the Welsh Ministers, then approved by the Assembly – and the approval by the Assembly of the Order must be given before the approval of the Local Government Finance report. However, it is considered that this does not affect the validity of the Order currently in force, because that Order had been approved by the Assembly before the Assembly approved the Local Government Finance report, the only difference being that it was laid in draft before the Assembly rather than being laid as an Order which had already been made.

### **3. Legislative background**

Under the Local Government Finance Act 1988, the default position is that, for financial years at the beginning of which new rating lists do not need to be compiled, the NDR multiplier for Wales is set by applying a formula set out in paragraph 3B to Schedule 7 to that Act:

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

where:

A = the non-domestic rating multiplier for the financial year preceding the year concerned

B = is the retail prices index for September of the financial year preceding the year concerned

C = the retail prices index for September of the financial year which precedes that preceding the year concerned.

2015 is a year when new lists are not being compiled. The formula in paragraph 3B (shown above) includes an item B which is the RPI for September of the financial year preceding the year concerned, unless the Welsh Ministers exercise their power under paragraph 5(3) of Schedule 7 to the Act to specify by Order a different amount for item B.

The Welsh Ministers are exercising this power in relation to the 2015 financial year, by making this Order to specify that amount for item B is lower than the RPI for September of the preceding financial year.

The Order is subject to the affirmative procedure. Paragraph 5(15) of Schedule 7 to the 1988 Act provides that an Order made by the Welsh Ministers under

sub-paragraph (3), in its application to a particular financial year (including an Order amending or revoking another), shall not be effective unless it is approved by resolution of the Assembly before the approval by the Assembly of the local government finance report for the year, or before 1 March in the preceding financial year (whichever is earlier).

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

The UK Government announced in the Autumn Statement 2014 they would be implementing a 2% cap on the RPI increase in the NDR multiplier for 2015-16. The default position is to increase the multiplier in line with the RPI figure from September from the preceding year. This would mean the multiplier would ordinarily rise by 2.3%.

The Order will have the effect of increasing the NDR multiplier for Wales at the same rate as England (2%). It will therefore increase from £0.473 in 2014-15 to £0.482 in 2015-16.

This measure will help ensure Wales continues to offer an attractive business environment by reducing the tax burden to businesses.

All businesses (which own or occupy properties) and other non-domestic properties in Wales will benefit from a lower than inflationary increase in their rates bill for 2015-16. Even those properties which receive significant amounts of rate relief will benefit as the residual amounts due will be calculated using a lower NDR multiplier.

There will be no adverse financial effects for Local Government in Wales. Whilst the cost of capping the multiplier will reduce the Distributable Amount which supports Local Government and Police funding, this will be offset by a corresponding increase in the Revenue Support Grant.

No consultation has been undertaken on the policy underpinning this Order due to the nature of the announcement made by the Chancellor. However, a similar measure was also implemented in respect of rates bill for 2014-15 and was well received by businesses.

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

### **Options**

#### ***Option 1 – Retain the inflationary increase (2.3%) to the NDR multiplier***

This option would see the NDR multiplier increase from £0.473 to £0.484. This is the default position and would see the multiplier increase by the RPI figure from September 2014 (2.3%).

#### ***Option 2 – Cap the NDR multiplier at 2%***

This option would see Wales follow England and to extend the cap on the RPI increase to the NDR multiplier at 2% for 2015-16. This would mean the multiplier in Wales would increase from £0.473 in 2014-15 to £0.482 in 2015-16.

### ***Option 3 – Utilisation of existing relief provisions***

The existing legislation allows Local Authorities to provide relief to businesses within their areas where it can be demonstrated to be in the interests of other taxpayers in their respective areas. This option would require the Welsh Government to oversee a programme of NDR reliefs being offered by all Local Authorities.

### **Costs & benefits**

#### ***Option 1 - Retain the inflationary increase (2.3%) to the multiplier***

In Wales there is one uniform multiplier rate for all businesses. Retaining the inflationary increase, will mean the multiplier rate in Wales will be 0.484 for 2015-16.

In England, the business multiplier has two different rate figures. As the UK Government have decided to cap increases to the multiplier at 2%, the provisional rates are 0.480 for small businesses (those with an RV of less than 18,000, or 25,000 in Greater London) and 0.493 for all other businesses.

These figures also apply to Scotland. However Scotland uses a higher threshold in relation to small businesses (any business with an RV of £35,000 or less is classed as a small business). It is not known at this point in time, whether or not Scotland will retain the inflationary increase. However, officials believe it is likely they will also cap the multiplier at 2%.

The two examples below illustrate the cost to businesses in Wales, in comparison to England and Scotland.

#### **Non- Domestic Rates bill for a property which has an RV of £15,000\* (E.g. a small shop or restaurant)**

	2014-15	2015-16
Wales	£7,095	£7,260
England and Scotland	£7,065	£7,200

\*as assessed by the Valuation Office Agency without any reliefs applied

#### **Non- Domestic Rates bill for a property which has an RV of £150,000\* (E.g. a medium sized supermarket or large office)**

	2014-15	2015-16
Wales	£70,950	£72,600
England and Scotland	£72,300	£73,950

\*as assessed by the Valuation Office Agency without any reliefs applied

Small businesses in Wales will continue to have a slightly higher non-domestic rates bill than similar businesses in England and Scotland, but the % difference in cost will slightly increase compared with 2014-15. For larger businesses in Wales, the rate will continue to be slightly lower than for similar businesses located in England, however this difference will become slightly smaller compared with 2014-15.

This could potentially lead to fewer businesses locating to Wales, or more businesses moving out of Wales. Either way, there is the potential for a negative impact on the reputation of Wales within the business community, as well as a potential negative impact on Welsh GDP, if significant numbers of businesses thought the absence of a cap a sufficient disincentive to invest – or a reason to disinvest.

### ***Option 2 – Cap the multiplier at 2%***

This option means Wales follows England in restricting the increase to the multiplier. Using comparable data from Option 1 then:

Non- Domestic Rates bill for a property which has an RV of £15,000\* (E.g. a small shop or restaurant)

	2014-15	2015-16
Wales	£7,095	£7,230
England and Scotland	£7,065	£7,200

\*as assessed by the Valuation Office Agency without any reliefs applied

Non- Domestic Rates bill for a property which has an RV of £150,000\* (E.g. a medium sized supermarket)

	2014-15	2015-16
Wales	£70,950	£72,300
England and Scotland	£72,300	£73,950

\*as assessed by the Valuation Office Agency without any reliefs applied

The above figures illustrate that small businesses in Wales will continue to have a slightly higher non-domestic rates than in England. For larger businesses in Wales, the rate will continue to be slightly lower than in England. The % difference in relation to Non-Domestic Rates between the two countries would remain the same compared with 2014-15.

The cost of capping the increase in the multiplier to 2% would be borne by the Welsh Government and there would be no financial effect on Local Authorities.

### ***Option 3 - Utilisation of existing relief provisions***

Using the discretionary powers available to Local Authorities would be a much more cumbersome way to achieve the same objective as restricting the increase to the multiplier.

There would be a requirement to:

- Gain the agreement of all Authorities to provide a relief scheme which has the same effect on NDR bills;
- Devise a suitable scheme to reimburse each Local Authority;
- Implement changes to Local Authority software systems; and
- Set aside a budget allocation which would not be part of the NDR Pool. .

It would also be highly unlikely the Welsh Government could implement such a scheme within the required timescales.

### **Option Selection**

After considering each of the options above, Option 2 is considered to be the most effective choice.

