

# Constitutional and Legislative Affairs Committee

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Meeting Venue:  
**Committee Room 2 – Senedd**

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Meeting date:  
**27 April 2015**

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Meeting time:  
**13.30**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



For further information please contact:

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## Agenda

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

### **2 Evidence in relation to the Regulation and Inspection of Social Care (Wales) Bill (13.30 – 14.30) (Pages 1 – 196)**

*(Indicative time 13.30pm)*

Mark Drakeford AM, Minister for Health and Social Services;

David Pritchard, Welsh Government;

Kate Johnson, Welsh Government;

**CLA(4)–11–15 – Paper 1 – Statement of Policy Intent**

**CLA(4)–11–15 – Research Service Briefing**

**CLA(4)–11–15 – Legal Advice Note**

### **3 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3 (14.30) (Pages 197 – 198)**

**CLA(4)–11–15 – Paper 2 – Statutory instruments with clear reports**

## Negative Resolution Instruments

### **CLA525 – The Welsh Language Tribunal Rules 2015**

Negative procedure; Date made: 8 April 2015; Date laid: 9 April 2015; Coming into force date: 30 April 2015

### **CLA526 – The Wildlife and Countryside Act 1981 (Variation of Schedule 9) (Wales) Order 2015**

Negative procedure; Date made: 16 April 2015; Date laid: 20 April 2015; Coming into force date: 11 May 2015

## Negative Resolution Instruments which breach the 21 day rule

### **CLA524 – The Firefighters' Pension (Wales) Scheme (Contributions) (Amendment) Order 2015**

Negative procedure; Date made: 30 March 2015; Date laid: 31 March 2015; Coming into force date: 1 April 2015

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

## Negative Resolution Instruments which breach the 21 day rule

### **CLA522 – The Firefighters' Pension Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015 (Pages 199 – 265)**

Negative procedure; Date made: 31 March 2015; Date laid: 31 March 2015; Coming into force date: 1 April 2015

**CLA(4)–11–15 – Paper 3 – Report**

**CLA(4)–11–15 – Paper 4 – Regulations**

**CLA(4)–11–15 – Paper 5 – Explanatory Memorandum**

### **CLA523 – The Firefighters' Compensation Scheme and Pension Scheme (Wales) (Amendment) Order 2015 (Pages 266 – 310)**

Negative procedure; Date made: 31 March 2015; Date laid: 31 March 2015; Coming into force in accordance with article 1.

**CLA(4)–11–15 – Paper 6 – Report**

**CLA(4)–11–15 – Paper 7 – Order**

## **CLA(4)–11–15 – Paper 8 – Explanatory Memorandum**

### **5 Papers to note**

**Correspondence in relation to the Inquiry into Making Laws in the Fourth Assembly**  
(Pages 311 – 324)

**CLA(4)–11–15 – Paper 9 – Letter from the Minister for Finance and Government Business**

**CLA(4)–11–15 – Paper 10 – Letter from First Legislative Counsel**

**CLA(4)–11–15 – Paper 11 – Letter from the Chair of the Finance Committee**

**Written Statement** (Pages 325 – 328)

**CLA(4)–11–15 – Paper 12 – Written statement: Update on implementation of the Social Services and Well-being (Wales) Act 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, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person;

**Draft report on the Local Government (Wales) Bill** (Pages 329 – 353)

**CLA(4)–11–15 – Paper 13 – Draft Report**

**Draft report Safe Nurse Staffing Levels (Wales) Bill** (Pages 354 – 368)

**CLA(4)–11–15 – Paper 14 – Draft Report**

**Scoping Paper – St David's Day Process** (Pages 369 – 373)

**CLA(4)–11–15 – Paper 15 – Scoping Paper**

**Oral Item – Stage 2 Qualifications Wales Bill**

No paper



Llywodraeth Cymru  
Welsh Government

## **REGULATION AND INSPECTION OF SOCIAL CARE (WALES) BILL**

Policy intent for regulations  
to be made under this Bill

March 2015

## **POLICY INTENTION FOR PROPOSED REGULATIONS UNDER THE REGULATION AND INSPECTION OF SOCIAL CARE (WALES) BILL**

This document provides an indication of the current policy direction for regulations which the Welsh Ministers intend to make using the powers under the Regulation and Inspection of Social Care (Wales) Bill.

The Regulation and Inspection of Social Care (Wales) Bill will revise and streamline the legislative framework for the regulation and inspection of care and support in Wales. It will:

- reform the regulatory regime for care and support services;
- establish requirements for local authorities and Welsh Ministers to undertake assessments of the sector's future stability;
- reform the inspection regime for local authority social services functions;
- reconstitute and rename the Care Council for Wales as Social Care Wales and broaden its remit; and
- define the regulation of the social care workforce.

This document should be read in conjunction with:

The Regulation and Inspection of Social Care (Wales) Bill

<http://senedd.assembly.wales/mglIssueHistoryHome.aspx?Ild=12110>

The Explanatory Memorandum for the Regulation and Inspection of Social Care (Wales) Bill

<http://senedd.assembly.wales/mglIssueHistoryHome.aspx?Ild=12110>

The consultation and summary responses

<http://gov.wales/consultations/healthsocialcare/support/?status=closed&lang=en>

## Service Regulation and Local Authorities

REGULATIONS RELATING TO:	Meaning of “regulated service”
BILL PART:	1 Chapter 1
SECTION:	2(1)(h) & 2(3)
DESCRIPTION OF THE POWER/REGULATION	
<p>2(1)(h) This power permits the Welsh Ministers to specify any other service comprising the provision of care and support as being a service requiring registration with the Welsh Ministers.</p> <p>2(3) This power permits the Welsh Ministers to prescribe which things are NOT to be treated as regulated services.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The existing legislation defining establishments and agencies is the Care Standards Act 2000. The Bill introduces the concept of regulated services and each of the regulated services listed in Schedule 1 correspond with the existing social care establishments and agencies which are currently regulated (Section 2 and Schedule 1).</p> <p>The policy intention is that the Welsh Ministers are able to react to future changes in the social care sector. The social care sector is evolving and new models of service delivery are expected to emerge, particularly as a consequence of changes introduced by the Social Services and Well-being (Wales) Act 2014. It is not feasible, therefore, for the Bill to contain an exhaustive list of regulated services which will remain current.</p> <p>The regulations in sub-section 1(h) enable the Welsh Ministers to specify other services comprising the provision of care and support as being a service which must be registered with the Welsh Ministers. The regulations in subsection 3 enable the Welsh Ministers to prescribe services which, although they fall within the definition of a service which is required to be regulated, they do not intend to be regulated.</p> <p>This power may be used in future to bring other services within the regulatory regime. For example, regulations are being brought forward under the Social Services and Well-being (Wales) Act 2014 to require local authorities to arrange for advocacy services to be made available to people with needs for care and support (whether or not these needs are met by a local authority). It is the Welsh Government’s intention that this will be a regulated service in future. However, that service area needs time to become established and there needs to be a better understanding of it to ascertain precisely what aspect of advocacy requires regulation. It is the intention therefore of the Welsh Government to use this regulation making power to prescribe advocacy as a regulated service following detailed consultation with the sector. The Welsh Government also intends to establish processes to review regularly options for further regulation of services, led</p>	

by the service regulator. These processes will consider, in the first instance, the developing model of extra care in Wales.

Similarly, a new service may emerge which falls into the definition of a service that requires to be registered but where there are good reasons for it not to be. For example, the service may be subject to another regulatory regime such as housing or health. In these circumstances, the Welsh Ministers would have the power to determine that the service should not be treated as a regulated service for the purpose of regulation under this Bill. There is no current need to make such regulations.

Without these powers the Welsh Ministers would be unable to respond to future changes in the social care sector and important services would be left unregulated. Similarly, services could be subject to the regulatory regime when it would not be necessary or appropriate. The requirement for the Welsh Ministers to consult before making regulations under either of these subsections is stated in subsection (4). There will be full engagement with the regulator, the sector and citizens in the development of the regulations.

REGULATIONS RELATING TO:	Other key terms
BILL PART:	1 Chapter 1
SECTION:	3(3)
DESCRIPTION OF THE POWER/REGULATION	
This power will allow the Welsh Ministers to prescribe things which are not to be treated as care and support despite the definitions in section 3(1)(a) and (d).	
POLICY INTENTION OF THE REGULATIONS	
<p>The current overarching legislation relating to the regulation of social care is the Care Standards Act 2000. It does not include a definition of things to be treated as “care” and “support”. Those terms are very widely defined in section 4 of the Social Services and Well-being (Wales) Act 2014. The Bill contains definitions of care and support for the purposes of the Bill. These definitions are necessary because under a separate power in the Bill at section 2(1)(h), the services which may be required to register in the future may be expanded so that people who are not currently required to register may be obliged to do so. The purpose of the definition is to set a parameter around what services may be the subject of regulation in the future.</p> <p>The policy intention is that the regulations will allow the Welsh Ministers to respond appropriately to changes in the social care market.</p> <p>The regulations in subsection (3) may be used to allow the Welsh Ministers to prescribe which services should not be treated as care and support and will therefore fall outside the regulatory regime.</p> <p>As described previously, in the context of regulated services, a new service may emerge which falls into the broad definition of a care and support service but where there are good reasons for it not to be treated as such. For example, the service may be subject to another regulatory regime such as housing or health. In these circumstances, the Welsh Ministers would have the power to determine that the service should not be treated as a regulated service.</p> <p>This power will enable the Welsh Ministers to give certainty to service providers in terms of which regulatory regime they are subject to. It will also ensure that services are not brought within the regulatory regime where this is not appropriate.</p> <p>There is a precedent in the Public Services Reform (Scotland) Act 2010 which contains the power to modify, and thereby add or remove services from, the definition of care and support services.</p> <p>There is no current need to make such regulations.</p>	



REGULATIONS RELATING TO:	Application for registration as a service provider
BILL PART:	Chapter 2
SECTION:	6(1)(d) 6(2)
DESCRIPTION OF THE POWER/REGULATION	
<p>6(1)(d) This power will allow the Welsh Ministers to set out further information required in an application for registration to provide a care and support service.</p> <p>6(2) This power will allow the Welsh Ministers to prescribe the form of an application made under section 6.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The current overarching legislation is the Care Standards Act 2000. It requires that applications for registration must include prescribed information on prescribed matters; and any other information reasonably required by the registration authority. The Registration of Social Care and Independent Health Care (Wales) Regulations 2002, made under the Care Standards Act 2000, sets out the prescribed information in detail. It also requires that any application is made in writing on a form approved by the National Assembly.</p> <p>The Bill sets out a new approach of service-based registration and the information to be included in an application to provide a care and support service is set out on the face of the Bill at section 6(1)(a) to (c). It includes details of the regulated service to be provided; the places at, from or in relation to which the service is provided; and, the name and address of the designated responsible individual(s).</p> <p>The regulations made under subsection (1)(d) will allow the Welsh Ministers to require additional information to be provided in an application for registration as a service provider. The policy intention is that the regulations established will enable the Welsh Ministers to ensure that the most relevant, useful and appropriate information is captured as part of the application process. The level of information required is likely to change over time, particularly as a new system of registration is established. It will also enable the Welsh Ministers to make a proportionate response to any best practice recommendations which emerge in the future.</p> <p>The power to prescribe the form of an application is a technical one and this level of detail would not be appropriate for the face of the Bill. This power will ensure that the form of application is consistent with the information which is required to be provided and that there is consistency between applications.</p> <p>Dr Flynn is considering this area in the context of her review of Operation Jasmine. These regulations could be used to make changes to the information required in an application in light of the recommendations of that review.</p>	

The Care Quality Commission (Registration) Regulations 2009 and the Social Care and Social Work Improvement Scotland (Applications) Order 2011 set out information requirements for registration as a new provider of regulated activity in England and Scotland respectively. They provide an indication of what might be included in regulations made under this Bill.

REGULATIONS RELATING TO:	Annual return
BILL PART:	Chapter 2
SECTION:	8(2); 8(3)
DESCRIPTION OF THE POWER/REGULATION	
<p>8(2) This power will allow the Welsh Ministers to prescribe the information contained within, and the form of, the annual return to be prepared by providers.</p> <p>8(3) This power will allow the Welsh Ministers to specify the time limit within which an annual return must be submitted by providers.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The Care Standards Act 2000 states that regulations may require an annual return to be made to the registration authority. It also states that regulations may provide for the content and timing of the annual report. The setting specific regulations (for example the Domiciliary Care Agencies (Wales) Regulations 2004) require service providers to undertake a review of quality of care at least annually and to make the report available to service users, the local authority and Welsh Ministers . The current position is that independent care and support providers provide the service regulator with a Self-assessment of Service Statement and a Quality Report for each of their establishments or agencies. These are used to inform inspections but are not required to be published.</p> <p>The Bill requires that a service provider must submit an annual return to the Welsh Ministers following the end of each financial year during which the provider is registered. It also requires that the Welsh Ministers publish the return.</p> <p>The policy intention is to provide greater transparency and ensure that people have access to relevant information in order to determine the best services for their needs and to enable them to make comparisons between service providers. This is consistent with the principle of voice and control.</p> <p>The regulations made under subsection (2) will allow the Welsh Ministers to prescribe the content of and form of the annual return. The regulations made under subsection (3) will allow the Welsh Ministers to prescribe the time limit within which the annual return must be provided.</p> <p>The regulations will be used to ensure that the information contained in the annual return will be proportionate, factually-based, current and consistent across services and also that the return is produced within a specific timeframe. This will enable people to make a direct comparison between providers. The regulations will set out the information that is required to be provided in the annual return. It is the intention of the Welsh Government to include the following:</p> <p>An overview and evaluation of how the provider considers the service is</p>	

being delivered in a manner which is consistent with the well-being of service users;

Information about the rate of staff turnover in the preceding year;

Details of the training programme which the employer has in place for its employees together with confirmation of how many employees have taken part in that training programme in the preceding year;

The number of complaints received by the provider in the annual reporting period and details of the action taken by the provider to resolve them.

The aim of the regulations is to ensure that every service provider, no matter what their size or corporate structure is, is required to complete the annual return in a consistent way in order to assist current and potential service users in comparing like for like services.

The Minister for Health and Social Services has also received advice from Dr Flynn who has indicated her desire to contribute to the thinking on the development of regulations in this area. There will be full engagement with the regulators, the sector and citizens in the development of these regulations.

REGULATIONS RELATING TO:	Application for variation of registration as a service provider
BILL PART:	Chapter 2
SECTION:	9(3)(a)(ii) 9(3)(b)
DESCRIPTION OF THE POWER/REGULATION	
<p>9(3)(a)(ii) This power will allow the Welsh Ministers to prescribe the details required from a provider in an application to vary registration.</p> <p>9(3)(b) This power will allow the Welsh Ministers to prescribe the form of an application for variation.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The Registration of Social Care and Independent Health Care (Wales) Regulations 2000 set out the process for registering as a regulated service and for varying or removing a condition of registration.</p> <p>The Bill sets out a revised set of processes in terms of service provider registration. This is based on a new service model rather than the existing establishment and agency model. It also sets out the related processes for the variation or cancellation of the registration which will apply to the new model. Section 9 requires that any application for variation must contain the details of the variation sought by the provider and such other information as may be prescribed.</p> <p>The policy intent is to provide a more flexible and streamlined version of the current broadly successful system of regulation. The intention is to provide greater flexibility to service providers; avoid unnecessary duplication in the information and documentation to be provided to the regulator; and to provide greater flexibility to the regulator in the way that it carries out its enforcement procedures.</p> <p>Regulations made under the powers in sections 9(3)(a)(ii) and 9(3)(b) will complement those in section 6 which deal with the registration of service providers. They will set out the process for varying a provider's registration should they wish to provide a new service for which they are not already registered; or to provide the service at a place not already specified; or to cease providing such a service. The power to prescribe the form of an application for variation is a technical matter and simply ensures that such applications are fit for purpose and include the necessary level of detail for the regulator to reach a decision.</p> <p>These regulations are pertinent given the greater flexibility which the new system provides and the need to avoid duplication of requirements on service providers who have previously satisfied the requirements for initial registration. The regulation making power will allow the Welsh Ministers to be able to respond appropriately to review findings and recommendations of best practice in this regard.</p>	

REGULATIONS RELATING TO:	Responsible individuals
BILL PART:	Chapter 2
SECTION:	9(2), 19(4), 19(6) and 27(1)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>9(2) This power will allow the Welsh Ministers to prescribe a time limit within which an application to vary a provider's registration may be made in circumstances where there is no responsible individual at a place at, from or in relation to which the provider provides a regulated service.</p> <p>19(4) This power will allow the Welsh Ministers to prescribe the requirements to be satisfied as to an individual's fitness to be a responsible individual.</p> <p>19(6) This power will allow the Welsh Ministers to specify circumstances in which the Welsh Ministers may designate a responsible individual despite the individual not satisfying the requirements of subsection 4 and to make provisions for that Part to apply with prescribed modifications to such an individual.</p> <p>27(1) This power will allow the Welsh Ministers to prescribe the requirements imposed on a responsible individual.</p>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>The concept of a provider nominating a responsible individual already exists in the sector specific regulations under the Care Standards Act 2000 (see for example regulation 6 of the Children's Homes (Wales) Regulations 2002). However, the requirement on service providers to designate a responsible individual who will be subject to fitness and suitability checking not only at the point of initial registration but subsequently is new and is not currently a condition of the service provider's registration.</p> <p>The Bill establishes the concept of a designated 'responsible individual' in primary legislation. Section 19 of the Bill sets out the broad requirements for an individual's eligibility to be a responsible individual. The Bill does not specify the duties of the responsible individual but states that they will be set out in regulations. This allows for sector specific regulations to be developed.</p> <p>The policy intention is to ensure that accountability for service quality and compliance is held by a nominated responsible individual at an appropriately senior level within an organisation. It will enable the regulator to take action against the responsible individual. This responds to the Francis Inquiry Report and will ensure that a clear chain of accountability is established which includes the corporate responsibility of the board, the responsible individual and the service manager.</p> <p>In relation to the power in section 9(2) it is recognised that there may be circumstances where a service is without a responsible individual either because the person appointed as responsible individual for a place is no longer able to perform their duties and so is removed or because the person has died. Pursuant to section</p>	

41 of the Bill it is an offence for a place at which a service is being provided to be without a responsible individual. However, sections 9(2) and 41(2) are in recognition of the fact that there needs to be a period of grace for a service to designate a new person to be a responsible individual and for the regulator to assess the fitness and suitability of that person. It is important that in setting the time limit under this provision the period set is not too short such that it proves to be an impossible goal and that it is not too long that there is insufficient oversight of a service and the management of a service which can then have a knock on effect on the regulatory compliance of that service

The regulations made under the power in section 19(4) will be used to set out the specific requirements for an individual's 'fitness' to be a responsible individual in more detail. Sector specific regulations made under the Care Standards Act 2000 currently establish a fitness test for providers and responsible individuals. The current test for fitness requires that a person:

- Is of suitable integrity and good character;
- Is physically and mentally fit to carry on the relevant establishment or agency;
- Has provided full and satisfactory information and documentation to the regulator.

In England, Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 sets out the test of fitness of directors for the purposes of health and adult social care regulation. More recently, as a consequence of the Francis Report, the UK Government amended these regulations to establish a new test of fitness for directors of health services.

It is anticipated that a similar test to those above will be the approach taken under this power.

The purpose of the power in section 19(6) is to make provision so as to ensure that an otherwise competently run service, or place where a service is being provided may continue without its registration being cancelled entirely where there is no one capable of being designated as responsible individual. It is recognised that there may be some circumstances where a responsible individual's designation is cancelled, perhaps under urgent circumstances such as those in section 20(5) but there is no one within a service provider's organisation who is capable of fulfilling the requirements of fitness, for example, in the case of a sole provider who is also the responsible individual. The power in section 19(6) may be used to set out the circumstances under which a person who does not strictly meet the requirements may nevertheless be designated by the Welsh Ministers as opposed to the provider designating such an individual.

The Bill requires that the Welsh Ministers consult any person they think appropriate in making these regulations. The intention is to work closely with the sector in developing these regulations to ensure that the requirements are relevant, valid and proportionate. These are new requirements and may need to be further refined and amended as the new regulatory system becomes established and matures.

The regulations made under the power in section 27 will specify the detailed requirements to be imposed upon a responsible individual. The duties that it is intended will be incorporated into regulations made under the power in section 27 are:

- To appoint a suitable and fit manager;

- To report the appointment of the manager to the board of directors (in the case of a company), the partners (in the case of a partnership) and to the Director of Social Services (in the case of a local authority);

- To report changes in management to both the workforce and service regulators;

- To supervise the management of each place for which a person is the responsible individual;

- To check the accuracy of record keeping at the place(s) at which a person is the responsible individual;

- To undertake regular inspections at the place(s) for which a person is the responsible individual;

- To complete that section of the annual report that relates to the place(s) for which a person is the responsible individual;

- To report, in a timely manner, any concerns about a place at which a service is being provided for which they are the responsible individual to the Board of Directors, the partnership or the Director of Social Services as the case may be.

Clarity is of the utmost importance here given the legal duties placed on that individual. Again, the Welsh Ministers need to be able to respond to future changes, review findings and evidence of best practice.



REGULATIONS RELATING TO:	Regulations about regulated services
BILL PART:	Chapter 2
SECTION:	26(1)
DESCRIPTION OF THE POWER/REGULATION	
This power will allow the Welsh Ministers to prescribe the requirements to be imposed on a service provider in relation to a regulated service.	
POLICY INTENTION OF THE REGULATIONS	
<p>The existing requirements which are placed on providers of establishments and agencies are imposed by virtue of Section 22 of the Care Standards Act 2000. There are nine sets of setting-specific regulations and eleven sets of statutory National Minimum Standards in place that set out the same requirements albeit with modifications and additions in relation to specific establishments or agencies.</p> <p>The policy intention is to move to a more streamlined model of regulation so that there will be two sets of regulations under this power which will apply to all of the regulated services which are listed in Schedule 1 of the Bill. There will be a set of regulations covering the regulatory requirements to be placed on service providers across all care and support services that are similar to those that are currently imposed under section 22. These are likely to encompass the following requirements:</p> <ul style="list-style-type: none"> <li>the completion of standard documentation such as a statement of purpose, a service users guide, a staff handbook;</li> <li>the requirement to maintain and store records;</li> <li>the requirements of fitness of a service provider.</li> </ul> <p>It is anticipated that in addition to the regulations which are common to all settings there may be different or additional requirements for certain settings, for example a care home service that is provided only to children may impose additional requirements such as a requirement to have child protection policies in place or specific requirements in relation to staffing.</p> <p>There will then be a further set of regulations setting out quality standards which will be linked to the well-being statement introduced under the Social Services and Well-being (Wales) Act 2014. The policy intention is that the regulation of social care should reflect what is, to some extent, already happening on the ground in moving from a tick box approach to regulation to focus on the extent to which the care being provided in any particular place is delivering person-centred care. The regulations developed under this Bill will ensure that there is a consistent approach across the social care sector in terms of how the quality of care being provided is regulated and assessed with reference to individual service users well-being outcomes. For example, it is intended that providers will be required to:</p>	

Collaborate with the service user to seek to define and agree the well-being outcomes that are personal to the service user;  
Identify how care and support can be provided to the service user with reference to those outcomes.