### **Consultation**

The timing of the Chancellor's Autumn Statement and the need to agree the Local Government settlement means no consultation has been undertaken on these proposals



David Melding AM  
Chair, Constitutional & Legislative Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

23 December 2014

Dear David,

I am writing regarding the Non-Domestic Rates (NDR) Multiplier for 2015-16. As you will be aware, in his Autumn Statement on 3 December the Chancellor announced the UK Government would be extending the 2% cap on the Retail Price Index (RPI) increase to the Multiplier for the 2015-16 for England. Welsh Ministers propose to adopt this approach, so businesses in Wales are not disadvantaged in comparison with their counterparts in England. Not to do so could have consequences for the Welsh economy.

The provisions governing the calculation of the Multiplier are set out in Schedule 7 of the Local Government Finance Act 1988. The Multiplier for a particular year is normally calculated using the following formula:

$$\frac{\text{2014-15 Multiplier} \times \text{RPI September 2014}}{\text{RPI September 2013}}$$

Under this formula, the Multiplier for 2015-16 would ordinarily increase by 2.3%. As applying a 2% cap to the Multiplier represents a departure from the normal practice for increasing the Multiplier, Schedule 7 requires an Order specifying an increase below the RPI to be approved by the National Assembly for Wales and such an Order will not be effective unless it is approved by resolution of the Assembly before the approval by the Assembly of the local government finance report for the year, or before 1 March in the preceding financial year (whichever is earlier).

This Order must be laid for approval prior to the debate to approve the Local Government Finance Report because it informs the calculation of the figures in the Report under Part III of Schedule 8 to the Local Government Finance Act 1988. The debate on this Report had already been scheduled for 13 January 2015 when the Autumn Statement was made. As a result, it will not be possible to lay the Order to allow a period of 20 days for scrutiny before the debate on the Local Government Finance Report on 13 January.

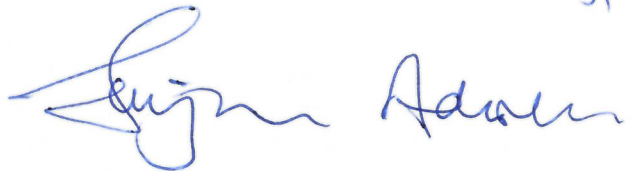
A similar position was experienced last year with regard to timing when the UK Government decided to implement the 2% cap to the multiplier for 2014-15. Whilst the possibility of the UK Government extending the cap for 2015-16 was considered, given the comparatively lower level of RPI this year (2.3%) as opposed to last year (3.2%), there was no certainty of this. Consequently it was not possible to make arrangements for laying the Order until after this measure was announced in the Autumn Statement and an associated consequential identified for Wales.

Although I have considered delaying the debate on the Local Government Finance Report, this would result in considerable difficulties for Local Authorities who must agree their budgets and set their Council Tax levels for 2015-16 within tight statutory timetables. Early approval of the Order is also needed to enable Local Authorities to adopt the Multiplier for NDR billing purposes. This will also provide businesses with the clarity they need to plan for the next financial year.

I would therefore be grateful if the Constitutional and Legislative Affairs Committee could consider and report on the NDR Multiplier Order in order to enable the debate on the Local Government Finance Report to proceed as scheduled on 13 January, when the Order must be approved before the approval of the local government finance report.

The Order is very brief and only covers the change to the Multiplier. My officials have already informally provided a copy of the draft Order to your officials and I would be happy for my officials to provide technical briefing if that would help.

I appreciate the difficulties in making such arrangements at this time of year but I would be grateful for the Committee's continued support to ensure the necessary legislation is in place in time for Local Authorities to agree their budgets within the tight statutory timescales.

Yours sincerely,  
 Leighton Andrews

**Leighton Andrews AC / AM**  
Y Gweinidog Gwasanaethau Cyhoeddus  
Minister for Public Services





David Melding AC  
Cadeirydd, y Pwyllgor Materion Cyfansoddiadol a  
Deddfwriaethol  
Cynulliad Cenedlaethol Cymru  
Bae Caerdydd  
CF99 1NA

23 Rhagfyr 2014

*Amwyg Dai,*

Rwyf yn ysgrifennu ynghylch Lluosydd Ardrethi Annomestig (NDR) ar gyfer 2015-16. Fel y gwyddoch, cyhoeddodd y Canghellor yn Natganiad yr Hydref ar 3 Ragfyr y byddai Llywodraeth y DU'n ymestyn y cap o 2% ar godiad y Mynegai Prisiau Manwerthu (RPI) i'r Lluosydd ar gyfer 2015-16 yn achos Lloegr. Mae Gweinidogion Cymru'n bwriadu mabwysiadu'r dull hwn, fel na fydd busnesau yng Nghymru o dan anfantais o'u cymharu â'u cydweithwyr yn Lloegr. Gallai peidio â gwneud hynny fod â chanlyniadau i economi Cymru.

Nodir y darpariaethau sy'n llywodraethu cyfrifo'r Lluosydd yn Atodlen 7 o Ddeddf Cyllid Llywodraeth Leol 1988. Mae'r lluosydd ar gyfer blwyddyn benodol yn cael ei gyfrifo fel rheol dan ddefnyddio'r fformiwla ganlynol:

$$\frac{\text{Lluosydd 2014-15} \times \text{RPI Medi 2014}}{\text{RPI Medi 2013}}$$

O dan y fformiwla hon, byddai'r Lluosydd ar gyfer 2015-16 fel rheol yn cynyddu 2.3%. Gan fod cymhwyso cap o 2% cap i'r Lluosydd yn wyriad oddi ar yr arfer bresennol ar gyfer cynyddu'r Lluosydd, mae Atodlen 7 yn ei gwneud yn ofynnol bod Gorchymyn sy'n pennu cynnydd sy'n llai na'r RPI yn cael ei gymeradwyo gan Gynulliad Cenedlaethol Cymru ac ni fydd Gorchymyn o'r fath yn cael effaith oni chaiff ei gymeradwyo trwy benderfyniad y Cynulliad cyn i'r Cynulliad gymeradwyo adroddiad cyllid llywodraeth leol am y flwyddyn, ar 1 Mawrth neu cyn hynny yn y flwyddyn ariannol flaenorol (p'un bynnag sydd gyntaf).

Rhaid i'r Gorchymyn hwn gael ei osod i'w gymeradwyo cyn y ddadl i gymeradwyo Adroddiad Cyllid Llywodraeth Leol gan ei fod yn llywio cyfrifo'r ffigurau yn yr Adroddiad o dan Ran III o Atodlen 8 i Ddeddf Cyllid Llywodraeth Leol 1988. Mae'r ddadl ar yr Adroddiad hwn eisoes wedi cael ei hamserlennu ar gyfer 13 Ionawr 2015 pan gafodd Datganiad yr Hydref ei wneud. O ganlyniad, ni fydd modd gosod y Gorchymyn er mwyn caniatáu cyfnod craffu o 20 niwrnod cyn y ddadl ar Adroddiad Cyllid Llywodraeth Leol ar 13 Ionawr.

Cafwyd sefyllfa debyg y llynedd mewn perthynas ag amseru pan benderfynodd Llywodraeth y DU roi'r cap o 2% i'r lluosydd ar waith ar gyfer 2014-15. Er i ystyriaeth gael ei rhoi i'r



posibilrwydd y byddai Llywodraeth y DU yn ymestyn y cap ar gyfer 2015-16, o gofio lefel gymharol is RPI eleni (2.3%) o'i gymharu ag y llynedd (3.2%), nid oedd hyn yn sicr. O ganlyniad nid oedd modd gwneud trefniadau ar gyfer gosod y Gorchymyn tan ar ôl i'r mesur gael ei gyhoeddi yn Natganiad yr Hydref a than i swm canlyniadol cysylltiedig gael ei nodi ar gyfer Cymru.