In order to comply with the above it is intended that the regulations would then set out a non-exhaustive list of the types of things which a provider must do to comply with the requirement such as:

- undertaking a comprehensive assessment of a service user's needs prior to a person receiving care and support;
- taking into account the views of others such as the service user's family, any relevant professional and any person who has been involved as a carer for the service user;
- preparing a written plan which is consistent with the comprehensive assessment and the service user's personal well-being outcomes and keeping that plan under review;
- enabling the participation of the service user in decisions about their care;
- respecting the privacy of the service user;
- respecting the autonomy of the service user.

The regulation making powers may also be used in the future to allow the Welsh Ministers to respond to new services as well as to react to any review findings or recommendations of best practice.

The Bill requires the Welsh Ministers to consult any person they think appropriate in making these regulations. Given that the regulations made under this power will dictate how services will be regulated in the future the intention is to work closely with the sector and other stakeholders in developing these regulations (and associated guidance) to ensure that the requirements are relevant, proportionate and are capable of being enforced. These are new requirements and may need to be further refined and amended as the new regulatory system becomes established and matures.

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 set out the requirements on service providers in regulated health and social care settings in England, including fitness of service providers and person-centred care.

REGULATIONS RELATING TO:	Regulations about service providers who are liquidated, etc.
BILL PART:	Chapter 2
SECTION:	29(1) and 30(1)
DESCRIPTION OF THE POWER/REGULATION	
<p>29 (1) This power allows Welsh Ministers to make provision that service providers who are liquidated must notify the Welsh Minister.</p> <p>30(1) This power allows Welsh Ministers to make provision about service providers who have died.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>Sections 34 and 35 of the Care Standards Act 2000 set out the regulatory powers relating to notification requirements should a receiver or liquidator be appointed; and, in the event that the registered person dies. The regulations that are made pursuant to those powers are repeated in each of the sector specific regulations referred to above e.g. see regulations 38 and 39 of the Children's Homes (Wales) Regulations 2002.</p> <p>The policy intention is to replicate the existing regulations made under the Care Standards Act 2000. This will ensure that the Welsh Ministers can react appropriately and make necessary provision or adjustments in the event that a service provider is liquidated or dies.</p> <p>The regulations enable the Welsh Ministers to make provision for them to be notified in the event that a service provider is liquidated or dies. Where a service provider has been liquidated they will enable the Welsh Ministers to modify the requirements on service providers in relation to the appointed person. Where a service provider has died they also enable the Welsh Ministers to allow a prescribed person who is not a service provider to act in that capacity for a prescribed period.</p> <p>The regulations will be used to set out (i) the process to be followed in these circumstances and (ii) the requirements placed on those acting as service providers in these particular circumstances.</p> <p>The regulations will be used in this way to ensure that there is a continuity of service in these circumstances and clarity in terms of the requirements and responsibilities which are placed on those acting in that capacity.</p>	

REGULATIONS RELATING TO:	Service Inspections
BILL PART:	Chapter 3
SECTION:	32(3), 32(4)
DESCRIPTION OF THE POWER/REGULATION	
<p>32(3) This power will allow the Welsh Ministers to prescribe the qualifications and other conditions to be met by an individual who may be an inspector.</p> <p>32(4) This section requires the Welsh Ministers to publish a code of practice about the manner in which inspections are to be carried out (including the frequency of inspections).</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The existing regulatory system is set out in the Care Standards Act 2000 which provides the Welsh Ministers with a wide set of inspection powers – including the rights of entry, search and seizure. The requirements in terms of the frequency and manner in which they are to be carried out and the qualifications and other conditions to be met by an inspector are not currently set out in the Care Standards Act 2000 or regulations.</p> <p>The policy intention is to ensure that inspectors are suitable and appropriately qualified and that the regulator has a clear set of powers to inspect services, and to report on their effectiveness, which is consistent with the new service-based model of regulation and which focuses on outcomes.</p> <p>In order to ensure compliance with the European Convention on Human Rights, it is considered necessary for the Bill to contain provision requiring the Welsh Ministers to prepare a code of practice which sets out the manner in which its powers of inspection are to be exercised.</p> <p>The regulations and code of practice will be used to provide clarity and legal certainty for both the regulator and the service provider. They will be used to ensure that inspectors are appropriately qualified and experienced. They will ensure a consistent approach both in terms of inspection cycles and the inspection process. .</p> <p>The regulations and the code of practice will be used in this way to ensure that there is continued provider and public confidence in the inspection process. There will be full engagement with the regulator, the sector and citizens in the development of the regulations and the code of practice.</p>	

REGULATIONS RELATING TO:	Inspection ratings
BILL PART:	Chapter 3
SECTION:	35(1)
DESCRIPTION OF THE POWER/REGULATION	
35(1) This power will allow the Welsh Ministers to make provision about ratings which an inspector may give in relation to the quality of care and support provided by a service provider who has been inspected.	
POLICY INTENTION OF THE REGULATIONS	
<p>The existing regulatory system is set out in the Care Standards Act 2000 which provides the Welsh Ministers with a wide set of inspection powers – including the rights of entry, search and seizure. The Bill re-states these powers. The power for the Welsh Ministers to introduce inspection ratings is new.</p> <p>The policy intention is to provide inspectors with the power to apply ratings to services following inspections. The intention is to drive up quality and to support and encourage improvement. It is not intended to create a ‘league table’.</p> <p>Publicly available and clearly expressed inspection ratings will assist those who have an interest in the quality of individual service settings (existing and potential service users, commissioners of services) to make comparisons between two or more providers of a similar size and description.</p> <p>It is anticipated that the service regulator will express these judgements in terms of expectations and outcomes for users of that service and their carers. They will be included in the inspection report and made public.</p> <p>There was support for the introduction of some form of quality judgement rating in the responses to the White Paper. However, it was noted that the framework would require careful development in order to ensure a reliable and consistent judgement of service delivery and quality. There is no intention to introduce regulations in the short term, and any such regulations will only be brought forward after thorough consultation with the regulator and the sector. It is essential that any such system is right for this sector.</p>	

REGULATIONS RELATING TO:	Register of service providers
BILL PART:	Chapter 4
SECTION:	36(2)(g) and 36(5)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>36(2)(g) This power will allow the Welsh Ministers to prescribe additional information which may be placed in an entry on the register.</p> <p>36(5) This power will allow the Welsh Ministers to prescribe information which may be omitted from the register of service providers under prescribed circumstances or to prescribe circumstances under which the regulator may refuse to comply with a request for a copy of, or extract from the register of service providers.</p>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>The Care Standards Act 2000 sets out the existing requirements in relation to the making available of copies of, or extracts from, registers of service providers and regulations made under that Act applying only to England set out the circumstances under which these requirements do not apply.</p> <p>The policy intention is to make as much information as possible publicly available and to have a single register of regulated service providers with consistent information on each provider. This will provide a reliable source of information which is readily available to anyone who wishes to check the status of a provider.</p> <p>The Bill continues the existing approach but also requires that the Welsh Ministers must publish the register. The Bill also sets out the information which will be included in an entry on the register:</p> <p>The regulation making power will enable the Welsh Ministers, should circumstances require it, to add to the information to be included on the register. It could also be used to exclude certain information from the published register in particular circumstances and to allow the Welsh Ministers to refuse to comply with a request for a copy of, or extract from, the register in prescribed circumstances.</p> <p>The regulation making power could be used in particular circumstances to allow the Welsh Ministers to restrict the publication of sensitive information, for example, medical information about providers or details about establishments relating to children.</p> <p>The regulation making power may be used to allow the Welsh Ministers to respond appropriately to any changes in the social care sector, review findings or recommendations of best practice. Dr Flynn has indicated that there are emerging lessons from her review of Operation Jasmine and she wishes to contribute to the development of these regulations.</p>	

REGULATIONS RELATING TO:	Notifying local authorities of certain action taken under this Part
BILL PART:	Chapter 4
SECTION:	37(1)(g) and 37(2)
DESCRIPTION OF THE POWER/REGULATION	
<p>37(1)(g) This power will allow the Welsh Ministers to provide for other events that may occur by virtue of Part 1, or regulations under it, which will trigger requirements to be placed on the Welsh Ministers to notify each local authority in England and Wales.</p> <p>37(2) This power will allow the Welsh Ministers to make provision about what information must be provided in notifications to local authorities under section 37.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The Care Standards Act 2000 sets out the existing requirements for the Welsh Ministers to notify local authorities in England and Wales about action taken in relation to a service provider.</p> <p>Local authorities are commissioners of care. They also have statutory duties, under the Social Services and Well-being (Wales) Act 2014, to step in when service providers are failing. The policy intention is to ensure that local authorities are notified about relevant issues which may impact upon the safeguarding of service users, service provision and service delivery in their areas. The Bill continues this approach and specifies on its face the type of information which would be shared including the cancellation or variation of a service provider; an urgent cancellation or variation; the cancellation of the designation of a responsible individual; proceedings against a person in relation to the Part 1 of the Bill; and the issuing of penalty notices under section 51 of the Bill.</p> <p>The regulation making power enables the Welsh Ministers to prescribe other matters and information to be notified to local authorities.</p> <p>The regulation making power would be used to allow the Welsh Ministers to respond appropriately should it become clear in the future that there are other matters which should be shared with local authorities. However, the power would only be used to prescribe events which are consistent with both the notification requirements on the face of the Bill and the role of the Local Authority in relation to service provision. There is no current need to make regulations in this area.</p>	

REGULATIONS RELATING TO:	Charging fees
BILL PART:	Chapter 4
SECTION:	38(1)
DESCRIPTION OF THE POWER/REGULATION	
<p>This power will allow the Welsh Ministers to make provision requiring fees to be paid for :</p> <ul style="list-style-type: none"> <li>(a) making an application for registration as a service provider;</li> <li>(b) making an application to vary a registration;</li> <li>(c) allowing a person to continue to be registered as a service provider;</li> <li>(d) for a copy of an inspection report; and</li> <li>(e) for a copy of the register or an extract of it.</li> </ul>	
POLICY INTENTION OF THE REGULATIONS	
<p>There are currently powers in The Care Standards Act 2000 for the Welsh Ministers to charge fees in connection with their regulatory functions under that Act.</p> <p>Welsh Ministers have previously exercised their powers to charge fees under the Registration of Social Care and Independent Healthcare (Fees) (Wales) Regulations 2002. These regulations were repealed in 2006 as there was concern that the fees were essentially a bureaucratic process which circulated existing money through the system, rather than created new revenue streams. However the sector has changed significantly since then, and will continue to change and thus the consideration of the benefits or otherwise of a fee regime will need to be reviewed regularly.</p> <p>The policy intention is that service providers should contribute to the cost of regulation. One of the ways this can be achieved is through the charging of fees, and therefore the intention is to retain a general and broad power for the Welsh Ministers to charge fees for its regulatory activity. Wales is the only administration in the UK not charging service providers a fee for registration. The financial cost of the registration of providers in Wales is therefore met entirely by the public purse. Service providers derive significant benefit from regulation and the policy intention is that they should make a proportionate contribution to that cost. The policy intention is to achieve partial rather than full cost recovery – the Welsh Ministers recognise the responsibility which they have towards the regulation of the social care sector.</p> <p>The regulation making power would be used to establish a fee charging arrangement which would achieve the policy intention of a partial cost recovery.</p> <p>The Bill includes a requirement for the Welsh Ministers to consult on any regulations relating to fees. The intention is to work closely with the sector in developing these regulations so that the impact on the sector is fully understood and that any system established is fair and equitable.</p>	



REGULATIONS RELATING TO:	Failure by service provider to comply with requirements in regulations
BILL PART:	Chapter 5
SECTION:	43
DESCRIPTION OF THE POWER/REGULATION	
This power will allow the Welsh Ministers to make provision that it is an offence for a service provider to fail to comply with a specified provision of regulations made under section 26.	
POLICY INTENTION OF THE REGULATIONS	
<p>Section 25 of the Care Standards Act 2000 provides that it is an offence to fail to comply with any specified provision of the regulations which is punishable on summary conviction to a fine not exceeding level 4 on the standard scale.</p> <p>Section 43 of the Bill replicates this approach. Section 50 of the Bill specifies the penalties upon conviction of an offence under regulations made under section 43. These are:</p> <ul style="list-style-type: none"> <li>(a) On summary conviction, to a fine, or to imprisonment for a term not exceeding 6 months, or to both;</li> <li>(b) On conviction on indictment, to a fine, or to imprisonment for a term not exceeding 2 years, or both.</li> </ul> <p>The policy intention is that there should be greater accountability and the ability to enforce any breaches of the regulatory system proportionately and appropriately. This includes the ability to prosecute the registered service provider.</p> <p>The regulation making power enables the Welsh Ministers to establish further offences in the event that the service provider fails to comply with specific provisions of the regulations which are made under section 26.</p> <p>The regulation making powers will be used to prescribe which regulatory breaches will be capable of prosecution either as an alternative to or in addition to civil enforcement action.</p> <p>The current approach is that breaches of all of the regulations made under section 22 of the Care Standards Act 2000 are offences established in regulations, albeit summary only offences. This approach is unlikely to work in the context of how it is proposed that the regulation making power in section 26 will be used. It is intended that there will be two sets of regulations made under that power. The first will be set of regulations which deal with the things that providers must do or have in place. That set of regulations would lend themselves to the same approach so that offences</p>	

would be established in relation to a breach of any of those regulations. For example, a failure by the provider to complete a statement of purpose or a failure to ensure that services users' records are maintained. The other set of regulations will establish standards of quality of care against which the provider can be assessed in relation to the extent to which a service is being provided in a manner which is consistent with the personal well-being outcomes of each service user. It is likely that those regulations will be fairly high level and might contain an indicative but non-exhaustive list of things which a provider might do to satisfy the requirement. It is intended then that guidance issued under section 28 will provide more of the detail into how the regulatory standard may be met in relation to each service. The establishment of offences in relation to such high level regulations will need to be carefully considered so as to ensure a sufficient degree of legal certainty to providers in knowing when an offence has been committed. There may be some elements of a standard which might be subject to an offence and others that are not capable of being so.

REGULATIONS RELATING TO:	Failure by responsible individual to comply with requirements in regulations
BILL PART:	Chapter 5
SECTION:	44
DESCRIPTION OF THE POWER/REGULATION	
This power will allow the Welsh Ministers to make provision that it is an offence for a responsible individual to fail to comply with a specified provision of regulations made under section 27.	
POLICY INTENTION OF THE REGULATIONS	
<p>Section 25 of the Care Standards Act 2000 provides that it is an offence to fail to comply with any specified provision of the regulations which is punishable on summary conviction to a fine not exceeding level 4 on the standard scale.</p> <p>Section 44 of the Bill replicates this approach but applies specifically to responsible individuals and relates to the provision of regulations made under section 27.</p> <p>Section 50 of the Bill specifies the penalties upon conviction of an offence under regulations made under section 44. These are:</p> <ul style="list-style-type: none"> <li>(c) On summary conviction, to a fine, or to imprisonment for a term not exceeding 6 months, or to both;</li> <li>(d) On conviction on indictment, to a fine, or to imprisonment for a term not exceeding 2 years, or both.</li> </ul> <p>The policy intention is that there should be greater accountability and the ability to enforce any breaches of the regulatory system proportionately and appropriately. This includes the ability to prosecute the designated responsible individual.</p> <p>The regulation making power enables the Welsh Ministers to establish further offences in the event that the responsible individual fails to comply with specific provisions of the regulations which are made under section 27.</p> <p>The regulation making powers will be used to prescribe which regulatory breaches will be treated as an offence. The duties which it is intended will be placed on responsible individuals in regulations made under section 27 are listed above under the statement of intent in relation to section 27. It is likely the power in section 44 will be used to specify that a breach by a responsible individual of each of those duties will be an offence.</p>	

REGULATIONS RELATING TO:	Penalty notices
BILL PART:	Chapter 5
SECTION:	51(6)
DESCRIPTION OF THE POWER/REGULATION	
This power will allow the Welsh Ministers to make provision in relation to penalty notices.	
POLICY INTENTION OF THE REGULATIONS	
<p>Section 30ZA and section 30ZB of the Care Standards Act 2000 are the current powers to establish in regulations a fixed penalty notice scheme. This power only applies to Wales but has not been used. The power was inserted into the Care Standards Act 2000 by the Health and Social Care Act 2008 which established a new regime for the regulation of health and adult social care in England. The Health and Social Care Act 2008 contains a similar power. The power has been used in England (see Health and Social Care Act 2008 (Regulated Activity) Regulations 2014.</p> <p>The Bill contains a power to the Welsh Ministers to issue a penalty notice, the implication being that such a notice may be fixed or variable.</p> <p>The policy intention is to establish a flexible system of regulation so that the regulator has a full range of powers at its disposal to deal with regulatory breaches. Sometimes there may be a need for prosecution as an alternative to civil enforcement. Other times there may not be an overriding desire to pursue prosecution which is expensive and consumes valuable time and resources in preparing for prosecution. An alternative or additional measure open to the regulator under the Bill is the issuing of penalty notices. The power is broad so as to allow both fixed and variable notices but in relation to only those offences which are listed in section 51(6).</p> <p>The regulation making power will allow the Welsh Ministers to establish a penalty notice system.</p> <p>The regulation making power will be used to set out the detailed arrangements for the penalty notice system in the context of the new service-based model of regulation. The regulations will provide clarity by dealing with the practicalities of administering the penalty notice system including the form and content of the penalty notice; amounts payable; method of payment; record keeping etc. There will be full engagement with the regulator, the sector and citizens in the development of the regulations.</p>	

REGULATIONS RELATING TO:	Reports by local authorities and general duty of the Welsh Ministers
BILL PART:	Chapter 6
SECTION:	55 - Inserts section 144A(2)(b) into the Social Services and Well-being (Wales) Act 2014 - annual report by local authorities. 55 - inserts section 144A(4) into the Social Services and Well-being (Wales) Act 2014 – form of annual report.
DESCRIPTION OF THE POWER/REGULATION	
<p>This power will enable the Welsh Ministers:</p> <ul style="list-style-type: none"> <li>to make provision in relation to such other information to be included in the annual report prepared by local authorities in relation to the exercise of social services functions;</li> <li>to prescribe the form of the annual report prepared by local authorities under section 144A.</li> </ul>	
POLICY INTENTION OF THE REGULATIONS	
<p>Currently, guidance issued under Local Authority and Social Services Act 1970 requires local authorities to produce and publish an annual report on their delivery of care and support. This is commonly known as the Annual Report of the Director of Social Services. The format and length of the reports vary widely between local authorities.</p> <p>The policy intention is to ensure that the Annual Report of the Directors of Social Services is placed on a statutory footing and standardised across the local authorities in Wales. It will ensure that service users and citizens are able to make comparisons of service quality between local authorities in Wales.</p> <p>The main items to be included within the report are set out in subsection 2(a). The regulation making power will set out the form of the report and will specify any additional information which should be included in the report. The regulation making power will be used to ensure that reports are clear and accessible and are produced in a way which allows for the performance of local authorities to be compared easily. The regulation making power will enable the Welsh Ministers to require that additional information is included in the report and so allow them to respond appropriately to new models of service and recommendations of best practice.</p>	

REGULATIONS RELATING TO:	Reviews, investigations and inspections
BILL PART:	Chapter 6
SECTION:	56(1) - Inserts section 149B into the Social Services and Well-being (Wales) Act 2014— criteria for rating.
DESCRIPTION OF THE POWER/REGULATION	
This power in sub-section 4 will enable the Welsh Ministers to prescribe criteria by which a rating may be given in relation to the standard to which a local authority's social services functions of a kind specified is to be exercised.	
POLICY INTENTION OF THE REGULATIONS	
<p>The existing power is contained in section 94(3) of the Health and Social Care (Community Health and Standards) Act 2003.</p> <p>The Bill replicates for local authorities the provision that is made in section 35 of the Bill in relation to private sector service providers.</p> <p>The policy intention is to provide parity with the ratings system which will be adopted under section 35 for private sector service providers. It will provide service users and citizens with an indication of a local authority's performance in the exercise of its social services functions. The intention is to encourage improvement in the provision of social services function by local authorities in Wales. It is not intended to create a 'league table'.</p> <p>It is anticipated that, consistent with the Social Services and Well-being (Wales) Act 2014, the service regulator will express these ratings in terms of expectations and outcomes for users of that service and their carers; and the way that people are involved in the delivery of those functions. They will be included in the report of the review and made public.</p> <p>Publicly available and clearly expressed review ratings will assist those who have an interest in the quality of service provided by local authorities and will enable people to make comparisons between two or more local authorities.</p> <p>As with the proposed service provider ratings any such framework will require careful development in order to ensure a reliable and consistent judgement of service delivery and quality. Such regulations would only be introduced after thorough consultation with the regulator and the local authorities.</p>	

REGULATIONS RELATING TO:	Reviews, investigations and inspections
BILL PART:	Chapter 6
SECTION:	56(1) - Further inserts section 149C into the Social Services and Well-being (Wales) Act 2014 - fee for review.
DESCRIPTION OF THE POWER/REGULATION	
This power requires local authorities to pay a fee in respect of a review conducted by Welsh Ministers under section 149B(1)	
POLICY INTENTION OF THE REGULATIONS	
<p>Section 94(6) of the Health and Social Care (Community Health and Standards) Act 2003 provides Welsh Ministers with a regulation making power to require a local authority in Wales to pay a fee in relation to the exercise of its function of review.</p> <p>The Welsh Ministers' functions in the Health and Social Care (Community Health and Standards) Act 2003 are to be repealed and have been re-stated in the Bill and so the Bill continues the same approach by making provision for the charging of fees.</p> <p>The Social Services and Well-being (Wales) Act 2014 imposes statutory duties on local authorities in respect of their social services functions. The Social Services and Well-being (Wales) Act 2014 is intended to be a stand alone piece of legislation in relation to local authority social services functions. Section 56 inserts a provision into that Act.</p> <p>The regulation making power enables the Welsh Ministers to require a fee to be paid; to determine the level of fees payable; and the time limit for payment. There is no intention to charge fees to local authorities for inspections carried out by Welsh Ministers and therefore it is not anticipated that any regulations will be made in this area.</p>	

REGULATIONS RELATING TO:	Reviews, investigations and inspections
BILL PART:	Chapter 6
SECTION:	56(2) – Replaces section 161 of and inserts section 161 A into the Social Services and Well-being (Wales) Act 2014.
DESCRIPTION OF THE POWER/REGULATION	
<p>Subsection (4) of section 161 provides a power to make provision about the qualifications and other conditions to be met by an individual who may be an inspector.</p> <p>Section 161A requires that the Welsh Ministers must publish a code of practice about the manner in which inspections of premises under section 161 are carried out (including the frequency of such inspections).</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The existing regulatory system is set out in the Care Standards Act 2000 which provides the Welsh Ministers with a wide set of inspection powers – including the rights of entry, search and seizure. The requirements in terms of the frequency and manner in which they are to be carried out and the qualifications and other conditions to be met by an inspector are not currently set out in the Care Standards Act 2000 or regulations.</p> <p>The Social Services and Well-being (Wales) Act 2014 imposes statutory duties on local authorities in respect of their social services functions. The Social Services and Well-being (Wales) Act 2014 is intended to be a stand alone piece of legislation in relation to local authority social services functions. Section 56 inserts a provision into that Social Services and Well-being (Wales) Act 2014 in respect of the inspection of premises owned or controlled by a local authority or which are used in connection with the exercise of a local authority function.</p> <p>The Bill replicates for local authorities the provision that is made in in section 32 of the Bill in relation to private sector service providers.</p> <p>The policy intention is to ensure that inspectors are suitable and appropriately qualified and that the regulator has a clear set of powers to inspect services, and to report on their effectiveness and that those powers are consistent with the new service-based model of regulation and which focuses on outcomes.</p> <p>The Bill allows the Welsh Ministers to authorise individuals (inspectors) to carry out inspections of regulated services on their behalf. The regulation making power enables the Welsh Ministers to prescribe the qualifications and other conditions to be met by an individual who is an inspector. The Bill requires that the Welsh Ministers must publish a code of practice about the manner in which inspections are carried</p>	



out (including the frequency).