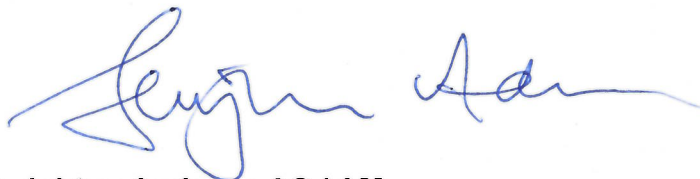
Er fy mod wedi ystyried gohirio'r ddadl ar Adroddiad Cyllid Llywodraeth Leol, byddai hyn yn arwain at anawsterau sylweddol i'r Awdurdodau Lleol sy'n gorfod cytuno ar eu cyllidebau a phennu lefelau'r Dreth Gyngor am 2015-16 o fewn amserlenni statudol tynn. Mae angen i'r Gorchymyn gael ei gymeradwyo yn gynnar er mwyn galluogi'r Awdurdodau Lleol i fabwysiadu'r Lluosydd at ddibenion bilio NDR. Byd hyn yn rhoi i fusnesau'r eglurder y mae ei angen i gynllunio ar gyfer y flwyddyn ariannol nesaf.

Byddwn yn ddiolchgar felly pe gallai'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol ystyried ac adrodd ar Orchymyn y Lluosydd NDR er mwyn galluogi'r ddadl ar Gyllid Llywodraeth Leol gael ei chynnal ar 13 Ionawr yn unol â'r amserlen, pan fydd rhaid i'r Gorchymyn gael ei gymeradwyo cyn i adroddiad cyllid llywodraeth leol gael ei gymeradwyo.

Mae'r Gorchymyn yn fyr iawn ac nid yw'n ymdrin ond â'r newid i'r Lluosydd. Mae fy swyddogion eisoes wedi rhoi copi o'r Gorchymyn drafft i'ch swyddogion a byddwn yn hapus i'm swyddogion ddarparu'r briffio technegol os byddai hynny'n helpu.

Rwyf yn gwerthfawrogi'r anawsterau sydd ynghlwm wrth wneud trefniadau o'r fath ar yr adeg hon o'r flwyddyn ond byddwn yn ddiolchgar am gefnogaeth barhaus y Pwyllgor er mwyn sicrhau bod y ddeddfwriaeth angenrheidiol yn ei lle mewn pryd i'r Awdurdodau Lleol gytuno ar eu cyllidebau o fewn yr amserlenni statudol tynn.

*In gywir,*



**Leighton Andrews AC / AM**

Y Gweinidog Gwasanaethau Cyhoeddus  
Minister for Public Services

Subsidiarity monitoring report May to December 2014

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol | Ionawr 12, 2014  
Constitutional and Legislative Affairs Committee | 12 January 2015

Research Briefing

Table of Contents

1. Introduction ..... 2

2. The monitoring process ..... 3

3. Overview of draft EU proposals received (May 2014–December 2014) 4

    3.1 EU legislative proposals that did not raise any subsidiarity concerns ..... 5

4. European Commission Annual Report 2013 on Subsidiarity ..... 8

## 1. Introduction

Under Standing Order 21, a 'responsible committee' in the Assembly (currently the Constitutional and Legislative Affairs Committee) is empowered to consider draft EU legislation that relates to matters within the legislative competence of the Assembly or to the functions of the Welsh Ministers and of the Counsel General, to identify whether it complies with the principle of subsidiarity.

The principle of subsidiarity is enshrined in Article 5 of the Treaty on European Union:

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.
2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.
3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

In addition, the application of the principle is governed by the Protocol on the Application of the Principles of Subsidiarity and Proportionality. The relevant part in relation to the work of the Assembly is included in the first paragraph of Article 6:

Any national Parliament or any chamber of a national Parliament may, within eight weeks from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. It will be for each national Parliament or

each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers.

## 2. The monitoring process

In order to ensure that the Constitutional and Legislative Affairs Committee fulfils its subsidiarity monitoring function effectively as set out in Standing Orders, Assembly officials monitor all draft EU legislative proposals that apply to Wales on a systematic basis to check whether they raise any subsidiarity concerns. The way in which Assembly officials monitor these proposals is outlined below for information:

- The Assembly in the first instance is notified of all proposals published by the European Commission for consideration through a list (known as the “batch list”) which is sent by the Foreign and Commonwealth Office on behalf of the UK Government to the Assembly’s Research Service for information.
- The relevant UK Government department will then prepare an Explanatory Memorandum (EM) based on the proposals included on the batch list usually within 4 to 6 weeks of the initial notification by the Foreign and Commonwealth Office. Each EM includes an assessment of the policy impact of the proposals (including whether the UK Government department believes the proposal raises any subsidiarity concerns). Copies of each EM are sent to the Assembly via the Research Service.
- The Research Service filters the EMs received to check whether the proposal they relate to are ‘legislative’ or ‘non-legislative’ and whether they encompass issues which may be of interest to the Assembly (i.e. relating to devolved matters).
- Those EMs that relate to proposals that are both ‘legislative’ and deal with issues of interest to the Assembly are then checked further by officials from the Assembly’s Legal Services, Brussels Office and the Research Service to see whether they raise any potential subsidiarity concerns.
- If a proposal raises subsidiarity concerns, Assembly officials will alert the Constitutional and Legislative Affairs Committee immediately whereupon Members will be asked to consider whether the Committee should ask either or both Houses at Westminster to issue a ‘reasoned opinion’ on the proposal or not.
- Those proposals which are ‘legislative’ and relate to devolved matters but raise no subsidiarity concerns are then collated in a monitoring report produced by the Research Service which is considered as a paper to note by the Constitutional and Legislative Affairs Committee usually during each term in an Assembly year (Autumn [September–December], Spring [January–April] and Summer [May – August]).

This report therefore includes a general overview of those draft EU legislative proposals received by the Assembly's Research Service between 1 May 2014 and 31 December 2014, and provides further information about those proposals that were identified by Assembly officials as being both 'legislative' in nature and relating to devolved matters.

Please note however that this report primarily monitors 'legislative' proposals, in the main it does not contain details of 'non-legislative proposals' that may be relevant to the work of the Assembly. These are monitored on a separate basis by the Research Service.

### **3. Overview of draft EU proposals received (May 2014–December 2014)**

A total of 488 UK Government EMs relating to EU proposals were received by the Assembly's Research Service from the UK Government between 1 May 2014 and 31 December 2014.

Of these, three EMs were identified by Assembly officials as being both 'legislative' in nature and of interest to the Assembly.

Following further analysis by officials from the Assembly's Legal Service, Brussels Office and Research Service, none of the three proposals were identified as raising subsidiarity concerns, although two were considered in breach of the proportionality principle. Details of these proposals are included below.

### 3.1 EU legislative proposals that did not raise any subsidiarity concerns

Date emailed	Title and description
03/06/2014	<p><i>Proposal for a Regulation of the European Parliament and of the Council laying down a <b>prohibition on driftnet fisheries</b>, amending Council Regulations (EC), no 850/98, (EC) no 812/2004, (EC) no 2187/2005 and (EC) no 1967/2006 and repealing Council Regulation (EC) no 894/97. (COM(2014)265)</i></p> <p>The proposed Regulation would introduce a complete ban on all fishing with driftnets in EU waters. The aim is to overcome the difficulties with enforcing the moratorium on large scale pelagic driftnet fishing on the high seas, particularly in the Mediterranean, which was implemented in EU legislation from 1997. This legislation prohibited the use of driftnets of over 2.5km in length for all driftnet fishing.</p> <p>The proposal has met with criticism in Wales, and other parts of the UK, where driftnets are used for small scale fishing. Since the proposed regulation aims to address large scale driftnet fishing in the Mediterranean, rather than smaller scale operations such as those in Wales, it is argued that the proposal <b>breaches the principle of proportionality</b>.</p> <p>Further criticism of the proposal has come from other EU Member states including France, Spain and Ireland. This Committee wrote to the European Commissioner for Maritime Affairs and Fisheries in July 2014 and has had further correspondence since. The Commissioner has met with representatives of the UK fishing industry to hear its concerns and the proposed legislation is currently being considered by the Council and in the European Parliament, with an indicative timeframe of vote in Fisheries Committee on 23 February and in plenary on 19 May 2015.</p>
29/07/2014	<p><i>Proposal for a Directive of the European Parliament and of the Council amending Directives 2008/98/EC on <b>waste</b>, 94/62/EC on <b>packaging and packaging waste</b>, 1999/31/EC on <b>the landfill of waste</b>, 2000/53/EC on <b>end-of-life vehicles</b>, 2006/66/EC on <b>batteries and accumulators and waste batteries and accumulators</b>, and 2012/19/EU on <b>waste electrical</b></i></p>

*and electronic equipment.* (COM(2014)397)

The proposed Directive amends six Directives relating to the management of waste. It forms part of a package of proposals from the European Commission and sits alongside a Commission Communication on the Circular Economy (COM(2014)398).

The proposals include:

- a scheduled review of the targets contained in the Waste Framework Directive (WFD), the Landfill Directive (LD), and the Packaging and Packaging Waste Directive (PPWD);
- amendments to align definitions, terms and powers across these 3 Directives; and
- measures to streamline and simplify reporting requirements and to tackle specific waste issues.

A limited number of amendments are also proposed for the Waste Electronic and Electrical Equipment (WEEE), the End of Life Vehicles (ELV) and the Batteries and Accumulators and Waste Batteries and Accumulators (BD) Directives. These proposals both streamline and simplify reporting requirements as well as introducing new conditions on reporting.

The European Commission has indicated in its 2015 Work Programme<sup>1</sup>, published on 16 December 2014, its intention to withdraw this proposal and replace it, by the end of 2015, with a “more ambitious proposal... to promote the circular economy”.

8/4/2014

*Proposal for a Regulation of the European Parliament and of the Council on organic production and labelling of organic products, amending Regulation (EU) No.XXX/XXX of the European Parliament and of the Council [Official controls Regulation] and repealing Council Regulation (EC) No.834/2007.* (COM(2014)180)

The proposal consists of a new regulation and Impact Assessment covering organic production and labelling of organic products. There is also an associated Action Plan (COM(2014)179) which considers the future of organic production. The documents have been produced

<sup>1</sup> [European Commission Work Programme 2015](#), Annex 2 List of withdrawals or modifications of pending proposals, p8 [accessed 6 January 2015]



following a Commission review of the legislative and policy framework for organic production across the EU. The Commission's stated aim for the proposals is to reduce the administrative burdens of organic production and to maintain and improve consumer confidence in organic products.

Although no subsidiarity issues have been raised, there has been concern about the 'proportionality' of the proposals.

The proposals will make changes to the inspection and control system, introduce new animal welfare standards and remove a number of the derogations on non-organic inputs and methods currently allowed. Of significant concern to Wales are the proposals to remove the derogations on: mixed farming (which allow organic and conventional farming on the same holding); the use of non-organic seeds; regional food sourcing; the use of non-organic breeding stock; and the retailer's exemption from organic certification

The Assembly's **Environment and Sustainability Committee** has considered the proposals and held an evidence session on [13 November 2014](#). The Committee has written to the European Parliament and Commission to outline the concerns of stakeholders in Wales. It has also expressed disappointment that some of the most important details of the proposal have been left to delegated and implementing Acts.

The proposals have also provoked controversy at the European level. They were considered by the EU Council of Ministers on 10 November 2014 which agreed that the EU must retain current derogations that allow mixed farming and organic farmers to use non-organic animals, seeds and feed.

The European Commission Work Programme for 2015<sup>2</sup>, published on 16 December 2014 states that, if not agreed in six months, the proposal will be withdrawn and replaced by a new initiative.

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<sup>2</sup> [European Commission Work Programme 2015](#), Annex 2 List of withdrawals or modifications of pending proposals, p4 [accessed 6 January 2015]



## 4. European Commission Annual Report 2013 on Subsidiarity

This section includes information on the European Commission's Annual Report for 2013 on subsidiarity and proportionality, and the UK Government's Explanatory Memorandum in response to it. It is included for information purposes and to provide an overall picture of how national parliaments across the EU engaged with the subsidiarity early warning system during 2013, including the UK Parliament.

29/08/2014 The European Union Commission's [Annual Report on Subsidiarity for 2013](#). (COM(2014) 506)

The European Commission published its 2013 annual report on the application of the principles of subsidiarity and proportionality in EU law-making in August 2014.

The report looks at how the EU institutions and bodies have implemented these two principles and how practice has evolved as compared with previous years. It also provides a more detailed analysis of a number of Commission proposals that were the subject of reasoned opinions submitted by national parliaments on the basis that they believed Commission proposals did not meet subsidiarity criteria.

**National parliaments issued 88 “reasoned opinions”**, the instruments which can be used to trigger a “yellow card” review, on issues of subsidiarity. **One “yellow card” was triggered in 2013**, being only the second ever issued, over the legislative proposal to create a European Public Prosecutor's Office. The report details that the most prolific issuer of reasoned opinions was once again the Swedish *Riksdag* (nine), though it issued far fewer than in the previous year (twenty). The **House of Commons** was in the group of Parliamentary chambers issuing the third most reasoned opinions, having issued five. The **House of Lords** issued two reasoned opinions. Devolved legislatures may ask either or both Houses at Westminster to issue a ‘reasoned opinion’ where they believe it is necessary.

The Committee of the Regions implemented a “Subsidiarity Work Programme” in which it paid close attention to the subsidiarity aspects of the implementation of five of the initiatives set out in the Commissioner Work Programme. The Committee also considered subsidiarity issues as part of its own-initiative opinion on devolution and the place for local and regional self-government in EU policy-making and delivery.

29/08/2014 **Explanatory memorandum on the 2013 Annual Report from the EU Commission on Subsidiarity and Proportionality**

The Foreign and Commonwealth Office of the UK Government published this EM on 28 August 2014. (COM(2014)506)

The document summarises the contents of the Commission report and sets out the UK Government's own views on subsidiarity and proportionality issues:

20. The Government considers that the principles of subsidiarity and proportionality should be fundamental to the way the EU makes law.

[...]

21. The Government's position is that national parliaments and national governments are the real source of democratic legitimacy in the EU.

[...]