The regulations and code of practice will be used to provide clarity and legal certainty for both the regulator and the service provider. They will be used to ensure that inspectors are appropriately qualified and experienced They will ensure a consistent approach both in terms of inspection cycles and the inspection process. .

These regulations will be used in this way to ensure that there is continued local authority and public confidence in the inspection process.

REGULATIONS RELATING TO:	Regulation of local authority functions relating to looked after and accommodated children
BILL PART:	Chapter 6
SECTION:	57 - Inserts section 94A and 94B into the Social Services and Well-being (Wales) Act 2014
DESCRIPTION OF THE POWER/REGULATION	
Section 94A(1) is a regulation making power to make provision about the exercise by local authorities of functions conferred on them by section 81 (ways in which looked after children are to be accommodated and maintained) or regulations made under section 87 of a kind as is mentioned in sections 92(1), 93 or 94 of the Social Services and Well-being (Wales) Act 2014.	
POLICY INTENTION OF THE REGULATIONS	
<p>The existing power is contained in section 48 of the Care Standards Act 2000. Part III of the Care Standards Act 2000 provides the Welsh Ministers with the function of regulating 'relevant fostering functions'.</p> <p>The Bill replicates this approach in providing Welsh Ministers with powers to regulate the comparable fostering functions under the Social Services and Well-being (Wales) Act 2014.</p> <p>The Social Services and Well-being (Wales) Act 2014 imposes statutory duties on local authorities in respect of their social services functions. The Social Services and Well-being (Wales) Act 2014 is intended to be a stand alone piece of legislation in relation to local authority social services functions. Part 6 of the Social Services and Well-being (Wales) Act 2014 makes provision in relation to looked after and accommodated children. Section 57 of the Bill inserts a provision into the Social Services and Well-being (Wales) Act 2014 in respect of the regulation of local authority functions relating to looked after and accommodated children.</p> <p>The policy intention is to bring the exercise of those functions under Part 6 of the Social Services and Well-being (Wales) Act 2014 within the regulatory regime established by this Bill.</p> <p>The regulations will be used to specify the requirements which will be placed on local authorities. The areas which may be covered such as the fitness of people employed in connection with the exercise of those functions (including their management and training) and the fitness of premises used in this regard.</p>	

REGULATIONS RELATING TO:	Offence of contravening regulations under section 94A
BILL PART:	Chapter 6
SECTION:	57 – Inserts Section 94B(1) into the Social Services and Well-being (Wales) Act 2014
DESCRIPTION OF THE POWER/REGULATION	
Section 94B(1) is a regulation making power to make provision that it is an offence for a person to contravene or fail to comply with a specified provision of regulations made under section 94A.	
POLICY INTENTION OF THE REGULATIONS	
<p>Section 25 of the Care Standards Act 2000 provides that it is an offence to fail to comply with any specified provision of the regulations which is punishable on summary conviction to a fine not exceeding level 4 on the standard scale. Part III of the Care Standards Act 2000 provides the Welsh Ministers with the function of regulating ‘relevant fostering functions’.</p> <p>The Social Services and Well-being (Wales) Act 2014 imposes statutory duties on local authorities in respect of their social services functions. The Social Services and Well-being (Wales) Act 2014 is intended to be a stand alone piece of legislation in relation to local authority social services functions. Part 6 of the Social Services and Well-being (Wales) Act 2014 makes provision in relation to looked after and accommodated children. Section 57 of the Bill inserts a provision into the Social Services and Well-being (Wales) Act 2014 in respect of the regulation of local authority functions relating to looked after and accommodated children.</p> <p>Section 57 of the Bill replicates this approach and specifies the penalties upon conviction of an offence under the regulations made under section 94A of the Social Services and Well-being (Wales) Act 2014. These are:</p> <ul style="list-style-type: none"> <li>(a) On summary conviction, to a fine, or to imprisonment for a term not exceeding 6 months, or to both;</li> <li>(b) On conviction on indictment, to a fine, or to imprisonment for a term not exceeding 2 years, or to both.</li> </ul> <p>The policy intention is that there should be greater accountability and the ability to enforce any breaches of the regulatory system proportionately and appropriately. This includes the ability to prosecute persons who contravene regulations in the same way that service providers may be prosecuted.</p> <p>The regulation making power enables the Welsh Ministers to establish further offences in the event that a person fails to comply with specific provisions of the regulations which are made under section 26.</p>	

The regulation making powers will be used to prescribe which regulatory breaches will be capable of prosecution either as an alternative to or in addition to civil enforcement action.

## Market Stability

REGULATIONS RELATING TO:	Market Oversight
BILL PART:	Part 1 Chapter 6
SECTION:	<p>55 inserts section 144B(1) into the Social Services and Well-being (Wales) Act 2014 – Local market stability reports.</p> <p>55 inserts 144B(2)(a)(i) into the Social Services and Well-being (Wales) Act 2014 – Local market stability reports.</p> <p>55 inserts 144B(2)(a)(iii) into the Social Services and Well-being (Wales) Act 2014.</p> <p>55 inserts section 144B(3) into the Social Services and Well-being (Wales) Act 2014 – Local market stability reports.</p>
DESCRIPTION OF THE POWER/REGULATION	
<p>55 inserts section 144B (1) into the Social Services and Well-being (Wales) Act 2014 – Local market stability reports: this power will enable Welsh Ministers to prescribe the time cycle for the preparation and publication of the local market stability report by local authorities.</p> <p>55 inserts 144B(2)(a)(i) into the Social Services and Well-being (Wales) Act 2014 – Local market stability reports: this power will enable Welsh Ministers to prescribe the period during which a local market stability assessment must address the sufficiency of provision of care and support.</p> <p>55 inserts section 144B(2)(a)(iii) into the Social Services and Well-being (Wales) Act 2014 – Local market stability reports: this power will enable Welsh Ministers to make provision requiring additional matters to those listed in subsection (2)(a)(i) and (ii) in the local market stability report.</p> <p>55 inserts section 144B (3) into the Social Services and Well-being (Wales) Act 2014 – Local market stability reports: this power will enable Welsh Ministers to prescribe the form of the local market stability report.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>There is currently no requirement on local authorities in Wales to prepare and publish a local market stability reports on the social care market in Wales. That requirement is established in section 55 of the Bill which will insert section 144B into the Social Services and Well-being (Wales) Act 2014.</p>	

The report is intended to provide local authorities with a snapshot of the sector. It will help them to plan and shape services, including care for the future.

The regulation making power in section 144B(1) will be used to set out when and how often the reports are to be published. It is the intention of the Welsh Government to align the requirement to publish this report with the local needs assessment required under section 14 of the Social Services and Well-being (Wales) Act 2014, that is once every electoral cycle. However, it will also be expected that local authorities provide updates or addenda to these reports on an annual basis.

The power in section 144B(2)(a)(i) permits the Welsh Ministers to set out the period over which local authorities are required to assess the sufficiency of provision. So for example, there might be a requirement to assess the sufficiency of the market for the next 5, 10 or 20 years.

The regulations also provide flexibility for Welsh Ministers to require additional but related matters to be part of the report.

The further requirements which might be prescribed under the power in section 144B(2)(a)(iii) will be better known when work has taken place with the sector.

Engagement will also take place with local authorities to discuss the format of the report along with reporting cycles and timeframes for taking action.

The policy intention is not to over burden the reporting requirements imposed on local authorities. For example, as part of the considerations, it may be that the publication of the required information can be delivered through existing publications. It is also intended that local authorities may be able to fulfil these requirements through joint reports at a regional level where this is considered appropriate, including with other sector representatives such as local NHS boards.

The Welsh Government will discuss the content of these reports with the sector before drafting any regulations.

The power under 144B(2)(a)(iii) is likely to be used when both the market oversight provisions and the new reporting requirements are established to focus on specific matters with which the report may not be dealing but should be.

The Welsh Government has supported the development of model market assessment through the Social Services Improvement Agency, working with local authorities. This work will inform the detailed development of policy in this area ([http://www.ssiacymru.org.uk/home.php?page\\_id=7899](http://www.ssiacymru.org.uk/home.php?page_id=7899))

REGULATIONS RELATING TO:	Market Oversight
BILL PART:	Chapter 7
SECTION:	<p>58(1) – criteria for determining whether section 60 applies to a service provider</p> <p>58(4) – the extent of application of section 60</p> <p>60(6) – information to assess financial sustainability</p> <p>60(7) – assessments</p>
DESCRIPTION OF THE POWER/REGULATION	
<p>58(1) – criteria for determining whether section 60 applies to a service provider: this power will allow the Welsh Ministers to specify the criteria for determining whether (subject to regulations made under subsection (4)) section 60 applies to a service provider in respect of regulated services.</p> <p>58 (4)- the extent of application of section 60: this power will allow the Welsh Ministers to provide that section 60 does not apply, or applies only to the extent specified, to a specified service provider or to a service provider of a specified description.</p> <p>60(6) – information to assess financial sustainability: this power will allow the Welsh Ministers to make provision for enabling the obtaining of information from such persons as they consider appropriate, information which they believe will assist them to assess the financial sustainability of a service provider to which this section applies.</p> <p>60(7) – assessments: this power will allow the Welsh Ministers to make provision about the making of assessments.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>Welsh Ministers currently do not have powers to assess the financial sustainability of providers. Information is therefore provided of a voluntary basis. As such, there are no existing criteria for determining which providers might be assessed or how any assessment might look and be undertaken.</p> <p>These are significant regulations intended to reduce the likelihood of unsighted market failure. The broad intention of these regulations is to introduce a systematic approach for fairly determining which providers will be subject to the financial sustainability provisions and to develop a criterion that is proportionate, effective and guards against over burdening providers. The information obtained will provide the Welsh Ministers with an early warning of market failure and in doing so provide the</p>	

Welsh Ministers with a level of reassurance over the state of the market. These regulations will also state the types of information required and from whom, along with determining how the actual assessment will work.

The detail and practical application of the criterion, type of information sought and the process for the making of an assessment is to be worked up. However, given that the over-riding intention of these provisions is to identify early warning signs of financial weakness in those areas where provider failure would likely have a significant and adverse impact on the sector, the provisions are likely to fall on larger providers and/or providers who have a significant presence in the market or who operate in the more specialist support areas.

The Welsh Government will set out in regulation the criteria for selecting those providers who should fall under this regulatory regime. It is intended that these criteria will be specific to each regulated service and are likely to be:

For nursing residential care and residential care – number of beds provided  
For domiciliary care – numbers of hours of care provided or number of individuals receiving care in a week  
Other services - number of individuals receiving care or support within a specified time period

The precise number against each of these criteria will be the subject of consultation and discussion.

The Welsh Government will also set out those providers who will not fall under these provisions. These providers will normally be those who already are subject to similar oversight. Local authorities will not fall under these provisions. Given that these provisions mirror closely legislation in England under the Care Act 2014 it is also expected that the Welsh Government will seek to co-operate with the Care Quality Commission to avoid duplication of effort and regulation.

The intention is that the service regulator will have access to a provider's accounts and any financial reports prepared. There would then be a "due diligence" exercise undertaken by the service regulator. The intention is that this will be a similar approach to the exercise undertaken by the Welsh Government in relation to Housing Associations through Financial Viability Judgements:  
(<http://wales.gov.uk/topics/housing-and-regeneration/services-and-support/regulation/financialviabilityjudgements/?lang=en>).

The information analysed will be from a variety of sources but it is envisaged it will include:



Audited annual accounts, including the internal controls assurance statement;  
External auditors' management letter;  
Quarterly management accounts;  
5 year business plans;  
Internal audit reports;  
Board papers, as requested;  
Financial and risk management information collected through undertaking regulatory engagement.

It is envisaged that the service regulator could either employ staff to undertake such reviews or alternatively such assessments could be carried out by external third parties such as a firm of accountants. The purpose of the review would be to form a professional opinion about the state of the business. In that respect, it is not a report which is intended to set out the historical position of the business but one that sets out the likely future of the business.

If that assessment together with other information that the service regulator has leads the service regulator to form the view that the business is at significant risk of failure, then the service regulator will have the power to require the provider to undergo a business review and/or provide the regulator with contingency planning arrangements.

If, following receipt of that business review and/or contingency plans, the Welsh Ministers are of the view that the business is failing or is likely to fail then they will then have a duty to inform local authorities who have corresponding duties which are set out in sections 189 to 192 of the Social Services and Well-being (Wales) Act 2014 to manage that failure.

The criterion, sources of information and method of assessment will be developed in partnership with providers and the wider sector. A technical group made up of key stakeholders will be established to discuss and advise Welsh Ministers on the detailed development of these regulations. This will include detailed discussions over how any information obtained from providers for the purpose of these regulations is stored and used. For example, how information is shared with local authorities so as not to put a provider at any disadvantage and/or disclose market sensitive information is likely to be a key issue.

The regulations which have been made under the Care Act 2014 which applies in England which correspond with the regulation making power in section 58 (1) are The Care and Support (Market Oversight Criteria) Regulations 2014.

The regulations which are made under the Care Act 2014 which applies in England that correspond with regulations made under section 60(6) of the Bill are The Care and Support (Market Oversight Information) Regulations 2014.

REGULATIONS RELATING TO:	Market Oversight
BILL PART:	Chapter 7
SECTION:	<p>62(1) - national market stability report</p> <p>62(3)(a)(i) – national market stability report</p> <p>62(3)(a)(iii) – national market stability report</p>
DESCRIPTION OF THE POWER/REGULATION	
<p>62(1) - national market stability report: this power will allow the Welsh Ministers to make provision for the timing and publication of a national market stability report.</p> <p>62(3)(a)(i) – national market stability report: this power will allow the Welsh Ministers to make provision for the national market stability report to include an assessment of the sufficiency of care and support provided in Wales during a specific period.</p> <p>62(3)(a)(iii) – national market stability report: this power will allow the Welsh Ministers to make provision for any matter related to the provision of care and support to be included in the national market stability report.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The Welsh Ministers are currently required to publish reports on the carrying out of their functions in relation to relevant Parts of the Health and Social Care Act 2003 and the Care Standards Act 2000 on an annual basis. However no requirement is made for any reports to undertake analysis of the care and support market now or in the future.</p> <p>Section 62 of the Bill places a duty on the Welsh Ministers to prepare and publish a national sector stability report. This is intended to be a report on the social care market in Wales made up of information from whatever source is considered relevant, but with regard to the local market reports produced by local authorities. The Bill requires that report to include information on:</p> <ul style="list-style-type: none"> <li>The sufficiency of care and support provided in Wales during a prescribed period;</li> <li>The extent to which regulated services were provided in Wales during that period which are subject to financial sustainability assessments under the market oversight provisions of the Bill;</li> <li>Any action taken under the market oversight provisions of the Bill.</li> </ul> <p>In relation to the power under section 62(1) it is the intention of the Welsh Government publish this report in the period following the production and publication</p>	

by local authorities of the local market stability reports required by section 55 of the Bill which inserts section 144B into the Social Services and Well-being (Wales) Act 2014. However, it will also be expected that there are updates or addenda to these reports on an annual basis.

In relation to the power under section 62(3)(a)(iii) this is a power which is likely to be used when both the market oversight provisions and the new reporting requirements are established, to focus on specific matters which the report may not be dealing but should be.

REGULATIONS RELATING TO:	Meaning of Social Care Workers
BILL PART:	4: Social Care Workers
SECTION:	78
DESCRIPTION OF THE POWER/REGULATION	
The power allows categories of workers to be added to or excluded from persons defined in the section as social care workers.	
POLICY INTENTION OF THE REGULATIONS	
<p>The current overarching legislation relating to the regulation of the social care workforce is the Care Standards Act 2000. Section 55 sets out those persons who are “social care workers” for the purposes of the Care Standards Act 2000. Section 55(2) lists those persons who are always to be treated as social care workers. Subsection (3) enables the Welsh Ministers, by regulations, to treat other categories of person as social care workers for the purposes of the Care Standards Act 2000. This Bill continues this approach with section 78 setting out those persons who are “social care workers” for the purposes of the Bill. Subsection (1) derives from the definition of social care worker in section 55 of the Care Standards Act 2000 and lists those persons who manage, or provide care and support in connection with regulated services. Those persons are always to be treated as social care workers for the purposes of the Bill. As in the Care Standards Act 2000 subsection (2) then enables the Welsh Ministers by regulations to treat other categories of persons as social care workers for the purposes of the Bill, and subsection (3) lists those categories. Those persons are intended to capture the breadth of persons who work in the social care sector and do things which relate to care and support and therefore might need to be treated as social care workers.</p> <p>There are a number of references to “social care workers” in the Bill. Currently references to “social care workers” are only to those persons listed in section 78(1). It is the Welsh Government’s intention, however, to treat other categories of social care workers listed in subsection (3) as social care workers for the purposes of the Bill.</p> <p>The policy intention is that regulations will be made which requires all those persons listed in subsection (3) of section 78 to be treated as social care workers for the purposes the following sections:</p> <p>Section 67 (Social Care Wales (“SCW”) exercising its functions to promote high standards of practice and conduct among social care workers);</p> <p>Section 68 (provision of care and support by social care workers for the purposes of defining care and support service);</p> <p>Section 70 (SCW’s engagement with social care workers);</p>	

Section 74 (requirement for SCW to consult with social care workers before issuing rules, code etc);

Section 111 (SCW must prepare codes of practice for social care workers)

Section 113 (approval of courses etc);

Section 163 (orders prohibiting practising as a social care worker).

The policy intention is to ensure that the work of Social Care Wales brings together and encompasses all those who contribute to the quality of care. Social care works closely with other sectors such as health and education, and it is important that as SCW seeks to improve the provision of services it is able to consider the multidisciplinary nature of modern social care.

The policy intention is that regulations will be made that require a narrower category of social care workers to be treated as social care workers for the purposes of the following sections:

Section 79 (social care workers that can be required to register with SCW);

Sections 116, 122, 135 and 158 (Part 6 social care workers: fitness to practise).

These sections relate to the groups of the workforce that SCW is required to register and the subsequent procedures that apply. These sections would not be relevant to those parts of the workforce that are not registered with SCW.

The intention is that the regulations will provide that in addition to those social care workers listed in section 78(1), student social workers as well as residential child care workers will be treated as social care workers for the purposes of the above sections.

It is necessary to have the ability to adjust the categories of persons defined as social care workers as the sector develops and grows, in order that consideration can be given to whether existing or newly emerging types of workers should be subject to regulation as set out in the sections above. For example, over recent years we have seen the growth of personal assistants because of the use of direct payments, as well as those who employ and manage them. This example shows that the social care sector continues to evolve, and our understanding of its workforce will need to adapt accordingly over time. It may be necessary therefore in the future to treat such persons as social care workers for the purpose of registration or for the purpose of approving courses for such persons.

REGULATIONS RELATING TO:	Register of designated social care workers
BILL PART:	4: Social Care Workers
SECTION:	79
DESCRIPTION OF THE POWER/REGULATION	
The power allows types of social care workers to be required to register with the workforce regulator.	
POLICY INTENTION OF THE REGULATIONS	
<p>The regulations will ensure that SCW must maintain a register of social care workers who are currently required to register with the Care Council for Wales. There is no immediate intention to add other categories of workers to this requirement.</p> <p>Section 79 is a restatement of section 56 of the Care Standards Act 2000 and requires SCW to keep a register of relevant social workers, visiting social workers from relevant European States and social care workers of any other description specified by the Welsh Ministers in regulations. The policy intention is that the Welsh Ministers will through regulations require SCW to keep a register of managers of regulated services, students participating on an approved social work degree course in Wales and residential child care workers. This is consistent with the register that the Care Council for Wales currently maintain.</p> <p>This Bill will, however, allow Ministers, through regulations, to extend those categories of the social care workers for whom SCW must maintain a register . This is a restatement of the existing position established within the Care Standards Act 2000.</p> <p>Like the Care Standards Act 2000, the Bill does not require social care workers of other descriptions to register. Under the Care Standards Act 2000, managers, students and residential child care workers are required to register by virtue of requirements set out in regulations made pursuant to section 22 of the Care Standards Act 2000. The intention is that regulations made under section 26 and 27 of the Bill will set out similar requirements. The Welsh Ministers could require further categories of social care workers to register by virtue of regulations made under sections 26 or 27 if they considered that this was necessary for reasons of public protection. The Welsh Ministers could also impose a requirement to register on other categories of social care workers by extending the protection of title afforded to social workers by virtue of section 110 to other categories of social care workers. If such requirements were imposed on other categories of social care workers it would be necessary to extend the categories of social care workers for whom SCW must maintain a register.</p> <p>These regulations together with regulations made under sections 26, 27 and 110</p>	

effectively future proofs the legislation, giving the Welsh Ministers sufficient powers to take account of service modernisation and new categories of workers within the definition of social care worker, and to keep pace with the emergence of new social care services and models of care. The registration of the social care workforce is something which needs to be regularly reviewed and reconsidered in the light of experience and changes in the sector. The progress of other forms of regulation, such as prohibition orders or employer-led regulations, will influence whether registration of other categories of the workforce needs to be considered. These regulation making powers will enable the Welsh Ministers to extend the categories of social care workers who are required to register with SCW if this is considered necessary in the future. It is considered important therefore to be able to retain the ability to extend registration if necessary as one tool in the wider regulatory framework.

However at this stage, it is not the Welsh Government policy to change the current groups of the workforce who are required to register and therefore SCW will be required to maintain a register of those social care workers it currently registers. The current approach has worked well in reinforcing accountability within key parts of the workforce, especially in relation to elements of the workforce where there are particular professional or corporate responsibilities. The approach has much in common with the regulatory approaches in the other UK countries.

This approach will allow the workforce regulator time to adapt to its new requirements established in this Bill, and to embed the relatively recent requirements for domiciliary managers to be registered. It is the intention of the Welsh Government to continually monitor this area to assess the benefits and disadvantages of extending or reducing the groups of the workforce required to register. These reviews will involve engagement and consultation across the sector.