22. The Government was therefore very disappointed by the Commission's response to the "yellow card" issued in response to the EPPO proposal in 2013. Thirteen national chambers, including both Houses of Parliament, put forward reasoned opinions that the proposal breached the principles subsidiarity. These arguments were perfunctorily dismissed by the Commission. After only four weeks' consideration, the Commission announced that its proposal on the EPPO would remain unchanged. Its response took a narrow view of subsidiarity, introduced no new evidence to justify the proposal and failed to engage with the thoroughness and detail that rightly should be expected with the genuine concerns that so many national Chambers had expressed. While this is technically within the Commission power, the Government considers it to be wholly unsatisfactory, and the Minister for Europe joined others in setting out our concerns at the 17 December General Affairs Council.

The document sets out the UK Government's views on strengthening the role of national parliaments in monitoring and challenging breaches of the subsidiarity and proportionality principles.



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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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<b>TITLE</b>	<b>Amendment to the Infrastructure Bill providing powers for the Welsh Ministers to make provision by way of building regulations for off-site carbon abatement measures</b>
<b>DATE</b>	<b>10 December 2014</b>
<b>BY</b>	<b>Carl Sargeant, Minister for Natural Resources</b>

This written statement is laid under Standing Order 30 – Notification in relation to UK Parliament Bills.

The Infrastructure Bill was introduced in the House of Lords on 5 June 2014. A number of amendments have been made to the Bill since its introduction. The relevant amendment for the purpose of this statement was tabled by Baroness Kramer to clause 26 of the Bill at report stage in the House of Lords on 29 October 2014 and published in the Amendments to be moved on report on the Parliament website on 30 October. It was incorporated into clause 31 of the Bill as amended on report. The amendment provides powers for the Welsh Ministers to make building regulations for off-site carbon abatement measures – these are measures that builders can take, which are not tied to the building itself, to offset the carbon emissions from the building. The amendment will confer functions on Welsh Ministers.

The Infrastructure Bill makes provision for the UK Government's proposals to fund, plan, manage and maintain the UK's national infrastructure. The Bill includes a diverse range of measures. The UK Government has stated that its policy objectives for the Bill are to; bolster investment in infrastructure by providing frameworks to allow stable long-term funding, drive economies of scale to deliver better value, relieve unnecessary administrative pressures and create the right conditions for sustainable economic growth.

Substantial and cost-effective reductions in carbon emissions from buildings are an essential part of the Welsh Government's effort to reduce greenhouse gas emissions. Last year, the residential sector accounted for about a quarter of emissions, so action to tackle emissions from both new and existing buildings will be critical to the transition to a low-carbon economy. More energy efficient homes may also mean lower energy bills for consumers.

The Building Act 1984 contains powers to make building regulations. The energy performance standards for homes are set in the Building Regulations 2010. Broadly

speaking, the powers in the Building Act 1984 to make building regulations are tied to the building itself and, as such, are insufficient to enable building regulations to cover off-site carbon abatement measures. The amendment supplements the powers in the Building Act 1984 to make building regulations to cover off-site carbon abatement measures. The amendment provides the framework for off-site carbon abatement measures and their administration. The amendment also provides an administrative advantage for the Welsh Ministers in affording them the flexibility to administer their own carbon abatement register and fund or to utilise a register and fund administered by the Secretary of State.

The amendment is outside of the National Assembly's legislative competence. However, the new powers for the Welsh Ministers to make building regulations for off-site carbon abatement measures would mean that their regulation would be within their power and be subject to the scrutiny of the National Assembly. We will consult on off-site carbon abatement measures in Wales before exercising the new powers to make building regulations. I have, therefore, agreed that the UK Government make provision for powers for the Welsh Ministers to make building regulations for off-site carbon abatement measures in the Infrastructure Bill.

It is considered appropriate for these provisions to be made by means of the Infrastructure Bill because the amendments could not be made by Assembly Act.



Llywodraeth Cymru  
Welsh Government

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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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**TITLE:** Publication of the report following the Independent Review of the Role and Functions of the Children's Commissioner for Wales.

**DATE:** 10 December 2014

**BY:** Lesley Griffiths AM, Minister for Communities and Tackling Poverty

Today I have received the report of the Independent Review of the Role and Functions of the Children's Commissioner for Wales from Dr Mike Shooter.

A copy of the report, along with a young person version, is attached to this Statement. The report includes a series of wide-ranging recommendations for the Welsh Government. I will be considering these in more detail and will make a further, substantive statement in the New Year.

I would like thank Dr Shooter for leading the review, the current Children's Commissioner and his office, and the significant number of stakeholders, including children and young people, for their proactive input into the review. This is testament to the fact we all have a common aim, which is to have a Children's Commissioner for Wales who is as strong and effective as possible and a champion for children and young people.

<http://wales.gov.uk/topics/childrenyoungpeople/rights/commissioner/review-of-childrens-commissioner/?lang=en>


Carl Sargeant AC / AM  
Y Gweinidog Cyfoeth Naturiol  
Minister for Natural Resources



Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref  
Ein cyf/Our ref LF/CS/1240/14

David Melding AM  
Chair  
Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Ty Hywel  
Cardiff Bay  
Cardiff  
CF99 1NA

 December 2014

Dear David

## **Planning (Wales) Bill**

Thank you for inviting me to the Constitutional and Legislative Affairs Committee on 10 November 2014 to give evidence on the Planning (Wales) Bill.

As noted in your letter of 21 November, I committed to provide the Committee with further information on a number of issues. The information is provided below with some further details to clarify certain points raised by Members of the Committee. Dealing with each of the points in turn:

### **1. The overlap between the Planning, Well-being of Future Generations and the Environment Bills**

Please find attached at Annex 1 the document which I referred to during the Committee session outlining the links between the Planning Bill, Well-being Bill of Future Generations Bill and the Environment Bill.

### **2. Whether pre-application advice would be subject to the provisions of the Freedom of Information Act 2000?**

The subordinate legislation in connection with the pre-application services will make provision for and in connection with when the pre-application services are required to be provided, the nature of the service and the requirements for the documents and information to be published. This will require local planning authorities and the Welsh Ministers to retain records of pre-application services and to publish information on

the type of pre-applications services provided. This will ensure that the process is open and transparent.

Any Freedom of Information request received by the Welsh Government or a local planning authority in relation to information held on pre-application services would be subject to disclosure. However, deciding whether information is to be released would depend on whether the public body are bound to protect that information. In disclosing information a public body has to follow the law relating to handling information. There are three main pieces of legislation governing handling of requests for information:

- Data Protection Act (DPA) 1998.
- Freedom of Information Act (FOIA) 2000.
- Environmental Information Regulations (EIR) 2004.

I mentioned in scrutiny that I would need to seek advice on whether there is competence in relation to FOI requests. This was in relation to seeking advice in relation to human rights implications of disclosing information. I am reassured that there are no issues of competence in relation to the disclosure of information.

### **3. The meaning of Developments of National Significance; (DNS).**

In Positive Planning, I consulted on the proposal that the Welsh Ministers would in future determine applications defined as Developments of National Significance.

Positive Planning described DNS as:

“few in number but of greatest significance to Wales because of their potential benefits and impacts. They may raise complex technical issues... Ultimately, many of these applications already fall to the Welsh Ministers to decide, either as a result of being called in, or, on appeal.”

The proposed categories and thresholds for DNS were published in Annex B which, I have reproduced as Annex 2 to this paper. Almost 70% of respondents agreed with the categories in Annex B, some respondents commented that the LPAs do not have the required expertise in relation to some of the issues. Respondents also noted that the criteria for DNS should be flexible enough to allow for amendment and extension.

Positive Planning also consulted on the process for considering these applications, including the need for mandatory pre-application consultation, with 97% of respondents agreeing with this proposal. Similarly, there was widespread support for charging of fees for pre-application advice on DNS applications.

In relation to connected consents, the majority of respondents, 81% agreed with the proposal for handling connected consents and believed it would bring benefits in terms of a more comprehensive consideration of an application and that a single decision making body would speed-up the process. Comments also noted that the process would benefit the public and consultees as they would be able to fully consider the impacts of a scheme as a whole at the start of the engagement process.

DNS will also be specified by the Welsh Ministers in the National Development Framework (NDF) document, which is subject to a 12 week public consultation

process followed by Ministerial consideration. The final draft NDF will then be laid before the Assembly for approval for a period of 60 days. It is only these developments and those that meet the criteria set out in the regulations that will be DNS. The NDF can be reviewed and revised at any time subject to further scrutiny. Guidance will be produced outlining this process.

4. **The reasons for the use of the negative and affirmative procedures in respect of new sections inserted into the Town and Country Planning Act 1990 by sections 44 and 45 of the Bill. In particular, why when both section 44 and paragraph 18 of Schedule 4 to the Bill impose financial burdens on the public, you have chosen the affirmative procedure for paragraph 18 of Schedule 4 (inserting section 303(1B)) and the negative procedure for section 44 (inserting section 322C).**

Paragraph 18 of Schedule 4 applies to fees charged by the Welsh Ministers in relation to the performance of functions undertaken where an application is submitted to them. Those fees are charged in advance of the making of an application and may place some financial burden on the applicant. The amendment inserts provisions into section 303 of the Town and Country Planning Act 1990, regulations under which are already subject to affirmative procedure.

Section 322C, by contrast, applies to costs actually incurred by the Welsh Ministers or parties to an application, appeal or reference to the Welsh Ministers. The Welsh Ministers will be able to direct that all or part of their costs are paid by the applicant, appellant, person making the reference, local planning authority or other party. The Welsh Ministers may also make orders as to the costs of the applicant, appellant or other party. The intention of this section is to ensure that where a party has acted unreasonably, an award may be made to other parties to reimburse them of the additional cost incurred as a result of that unreasonable behaviour. The Welsh Ministers may prescribe a standard daily amount to reflect their costs. The prescribed standard daily amount is intended to reflect the amount spent by the Welsh Ministers, which may change regularly, based on economic and staffing factors. These costs are intended to reflect costs at the time of dealing with a case, and as such, flexibility is required.

The key difference between this section and section 303, is as follows. Under section 303 fees for planning applications and other matters have to be paid, irrespective of any other circumstances. Fees set under this section in effect set the level of income local planning authorities receive from the exercise of their development management functions, subject only to variability in the number of applications they receive. In contrast, under section 322C a costs order can only relate to costs which have actually been incurred (and will need to be reasonable in the case of the Welsh Ministers, applying public law principles). These costs are due to the behaviour of the applicant, appellant or other person against whom an order is made. In a sense the “burden” can be avoided by not behaving unreasonably.

Current provisions relating to costs are contained at section 42 of the Housing and Planning Act 1986 and section 250 of the Local Government Act 1972. The provision



at section 322C, amongst other things, consolidates the costs regime into one place in relation to planning decisions. There is already provision at section 42 of the Housing and Planning Act 1986, which enables the Welsh Ministers to prescribe a standard daily rate, which follow the negative procedure.

In addition to the information that I agreed to provide at Committee, in your letter you asked for more detail in relation to a number of questions. I have provided detailed responses to those questions below:

**1. Why under Schedule 4D, paragraph 1(2) of the Town and Country Planning Act 1990 (as inserted by Schedule 3, paragraph 1) is a “specified function” to be set out in regulations rather than including definition on the face of the Bill?**

It is anticipated that the Planning Inspectorate will be appointed to exercise certain functions in relation to optional direct applications, such as the receipt of applications, identification of consultees, consideration of responses and the determination of the application. For DNS applications, the Planning Inspectorate, are expected to undertake administrative functions and consideration of the DNS application, with the function of determination reserved to the Welsh Ministers. Where it is more efficient for the local planning authority to undertake certain actions (such as to erect the site notice), provision is included in the Bill that enables the Welsh Ministers to direct LPAs to undertake certain functions.

The Town and Country Planning Act 1990 contain powers, at Schedule 6, to appoint and/or revoke or alter the appointed persons at any time. Schedule 4D also allows this to occur in relation to optional direct applications and DNS. Secondary legislation is required to prescribe specific functions to be undertaken by appointed persons as routine, rather than appointments being made on a case-by-case basis. This also allows the flexibility for the Welsh Ministers to undertake certain tasks should they consider it necessary.

It may also be considered appropriate to review this legislation regularly, as the procedures for DNS and optional direct applications are monitored, and updated.

The negative procedure is considered appropriate as this is a matter of relatively minor detail in an overall legislative scheme, which prescribes the functions that are to be undertaken by an Inspector, rather than the Welsh Ministers. In addition, the provisions do not give enabling power that would change primary legislation; confer significant powers on the Welsh Ministers; increase or impose significant financial burdens on the public; or create or confer unusual powers. Similar powers exist in relation to appeals and call-ins at Schedule 6 to the Town and Country Planning Act 1990. These are subject to negative procedure.

**2. Would the regulation-making power under Schedule 4D, paragraph (1)(3) of the Town and Country Planning Act 1990 (as inserted by Schedule 3,**

**paragraph 1) include the power to amend primary legislation and if so, why is the negative procedure appropriate?**

The power in question is constrained in so far as it may be used to give effect to the provision in articles 1(1) and 1(2). It does not enable the Welsh Ministers to amend primary legislation. There is nothing on the face of the Bill which suggests that paragraph 1(3) includes a power to amend primary legislation, and if it were the case that the provision was intended to confer such a power, you would expect to see that explicitly referred to in the wording of the section.

**3. What is the rationale for using negative procedure in the making of an order under section 75A(1) of the Town and Country Planning Act 1990 (as inserted by Schedule 4 paragraph 7) given the scope for such an order to amend primary legislation?**

Schedule 4 (7) inserts Section 75A into the TCPA 1990. The purpose of section 75A is to allow a development order to apply (or disapply) other legislation which might otherwise hinder the Welsh Ministers from making determinations of applications for DNS, optional direct applications or connected applications.

It is likely that the procedures for both types of applications will mirror, as far as possible, the process and requirements that usually apply when an application is submitted to a local planning authority. This is in order to maintain a consistent and familiar approach for stakeholders, including the applicant, the local community and statutory consultees. In order to achieve as similar a process as possible, Section 75A(1) enables provisions within existing planning legislation to be applied, with or without modification to applications made directly to them, including 'connected' applications.

The power would be used to apply existing processes and requirements that relate to applications made to local planning authorities to those made directly to the Welsh Ministers. For example by applying:

- The existing requirements associated with the making of a valid application, such as the form and manner in which it is to made, as well as the information to accompany the application.
- The publicity and consultation requirements.
- The form and content of the decisions notice.

The negative procedure is considered appropriate as the provision prescribes operational matters relating to the process of making and determining these applications. Some of these matters will include establishing arrangements relating to the validation of applications, the publicity to be undertaken and the issuing of the decision notice.

Flexibility is also required to enable the application procedures to be amended from time to time in order to respond to changing circumstances. For example, with the procedures for both types of applications likely to mirror as far as

possible existing ones, any changes made to the existing procedures under current subordinate legislation, that are already subject to the negative procedure, may also need to be reflected for applications submitted directly to the Welsh Ministers. This is to maintain a consistent approach for stakeholders, including applicants, the local community and statutory consultees.