REGULATIONS RELATING TO:	Content of the register
BILL PART:	4: Social Care Workers
SECTION:	90
DESCRIPTION OF THE POWER/REGULATION	
These powers allow the content of the register to be varied.	
POLICY INTENTION OF THE REGULATIONS	
<p>The intention is to set out what information must to be included in the register in relation to:</p> <p style="padding-left: 40px;">qualifications, knowledge or experience beyond that required to initially practise in the role for which the person is registered; a registered person's fitness to practise.</p> <p>The Care Standards Act 2000 requires the Care Council for Wales to maintain a register for social care workers and provides that the method and format of the register is to be set out in registration rules maintained by the Care Council and approved by Welsh Ministers. The current rules set out that the register will include seven fields of information including for example, the registrant's name, registration number and any conditions imposed as a consequence of fitness to practise proceedings.</p> <p>The Bill prescribes certain requirements which must be included in the register, to be maintained by SCW, rather than leaving this to be set out in regulations or rules. Section 90 sets out the information that must appear on the register in relation to registered persons. It requires for example that the register must include details of the registered person's qualification which enables them to practise as a social worker or social care worker. The Welsh Ministers can set out in regulations that the register must show additional qualifications or experience that the registered person has gained. This will ensure that the register can be adapted to the particular features of, and groups within, the social care workforce in Wales.</p> <p>The policy intention is that that annotating the register to reflect different levels of qualification will be used to support the implementation of a career structure model for social care workers. The Care Council has developed a comprehensive range of programmes for the continuing professional education and learning of social workers. These programmes are in the process of being implemented and are already having a positive effect on the quality of the workforce. The Care Council is keen to maximise the impact and recognition of this professional development and including reference to it on the register is a powerful way of doing this. The intention is therefore for the register to be annotated to show that a social worker has completed SCW's continuing professional education programme. This could be used to reflect that a social worker has completed a senior social programme, for</p>	

example, in order that the register reflects the different level of social worker.

The regulation making power in S90(1)(d) will set out what information will appear on the register in relation to a registrant's fitness to practise. This information is currently contained in the Care Council's rules.

It is vital that clear information about fitness to practise is available on the register in order to provide public protection. This allows the general public, employers and others with an interest in the workforce, to check the fitness to practise of registrants, including any limitations which may apply to their practise. The policy intention is that regulations made under S90(1)(d) will specify the same information that currently appears in the register in relation to a registered person's fitness to practise. Currently any admonishment (called a warning in the Bill) or condition of practise order imposed by a committee is included. Currently the Council have discretion to include any other detail as it considers appropriate. The policy intention is that there should be a consistent approach in relation to what must appear on the register and this should be clearly set out. The policy intention is that any determination that a person's fitness to practise is impaired and any current fitness to practise sanction should be entered in the register. This means all sanctions issued by a fitness to practise panel following a finding of impairment. It is vital for public protection that such information is not kept privately by regulators. The policy intention is also that the register is to contain the details of any conditions on practice (except where the conditions relate to the registrant's health) and not just the fact that conditions have been imposed. This is important to ensure monitoring and compliance with any conditions imposed. The intention is also to ensure that the register reflects the fact that warnings have been issued to registrants, undertakings have been agreed and interim orders imposed. The imposition of such orders or the agreement of such undertakings has been made for reasons of public protection and therefore it is right that the register should reflect those decisions.

The regulation making power will enable the Welsh Ministers to respond if it is considered necessary to include other decisions or information relating to a person's fitness to practise on the register or if it is felt necessary to limit the information which appears on the register in light of SCW's experience.

REGULATIONS RELATING TO:	List of persons removed from the register
BILL PART:	4: Social Care Workers
SECTION:	109
DESCRIPTION OF THE POWER/REGULATION	
<p>These powers allow the Welsh Minister to make provision about the form and content of the list of persons removed from the register to be specified, the publication of the list and the circumstances in which an entry relating to a person must be removed from the list.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The intention is to set out the requirements in relation to the list of persons who have been removed from the register. The maintenance of such a list by SCW is a new requirement.</p> <p>The workforce regulator does not currently maintain a list of people removed from the register. If a member of the public or an employer is seeking to find out if someone is registered, they first need to search the register. If they cannot identify the person there, they can search the list of outcomes of fitness to practise decisions to see if the person has been removed from the register. Further to this, they can contact the workforce regulator to ascertain the status of the person they are looking for. A person would remain on the list of outcomes of fitness to practise unless new evidence arises that calls the original decision into question or they are reinstated on the register.</p> <p>For reasons of public protection the register will reflect those sanctions imposed by a fitness to practise panel on a registrant. However, the register will not reflect that a person's entry has been removed. Therefore by virtue of section 109 SCW will be required to keep a list of those persons whose entries have been removed. Such a list will avoid any confusion as to why a registrant cannot be located within the register.</p> <p>In relation to the form and content of the list the policy intention is that the list will be consistent with the register. It will therefore include information to allow the identification of the former registrant such as the registered person's name and registration number. The intention is that the list will specify the reason why the registered person was removed from the register. SCW will be required to publish fitness to practise decision therefore the intention is that the reasons for removal will provide a summary of the published decision. Further discussions will take place with the workforce regulator and the sector to define what further information, if any, is needed.</p> <p>In relation to publication of the list the policy intention is that once again it will be</p>	

consistent with how the register is published. Currently the Care Council publish the register in electronic format and therefore the intention is that the list will also be published in the same way. This will ensure that the list is sufficiently accessible to members of the public, employers and others with an interest in the social care workforce. The regulations can make provision about the circumstances in which an entry must be removed from the list. It is the intention that one relevant circumstance would be a successful application to be restored to the register, or after a period of time, to be further considered, had elapsed.

The regulations will ensure that there is transparency about those that have been removed from the register, as well as about those who are on the register so that if members of the public have concerns about a social care worker and cannot find their name on the register, they can check the list of removed persons to see if they have been removed on the basis of being unfit to practise. The regulations will ensure that the way in which this list operates is carefully considered by the regulator and the government, so that the interests of the general public, employers and registrants are properly balanced and maintained.

The way in which the list operates may be subject to change in light of SCW's experience of maintaining such a list particularly given as this is a new requirement. It is necessary therefore to have the ability to make such changes .

REGULATIONS RELATING TO:	Use of the title social care worker
BILL PART:	4: Social Care Workers
SECTION:	110 (2)
DESCRIPTION OF THE POWER/REGULATION	
This power allows for protection of title to be applied to other types of social care workers in addition to social workers	
POLICY INTENTION OF THE REGULATIONS	
<p>The Care Standards Act 2000 provides protection of title for social workers. It makes it an offence for a person to use the title of social worker in Wales, unless they are registered with the Care Council for Wales or an equivalent UK regulator of social workers. The Bill replicates this position in section 110. Subsection (2), however, provides a regulation-making power for the Welsh Ministers to be able to add other descriptions of social care workers whose titles might require protection.</p> <p>There is no immediate intention to add other protected titles beyond that of social worker.</p> <p>Protection of title is a useful means of providing public protection beyond that provided by a requirement to register, by ensuring that workers in key roles can only carry out those roles if they are appropriately registered. Given that registration is dependent upon meeting certain requirements, protection of title can ensure that key workers are suitable for the roles that they are performing. Protection of title has worked well in relation to social workers and a variety of other professions. This power enables the same approach to be taken to other titles as the social care workforce develops.</p> <p>Nevertheless there needs to be the ability to add further descriptions of social care workers whose titles may need protecting in response to how the sector develops and evolves. The current model of registered managers is still developing and needs time to be fully embedded. It may be that non-registered individuals begin to use titles that closely resemble those of registered staff, resulting in public confusion. In these circumstances it may be necessary for protection of title to be considered to provide clarity and restore confidence.</p> <p>However it is not clear at this stage which groups will require protection. Regulations could for example make it an offence for a person who is not registered as a manager of a regulated service to use that title or hold themselves out as being registered with an intention to deceive. Given that the use of this power would create new criminal offences, full consultation would be carried out on any intention to use it. The consultation would involve the workforce regulator, the relevant groups of workers and their employers in order to ensure that the additional protection of title would deliver improved public assurance and protection.</p>	

REGULATIONS RELATING TO:	Amending relevant register list
BILL PART:	4: Social Care Workers
SECTION:	110 (5)
DESCRIPTION OF THE POWER/REGULATION	
<p>This power enables the Welsh Ministers to amend section 110(4). Section 110(4) sets out which are relevant registers for the purposes of the protection of title. If a social worker or social care worker is registered in a relevant register then they can use or take the title of social worker or social care worker.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>For the purposes of section 110, a register is a “relevant register” if it is a register maintained by SCW, the Health and Care Professions Council, the Scottish Social Services Council or the Northern Ireland Social Care Council. Therefore social workers who are registered with SCW or an equivalent social care regulator in the UK are able to take and use the title social worker. Subsection (5) enables the Welsh Ministers to amend the bodies who maintain a register. This is currently the position under the Care Standards Act 2000. A “relevant register” is a prescribed register maintained under a provision of the law of the UK which appears to the Welsh Ministers to correspond to the register in Wales. The Welsh Ministers have currently prescribed the register maintained by the Health and Care Professions Council, the Scottish Social Services Council and the Northern Ireland Social Care Council.</p> <p>There is no intention at this time to amend this through regulations under section 110. The policy intention is that the arrangement should continue so that there are no barriers for social care workers registered elsewhere in the UK to use their titles within Wales. It might be necessary in the future, however, to amend or add to those bodies if for example protection of title is extended to additional categories of social care workers who are regulated by other regulators or if there is a change in the way social care workers are regulated in other parts of the UK. There might also come a time in the future when registration with equivalent UK regulators is not considered to offer similar safeguards as registration with SCW, due to divergence of qualification criteria. This power would enable Welsh Ministers to limit a relevant register to a register maintained by SCW only.</p>	

REGULATIONS RELATING TO:	Grounds of impairment of fitness to practise
BILL PART:	6: Social Care Workers: Fitness to practise
SECTION:	116
DESCRIPTION OF THE POWER/REGULATION	
This power allows for the grounds by which a registrant's fitness to practise may be regarded as impaired to be amended.	
POLICY INTENTION OF THE REGULATIONS	
<p>Currently, Section 59 of the Care Standards Act 2000 provides that the workforce regulator must set out in rules the circumstances in which fitness to practise action will be taken. The Care Council for Wales' Fitness to Practise rules set the criteria out.</p> <p>Given the importance of the grounds for impaired fitness to practise in the regulatory process, these are now set out on the face of the Bill, rather than in rules. However it is also necessary for the grounds of impairment to be capable of being updated and adjusted to ensure that the system of regulation continues to be relevant and effective. This power provides for that to happen.</p> <p>The power provides the necessary ability to update this core feature of the regulatory process to ensure that the process continues to be fit for purpose in the context of the experience of the application of the grounds set out in the Bill; wider changes to the social care workforce; or to relevant case law. Although the grounds set out in the Bill have been carefully considered, any of these factors may lead the regulator and Ministers to the view that the grounds need to be adjusted in the future to ensure that the regulatory process can continue to function efficiently and effectively. This facility exists in the present system where the grounds of impairment are set in rules and for the reasons above needs to continue to be a feature of the new arrangement. Given the current consideration applied to setting the grounds of impairment in the Bill, there is no intention to make any regulations in the short term.</p>	

REGULATIONS RELATING TO:	Persons who cannot carry out preliminary consideration or investigations
BILL PART:	6: Social Care Workers: Fitness to practise
SECTION:	118, 124
DESCRIPTION OF THE POWER/REGULATION	
These powers allow for additional types of persons to be excluded from carrying out preliminary consideration or investigation of matters referred to the workforce regulator.	
POLICY INTENTION OF THE REGULATIONS	
<p>Preliminary consideration refers to the process of considering allegations or information to determine whether or not a case should proceed to be given further consideration. The workforce regulator will establish the process for screening such allegations and information; and this process could be carried out by a member or members of the workforce regulator's staff or by other persons appointed for that purpose. Where appropriate, this process is followed by investigation of the allegations, led by an investigation committee. Currently, Section 59 of the Care Standards Act 2000 provides for these arrangements to be set out in rules. The Fitness to Practise rules set the procedures for preliminary consideration and investigation including who can and cannot be involved.</p> <p>Under the Bill, the workforce regulator will be able to engage its own staff in these processes or appoint people for these purposes. However, in order to ensure that these processes are carried out in an objective and unbiased manner and are sufficiently separated from other processes, the Bill sets out certain persons who are excluded from being involved. These powers allow Ministers to exclude additional persons from involvement in these processes.</p> <p>There needs to be the capacity to make changes to who should not carry out preliminary consideration or investigation as these persons may need to be changed in light of the workforce regulator's experience; or as the system evolves; or in response to changes in the wider regulatory landscape. For example, if new regulatory bodies are created elsewhere in the UK, it may be necessary to exclude members of the new bodies from involvement in these processes. Similar provision is currently contained in rules made by the Care Council.</p> <p>There is no current policy intention to make any provision in regulations but this capacity needs to exist to respond to the factors above. Any regulations would be made following consultation with the regulator.</p>	



REGULATIONS RELATING TO:	Notice of onward referral
BILL PART:	6: Social Care Workers: Fitness to practise
SECTION:	122, 135, 149
DESCRIPTION OF THE POWER/REGULATION	
These powers allow for the regulator to be under a duty to give notice of onward referral and to disclose undertakings to additional persons to those already listed in the Bill.	
POLICY INTENTION OF THE REGULATIONS	
<p>Currently, Section 59 of the Care Standards Act 2000 provides for these arrangements to be set out in rules. The Fitness to Practise rules set the procedure out for giving notice and information at the various stages of the fitness to practise process.</p> <p>In order to provide effective public protection through the workforce regulatory process, it is necessary that the process is transparent and those with a direct interest are efficiently informed at the key points of the process. These sections now set out on the face of the Bill who must be informed of the onward referral of matters following preliminary consideration and of the agreement of undertakings. The Bill allows these lists to be added to by regulations.</p> <p>Ministers may need to make changes to the list of persons who should be given notice and information as these may need to be altered in light of the workforce regulator's experience or as the system evolves, particularly if new categories of workers are registered with the regulator. The intention is that the legislation will continue to ensure that every type of person with a direct interest in the registrant's work will be informed about fitness to practise actions.</p> <p>There is no current policy intention to make any provision in regulations and any regulations would be made following consultation with the workforce regulator.</p>	

REGULATIONS RELATING TO:	The provision of mediation
BILL PART:	6: Social Care Workers: Fitness to practise
SECTION:	129
DESCRIPTION OF THE POWER/REGULATION	
This power allows for the workforce regulator to put in place a system of mediation	
POLICY INTENTION OF THE REGULATIONS	
<p>There is no immediate intention to make regulations to introduce mediation. This power allows mediation to be put in place in due course if it is decided that this would be a useful addition to the regulatory process.</p> <p>The view of the Welsh Government is that mediation could be valuable in relation to matters raised where there is no realistic prospect of a panel finding impairment of fitness to practise, so that a mechanism is still available outside of the fitness to practise panel process to resolve difficulties that have arisen between a registered person and a complainant or service user. The availability of mediation could be a useful addition to the system for those reasons.</p> <p>This is a developing area in relation to health and social care regulation and a number of regulators across the UK use this method in a variety of ways. The Law Commission report on the Regulation of Health Care Professionals and Regulation of Social Care Professionals in England provides useful analysis of current practice and guidance on how it may be used in the future. The Law Commission recommended, following its review, that the Government should be provided with a regulation making powers to introduce mediation and provided for this in its draft Bill. Mediation could become an appropriate tool for the regulator and therefore the Welsh Ministers consider it necessary to have the ability to introduce this power of disposal. However it would be vital that such a means of disposal was used appropriately. In particular it would be important to continue the existing process where if the regulator receives information that is capable of amounting to a complaint, it must engage the fitness to practise process. Mediation would not be carried out as an alternative to this and would not undermine the public assurance provided by the fitness to practise process. Thus such regulations would set out the particular circumstances in which mediation could be undertaken and the circumstances in which it should not be undertaken. Circumstances in which mediation could be undertaken would include cases where there was a difficulty with communication, a misunderstanding or a relationship problem between a registrant and the person they were working with. Such a matter might not amount to impairment of fitness to practise but might still benefit from a process of resolution to the benefit of all of those involved.</p> <p>The regulations would also set out the arrangements for carrying out mediation.</p>	

These would ensure that there was no potential for confusion with the fitness to practise process. This would mean, for example, that there would be a requirement for mediation to be carried out by an organisation external to the regulator or by persons appointed for this dedicated purpose. Regulations would also set out that mediation should only be carried out early in the process following preliminary consideration or investigation. Given that mediation is an alternative approach to addressing matters referred to the regulator, full consultation would be carried out in the development of the approach and subsequent regulations.

REGULATIONS RELATING TO:	Disposals by fitness to practise panels
BILL PART:	6: Social Care Workers: Fitness to practise
SECTION:	141
DESCRIPTION OF THE POWER/REGULATION	
This power allows for the disposals by fitness to practise panels set out in the Bill to be added to, changed or removed.	
POLICY INTENTION OF THE REGULATIONS	
<p>Under the current regime, Section 59 of the Care Standards Act 2000 provides for these arrangements to be set out in rules. The Fitness to Practise rules set out the disposals or sanctions which may be applied. Given the fundamental importance of knowing how matters can be disposed of by panels in the regulatory process, these are now set out on the face of the Bill, rather than in rules. This provides for transparency of the regulatory process. However, it is also necessary for the range of disposals to be capable of being updated and adjusted to ensure that the system continues to be a relevant and effective system of regulation.</p> <p>The power provides the necessary ability to update this core feature of the regulatory process to ensure that the process continues to be fit for purpose in the context of the experience of the use of the disposals set out in the Bill by this or other workforce regulators; wider changes to the social care workforce; or to relevant case law. For example, other regulators have been giving consideration to other ways of disposing of cases including financial reimbursements, requiring an apology or ending pension rights. Although the disposals set out in the Bill have been carefully considered, any of these factors may lead the workforce regulator and Ministers to the view that the disposals need to be adjusted in the future to ensure that the regulatory process can continue to function efficiently and effectively. This facility exists in the present system where the grounds of impairment are set in rules and can be modified. For the reasons above, this needs to continue to be a feature of the new system.</p> <p>Given the current consideration that has been applied to setting the disposals in the Bill, there is no intention to make any regulations in the short term.</p>	

REGULATIONS RELATING TO:	Prohibition orders
BILL PART:	7: Orders prohibiting work in social care: unregistered persons
SECTION:	163,164,166,168,169,170,171
DESCRIPTION OF THE POWER/REGULATION	
These powers enable the Welsh Ministers to establish a prohibition scheme.	
POLICY INTENTION OF THE REGULATIONS	
<p>Currently the Care Council for Wales does not operate a prohibition scheme or have the ability to prohibit unregistered social care workers from working. Prohibition orders would be a new way of regulating the social care workforce for which a part of the register does not exist, in order to ensure that social care workers are competent and fit to provide care to the public.</p> <p>The regulations provide for all the aspects of this process to be put in place. In practice this would involve fitness to practise panels making orders prohibiting particular individuals from carrying out activities designated by the regulations. The scheme would not restrict entry to practise but would allow the regulator to take action against a person who fails to comply with specified standards of conduct.</p> <p>Prohibition orders could be applied to particular roles, activities or job titles. This could include, for example, domiciliary care workers or workers in care homes for adults. Such workers would not be required to pay fees or comply with qualification or continuing professional development requirements, but they could be required to meet specified standards of conduct which might, for example, be equivalent to the existing code of practice for social care workers. Breaching such standards or meeting a variety of other conditions, such as being convicted of a criminal offence, could lead to referral to a fitness to practise panel, which would consider the matter in a similar way to their consideration of matters under the full fitness to practise system of regulation. The system of prohibition orders would also allow for interim orders, reviews and appeals in a similar way to the fitness to practise system. However, the outcome of the process would be simpler: either someone would be prohibited from working or allowed to continue working. There would be no provision for conditions to limit the freedom of an individual's practice. Regulations would set out the format of the list of prohibited persons and how this would be published. A person who continued to work in a designated role or activity that had been included in the list of prohibited persons, would have committed an offence and be subject to financial penalty. In addition, a person employing someone to carry out a role or activities in relation to which they had been included in the list of prohibited persons could be guilty of committing an offence and subject to a fine.</p> <p>The regulations could be used to bring public assurance to parts of the workforce</p>	

that are not currently subject to regulation. Prohibition orders have been used in other countries and have been considered for use in the UK. They could offer a proportionate and cost-effective alternative to full statutory registration and offer a higher level of public assurance than voluntary registration, which is being removed. The Law Commission analysed the arguments around the use of prohibition schemes and concluded that the advantages outweigh the drawbacks and that some of the drawbacks could be mitigated. For example, any confusion of the public about the relationship between full statutory registration and prohibition schemes could be addressed through public information campaigns. They recommended that the ability to introduce prohibition schemes should exist through regulations.

Given that prohibition orders would represent a new component of social care workforce regulation in Wales, full consultation would be carried out involving all parties with an interest in the social care workforce before putting such a process into place. However there is no current intention to make regulations in this area.

REGULATIONS RELATING TO:	Persons excluded from panels
BILL PART:	8: Social Care Wales: duty to establish panels
SECTION:	172
DESCRIPTION OF THE POWER/REGULATION	
This power allows for persons to be excluded from being a member of the panels established in the Bill.	
POLICY INTENTION OF THE REGULATIONS	
<p>Regulations will set out persons, in addition to those specified in the Bill, that will be excluded from being members of panels. This power will also allow this list to be adjusted in the future.</p> <p>Section 172 of the Bill provides that SCW must, by rules, make provision for there to be registration appeal panels, interim orders panels and fitness to practise panels. Subsection (5) sets out that members or members of staff of SCW and other equivalent UK social care regulators cannot be members of the panel. This is to ensure that panel members are impartial and can make decision without being affected by conflicts of interest. There is also a need to ensure that panels can reach decisions in an objective and unbiased manner, by ensuring that panel members are sufficiently separated from other parts of the fitness to practise process. The policy intention therefore is to prescribe in regulations additional persons who cannot sit as panellists on the various panels. The intention is to prescribe persons for different panels. For example, persons who have sat on an interim orders panel will be unable to sit as a fitness to practise panellist in relation to the same case. Similarly persons who were involved in preliminary consideration or investigation of a matter will not be able to be a member of the fitness to practise panel who hears the case. This will ensure that registrants subject to panel proceedings experience a fair process at which each stage is objective and not inappropriately influenced by other stages of the process.</p> <p>There also needs to be the capacity to make changes to who should not be a member of a panel as these persons may need to be changed in light of the workforce regulator's experience; or as the system evolves; or in response to changes in the wider regulatory landscape. For example, if new regulatory bodies are created elsewhere in the UK, it may be necessary to exclude members of the new bodies from involvement in this process. Similar provision is currently contained in rules made by the Care Council. Regulations will be made following consultation with the workforce regulator.</p>	

REGULATIONS RELATING TO:	Proceedings before panels
BILL PART:	8: Social Care Wales: duty to establish panels
SECTION:	173
DESCRIPTION OF THE POWER/REGULATION	
This power allows the Welsh Ministers to make regulations in respect of proceedings before the panels.	
POLICY INTENTION OF THE REGULATIONS	
<p>Regulations will set out certain aspects of how panel proceedings will take place. They will also allow the regulator to make rules about panel proceedings. This power will allow such arrangements to be adjusted in the future.</p> <p>Under existing legislation, Section 59 of the Care Standards Act 2000 provides for these arrangements to be set out in rules. The Fitness to Practise rules set out practical arrangements for committees, which are the current equivalent of panels.</p> <p>This section of the Bill allows the Welsh Ministers to make regulations in respect of proceedings before panels. Given the central role of panels to the regulatory process, it is vital that they operate with efficiency and effectiveness. Ministers therefore need powers to be able to define certain aspects of how panels will work and to be able to adapt procedure in light of experience.</p> <p>The regulations will set out certain aspects of how panels will operate. They will also make provision for the workforce regulator to make rules about certain aspects of how panels will operate.</p> <p>The integrity of the panel process is central to the reliability of the regulatory process. In order to secure this, detailed arrangements will need to be set out on how panels will operate. The policy intention is that overarching matters that orientate the role of panels, such as their general objectives or their case management processes will be set out in regulations. The intention is that the regulations will broadly follow the Care Council's current procedures which are set out in rules as well as reflecting the principles highlighted by the Law Commission in its draft Bill that was prepared following its review of review of health and social care regulation.</p> <p>The intention is that the matters which will be set out in regulations or rules under this section include:</p> <p style="padding-left: 40px;">General objectives of panels – what each type of panel is to achieve; Case management process – the co-ordination and flow of the panel process; Circumstances when a hearing is not necessary – when a case can be</p>	



considered on the basis of the documentation alone;  
Rules of evidence – acceptable forms of evidence;  
The circumstances in which members of the public may be excluded from proceedings;  
The summoning of witnesses – where the participation of essential witnesses needs to be secured;  
Special measures for witnesses – where witnesses may be vulnerable or have special needs;  
Who is entitled to make representations at hearing;  
Circumstances when hearing can be postponed or adjourned or when case can be heard together

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

# Agenda Item 3

## Constitutional and Legislative Affairs Committee Statutory Instruments with Clear Reports

27 April 2015

### **CLA 525 – The Welsh Language Tribunal Rules 2015**

**Procedure:** Negative

These Rules are made by the President of the Welsh Language Tribunal and allowed by the Welsh Ministers in accordance with section 123 of the Welsh Language (Wales) Measure 2011. They set out the practices and procedures which the Tribunal must follow in exercising its jurisdiction under that Measure.

### **CLA 526 – The Wildlife and Countryside Act 1981 (Variation of Schedule 9) (Wales) Order 2015**

**Procedure:** Negative

This Order varies Part 1B of Schedule 9 to the Wildlife and Countryside Act 1981, to add the Eurasian Beaver to the list of animals no longer normally present in Great Britain which may not be released or allowed to escape into the wild.

### Statutory Instruments which breach the 21 day Rule

### **CLA 524 – The Firefighters’ Pension (Wales) Scheme (Contributions) (Amendment) Order 2015**

**Procedure:** Negative

This Order amends the Firefighters’ Pension (Wales) Scheme (set out in Schedule 2 to the Firemen’s Pension Scheme Order 1992 (S.I. 1992/129)) (“the Scheme”) as it has effect in Wales.

The amendment provides different rates for pension contributions payable by members of the Scheme which increase according to the amount of pensionable pay which the member receives. The contribution rates are specified in the Table in paragraph 3 of Part A1 of Schedule 8 to the Scheme.

# Agenda Item 4.1

## **Constitutional and Legislative Affairs Committee Draft Report CLA**

### **Title: The Firefighters' Pension Scheme (Wales) Transitional and Consequential Provisions) Regulations 2015**

These Regulations make transitional provisions for a member of the Firefighters' Pension Scheme 1992 and a member of the New Firefighters' Pension Scheme (Wales) 2007 who are no longer able to remain active members of those Schemes following the transitional provisions of Schedule 2 to the Firefighters' Pension Scheme (Wales) Regulations 2015.

The amendments to the Schedule also make consequential amendments in connection with Schedule 7 (final salary link) to the Public Service Pensions Act 2013.

**Procedure:** Negative

### **Technical Scrutiny**

Under Standing Order 21.2 the Assembly is invited to pay special attention to the following instrument:-

[21.2(vi) – that its drafting appear to be defective or it fails to fulfil statutory requirements].

1. The enabling powers under Section 3 (6) and (7) of the Public Services Pensions Act 2013 have inaccurately been described. The correct reference should refer to Section 3 (5) and (6) of the 2013 Act.

### **Merits Scrutiny**

The following points are identified for reporting under Standing Order 21.3(ii) in respect of this instrument.

2. Section 11A(4) of the Statutory Instruments Act 1946, as inserted by paragraph 3 of Schedule 10 to the Government of Wales Act 2006 (which affords the rule that statutory instruments come into force at least 21 days from the date of laying) is breached for the introduction of the above-mentioned statutory instrument.

In a letter dated 31 March 2015 to the Presiding Officer, the Welsh Government's response was:

"... the Welsh Ministers have already made regulations establishing a new Pension Scheme for firefighters, from 1 April this year. This Scheme differs in two critical areas from that to be established in England. However, the Regulations referred to in this correspondence, which deal with the transition of existing unprotected scheme members into a new 2015 Scheme, do not depend at all on the design of that new Scheme. Furthermore, these Regulations deal in large measure with the terms of the Firefighters' Pension Scheme 1992, which predates devolution and on which there is little policy or legal expertise outside the UK Government.

Thus, the final versions of the Instruments made in England have been replicated with the only amendments made in Wales being to provide a Welsh language text, to reflect the Welsh SI format and to provide for gender-neutral drafting. This has meant significant delays in introducing the regulations as the final English regulations were not available to Welsh Government until 6 March 2015. In order for these to be in force for 1 April 2015 it is necessary to breach the 21 day rule. If the Orders were brought into force on a date later than 1 April 2015, under Section 18(1) of the 2013 Act this would mean that all scheme members would stop accruing pension benefits in the old Schemes. That would mean that members would need to be auto-enrolled into the new Pension Scheme by the next day including those who have protected rights to remain in their current Scheme."

## **Legal Advisers**

Constitutional and Legislative Affairs Committee

## **April 2015**

## **Government Response**

The error is acknowledged. The error is technical in nature and does not give rise to any issue in the operation of the various pension schemes. Regulations correcting the error will be made as soon as practicable.

**2015 No. 1016 (W. 71)**

**PUBLIC SERVICE PENSIONS,  
WALES**

**The Firefighters' Pension Scheme  
(Wales) (Transitional and  
Consequential Provisions)  
Regulations 2015**

**EXPLANATORY NOTE**

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

These Regulations make transitional provisions for a member of the Firefighters' Pension Scheme 1992 ("the 1992 Scheme") and a member of the New Firefighters' Pension Scheme (Wales) 2007 (NFPS) who are no longer able to remain active members of those Schemes following the transitional provisions in Schedule 2 to the Firefighters' Pension Scheme (Wales) Regulations 2015 ("the 2015 Regulations").

The amendments to Schedule 2 to the 2015 Regulations provide for the ill-health benefits and survivorship benefits in relation to an active member of the Firefighters' Pension Scheme (Wales) 2015 who is treated as an "active member" of the 1992 Scheme and the NFPS for this purpose. The amendments provide when a member of these Schemes is treated as "active" and when treated as a deferred member. Consequential amendments are made for these purposes to the NFPS and the 1992 Scheme.

The amendments to the Schedule also make consequential amendments in connection with Schedule 7 (final salary link) to the Public Service Pensions Act 2013. Further amendments are made in connection with this to the definitions of "pensionable pay" and "final pensionable pay" in the NFPS and to the definitions of "pensionable pay" and "average pensionable pay" in the 1992 Scheme.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these



Regulations. A copy can be obtained from the Fire and Armed Forces Branch, Welsh Government, Rhydycar, Merthyr Tydfil, CF48 1UZ or 0300 062 8221.

**2015 No. 1016 (W. 71)**

**PUBLIC SERVICE PENSIONS,  
WALES**

**The Firefighters' Pension Scheme  
(Wales) (Transitional and  
Consequential Provisions)  
Regulations 2015**

*Made* 31 March 2015

*Laid before the National Assembly for Wales*  
31 March 2015

*Coming into force* 1 April 2015

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 1(1) and (2)(1), 2(1), 3(1), (2), (3)(a) and (c), (6) and (7), 18(5) and (6) of, and paragraph 6(b) of Schedule 2, Schedule 3 and paragraphs 1(2)(ii), 2(2)(ii) and 5(1) of Schedule 7 to, the Public Service Pensions Act 2013(2).

In accordance with section 21 of that Act, the Welsh Ministers have consulted the representatives of such persons as appear to the Welsh Ministers likely to be affected by these Regulations.

**Title and commencement**

1.—(1) The title of these Regulations is the Firefighters' Pension Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015.

(2) These Regulations come into force on 1 April 2015.

**Amendment of the Firefighters' Pension Scheme  
(Wales) Regulations 2015**

2. The Firefighters' Pension Scheme (Wales) Regulations 2015(3) which establish the Firefighters'

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(1) See also section 1(3) and Schedule 1.  
(2) 2013 c. 25.  
(3) S.I. 2015/622 (W. 50).

Pension Scheme (Wales) 2015 are amended in accordance with Schedule 1 to these Regulations.

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

3. Schedule 1 to the Firefighters' Pension Scheme (Wales) Order 2007<sup>(1)</sup> (in which the New Firefighters' Pension Scheme (Wales) is set out) is amended in accordance with Schedule 2 to these Regulations.

**Amendment of the Firemen's Pension Scheme Order 1992**

4. Schedule 2 to the Firemen's Pension Scheme Order 1992<sup>(2)</sup> (in which is set out the Firefighters' Pension (Wales) Scheme), as it has effect in Wales, is amended in accordance with Schedule 3 to these Regulations.

*Leighton Andrews*

Minister for Public Services, one of the Welsh

Ministers

31 March 2015

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(1) S.I. 2007/1072 (W. 110); Schedule 1 is the subject of amendments not relevant to these Regulations.

(2) S.I. 1992/129. Schedule 2 is the subject of amendments not relevant to these Regulations. The name of the scheme was changed to the Firefighters' Pension (Wales) Scheme by S.I. 2004/2918 (W. 257). By virtue of S.I. 2007/1072 (W. 110), subject to certain savings, the scheme has no effect in relation to any person who takes up employment with a Welsh fire and rescue authority on or after 6 April 2006.

## SCHEDULES

### SCHEDULE 1 Regulation 2

#### Amendments to the Firefighters' Pension Scheme (Wales) Regulations 2015

1. In Part 1 (preliminary), in regulation 3 (interpretation)—

(a) in the appropriate places insert—

□“adjusted lower tier ill-health pension” (*“pensiwn addasedig afiechyd haen isaf”*) has the meaning given in regulation 75(4) (annual rate of ill-health awards);”;

““connected member of the NFPS” (*“aelod cysylltiedig o CPNDT”*) has the meaning given in rule 1C of Part 2 of the NFPS;”;

““connected special member of the NFPS” (*“aelod arbennig cysylltiedig o CPNDT”*) has the meaning given in rule 1D of Part 2 of the NFPS;”;

““continued pension” (*“pensiwn parhaus”*) means—

(a) in relation to a member of the NFPS, the entitlement to a pension under rule 1B of Part 3 of the NFPS,

(b) in relation to a member of the 1992 Scheme, the entitlement to a pension under rule B2A of the 1992 Scheme;”;

““deferred member of the 1992 Scheme” (*“aelod gohiriedig o Gynllun 1992”*) means a person who is entitled to a deferred pension under rule B5 of the 1992 Scheme;”;

““deferred member of the NFPS” (*“aelod gohiriedig o CPNDT”*) has the meaning given in rule 2(1) of Part 1 of the NFPS;”;

““equivalent amount to the 1992 Scheme lower tier ill-health pension” (*“swm cyfwerth â'r pensiwn afiechyd haen isaf Cynllun 1992”*) has the meaning given in regulation 74(5) (entitlement to lower tier ill-health pension and higher tier ill-health pension);”;

““equivalent amount to the NFPS lower tier ill-health pension” (*“swm cyfwerth â'r pensiwn afiechyd haen isaf CPNDT”*) has the meaning given in regulation 74(5)(a) (entitlement to lower tier ill-health pension and to higher tier ill-health pension);”;

““initial period” (*“cyfnod dechreuol”*) has the meaning given in regulation 86 (meaning of “initial period”);”;

““pensionable service in the 2015 Scheme” (*“gwasanaeth pensiynadwy yng Nghynllun 2015”*) means any continuous pensionable service in relation to the active member’s account in this scheme to which pensionable service in the 1992 Scheme was added for the purposes of regulation 66 (qualifying service) of these Regulations for the period whilst paragraph (7) of rule A3 of the 1992 Scheme continues to apply to that person;”;

- (b) in the definition of “retirement pension”, after paragraph (b) insert—

□(c)an ill-health award and the payment of any equivalent amount to the 1992 Scheme lower tier ill-health pension (if any) and the payment of any equivalent amount to the NFPS lower tier ill-health pension (if any);□.

2. In Part 2 (governance), at the end of paragraph (2) of regulation 4 (scheme manager) insert “in relation to each of the member’s pension accounts”.

3. In Part 3 (scheme membership) in Chapter 1 (eligibility for active membership), in regulation 15 (scheme employment), for paragraph (3) substitute—

□(3) A person who is a member of the 1992 Scheme or the NFPS satisfies the requirement in this paragraph.□

4. In Part 4 (pension accounts), in Chapter 8 (retirement account), in regulation 60 (account to specify amount of retirement pension (active members))—

- (a) after paragraph (3) insert—

□(3A) Where the active member is entitled to an equivalent amount to the 1992 Scheme lower tier ill-health pension or to an equivalent amount to the NFPS lower tier ill-health pension, the retirement account must specify that amount.□;

- (b) after paragraph (4) insert—

□(4A) For an equivalent amount to the 1992 Scheme lower tier ill-health pension or an equivalent amount to the NFPS lower tier ill-health pension, the retirement account must specify any commutation amount.”

5. In Part 5 (retirement benefits), in Chapter 2—

- (a) in regulation 68 (annual rate of retirement pension (active members))—

- (i) in paragraph (2), for “sub-paragraphs (a), (b) and (c)” substitute “sub-paragraphs (a), (b), (ba) and (c)”;
- (ii) after paragraph (2)(b) insert—
  - (ba) the sum of —
    - (i) the equivalent amount to the NFPS lower tier ill-health pension (if any) or the equivalent amount to the 1992 Scheme lower tier ill-health pension (if any) specified in the member’s retirement account,
    - (ii) subtracting the commutation amount (if any) specified in that account in relation to that amount; and□;
- (b) in regulation 71 (employer initiated retirement), after paragraph (2) insert—
  - (3) Where an employer is considering making the determination in paragraph (2) in respect of an active member who is a connected member of the NFPS, or a connected special member of the NFPS, in relation to that active member’s pension account, the employer must also consider making a determination under rule 6 (pension on authority initiated early retirement) of Part 3 of the NFPS.□;
- (c) in regulation 74 (entitlement to lower tier ill-health pension and to higher tier ill-health pension), after paragraph (3) insert—
  - (4) Where an active member (A) is entitled to a lower tier ill-health pension and paragraph 22 (transition member who has not reached normal pension age under the NFPS) or paragraph 24 (transition member who has not reached normal pension age under the 1992 Scheme) of Schedule 2 to these Regulations applies in relation to A—
    - (a) if paragraph 22 applies in relation to A, A is also entitled to an amount equivalent to the annual amount of a lower tier ill-health pension that would, if the member were entitled to payment of a lower tier ill-health pension under rule 2(2) of the NFPS, be payable to the member under the NFPS;
    - (b) if paragraph 24 applies in relation to A, A is also entitled to an amount equivalent to the annual amount of a lower tier ill-health pension that would, if the member were entitled to payment of a lower tier ill-health pension under rule B3 (ill-health awards) of the 1992 Scheme, be payable to the member under the 1992 Scheme.

(5) In these Regulations—

- (a) the amount equivalent to the annual amount of a lower tier ill-health pension in sub-paragraph (a) of paragraph (4) is referred to as the “equivalent amount to the NFPS lower tier ill-health pension” (“*swm cyfwerth â’r pensiwn afiechyd haen isaf CPNDT*”);
- (b) the amount equivalent to the annual amount of a lower tier ill-health pension in sub-paragraph (b) of paragraph (4) is referred to as the “equivalent amount to the 1992 Scheme lower tier ill-health pension” (“*swm cyfwerth â’r pensiwn afiechyd haen isaf Cynllun 1992*”).□;
- (d) in regulation 75 (annual rate of ill-health awards)—
  - (i) after paragraph (3) insert—

“(3A) In the case of a member who is entitled to an equivalent amount to the NFPS lower tier ill-health pension or to an equivalent amount to the 1992 Scheme lower tier ill-health pension, the adjusted lower tier ill-health pension includes the adjusted equivalent amount.”;
  - (ii) in paragraph (4), at the appropriate place insert—

□“the adjusted equivalent amount” (“*y swm cyfwerth addasedig*”) means—

- (a) in the case of a member who is entitled to an equivalent amount to the NFPS lower tier ill-health pension, that amount calculated—
  - (i) excluding from the calculation the amount of any additional period of service purchased under Part 11 of the NFPS, and
  - (ii) without the deduction of any commuted portion; and
- (b) in the case of a member who is entitled to the equivalent amount to the 1992 Scheme lower tier ill-health pension, that amount calculated without the deduction of any commuted portion;”;
- (e) in regulation 78 (consequences of review), after paragraph (6) insert—
  - (6A) Where L is entitled to an equivalent amount to the NFPS lower tier ill-health pension or to an equivalent amount to the 1992 Scheme lower tier ill-health pension, paragraphs (3) and (5) apply as if the reference to “lower

tier ill-health pension” included an equivalent amount to the NFPS lower tier ill-health pension or an equivalent amount to the 1992 Scheme lower tier ill-health pension, as the case may be.□;

- (f) after regulation 80 (option to commute part of pension) insert—

**□Option to commute part of an equivalent amount**

**80A.**—(1) A member who becomes entitled to the immediate payment of an equivalent amount to the NFPS lower tier ill-health pension or to an equivalent amount to the 1992 Scheme lower tier ill-health pension may opt under this regulation to exchange part of the pension for a lump sum.

(2) The option may only be exercised—

- (a) by written notice to the scheme manager which sets out the amount to be commuted; and
- (b) before the first payment of the equivalent amount to the NFPS lower tier ill-health pension or to an equivalent amount to the 1992 Scheme lower tier ill-health pension is made.

(3) Where the person is entitled to the immediate payment of an equivalent amount to the NFPS lower tier ill-health pension and exercises the option to commute under this regulation, the lump sum is calculated—

- (a) in the case of a person who is a connected member of the NFPS, in accordance with paragraphs (2) and (4) of rule 9 (commutation: general) of Part 3 of the NFPS, and
- (b) in the case of a person who is a connected special member of the NFPS, in accordance with paragraphs (2A), (4) and (4A) of rule 9 of Part 3 of that scheme.□

**6. In Part 6 (death benefits)—**

- (a) in Chapter 1 (interpretation), in regulation 86 (meaning of “initial period”), for “For the purposes of this Part” substitute “For the purposes of these Regulations”;
- (b) in Chapter 2 (pensions for surviving partners)—
  - (i) in paragraph (3) of regulation 87 (surviving partner’s pension payable on death of active member) for “Subject to regulation 91 (reduction in pensions in



cases of wide age disparity)” substitute “Subject to paragraph (4) and regulation 91 (reduction of pensions in cases of wide age disparity)”;

- (ii) after paragraph (3) of regulation 87 insert—

□(4) Where the member referred to in paragraph (1) was a transition member who had additional pension benefit under rule 7A or 7B of Part 3 of the NFPS or additional pension benefit under rule B5B or B5C of the 1992 Scheme, half the amount of additional pension benefit is added to the amount of the annual rate of the surviving partner’s pension referred to in paragraph (3).□;

- (iii) at the beginning of paragraph (2) of regulation 95 (eligible child’s pension on death of active member) insert “Subject to paragraph (3)”, and after that paragraph insert—

□(3) Where the member referred to in paragraph (1) was a transition member who had additional pension benefit under rule 7A or 7B of Part 3 of the NFPS or additional pension benefit under rule B5B or B5C of the 1992 Scheme, the amount of the additional pension benefit is added to the amount of the higher tier ill-health pension referred to in paragraph (2).□;

- (c) in Chapter 4 (lump sum death benefits), after paragraph (4) in regulation 102 (meaning of “final pay”) insert—

□(5) Where the member referred to in paragraph (1) is a transition member and was in pensionable service under the 1992 Scheme or the NFPS, as the case may be, during the period referred to in paragraph (1)(a) or (1)(b) and service from that scheme is included in the qualifying service for the pension account in respect of which the lump sum death benefit is paid—

- (a) pensionable pay in paragraph (1)(a) or (1)(b) includes average pensionable pay construed in accordance with rule G1 where the person was a member of the 1992 Scheme or pensionable pay under rule 1 or rule 2 of Part 11 of the NFPS where the person was a firefighter or special firefighter member of the NFPS, and
- (b) pensionable service includes pensionable service construed in accordance with rule F1 where the person was a member of the 1992 Scheme or pensionable service

construed in accordance with rules 2 to 5 of Part 10 of the NFPS.□;

- (d) after paragraph (3) of regulation 105 (lump sum payable on death of active member) insert—

□(4) Where the active member's account in respect of which the lump sum death benefit will be paid included pensionable service reckonable under rule F1 of the 1992 Scheme as qualifying service and a dependent relative's gratuity has been paid under rule E3 of the 1992 Scheme or the payment of the balance of contributions to estate has been paid under rule E4 of the 1992 Scheme, those amounts must be deducted from the amount of lump sum death benefit payable under this regulation.□

7. Schedule 2 (transitional provisions) is amended as follows—

- (a) in Part 1, in paragraph 3(2) for “Subject to sub-paragraph (3)” substitute “Subject to sub-paragraphs (3) and (4)” and after sub-paragraph (3) insert—

□(4) In the case of a tapered protection member of the NFPS who is a special member of the NFPS, the tapered protection closing date is the date found by applying the relevant date in column 3 of the 1992 Scheme table in Part 4 of this Schedule to the birthday referred to in column 1 and column 2.□;

- (b) in Part 2, in paragraph 9, after sub-paragraph (2) insert—

(2A) Where P was a full protection member of the 1992 Scheme and, after retiring from pensionable service in this scheme, became entitled to a continuous service pension under rule B1A, to an ordinary pension under rule B1, to a short service award under rule B2 or to a continued pension under rule B2A of that scheme, P ceases to be eligible to be a full protection member of the NFPS.□;

- (c) in Part 3, in paragraph 15, after sub-paragraph (1) insert—

□(1A) Where P was a full protection member of the 1992 Scheme and, after retiring from pensionable service in this scheme, became entitled to a continuous service pension under rule B1A, to an ordinary pension under rule B1, to a short service award under rule B2 or to a continued pension under rule B2A of that scheme, P ceases to be eligible to be a tapered protection member of the NFPS.□;

- (d) after Part 3 insert—

## □PART 3A

### Payment of ill-health benefits to transition members

#### **Transition member who has not reached normal pension age under the NFPS**

**22.**—(1) This paragraph applies in relation to a transition member with continuity of service who—

- (a) is a connected member of the NFPS or a connected special member of the NFPS;
- (b) becomes entitled to an ill-health award under this scheme in relation to relevant scheme employment; and
- (c) has not reached normal pension age under the NFPS.