Section 75A does not in any circumstances enable the Welsh Ministers to amend primary legislation. The power contained in that section is one which enables the Welsh Ministers to provide, in a development order, for an applicable enactment or requirement (as defined in section 75A(2)) to apply, with or without modifications, or not to apply, in the narrow context of applications made to the Welsh Ministers, in order to ensure the effectiveness of the relevant provisions.

- 4. In light of the Supreme Court cases about the importance of Assembly proceedings and documents generated by the Assembly or Welsh Government when considering competence, would the Welsh Government be prepared to share with the Committee any human rights assessment that has been carried out in preparing this Bill?**

Human rights issues in respect of the Bill have been considered as part of the overall legal advice provided to Ministers. All legal advice to Ministers is protected by Legal Professional Privilege.

The Welsh Government considers the proposals contained in the Bill are compatible with the Convention Rights given that the planning system by its very nature balances the rights of the individual and the interests of the wider community.

- 5. Are the amendments made by the Bill to the existing town and country legislation which already binds the crown, also intended to bind the Crown? If so, would it be clearer to state this expressly?**

The Planning and Compulsory Purchase Act 2004 and the Town and Country Planning Act 1990 bind the Crown and as such the amendments to those Acts made by this Bill will also bind the Crown. It is therefore not necessary to state this.

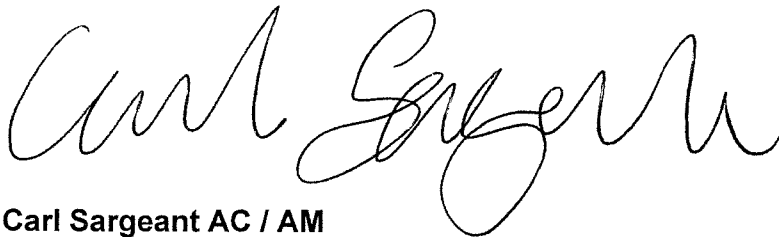
- 6. Do the Welsh Government consider that Queen and/or Prince's consent needs to be obtained in respect of the changes made to the town and country planning legislation by the Bill, and if not, for what reason?**

I consider, at this time, that Queen's or Prince's consent is not required in respect of the Bill. The earlier consent given in respect of the Planning and Compulsory Purchase Act 2004 is sufficient because the changes in the Bill affecting interests of the Crown are not substantive. This issue will be kept under review as the Bill progresses through the Assembly.

I trust that my response to the Committee's request and the additional information I have supplied will assist Members in their scrutiny of the Planning (Wales) Bill. Should you or any Member have any further queries or require more information on any aspect, please do not hesitate to contact me.

I am copying this letter to the Chair of the Environment and Sustainability Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carl Sargeant', written in a cursive style.

**Carl Sargeant AC / AM**  
Y Gweinidog Cyfoeth Naturiol  
Minister for Natural Resources

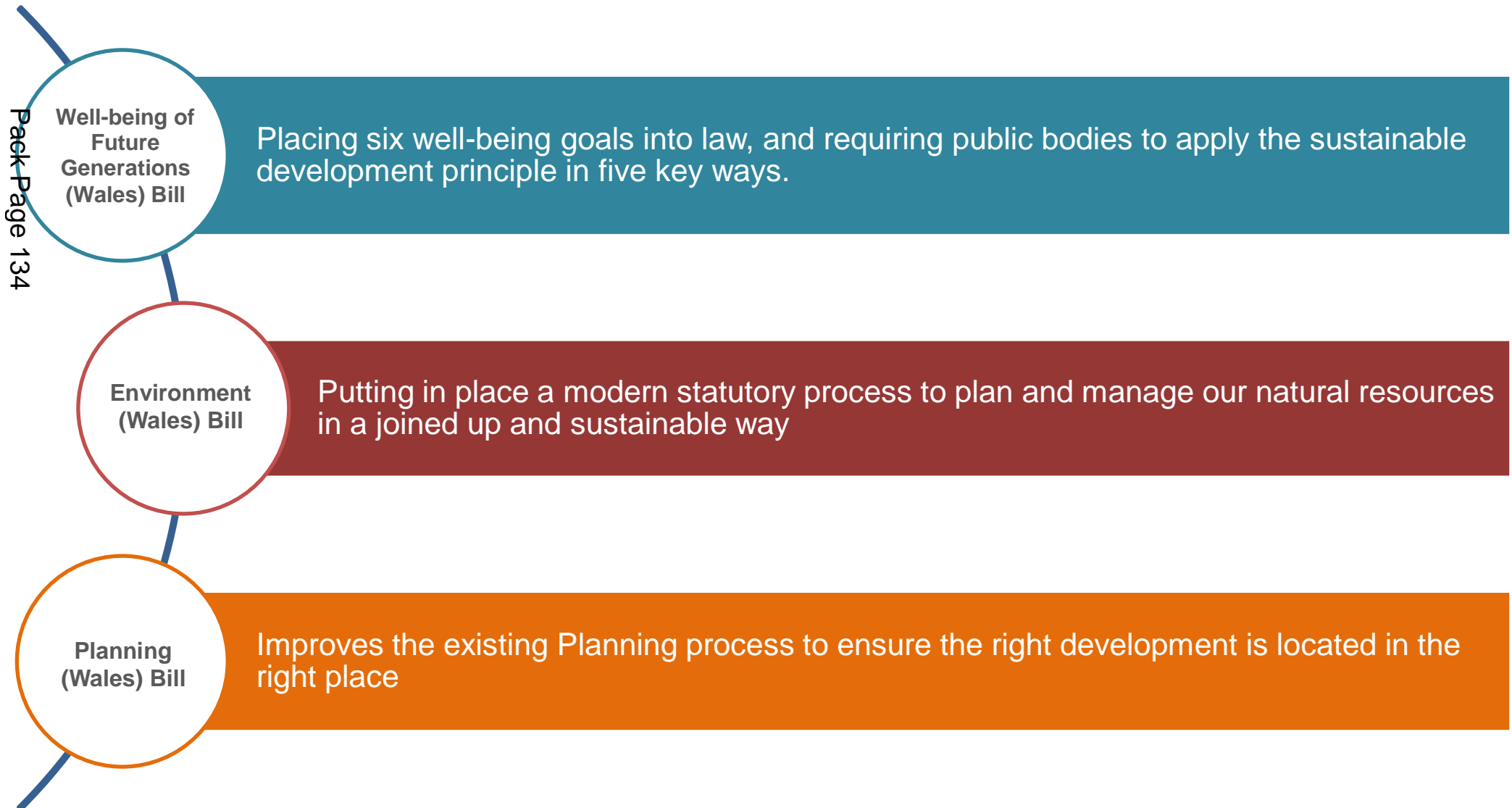
Cc Chair of the Environment and Sustainability Committee

# Legislating for sustainable development to secure the long term well-being of Wales

For Wales to develop sustainably, we need to change the law to put in place the key elements that will enable it to happen:

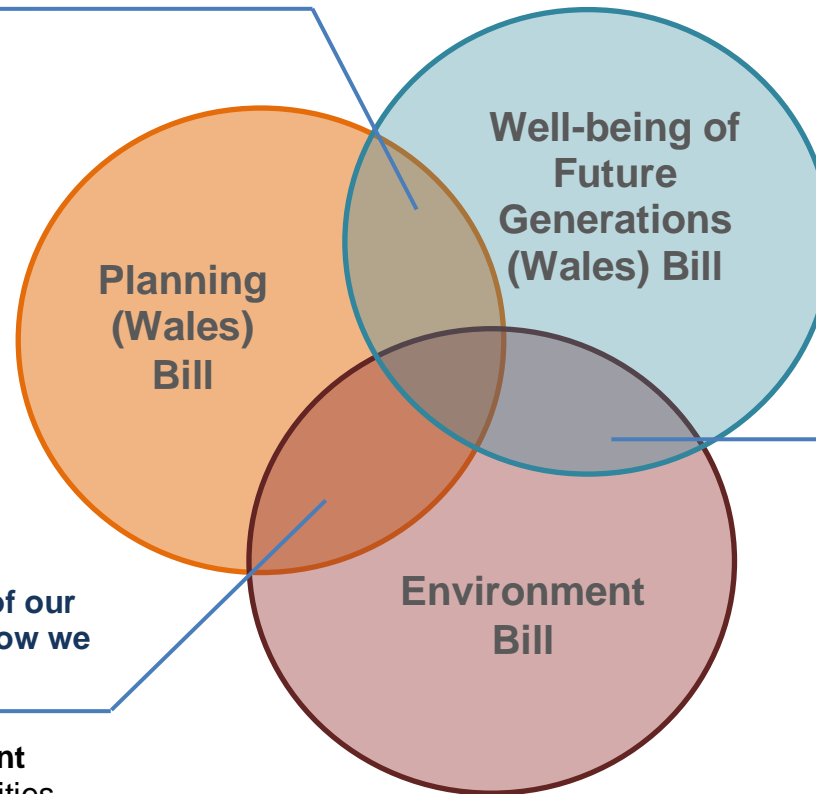
- A clear idea of what we are aiming for and an understanding of the key principles that will guide us;
- A clear picture of the natural resources we have, the risks they face and the opportunities they provide; and,
- An efficient process that ensures the right development is located in the right place to make it happen.

The three Bills do this by:



To help achieve the goals we need to plan how we use our land, and how our cities, towns and communities change over time

- A **plan-led system** means that Local Planning Authorities need to understand what their communities need. Local Planning Authorities will be under a duty to have regard to the 'local well-being plan' published by the Public Service Board (PSB)
- Greater development engagement at the **pre-application stage** will ensure local communities are able to engage early on in the planning process to influence development proposals.
- **Strategic Development Plans** will focus planning for areas with matters of greater than local significance. The key is to focus on areas where development is of a strategic nature.
- The **National Development Framework** will set out the Welsh Government's land use priorities.



Pack Page 135

Linking how we manage the use of our land must be done in alongside how we manage our natural resources

Our natural resources are essential for us to achieve the well-being of a sustainable Wales:

- **Natural resource management** informs priorities and opportunities through area-based evidence.
- More consistent, proactive and prioritised **evidence base** for natural resource use aligned to national and local goals.
- Prioritised opportunities to inform and underpin investment decisions and ensure the **right development**, supporting positive planning.

- The use and resilience of natural resources is reflected in the 6 well-being **goals**
- Natural Resources Wales are one of the 44 identified **public bodies** subject to the sustainable development duty and a member of the Future Generations Commissioner for Wales' **Advisory Panel**.
- **State of Natural Resources Report (SoNaRR)** will provide the evidence base for our natural resources which will inform Public Services Boards' assessments of well-being.
- Natural Resources Wales will be a statutory member of all **Public Services Boards**, supporting partnership working across the public sector to maximise their contribution to the well-being goals.
- **Area statements** will identify local needs, opportunities and challenges within the context of both natural resource management and local well-being plans.

## Planning Application Classifications – Thresholds and Criteria

### Developments of National Significance (DNS)

Proposed categories and thresholds are listed below.

Application Type	Threshold
Underground Gas Storage Facilities not constructed by a gas transporter, for the storage of gas underground in cavities or non porous strata	Working capacity at least 4 million standard cubic metres or maximum flow rate at least 4. million standard cubic metres per day.
Alteration of any type of underground gas storage facility	Working capacity at least 4 million standard cubic metres or maximum flow rate at least 4. million standard cubic metres per day.
LNG Facilities	Storage capacity at least 4 million standard cubic metres, or maximum flow rate at least 4. million standard cubic metres per day.
Gas Reception Facilities	Where the maximum flow rate is expected to exceed 4. million standard cubic metres per day.
Pipe-lines constructed by a Gas Transporter	<p>Pipelines constructed by a Gas Transporter that:</p> <p>are more than millimetres in diameter and more than 4 kilometres in length or would be likely to have a significant effect on the environment; and</p> <p>have a design operating pressure of more than bar gauge; and</p> <p>convey gas for supply (directly or indirectly) to at least , customers, or potential customers, of one or more gas suppliers.</p>
Airport related development and construction	Increase capacity by million passengers per annum, or over , air transport movement of freight per annum.
Harbour facilities	In the case of facilities for container ships: anything below , T ;

	<p>In the case of ro-ro ships: anything below , units;</p> <p>In the case of facilities for cargo ships of any other description, anything below million tonnes.</p> <p>In the case of mixed thresholds, the cumulative effects falling within the above but not greater (anything greater is determined under the NSIP regime in Wales).</p> <p>The above apply unless 'permitted development' under Classes B of Part of Schedule to the Town and Country Planning (General Permitted development) order .</p>
Railways	Works to the national rail network not covered by permitted development rights (as contained within Article of the Town and Country Planning (General Permitted development) order ); work that is a continuous length of more than kilometres, is not on land that was either operational land of a railway undertaker immediately before the works began or is on land that was acquired at an earlier date for the purpose of the works. This does not include works that take place on the operational land of a railway undertaker unless that land was acquired for the purpose of those works.
Rail freight interchanges	Interchanges covering at least 6 hectares and handling at least 4 goods trains per day.
Dams and reservoirs	Capable of holding back or storing in excess of million cubic metres of water.



Transfer of water resources	Capable of transferring in excess of million cubic metres of water per annum.
Waste water treatment plant	as a capacity exceeding that which is capable of dealing with a population equivalent of , .
a arduous waste facilities	Land-fills or deep stores able to handle more than , tonnes per annum; In any other case, facilities able to handle more than , tonnes per annum.
Pipe-lines <u>not</u> constructed by a gas transporter	A pipe-line below 6. km in length wholly or partly in Wales.
Generating stations (onshore)	Anything megawatts to 4 megawatts inclusive.

### Major Developments

Current thresholds and criteria for major development are listed under Article of the Town and Country Planning (Development Management Procedure) (Wales) Order for Wales. These thresholds and criteria are listed below.

Thresholds and Criteria for Major Development	
(a) the winning and working of minerals or the use of land for mineral-working deposits (for the definition of “ <i>mineral-working deposit</i> ” see section 6 of the Town and Country Planning Act (c. ))	
(b) waste development	
(c) the provision of dwellinghouses where	
(i) the number of dwellinghouses to be provided is or more; or	
(ii) the development is to be carried out on a site having an area of . hectares or more and it is not known whether the development falls within sub-paragraph (c) (i).	
(d) the provision of a building or buildings where the floor space to be created by the development is , square metres or more	

(e) development carried out on a site having an area of    hectare or more
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### **Local Developments**

A local development is any development proposal that falls below the categories for developments of national significance and major development, unless it is defined as permitted development. The types of development that comprise of permitted development are defined in the Town and Country Planning (General Permitted Development) Order

4 for Wales (as amended) (link to legislation is as follows:  
<http://www.legislation.gov.uk/ukxi/4/contents/made>).

# Agenda Item 6.1

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

# Agenda Item 6.2

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

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