(2) If this paragraph applies—

- (a) neither a lower tier ill-health pension nor a higher tier ill-health pension is payable under rule 2 (awards on ill-health retirement) of the NFPS; and
- (b) an ill-health award is payable under this scheme in accordance with this paragraph.

(3) If the member meets the conditions only for a lower tier ill-health pension under this scheme, the annual rate of a lower tier ill-health pension payable under this scheme is the sum of—

- (a) the annual rate of a lower tier ill-health pension payable under this scheme; and
- (b) an amount payable under regulation 74 (entitlement to lower tier ill-health pension and to higher tier ill-health pension).

(4) Where the member meets the conditions for a higher tier ill-health pension under this scheme, the adjusted lower tier ill-health pension in regulation 75(4) (annual rate of ill-health awards) includes the amount in subparagraph (3)(b) for the purposes of the calculation of the annual rate of the higher tier ill-health pension.

(5) If, after an ill-health award becomes payable under this scheme, a transfer value payment is made under Chapter 2 (transfers out of the Scheme) of Part 12 (transfers into and out of the Scheme) of the NFPS in respect of the member's rights under that Scheme and the transfer relates to a period of service included as qualifying service in relation to the member's

retirement account, the scheme manager must deduct from the ill-health award the amount in respect of service in the NFPS which is equal to the value represented by that transfer value payment.

(6) In this paragraph—

□relevant scheme employment” (“*cyflogaeth gynllun berthnasol*”) means the continuous period of pensionable service in scheme employment in relation to the active member’s account to which the qualifying service for that connected member of the NFPS, or connected special member of the NFPS, was added for the purposes of regulation 66 (qualifying service).

#### **Transition member who reaches normal pension age under the NFPS**

**23.—**(1) This paragraph applies in relation to a transition member with continuity of service who is receiving payment of an ill-health award in accordance with paragraph 22.

(2) When the member reaches normal pension age under the NFPS—

- (a) the equivalent amount to the NFPS lower tier ill-health pension specified under regulation 68(2)(ba) (annual rate of retirement pension (active members)) ceases to be payable under this scheme; and
- (b) the member becomes entitled under the NFPS to the immediate payment of a continued pension of a sum equal to the annual rate of the equivalent amount to the NFPS lower tier ill-health pension payable immediately before the date on which the member reaches normal pension age.

#### **Transition member who has not reached normal pension age under the 1992 Scheme**

**24.—**(1) This paragraph applies in relation to a transition member who—

- (a) was in pensionable service in the 1992 Scheme until the day before the transition date; and
- (b) has continued in pensionable service in relevant scheme employment, or has been treated as an active member of this scheme in relation to that employment, until that member became entitled to an ill-health award under this scheme; and

- (c) has not reached normal pension age under the 1992 Scheme or the age at which the conditions of rule B1 (ordinary pension) as modified by rule B1A (continuous service pension) of that scheme are satisfied.
- (2) If this paragraph applies—
- (a) neither a lower tier ill-health pension nor a higher tier ill-health pension is payable under rule B3 (ill health awards) of the 1992 Scheme; and
  - (b) an ill-health award is payable under this scheme.
- (3) If the member meets the conditions for a lower tier ill-health pension only under this scheme, the annual rate of a lower tier ill-health pension payable under this scheme is the sum of—
- (a) the annual rate of a lower tier ill-health pension payable under this scheme; and
  - (b) an amount payable under regulation 74(4) (entitlement to lower tier ill-health pension and to higher tier ill-health pension).
- (4) If the member meets the conditions for a higher tier ill-health pension under this scheme, the adjusted lower tier ill-health pension in regulation 75(4) (annual rate of ill-health awards) includes the amount in sub-paragraph (3)(b) for the purposes of the calculation of the annual rate of the higher tier ill-health pension.
- (5) If, after an ill-health award becomes payable under this scheme, a transfer value payment is made under rule F9 (payment of transfer value) of the 1992 Scheme in respect of the member's rights under that scheme and the transfer relates to a period of service included as qualifying service in relation to that member's retirement account, the scheme manager must deduct from the amount of the ill-health award an amount in respect of service in the 1992 Scheme which is equal to the value represented by that transfer value payment.
- (6) In this paragraph—
- “relevant scheme employment” (“*cyflogaeth gynllun berthnasol*”) means the continuous period of pensionable service in scheme employment in relation to the active member's account to which the pensionable service in the 1992 Scheme was added for the purposes of regulation 66 (qualifying service).

**Transition member who reaches normal pension age under the 1992 Scheme**

**25.**—(1) This paragraph applies in relation to a transition member who is receiving the payment of an ill-health award in accordance with paragraph 24.

(2) When the member reaches normal pension age under the 1992 Scheme or the age for retirement ascertained under rule B1A(3)(i) of that scheme—

- (a) the member ceases to be entitled to the immediate payment of the equivalent amount to the 1992 Scheme lower tier ill-health pension under regulation 74(4)(b) (entitlement to lower tier ill-health pension and to higher tier ill-health pension) under this scheme; and
- (b) the member becomes entitled under the 1992 Scheme to the immediate payment of a continued pension of a sum equal to the annual rate of the equivalent amount of the 1992 Scheme lower tier ill-health pension payable immediately before the date on which the member reaches normal pension age or the age for retirement ascertained under rule B1A(3)(i) of the 1992 Scheme.

**PART 3B**

**Payment of death benefits in respect of transition members**

**Annual rate of pensions for surviving partners payable under this scheme when certain transition members die in service with accrued benefits in the 1992 Scheme**

**26.**—(1) This paragraph applies in relation to a transition member who—

- (a) was in pensionable service in the 1992 Scheme until the day before the transition date;
- (b) has continued in pensionable service in scheme employment, or to be treated as an active member of this scheme, until that member dies; and
- (c) dies as an active member of this scheme.

(2) Awards for surviving spouses and civil partners are not payable under Part C (awards on death: spouses) of the 1992 Scheme in

respect of a member to whom this paragraph applies.

(3) A surviving spouse or civil partner of a member to whom this paragraph applies is not entitled to receive a bereavement pension under rule E8 of the 1992 Scheme.

**Annual rate of pensions payable to an eligible child under this scheme when a transition member dies in service with accrued benefits in the NFPS**

**27.**—(1) This paragraph applies in relation to a transition member with continuity of service who is a connected member of the NFPS or a connected special member of the NFPS—

- (a) who dies as an active member of this scheme; and
- (b) whose period of qualifying service is at least 3 months.

(2) Pensions for an eligible child are not payable under the NFPS in respect of that member.

**Annual rate of pensions payable to an eligible child under this scheme when a transition member dies in service with accrued benefits in the 1992 Scheme**

**28.**—(1) This paragraph applies in relation to a transition member who—

- (a) was in pensionable service in the 1992 Scheme until the day before the transition date;
- (b) has continued in pensionable service in scheme employment, or has been treated as an active member of this scheme, until that member dies; and
- (c) dies as an active member of this scheme.

(2) Awards for an eligible child are not payable under Part D (awards on death—children) and a bereavement pension is not payable under rule E8A of the 1992 Scheme in respect of that member.

**Amount of lump sum death benefit payable under this scheme when a transition member dies in service with accrued benefits in the NFPS**

**29.**—(1) This paragraph applies in relation to a transition member (T) who is a member of the NFPS and who dies as an active member of this scheme.

(2) Subject to sub-paragraph (3), where T dies as a pensioner member of the NFPS, the amount of the lump sum death benefit payable under this scheme is the greater of the amount of the lump sum death benefit payable under regulation 105(2) and the amount of post-retirement death grant payable under rule 2 (post-retirement death grant) of Part 5 of the NFPS.

(3) Where T at the time of T's death was a pensioner member of this scheme and an active member of this scheme, and regulation 107 (lump sum payable on death in certain cases) applies, in a case where the greater amount of the lump sum death benefit payable is that under regulation 106 (lump sum payable on death of pensioner member), "regulation 105" in sub-paragraph (2) is to be read as "regulation 106".

**Amount of lump sum death benefit payable under this scheme when a transition member dies in service with accrued benefits in the 1992 Scheme**

**30.**—(1) This paragraph applies in relation to a transition member (T) who is a member of the 1992 Scheme and who dies as an active member of this scheme.

(2) Sub-paragraph (3) applies where paragraph (7) of rule A3 of the 1992 Scheme applied to T immediately before T died and a lump sum death grant of an amount specified in regulation 105(2) (lump sum payable on death of active member) of this scheme is payable to those persons that the scheme manager determines under regulation 104 (person to whom lump sum death benefit payable) and—

- (a) a lump sum death grant has been paid under rule E1 of the 1992 Scheme,
- (b) a payment of the balance of contributions has been made under rule E4 of the 1992 Scheme, or
- (c) a dependent relative's gratuity has been paid under rule E3 of the 1992 Scheme.

(3) Where this sub-paragraph applies, the payments which have been made and are referred to in paragraphs (a), (b) or (c) of sub-paragraph (2) must be deducted from the lump sum death grant payable under regulation 105.

(4) Sub-paragraph (5) applies where T dies as a deferred member of the 1992 Scheme or in receipt of a pension from that scheme and a lump sum death grant of an amount specified in regulation 105(2) of this scheme is payable to



those persons that the scheme manager determines under regulation 104 and—

- (a) a dependent relative's gratuity has been paid under rule E3 of the 1992 Scheme, or
- (b) an amount of post retirement death grant has been paid under rule E4.

(5) Where this sub-paragraph applies, the payments which are referred to in paragraphs (a) or (b) of sub-paragraph (4) and which have been made must be deducted from the amount of lump sum death grant payable under regulation 105.

## PART 3C

### Transitional provisions relating to the NFPS and the 1992 Scheme

#### **Pensionable service under the NFPS**

**31.**—(1) This paragraph applies in relation to a transition member (T) who is a connected member of the NFPS, or a connected special member of the NFPS, and has continuity of service.

(2) The following provisions of Chapter 2 (purchase of additional service) of Part 11 (pensionable pay, pension contributions and purchase of additional service) of the NFPS continue to apply after the transition date as if T continued in pensionable service under that scheme—

- (a) the provisions relating to the payment of periodical contributions for the purchase of additional service if T had made an election to purchase additional service under rule 6 (election to purchase additional service) or if T returns to pensionable service as a firefighter after a period of unpaid service or absence and T elects to purchase additional service in respect of the period before the transition date under that rule; and
- (b) the provisions relating to the payment of the mandatory special period pension contributions payable in respect of an election to purchase service during the limited period under rule 6A (election to purchase service during the limited period).

(3) In determining whether T qualifies under the NFPS for retirement benefits (other than an

award on ill-health retirement or a deferred pension), T's pensionable service under the NFPS terminates when T's pensionable service under this scheme terminates.

**Final salary of certain transition members for any purposes of the NFPS**

**32.—**(1) This paragraph applies to a transition member with continuity of service (T) who is in pensionable service under this scheme and is a member of the NFPS.

(2) Subject to sub-paragraphs (3) to (5), in determining T's final pensionable pay for any purposes of the NFPS under Schedule 7 to the 2013 Act (final salary link)—

- (a) the provisions of paragraph 1 or paragraph 2 of that Schedule apply as if the reference to "final salary" were a reference to "final pensionable pay", and
- (b) pensionable pay derived from service under this scheme is to be regarded as derived from service under the NFPS.

(3) Where T's pensionable pay derived from service under this scheme at a time when T's final pensionable pay is determined for any purposes of the NFPS under Schedule 7 (final salary link) to the 2013 Act is lower than T's pensionable pay derived from service under the NFPS on the day before the transition date—

- (a) sub-paragraph (2) does not apply; and
- (b) T's final pensionable pay is determined in accordance with rule 1 (pensionable pay) and rule 2 (final pensionable pay) of Part 11 of the NFPS.

(4) Where T's pensionable pay derived from service under this scheme at the time when T's final pensionable pay is determined for any purposes of the NFPS under Schedule 7 to the 2013 Act (final salary link) is lower than the pensionable pay for any year after the transition date, the pensionable pay for the year of service before the reduction in pensionable pay is to be regarded for the purposes of Schedule 7 as the pensionable pay derived from service under the NFPS.

(5) The definition of pensionable pay derived from service under this scheme in regulation 26 (pensionable pay) is modified for the purposes of sub-paragraphs (2) and (4) by the omission of paragraph (1)(d) of that regulation, and in a case where T is being paid an allowance or supplement within the meaning of paragraph (6) of rule 1 to Part 11 of the NFPS which the

employer would have treated as pensionable under that scheme were the member still a firefighter member of that scheme, that amount is treated as included in pensionable pay for the purposes of determining T's final pensionable pay under the NFPS.

**Final salary of certain transition members for any purposes of the 1992 Scheme**

**33.**—(1) This paragraph applies in relation to a transition member (T) with continuity of service who is in pensionable service under this scheme and is a member of the 1992 Scheme.

(2) Subject to sub-paragraphs (3) to (5), in determining T's average pensionable pay for any purposes of the 1992 Scheme under Schedule 7 to the 2013 Act (final salary link)—

- (a) the provisions of paragraph 1 of that Schedule apply as if the reference to “final salary” were a reference to “average pensionable pay”, and
- (b) pensionable pay derived from service under this scheme is to be regarded as derived from service under the 1992 Scheme.

(3) Where T's pensionable pay derived from service under this scheme at the time when T's average pensionable pay is determined for any purposes of the 1992 Scheme under Schedule 7 to the 2013 Act (final salary link) is lower than T's pensionable pay derived from service under the 1992 Scheme on the day before the transition date—

- (a) sub-paragraph (2) does not apply, and
- (b) T's average pensionable pay is determined in accordance with rule G1 (pensionable pay and average pensionable pay) of the 1992 Scheme.

(4) Where T's pensionable pay derived from service under this scheme at the time when T's average pensionable pay is determined for any purposes of the 1992 Scheme under Schedule 7 to the 2013 Act (final salary link) is lower than the pensionable pay for any year after the transition date, the pensionable pay for the year of service before the reduction in pensionable pay is to be regarded for the purposes of Schedule 7 as the pensionable pay derived from service under the 1992 Scheme.

(5) The definition of pensionable pay derived from service under this scheme in regulation 26 is modified for the purposes of sub-paragraphs (2) and (4) by the omission of paragraph (1)(d) of that regulation, and in a case where the

member of the 1992 Scheme is being paid an allowance or supplement within the meaning of paragraph (9) of rule G1 (pensionable pay and average pensionable pay) which the employer would have treated as pensionable pay under that Scheme were the member still entitled to reckon pensionable service in that Scheme, that amount is included in pensionable pay for the purposes of determining T's average pensionable pay under the 1992 Scheme.

### **Continuous pensionable service under the 1992 Scheme**

**34.—**(1) This paragraph applies to a transition member (T) who was in pensionable service under the 1992 Scheme on the date before that member's transition date and joined this scheme on the transition date, and has remained in pensionable service under this scheme until the date on which T qualifies under the 1992 Scheme for an award under that scheme.

(2) The requirement in paragraph (1) that T has remained in pensionable service under this scheme is satisfied where T has been or is treated as an active member of this scheme.

(3) In determining whether T qualifies under the 1992 Scheme for retirement benefits (other than an award on ill-health retirement or to a deferred pension), T's pensionable service under the 1992 Scheme terminates when T's pensionable service under this scheme terminates.

(4) For the purposes of calculating the pension under rule B1A of the 1992 Scheme and for the commutation under rule B7 (commutation – general provision) of that scheme, pensionable service under this scheme is reckonable under rule F2 (current service) of that scheme as 2015 pensionable service.

(5) Where T had elected to pay periodical contributions for increased benefits under rule G6 (election to purchase increased benefits) of the 1992 Scheme, these continue to be payable as if T continued in pensionable service under the 1992 Scheme until T leaves pensionable service under the 2015 Scheme.

(6) If after the transition date T returns to work following a period of maternity or adoption leave and is entitled to elect to pay pension contributions under rule G2A (optional pension contributions during maternity and adoption leave) of the 1992 Scheme in respect of that period, the election may only be made in respect of the period before the transition date.

(7) Where this paragraph applies and T is entitled to an ordinary pension under rule B1 (ordinary pension) of the 1992 Scheme or a short service award under rule B2 (short service award) of that scheme, T's ordinary pension or short service award, as the case may be, is calculated in accordance with Part 2A of Schedule 2 to the 1992 Scheme and Part 1 and Part 2 of Schedule 2 to that scheme do not apply.

#### **Deferred member of the 1992 Scheme**

**35.** A transition member with accrued benefits in the 1992 Scheme to whom paragraph 34 does not apply is a deferred member of the 1992 Scheme.

#### **Deferred member of the NFPS**

**36.—**(1) A transition member with continuity of service (T), who is a connected member of the NFPS or a connected special member of the NFPS, does not become a deferred member of that scheme unless T becomes a deferred member of this scheme in relation to the active member's account to which the qualifying service for that connected member of the NFPS or connected special member of the NFPS was added.

(2) If T opts out of this scheme in relation to a scheme employment, or leaves scheme employment before being entitled to a pension in relation to that pensionable service, and T has at least 3 months' qualifying service—

- (a) T becomes a deferred member of the NFPS in relation to pensionable service under that scheme; and
- (b) any periodical payments for additional service under the NFPS cease to be payable.

(3) If T re-enters pensionable service under this scheme after a gap in service not exceeding 5 years, T ceases to be a deferred member of the NFPS.

#### **Scheme manager determines member of the NFPS is not entitled to an ill-health award**

**37.—**(1) This paragraph applies if the authority has decided to obtain the written opinion of an IQMP concerning whether a member of the NFPS is permanently disabled or able to undertake regular employment before making a determination as to whether a member is entitled to an ill-health award, and the

determination has not been made before the member's transition date.

(2) If this paragraph applies, the member joins this scheme on whichever is the latest of—

- (a) the member's transition date;
- (b) if the member decides not to appeal, the expiry of 28 days from the date on which the member received the last of the documents which the authority is required to supply under rule 4 (appeals against decisions based on medical advice) of Part 8 of the NFPS;
- (c) if the member withdraws the appeal, the date of the withdrawal of the appeal; and
- (d) where the member's appeal has been heard, the expiry of 28 days from the date on which the member received the report by the board of medical referees where no statement has been supplied by the authority to the Welsh Ministers or, where the board reconsiders its decision, the notice confirming the decision or the revised decision.

**Scheme manager determines member of the 1992 Scheme is not entitled to an ill-health award**

**38.**—(1) This paragraph applies if the authority has decided to obtain the written opinion of an IQMP under rule H1 (determination by fire authority) of the 1992 Scheme concerning whether a member of that scheme is permanently disabled or able to undertake regular employment before making a determination as to whether a member is entitled to an ill-health award, and the determination has not been made before the member's transition date.

(2) If this paragraph applies, the member joins this scheme on whichever is the latest of—

- (a) the member's transition date;
- (b) if the member decides not to appeal, the expiry of 28 days from the date on which the member received the last of the documents which the authority is required to supply under rule H2A (appeals against opinion based on medical advice) of Part H of the 1992 Scheme;
- (c) if the member withdraws the appeal, the date of the withdrawal of the appeal; and

- (d) where the member's appeal has been heard, the expiry of 28 days from the date on which the member received the report by the board of medical referees or, where the board reconsiders its decision, the notice confirming the decision or the revised decision.

#### **Repayment of contributions under the NFPS**

**39.** If a transition member with continuity of service (T) opts out of this scheme and T has less than 3 months' qualifying service in the NFPS and this scheme—

- (a) T must be repaid pension contributions and special pension contributions and mandatory special period pension contributions paid under the NFPS; and
- (b) any further periodical payments for additional service to be paid under the NFPS cease to be payable.

#### **Qualifying for retirement benefits under the NFPS**

**40.** In determining whether a transition member with continuity of service qualifies for retirement benefits under the NFPS, the member's qualifying service includes the total of—

- (a) the member's qualifying service under the NFPS; and
- (b) the member's qualifying service under this scheme.

#### **Qualifying for retirement benefits under the 1992 Scheme**

**41.** In determining whether a transition member with continuity of service qualifies for retirement benefits under the 1992 Scheme, the member's qualifying service includes the total of—

- (a) the member's qualifying service under the 1992 Scheme; and
- (b) the member's qualifying service under this scheme.

#### **Final salary link not to apply again to a pension in payment under the NFPS**

**42.** Where any element of a pension under the NFPS which is in payment under that Scheme has been calculated by reference to Schedule 7 (final salary link) to the 2013 Act, that element

of the pension is not recalculated by reference to Schedule 7 in consequence of a subsequent period of pensionable public service (within the meaning of paragraph 3 of Schedule 7 to the 2013 Act).

**Final salary link not to apply again to a pension in payment under the 1992 Scheme**

**43.** Where any element of a pension under the 1992 Scheme which is in payment under that scheme has been calculated by reference to Schedule 7 (final salary link) to the 2013 Act, that element of the pension is not recalculated by reference to Schedule 7 (final salary link) to the 2013 Act in consequence of a subsequent period of pensionable public service (within the meaning of paragraph 3 to Schedule 7 to the Act).

## **PART 3D**

### **Transfer of final salary benefits**

**Meaning of “final salary benefit”**

**44.—**(1) In this Part, “final salary benefit” (*“budd cyflog terfynol”*) means benefit accrued under a final salary scheme, subject to subparagraph (2).

(2) Where only part of the pension entitlement payable under a final salary scheme to or in respect of person which is based on the pensionable service of that person is or may be determined by reference to the person’s final salary, “final salary benefit” means the benefit in respect of which the pension entitlement is so determined.

**Acceptance of club transfer value payments**

**45.** Any part of a club transfer value payment from another scheme that relates to a member’s final salary benefit must be paid into the NFPS.

**Member of this scheme or the NFPS**

**46.—**(1) This paragraph applies to a person who transfers final salary benefits into the NFPS.

(2) Unless the person is a protected member of the NFPS, the person’s service in relation to the final salary benefits which have been transferred into the NFPS is taken to be qualifying service for the purposes of this scheme and the person—



- (a) becomes a member of this scheme; and
- (b) is taken to be a transition member with continuity of service.□

## SCHEDULE 2 Regulation 3

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

#### 1. In Part 1 (title and interpretation), in rule 2(1)—

##### (a) in the appropriate places insert—

□“the 2013 Act” (“*Deddf 2013*”) means the Public Service Pensions Act 2013;”;

““connected member” (“*aelod cysylltiedig*”) has the meaning given in rule 1C of Part 2;”;

““connected special member” (“*aelod arbennig cysylltiedig*”) has the meaning given in rule 1D of Part 2;”;

““continued pension” (“*pensiwn parhaus*”) has the meaning given in rule 1B of Part 3;”;

““continuity of service” (“*parhad gwasanaeth*”) has the meaning given in paragraph 2 of Schedule 2 to the 2015 Regulations;”;

““equivalent amount to the NFPS lower tier ill-health pension” (“*swm cyfwerth â'r pensiwn afiechyd haen isaf CPNDT*”) has the meaning given in regulation 74(5) of the 2015 Regulations;”;

““final salary link” (“*cyswllt cyflog terfynol*”) means the final salary link which applies when the requirements of paragraph 1 or paragraph 2 of Schedule 7 to the 2013 Act are met;”;

““scheme closing date” (“*dyddiad cau'r cynllun*”) means 31 March 2015;”;

““scheme employment” (“*cyflogaeth gynllun*”) in relation to the 2015 Scheme has the meaning given in regulation 15 of the 2015 Regulations;”;

““tapered protection closing date” (“*dyddiad cau diogelwch taprog*”) has the meaning given in paragraph 3 of Schedule 2 to the 2015 Regulations;”;

““transition date” (“*dyddiad trosiant*”) means—

- (a) if the firefighter member or the special firefighter member is a tapered

protection member of this Scheme, the date after the tapered protection closing date for that member;

- (b) if the firefighter member or special firefighter member is not a full protection member of this Scheme or a tapered protection member of this Scheme, the date after the scheme closing date; or
- (c) the date on which the member ceased to be a full protection member of this Scheme;”;

““transition member” (*“aelod trosiannol”*) has the meaning given in paragraph 1 of Schedule 2 to the 2015 Regulations;□;

- (b) for the definition of “Scheme Actuary” substitute—

□“Scheme Actuary” (*“Actiwari’r Cynllun”*) means the actuary appointed by the Welsh Ministers under regulation 159 (appointment of scheme actuary) of the 2015 Regulations;□;

- (c) for the definition of “special member” substitute—

□“special member” (*“aelod arbennig”*) means—

- (a) a special firefighter member,
- (b) a special deferred member,
- (c) a special pensioner member,
- (d) a connected special member;□.

**2.** In Part 2 (scheme membership, cessation and retirement)—

- (a) after rule 1A (special membership) insert—

**□Cessation of firefighter membership and special firefighter membership**

**1B.** A person ceases to be a firefighter member or a special firefighter member of this Scheme—

- (a) where the member is not a full protection member of this Scheme or a tapered protection member of this Scheme, on the scheme closing date;
- (b) where the member is a tapered protection member of this Scheme, on the tapered protection closing date or, if earlier, on the date on which the member ceases to be a tapered protection member;
- (c) where the member is a full protection member of this Scheme, on the date on

which the member retires from scheme employment in the 2015 Scheme or, if earlier, on the date on which the member ceases to be a full protection member of this Scheme.

**Standard membership of this Scheme after the transition date**

**1C.**—(1) In the case of a standard member of this Scheme to whom rule 1B applies and who joins the 2015 Scheme with continuity of service—

- (a) if that person (P) remains in pensionable service in that Scheme, P is a connected member of this Scheme in respect of the membership to which paragraph (4) applies;
- (b) if P opts out of pensionable service in the 2015 Scheme or leaves scheme employment in the 2015 Scheme before reaching normal retirement age, P is a deferred member of this Scheme;
- (c) if P opts into the 2015 Scheme or takes up scheme employment in the 2015 Scheme and paragraph (2) applies, P is again a connected member of this Scheme.

(2) This paragraph applies if P re-enters pensionable service under the 2015 Scheme after a gap in pensionable service not exceeding 5 years.

(3) In the case of a standard member of this Scheme to whom rule 1B applies and who joins the 2015 Scheme with a gap in pensionable service of more than 5 years, that member is a deferred member of this Scheme.

(4) This paragraph applies in relation to the active member's account of the 2015 Scheme to which the qualifying service of the membership of this Scheme was added for the purposes of regulation 66 (qualifying service) of the 2015 Regulations or, if the entries from the account were transferred to another active member's account under regulation 158 (transfer of pension account entries) of those Regulations, to that active member's account.

**Special membership of this Scheme after the transition date**

**1D.**—(1) In the case of a special member of this Scheme to whom rule 1B applies—

- (a) if that person (S) was a special firefighter member of this Scheme who

joins the 2015 Scheme immediately after rule 1B applied to S, or who had joined this Scheme as a special member on or after the date on which rule 1B applied to S, S is a connected special member of this Scheme in respect of the membership to which paragraph (2) applies;

- (b) if that person (D) was a special firefighter member of this Scheme who joins the 2015 Scheme with a gap in pensionable service after rule 1B applied to D, or who had joined this Scheme as a special member with a gap in pensionable service after the date on which rule 1B applied to D, D is a special deferred member of this Scheme in respect of the membership to which paragraph (2) applies;
- (c) if S opts out of pensionable service in the 2015 Scheme or leaves scheme employment under the 2015 Scheme before reaching normal retirement age, S is a special deferred member of this Scheme.

(2) This paragraph applies in relation to the active member's account of the 2015 Scheme to which the qualifying service of the membership of this Scheme was added for the purposes of regulation 66 (qualifying service) of the 2015 Regulations or, if the entries from the account were transferred to another active member's account under regulation 158 (transfer of pension account entries) of those Regulations, to that member's account.

#### **Membership of this Scheme where ill-health award paid from 2015 Scheme**

**1E.—**(1) A person who is entitled to the payment of an equivalent amount to the NFPS lower tier ill-health pension under the 2015 Scheme continues to be a connected member, or connected special member of this Scheme.

(2) A person who was entitled to an ill-health award under this Scheme or under the 2015 Scheme and who accepts an offer of employment referred to in rule 2 of Part 9 of this Scheme or referred to in regulation 78(3)(b) of the 2015 Scheme, continues to be a connected member, or a connected special member, of this Scheme. □;

- (b) in rule 3 (normal retirement age and normal benefit age), after paragraph (4) insert—

□(5) The normal retirement age of connected members is 60.

(6) The normal retirement age of connected special members is 55.□; and

(c) in rule 4 (last day of membership)—

(i) in paragraph (1) for “Where a firefighter member” substitute “Subject to paragraphs (3) to (5), where a firefighter member”;

(ii) after paragraph (2) insert—

□(3) The last day of membership of a firefighter member or a special firefighter member, who is not a full protection member of this Scheme or a tapered protection member of this Scheme, is to be taken as the scheme closing date.

(4) The last day of membership of a firefighter member or a special firefighter member, who is a tapered protected member of this Scheme, is to be taken as the tapered protection closing date or, if earlier, the date on which that member ceases to be a tapered protection member.

(5) The last day of membership of a firefighter member or a special firefighter member who is a full protection member of this Scheme is to be taken as the date on which that member ceases to be a full protection member of this Scheme.□

**3. In Part 3 (personal awards)—**

(a) in rule 1 (ordinary pension), after paragraph (1) insert—

□(1A) Subject to paragraph (2), this rule applies to a connected member of this Scheme who was a firefighter member of this Scheme, satisfies an eligibility condition and retires from scheme employment in the 2015 Scheme having reached normal retirement age under this Scheme.□;

(b) in rule 1A (special member’s ordinary pension), after paragraph (1) insert—

□(1A) Subject to paragraph (2), this rule applies to a connected special member of this Scheme who satisfies a special eligibility condition and retires from scheme employment in the 2015 Scheme having reached normal retirement age.□;

(c) after rule 1A (special member’s ordinary pension) insert—

**□ Continued pension**

1B. Where a connected member, or connected special member, is entitled to an equivalent amount to the NFPS lower tier ill-health pension under regulation 74(4)(a) (entitlement to lower tier ill-health pension and to higher tier ill-health pension) of the 2015 Regulations and that member reaches normal retirement age under this Scheme, that member is entitled to a continued pension of an amount equal to the annual rate of the equivalent amount to the NFPS lower tier ill-health pension.□;

- (d) in rule 3 (deferred pension), after paragraph (1) insert—

□(1A) Subject to paragraph (7), this rule applies to a person who ceases to be a firefighter member or a special firefighter member under rule 1B (cessation of firefighter membership and special firefighter membership) of Part 2.

(1B) Subject to paragraph (7), this rule applies to a connected member, or a connected special member, who—

- (a) opts out of pensionable service in the 2015 Scheme,
- (b) leaves scheme employment under the 2015 Scheme before reaching normal retirement age, or
- (c) ceases to be entitled to a lower tier ill-health pension or a higher tier ill-health pension under the 2015 Scheme in consequence of a review under regulation 78 (consequences of review) of the 2015 Regulations and declines an offer of employment made by the authority referred to in regulation 78(3)(b) of those Regulations.

(1C) This rule ceases to apply to a connected member who re-joins the 2015 Scheme after a gap in pensionable service not exceeding 5 years.□;

- (e) in rule 4 (cancellation of deferred pension)—
- (i) in paragraph (1) for “Where” substitute “Subject to paragraph (4), where”;
  - (ii) after paragraph (3) insert—

□(4) Where the person entitled to receive a deferred pension is not a protected member of this Scheme, the member may not instruct the authority to cancel the deferred pension.

(5) Where the person entitled to receive a deferred pension was a connected member of this Scheme and re-joins the 2015 Scheme after a gap in pensionable service not exceeding 5

years, the authority must cancel the deferred pension.□;

- (f) in rule 6 (pension on authority-initiated retirement), after paragraph (3) insert—

□(4) Where an authority is considering making a determination under regulation 71 (employer initiated retirement) of the 2015 Regulations that an active member of that Scheme who has attained the age of 55 should receive the payment of a pension without the early payment reduction, the authority must also consider making a determination under paragraph (1) of this rule.□;

- (g) in rule 7 (entitlement to two pensions), after paragraph (9) insert—

□(10) Where a person to whom this rule applies is a person to whom paragraph (7) of rule 1 of Part 11 applies, this rule applies with the substitution in paragraph (4) for “final pensionable pay to which the member is entitled on the last day of the member’s membership of the Scheme” with “final pensionable pay as modified by paragraph (7) or (8) of rule 1 of Part 11.□;

- (h) in rule 7C (additional pension benefit: supplementary provisions)—

(i) after paragraph (2) insert—

□(2A) Where rule 1B of Part 2 applies to a person (P) who is not a connected member or entitled to the payment of an ill-health award under regulation 74 (entitlement to lower tier ill-health pension and higher tier ill-health pension) of the 2015 Regulations, additional pension benefit is payable at normal benefit age; paragraphs (4) to (6) of rule 3 (deferred pension) apply in relation to that benefit as if it were a deferred pension to which P was entitled under that rule.□;

(ii) after paragraph (3) insert—

□(3A) Where the firefighter member is entitled to an ill-health award under regulation 74 of the 2015 Regulations, additional pension benefit is payable under this Scheme at the same time as the equivalent amount to the NFPS lower tier ill-health pension is payable under the 2015 Scheme.□;

- (i) in rule 9 (commutation: general)—

(i) in paragraph (1) for “Subject to paragraphs (3) and (4)” substitute “Subject to paragraphs (1B), (3) and (4)”;

(ii) after paragraph (1) insert—

□(1A) This rule applies to an equivalent amount of the NFPS lower tier ill-health pension

included in the annual rate of a retirement pension for the person under regulation 68(2)(ba) of the 2015 Regulations.

(1B) Where a person is entitled to a continued pension under rule 1B, that person may not commute a portion of that pension under this rule.□;

- (j) in rule 11 (allocation of pension), in paragraph (1), after “A firefighter member” insert “, a a connected member or a connected special member”.

4. In Part 10 (qualifying service and pensionable service)—

- (a) in rule 1 (qualifying service), after paragraph (h) omit “and” and after paragraph (i) insert—
  - and
- (j) any period of pensionable service for the active member’s account under the 2015 Scheme to which the person’s qualifying service had been added for the purposes of qualifying service in the 2015 Scheme.□;
- (b) after rule 3 (non-reckonable service) insert—

□**Period after transition date**

**3A.** A period of service or of leave or unpaid leave after a person’s transition date is not reckonable as pensionable service or as special pensionable service under this Scheme.□

5. In Part 11 (pensionable pay, pension contributions and purchase of additional service), in Chapter 1 (pensionable pay and pension contributions)—

- (a) in rule 1 (pensionable pay)—
  - (i) in paragraph (1) for “Subject to paragraphs (3) and (6) and rule 3(3)” substitute “Subject to paragraphs (3), (6) and (7) and rule 3(3)”;
  - (ii) after paragraph (6) insert—
    - (7) Subject to paragraphs (8) and (9), where rule 1B of Part 2 has applied to a member of this Scheme who has joined the 2015 Scheme with continuity of service and paragraph 1 or 2 of Schedule 7 (final salary link) to the 2013 Act applies to that person, paragraph (1) of this rule does not apply and final pensionable pay is determined in accordance with Schedule 7 so that the member’s pensionable pay under the 2015 Regulations (as modified by paragraph 33 of Schedule 2 to those Regulations) derived from service in the 2015 Scheme is to be regarded as pensionable pay derived from service in this Scheme.



(8) Where paragraph (7) and paragraph 33(4) of Schedule 2 to the 2015 Regulations apply to a member of this Scheme, the pensionable pay to be regarded as derived from service in this Scheme is the pensionable pay derived from service in the 2015 Scheme under the 2015 Regulations (as modified by paragraph 33 of Schedule 2 to those Regulations) for the last year of pensionable service in the 2015 Scheme before the reduction in pensionable pay.

(9) Where paragraph 33(3) of Schedule 2 to the 2015 Regulations applies to a member of this Scheme, pensionable pay is determined in accordance with paragraph (1) of this rule and paragraph (7) does not apply.□

(b) in rule 2 (final pensionable pay)—

(i) in paragraph (2) for “Subject to paragraph (3)” substitute “Subject to paragraphs (2A) and (3)”;

(ii) after paragraph (2) insert—

□(2A) In the case of a connected member or a deferred member to whom paragraph (7) of rule 1 applies, “the relevant date” (“*y dyddiad perthnasol*”) means—

(a) where the final salary link applies, the last day of pensionable service in the 2015 Scheme, or

(b) where paragraph 33(4) of Schedule 2 to the 2015 Regulations applies, the last day of pensionable service in the 2015 Scheme before the reduction of pensionable pay in the 2015 Scheme.□;

(c) in rule 4 (optional pension contributions during maternity and adoption leave)—

(i) in paragraph (3) for “Subject to paragraph (6)” substitute “Subject to paragraphs (6) and (7)”;

(ii) after paragraph (3) insert—

□(3A) Where the firefighter member returns to work, or ceases to be employed, after the transition date, the election under paragraph (3) may only be made in respect of the period before the transition date.□;

(iii) after paragraph (6) insert—

□(7) Where a person to whom this rule applies is a connected member who dies before the end of the period of 30 days referred to in paragraph (3) without having given the required notice—

(a) that person is to be deemed to have given the required notice, and

(b) the authority—

- (i) must give to that person's personal representatives a statement of the amount of contributions due; and
  - (ii) may collect the contributions with the agreement of the personal representatives by deducting the amount required from any lump sum death benefit payable under regulation 105 (lump sum payable on death of active member) of the 2015 Regulations.□;
- (d) in rule 6A (election to purchase service during the limited period)—
  - (i) after paragraph (7) insert—
 

□(7A) A person who intends to join this Scheme as a connected special member must make the election in paragraph (7) and where a person elects to join this Scheme as a connected special member, the reference to “special firefighter member” in this rule and rule 6B is to be treated as a referring to a “connected special member”.□;
  - (ii) after paragraph (9) insert—
 

□(9A) Where a special firefighter member has not paid all the mandatory special period pension contributions before the date on which rule 1B of Part 2 applies to that member, the member may continue to pay those contributions after that date.□;
- (e) in rule 7 (duration of periodical contributions and premature cessation)—
  - (i) at the end of sub-paragraph (c) of paragraph (2) omit “or” and after sub-paragraph (d) insert—
 

“or
  - (e) in the case of a connected member, or a connected special member, on the date that member ceases to be in pensionable service under the 2015 Scheme.□;
- (f) in rule 8 (discontinuance and resumption of periodical contributions), after paragraph (6) insert—
 

□(7) This rule applies to a connected member, or connected special member, as it applies to a firefighter member.□;
- (g) in rule 9 (periodical contributions in respect of periods of unpaid service or absence), after paragraph (4) insert—
 

□(5) This rule applies to a connected member, or a connected special member, as it applies to a firefighter member who elects to purchase additional service in respect of a period of

unpaid service or unpaid leave before the transition date.

(6) Where the connected member complies with the requirements in paragraph (2) that person may require the authority to treat the period referred to in paragraph (5) as pensionable service or in the case of a connected special member as special pensionable service.□

**6. In Part 12 (transfers into and out of the Scheme)—**

**(a) in Chapter 1 (interpretation of Part 12 and entitlement to transfer value payment)—**

**(i) in rule 1 (interpretation of Part 12), in the appropriate place insert—**

□“final salary benefit” (“*budd cyflog terfynol*”) means benefit accrued under a final salary scheme as defined in section 37 (general interpretation) of the 2013 Act;□;

**(ii) in rule 2 (entitlement to transfer value payment), in paragraph (2), after “Subject to” insert “paragraph (2A) and to” and after paragraph (2) insert—**

□(2A) A transition member (T), who is a connected member of this Scheme or has received a lower tier ill-health pension under the 2015 Scheme, is not entitled to require the payment of a transfer value in respect of the rights to benefits that have accrued to or in respect of T under this Scheme.□;

**(b) in Chapter 3 (transfers into the Scheme)—**

**(i) in rule 8 (applications for acceptance of transfer value payment from another scheme), after paragraph (3) insert—**

□(4) A person who is a protected member of this Scheme, or a person who becomes an active member of the 2015 Scheme, may apply for a transfer value payment from another public service pension scheme which is a final salary scheme, or includes final salary benefit, to be accepted by the authority for the purposes of this Scheme.□;

**(ii) in rule 9 (procedure for applications under rule 8), in paragraph (2) for “Subject to paragraph (4)” substitute “Subject to paragraphs (4) and (5),” and after paragraph (4) insert—**

□(5) Where the application is made by a person who joins this Scheme as firefighter member (other than as a special firefighter member) the application must be made within one year of the person becoming a firefighter member of this Scheme or within one year of

the person becoming an active member of the 2015 Scheme, as the case may be.□;

- (iii) in rule 10 (acceptance of transfer value payments), in paragraph (1) for “Subject to paragraph (3) below” substitute “Subject to paragraphs (3) and (4) below” and after paragraph (3) insert—

□(4) Where the application under rule 8 is made by a person to whom paragraph (4) of that rule applies, paragraphs (2) and (3) (limit on maximum amount of pensionable service that may be accrued) of rule 2 of Part 10 do not apply to that transfer value payment and the authority must accept the transfer value payment unless paragraph (3) of this rule applies.□

7. In Part 15 (miscellaneous provisions), after rule 4 (annual benefit statements) insert—

#### □**Actuarial valuations**

**4A.** Where the scheme actuary is carrying out a valuation of the 2015 Scheme and is required to carry out a valuation of this Scheme, the authority must provide the scheme actuary with any data that the scheme actuary requires in order to carry out a valuation and prepare a report on the valuation.□

8. In Annex 1 (ill-health pensions), after paragraph (6) insert—

□(7) Where a connected member or a connected special member of this Scheme is entitled to the payment of an equivalent amount to a lower tier ill-health pension, that amount must be calculated in accordance with paragraph (1) of this annex.□

## SCHEDULE 3 Regulation 4

### Amendments to Schedule 2 to the Firemen’s Pension Scheme Order 1992

1. In Part A (general provisions and retirement)—

- (a) in rule A3 (exclusive application to regular firefighters), in paragraph (1) for “Subject to paragraphs (3) to (5)” substitute “Subject to paragraphs (3) to (6)” and after paragraph (5) insert—

□(6) This paragraph applies to a person who satisfies the requirements of paragraph (5) if that person ceases to be a person who is entitled to reckon service as a firefighter as pensionable

service under rule F2 (current service) of this Scheme—

- (a) where the person is not a full protection member of this Scheme or a tapered protection member of this Scheme, on the scheme closing date;
- (b) where the person is a tapered protection member of this Scheme, on the tapered protection closing date or, if earlier, on the date on which the person ceases to be a tapered protection member;
- (c) where the person is a full protection member of this Scheme, on the date on which the member retires from scheme employment in the 2015 Scheme or, if earlier, on the date on which the person ceases to be a full protection member of this Scheme.

(7) Where paragraph (6) applies, if the person remains in continuous pensionable service under the 2015 Scheme, or is treated as an active member of that Scheme, after the transition date without a break in that service or membership until the date on which that person retires or ceases to be an active member of that Scheme, and the pension account for that scheme employment was the account to which the pensionable service from this Scheme was added, the person is entitled to a pension under rule B1A of this Scheme.

(8) A person who is entitled to the payment of an equivalent amount to the 1992 Scheme lower tier ill-health pension is treated as having been in continuous pensionable service under the 2015 Scheme for the purposes of paragraph (7) of this rule.

(9) Where paragraph (6) applies to a person who was entitled to an ill-health award under this Scheme or under the 2015 Scheme and who accepts an offer of employment made as referred to in rule K1A(2)(b) of this Scheme or referred to in regulation 78(3)(b) of the 2015 Scheme, that person is treated as having been in continuous pensionable service under the 2015 Scheme for the purposes of paragraph (7) of this rule.

(10) A person who refuses the offer of employment mentioned in paragraph (9) becomes entitled to a deferred pension under rule B5 of this Scheme and paragraph (7) does not apply to that member.□;

- (b) after rule A13 (normal pension age) insert—

□ **A13A.** The normal pension age for a regular firefighter to whom paragraph (7) of rule A3 applies is 55.□

**2. In Part B (personal awards)—**

- (a) in rule B1 (ordinary pension), in paragraph (2) after sub-paragraph (c) insert—

□ or

- (d) a person to whom paragraph (6) of rule A3 applies.□;

- (b) after rule B1 (ordinary pension) insert—

□ **Continuous service pension**

**B1A.**—(1) Where a person satisfies the requirements of paragraph (7) of rule A3, that person is entitled on retiring from scheme employment in the 2015 Scheme at or after normal pension age to a continuous service pension calculated in accordance with Part 2A of Schedule 2.

(2) A person to whom paragraph (1) applies is not entitled to a pension or award under rule B1 (ordinary pension), B2 (short service award), rule B3 (ill-health awards) or B5 (deferred pension).

(3) Where rule B1 (ordinary pension) would have applied to a person to whom paragraph (1) applies if rule A3(6) (exclusive application to regular firefighters) had not applied to that person—

- (a) the age at which that person may retire is ascertained by applying rule B1 to that person as if the reference to the “pensionable service” in paragraph (1)(a) included “2015 pensionable service”, and
- (b) in paragraph (1) of this rule for “normal pension age” as if the age is ascertained in sub-paragraph (a).

**B1B.**—(1) A person to whom rule B1A does not apply and to whom paragraph (6) of rule A3 does apply is entitled to a deferred pension under rule B5 (deferred pension).

(2) A person who is entitled to a deferred pension under paragraph (1) of this rule is not entitled to a pension or award under rule B1A (continuous service pension), rule B1 (ordinary pension), rule B2 (short service award), or rule B3 (ill-health awards).□;

- (c) in rule B1 (ordinary pension), in paragraph (2) after sub-paragraph (c) insert—

□ or

- (d) a person to whom paragraph (6) of rule A3 applies.□;
- (d) in rule B2 (short service award)—
  - (i) in paragraph (1) for “This rule applies” substitute “Subject to paragraph (3), this rule applies”;
  - (ii) after paragraph (2) insert—
    - (3) This rule does not apply to a person to whom paragraph (6) of rule A3 applies.□;
- (e) after rule B2 (short service award) insert—

□ **Continued pension**

**B2A.** Where a person to whom paragraph (7) of rule A3 applies is entitled to an equivalent amount of 1992 lower tier ill-health pension under regulation 74(4)(b) (entitlement to lower tier ill-health pension and to higher tier ill-health pension) of the 2015 Regulations and that person reaches normal pension age under this Scheme or the age for retirement ascertained in accordance with rule B1A(3)(i), that person is entitled to a continued pension of an amount equal to the annual rate of the equivalent amount to the 1992 Scheme lower tier ill-health pension.□;

- (f) in rule B3 (ill-health awards)—
  - (i) in paragraph (1) for “This rule applies” substitute “Subject to paragraph (1A), this rule applies”;
  - (ii) after paragraph (1) insert—
    - (1A) This rule applies to a person if paragraph (6) of rule A3 applies to that person and the requirements of paragraph (7) of that rule are not satisfied.□;
- (g) in rule B5 (deferred pension) after paragraph (1) insert—
  - (1A) This rule applies to a person to whom paragraph (6) of rule A3 applies if paragraph (7) of that rule does not apply to that person.□;
- (h) in rule B5A (entitlement to two pensions) after paragraph (8) insert—
  - (9) Where a person to whom this rule applies is a person to whom paragraph (10) of rule G1 applies, in paragraph (3) for “E is the firefighter’s average pensionable pay for the year ending with his last day of service” substitute “E is the firefighter’s average pensionable pay as modified by paragraph (10) of rule G1 for the year ending with his last day of service in the 2015 Scheme”.□;
- (i) in rule B5D (additional pension benefit: supplementary provisions)—

(i) in paragraph (1) for “Subject to paragraphs (2) and (3)” substitute “Subject to paragraphs (1A), (2) and (3)”;

(ii) after paragraph (1) insert—

□(1A) Where additional pension benefit under rule B5B or B5C is payable to a person, who is entitled to a continuous service pension under rule B1A, it is payable from normal pension age or at the age ascertained in accordance with paragraph (3)(i) of rule B1A if that is earlier.□;

(iii) after paragraph (2) insert—

□(2A) Where a person to whom paragraph (6) of rule A3 applies is not entitled to a continuous service pension under rule B1A or to an ill-health award under regulation 74 of the 2015 Regulations, paragraph (2) of this rule applies to that person as if that person were a firefighter who had resigned or been dismissed or made an election under rule G3.□;

(iv) after paragraph (3) insert—

□(3A) Where the firefighter is entitled to an ill-health award under regulation 74 of the 2015 Regulations, additional pension benefit is payable under this Scheme at the same time as the equivalent amount to the 1992 Scheme lower tier ill-health pension is payable.□;

(j) in rule B7 (commutation – general provision)—

(i) after paragraph (1) insert—

□(1A) This rule also applies to a pension under rule B1A and to the equivalent amount to the 1992 Scheme lower tier ill-health pension where that amount is included in the annual rate of a retirement pension for a person under regulation 68(2)(ba) (annual rate of retirement pension (active members)) of the 2015 Regulations.□;

(ii) in paragraph (2) for “Subject to paragraph (2A)” substitute “Subject to paragraphs (2A) and (2B)” and after paragraph (2A) insert—

□(2B) Where a person is entitled to a continued pension under rule B2A, that person may not commute a portion of that pension under this rule.□;

(iii) in paragraph (5) for “Subject to paragraph (5A)” substitute “Subject to paragraphs (5A) and (5B)” and after paragraph (5A) insert—

□(5B) In the case of a person who is entitled to a pension under rule B1A or to the equivalent



amount to the 1992 Scheme lower tier ill-health pension where the annual rate of a retirement pension under regulation 68(2)(ba) of the 2015 Regulations includes that amount, the reference to “pensionable service” in sub-paragraph (a) of paragraph (5) includes “2015 pensionable service”.□;

- (k) in rule B9 (allocation), after sub-paragraph (1) insert—

□(1A) This rule applies to a pension under rule B1A.□.

**3.** In Part C (awards on death – spouses) in rule C1 (spouse’s ordinary pension), in paragraph (1) for “This rule applies” substitute “Subject to paragraph (1A), this rule applies” and after paragraph (1) insert—

□(1A) This rule does not apply to a person who dies leaving a spouse or civil partner while serving as a regular firefighter if paragraph (6) of rule A3 applied to that person.□

**4.** In Part D (awards on death – children) in rule D1 (child’s ordinary allowance), in paragraph (1) for “This rule applies” substitute “Subject to paragraph (1A) this rule applies” and after paragraph (1) insert—

□(1A) This rule does not apply to a person who dies leaving a child while serving as a regular firefighter if paragraph (6) of rule A3 applied to that person.□

**5.** In Part E (awards on death – additional provisions)—

- (a) in paragraph (1) of rule E1 (lump sum death grant) for “On the death of” substitute “Subject to paragraph (1A), on the death of” and after that paragraph insert—

□(1A) This rule does not apply to a person who dies while serving as a regular firefighter if paragraph (6) of rule A3 applied to that person.□;

- (b) in paragraph (1) of rule E3 (dependent relative’s gratuity) for “This rule applies” substitute “Subject to paragraph (1A), this rule applies” and after that paragraph insert—

□(1A) This rule does not apply to a person who dies while serving as a regular firefighter if paragraph (6) of rule A3 applied to that person.□;

- (c) in paragraph (1) of rule E4 (payment of balance of contributions to estate) for “This rule applies” substitute “Subject to paragraph (1A), this rule applies” and after that paragraph insert—

□(1A) This rule does not apply to a person who dies while serving as a regular firefighter if

paragraph (6) of rule A3 applied to that person.□;

- (d) in paragraph (1) of rule E8A (bereavement pension: children) for “This rule applies” substitute “Subject to paragraph (1A), this rule applies” and after that paragraph insert—

□(1A) This rule does not apply where the deceased died while serving as a regular firefighter if paragraph (6) of rule A3 had applied to the deceased.□

**6. In Part F (pensionable service and transfer values)—**

- (a) in rule F2 (current service)—
  - (i) in paragraph (2), after sub-paragraph (a) insert—

□(ab) any period of service as a regular firefighter beginning with the day on which paragraph (6) of rule A3 applies to that person, or□;

- (ii) after paragraph (7) insert—

□(8) A person to whom paragraph (7) of rule A3 applies is entitled to reckon as 2015 pensionable service any continuous pensionable service in relation to the active member’s account in the 2015 Scheme to which pensionable service in this Scheme was added for the purpose of regulation 66 (qualifying service) of the 2015 Regulations for the period whilst paragraph (7) of rule A3 continues to apply.□;

- (b) in rule F9 (payment of transfer values)—
  - (i) in paragraph (1) for “Subject to paragraphs (2) to (8A)” substitute “Subject to paragraphs (1A) to (8A)”;

- (ii) after paragraph (1) insert—

□(1A) A transfer value may not be paid if—

- (a) paragraph (6) of rule A3 applies to the person, and
    - (b) paragraph 1(1) of Schedule 7 to the 2013 Act applies to that person by virtue of the person’s pensionable service in the 2015 Scheme so that person’s final salary falls to be determined by reference to paragraph 1(2) of that Schedule.

(1B) A transfer value may not be paid if paragraph (7) of rule A3 applies to the person and that person is receiving payment of the equivalent amount to the 1992 Scheme lower tier ill-health pension from the 2015 Scheme under the 2015 Regulations.□

7. In Part G (pensionable pay and contributions)—

(a) in rule G1 (pensionable pay and average pensionable pay)—

(i) in paragraph (1) for “Subject to paragraphs (2) and (9)” substitute “Subject to paragraphs (2), (9) and (10)”;

(ii) after paragraph (9) insert—

□(10) Where paragraph (6) of rule A3 (exclusive application to regular firefighters) applies to a regular firefighter and paragraph 1 of Schedule 7 (final salary link) to the 2013 Act applies to that person, paragraph (1) of this rule does not apply and the average pensionable pay is determined in accordance with Schedule 7 so that the member’s pensionable pay under the 2015 Regulations, as modified by paragraph 34 of Schedule 2 to those Regulations, derived from service in the 2015 Scheme is to be regarded as derived from service in this Scheme.

(11) Where paragraph (10) and paragraph 34(4) of Schedule 2 to the 2015 Regulations apply to a member of this Scheme, the pensionable pay to be regarded as derived from service in this Scheme is the pensionable pay derived from service in the 2015 Scheme under the 2015 Regulations as modified by paragraph 34 of Schedule 2 to those Regulations for the last year of pensionable service before the reduction in pensionable pay.

(12) Where the pensionable pay under the 2015 Regulations is the pensionable pay of the person employed as a retained firefighter or as a volunteer firefighter for the purposes of paragraphs (10) and (11), the pensionable pay under the 2015 Regulations is that of a wholetime regular firefighter employed in a similar role and with equivalent qualifying service.

(13) Where paragraph 34(3) of Schedule 2 to the 2015 Regulations applies to a person to whom paragraph (6) of rule A3 applies, average pensionable pay is determined in accordance with paragraph (3) of this rule and paragraph (10) does not apply in the case of that person.

(14) Subject to paragraph (13), where paragraph (10) applies—

(a) in sub-paragraph (a) of paragraph (4) “the date of the person’s last day of service as a regular firefighter” is to be read as “the date of the person’s last day of service in scheme employment in the 2015 Scheme”;

- (b) in sub-paragraph (b) of paragraph (4) “in a period during which contributions were payable under rule G2” is to be read as “in a period during which member contributions were payable under regulation 119 of the 2015 Regulations”; and
- (c) in sub-paragraph (e) of paragraph (6), where any unpaid period of additional maternity leave or adoption leave is within a period for which the pensionable pay derived from 2015 Scheme service is treated as pensionable pay derived from this Scheme, “contributions have been paid under rule G2A” is to be read as “contributions have been paid under regulation 122 of the 2015 Regulations”.

(15) In a case where paragraphs (1) and (11) apply, in sub-paragraph (a) of paragraph (4) “the date of the person’s last day of service as a regular firefighter” is to be read as “the date of the person’s last day of service in scheme employment in the 2015 Scheme before the reduction of pensionable pay”.□;

- (b) in rule G2A (optional pension contributions during maternity and adoption leave), after paragraph (3) insert—

□(3A) Where the regular firefighter returns to work, or ceases to be employed, after the date on which paragraph (6) of rule A3 applies to that person, the election under paragraph (3) may only be made in respect of the period before paragraph (6) applied to that person.□;

- (c) in rule G7 (payment of periodical contributions for increased benefits), after paragraph (3) insert—

□(4A) In the case of a person to whom paragraph (7) of rule A3 applies—

- (a) periodical payments continue to be payable whilst paragraph (7) applies;
- (b) where the person is entitled to the payment of an equivalent amount to the 1992 Scheme lower tier ill-health pension under regulation 74 of the 2015 Regulations and following review of that award under regulation 77 of those Regulations, accepts the offer of employment, the contributions again become payable.□;
- (d) in rule G8 (effect of payment for increased benefits), in sub-paragraph (a) of paragraph

(1), after “pension under rule” insert “B1A” and after “B5(” insert “continued”.

8. In Part I (glossary of expressions) of Schedule 1 (interpretation), in the appropriate places insert—

□ “The 2013 Act”	The Public Service Pensions Act 2013.
“The 2015 Regulations”	The Firefighters’ Pension Scheme (Wales) Regulations 2015.
“2015 pensionable service”	Construe in accordance with rule F2(8).
“The 2015 Scheme”	The Firefighters’ Pension Scheme (Wales) 2015 which is established in the Firefighters’ Pension Scheme (Wales) Regulations 2015.
“Continued pension”	Construe in accordance with rule B2A.
“Continuous service pension”	Construe in accordance with rule B1A.
“Equivalent amount to the 1992 lower tier ill-health pension”	Construe in accordance with regulation 74(5) of the 2015 Regulations.
“Full protection member of this Scheme”	A person who is a full protection member of this Scheme by virtue of paragraph 9 of Schedule 2 to the 2015 Regulations.
“Scheme closing date”	31 March 2015.
“Tapered protection closing date”	Construe in accordance with paragraph 3 of Schedule 2 to the 2015 Regulations.
“Tapered protection member of this Scheme”	A person who is a tapered protection member of this

9. In Schedule 2—

- (a) after Part 2 insert—

□PART 2A

Continuous service pension

1. Subject to Parts 6A and 8 of this Schedule, the amount of a continuous service pension of a member of this Scheme to whom paragraph (7) of rule A3 applies, or has applied, is—

$$A/60 \times B/C \times APP$$

Where—

APP is person's average pensionable pay,

B is the period in years of the person's pensionable service until the day before the person's transition date,

C is the period in years of the person's pensionable service and of the person's 2015 Scheme pensionable service (subject to a maximum of pensionable service of 40 years),

A is the sum of E + (F x 2) and must not exceed 40 years

Where—

E is the period in years of the person's pensionable service and of the person's 2015 pensionable service up to 20 years,

F is the period in years by which the person's pensionable service and the person's 2015 pensionable service exceeds 20 years. □;

- (b) in Part 6A—

- (i) in paragraph 1, after sub-paragraph (b) insert—

□(ba) continuous service pension under Part 2A, □;

- (ii) after paragraph 2 insert—

□(3) Where the award listed in paragraph 1 is a continuous service pension, the reference to "pensionable service" in paragraphs 1 and 2 includes 2015 pensionable service. □

**EXPLANATORY MEMORANDUM TO THE FIREFIGHTERS' PENSION SCHEME (WALES) (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) REGULATIONS 2015; THE FIREFIGHTERS' COMPENSATION SCHEME AND PENSION SCHEME (WALES) (AMENDMENT) ORDER 2015; THE FIREFIGHTERS' PENSION (WALES) SCHEME (CONTRIBUTIONS) (AMENDMENT) ORDER 2015**

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 Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015, the Firefighters' Compensation Scheme and Pension Scheme (Wales) (Amendment) Order 2015 and the Firefighters' Pension (Wales) Scheme (Contributions) (Amendment) Order 2015. I am satisfied the benefits of making these Statutory Instruments outweigh any costs.

**Leighton Andrews AM**  
**Minister for Public Services**  
**DATE**

## **Description**

1. The making of the Firefighters' Pension Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015 and the Firefighters' Compensation Scheme and Pension Scheme (Wales) (Amendment) Order 2015 to (a) provide transitional arrangements for members who transfer to the new Firefighters' Pension Scheme (Wales) 2015 from 1 April 2015 onwards and to amend the 2007 Compensation Scheme to make provision for members of the Firefighters' Pension Scheme 2015 and (b) amend the new Firefighters' Pension Scheme 2007 in respect of special members of the modified 2007 Scheme and to amend the Firefighter Pension Scheme 1992.

2. The third instrument, the Firefighters' Pension (Wales) Scheme (Contributions) (Amendment) Order 2015, substitutes the table of firefighter contributions under the 1992 Pension Scheme to provide an annual one per cent uplift in the pay bands until 2018

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

3. In most cases the policy approach to the Welsh Ministers' making of instruments under the above provisions (and, to a similar extent, that of the Scottish Ministers) has been to replicate the provision which is made for England. The main exception has been in relation to the regulations making the first scheme under the Public Service Pensions Act 2013 (2013 Act) where two features of the new scheme differ from the England scheme. However, these statutory instruments, which deal with the transition of existing unprotected scheme members into a new 2015 Scheme, do not depend at all on the design of that new Scheme.

4. Thus, the final versions of the instruments made in England have been replicated with the only amendments made in Wales being to reflect the Welsh SI format and to provide for gender-neutral drafting. This has meant significant delays in introducing the statutory instruments as the final English statutory instruments were not available to the Welsh Government until 6 March 2015. In order for these to be in force for 1 April 2015 it is necessary to breach the 21 day rule. The Presiding Officer has been notified of the breach by letter. The Treasury have advised that if the Orders were brought into force on a date later than the 1 April 2015, under Section 18(1) of the 2013 Act this would mean that all scheme members would stop accruing pension benefits in the old Schemes. That would mean that members would need to be auto-enrolled into the new Pension Scheme by the next day – including those who have protected rights to remain in their current Scheme.

5. Some of provisions in the Firefighters' Compensation Scheme and Pension Scheme (Wales) (Amendment) Order 2015 have retrospective effect. These are explained in paragraphs 42-46 of this Memorandum and replicate similar provisions made in England and in Scotland.



## Legislative background

6. The Firefighters' Pension Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015 are made under sections 1(1) and (2), 2(1), 3(1), (2), (3)(a) and (c), (6) and (7), 18(5) and (6), paragraph 6(b) of Schedule 2, Schedule 3 and paragraphs 1(2)(ii), 2(2)(ii) and 5(1) of Schedule 7 to the 2013 Act and deal with the benefits of firefighters who are members of the Firefighters' Pension Scheme 1992 ("the 1992 Scheme") or the Firefighters' Pension Scheme 2007 ("the 2007 Scheme") and subsequently under the 2015 Scheme.

7. The main provisions for the 2015 Scheme are set down in the Firefighters' Pension Scheme (Wales) Regulations 2015 (SI 2015/622 (W. 50)). In addition, the Firefighters' Pension Scheme (Wales) (Consequential Provisions) Regulations 2015 made additional provisions in relation to certain taxation matters.

8. The Firefighters' Compensation Scheme and Pension Scheme (Wales) (Amendment) Order 2015 is made under the following powers:

- Sections 34 and 60 of the Fire and Rescue Services Act 2004 ("the 2004 Act") allows the Welsh Ministers, by order, to make provision for a pension scheme for firefighters.
- Section 34 of the 2004 Act also allows the Welsh Ministers, by order, to make a scheme for the payment of compensation to, or in respect of, firefighters who have been injured or who have died. Section 34(3) provides that an order under that section may take effect from a date which is earlier than that on which the order is made.

9. This Order complies with section 34, which was amended by the 2013 Act with the insertion of sub-paragraph (1A) which introduces a restriction (pursuant to sections 18 and 19 of the 2013 Act) on benefits provided under existing schemes for firefighters regarding the payment of pensions, allowances and gratuities to or in respect of persons who are or have been employed by a fire and rescue authority and persons who die or have died while so employed.

10. The Firefighters' Pension (Wales) Scheme (Contributions) (Amendment) Order 2015 is made under Section 26 of the Fire Services Act 1947 which enables the Welsh Ministers to establish a pension scheme, by order, for the payment of pensions, allowances and gratuities to employees of fire brigades and includes provision for the making of employee contributions.

11. The Firefighters' Pension Scheme 1992 was established under this power and is set out in Schedule 2 to the Firemen's Pension Scheme Order 1992 (S.I. 1992/129). In relation to Wales the name of the scheme was changed to the Firefighters' Pension Scheme by article 4(1) of S.I. 2004/2917. The Fire Services Act 1947 was repealed by sections 52 and 54 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c.21). Subsections (1) to (5) continue to have effect

in relation to England, Scotland and Wales for the purposes of the Firefighters' Pension Scheme 1992 by virtue of S.I.2004/2917 and S.I. 2004/2918.

12. These Regulations and Orders will follow the negative resolution procedure.

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

#### **• The Firefighters' Pension Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015**

13. Both the 1992 and the 2007 Schemes calculated pensions on a final salary basis, that is, the amount of pensionable salary earned at the point of retirement. As required by the 2013 Act, the 2015 Scheme is a career average scheme, under which pensions are calculated on the basis of the average salary earned over the course of pensionable service.

14. The aim of these Regulations is to set out how members move from a final salary Scheme (ie, the 1992 or 2007 Schemes) to the career-average 2015 Scheme. In particular, the Regulations protect the rights that members have accrued in the 1992 and 2007 schemes, ensuring that these rights will be correctly represented and administered from the time that the member joins the 2015 Scheme under the Firefighters' Pension Scheme (Wales) Regulations 2015 (WSI 2015/622 (W. 50)).

15. Welsh Fire and Rescue Services Circular (W-FRSC(2015)04) issued on 16 February 2015 set out the design for the 2015 Scheme and stated that there would be full statutory protection for accrued rights for all members as follows:

- All accrued rights are protected and those past benefits will be linked to final salary when members leave the Firefighters' Pension Scheme 2015.
- For members of the 1992 scheme the Welsh Government will further meet:
  - (a) Members' expectation of double accrual for service accrued under the Firefighters' Pension Scheme 1992; so that a member's full continuous pensionable service upon retirement will be used to calculate an averaged accrual rate up to a maximum accrual rate of 1/45th.
  - (b) Members' expectation of being able to access their 1992 scheme benefits when they retire at that scheme's 'ordinary pension' age (i.e. from age 50 with 25 or more years pensionable service), subject to abatement rules for that scheme.
- Pensionable service for the purpose of calculating the ordinary pension age will include any continuous pensionable service accrued under both the 1992 scheme and the 2015 scheme members' expectation of an actuarially assessed commutation factor for benefits accrued under the 1992 Scheme.

16. The Firefighters' Pension Scheme (Wales) Regulations 2015 set out the conditions for full and tapered protection for members of the 1992 and 2007 schemes, and detailed when those members should transfer into the 2015 Scheme. These Regulations address the remaining issues, describing how those members will access their accrued rights. The purpose of the Regulations is to resolve matters arising from the accrual of pension in both one of the final salary schemes and in the career-average Firefighters' Pension Scheme 2015.

**Active and deferred membership (New paragraphs 34, 35 and 36 of Schedule 2 of the 2015 Regulations; Rules 1C and 4 of Part 2 and Rules 3 and 4 of Part 3 of the 2007 Order; and Rules A3, A13A, B1A, B1B, B5 and F2 of the 1992 Order)**

17. These provisions determine when a member is active or deferred in each of the 1992, 2007 and 2015 schemes, having participated in more than one of those schemes.

18. For members of the 2007 Scheme other than special members, the Regulations ensure that if a member ceases to have active membership in the 2015 Scheme but returns after a gap of not more than five years, their previous 2015 Scheme service and any connected 2007 Scheme service will no longer be deferred. Instead, it will be treated as active for certain purposes and as continuous with any new 2015 Scheme service. If a member re-joins and the gap in membership exceeds five years, the earlier membership in both the 2015 Scheme and the 2007 Scheme will remain deferred and the new membership in the 2015 Scheme is treated as a separate pension entitlement.

19. A different approach applies in respect of 1992 Scheme members and special members of the 2007 Scheme, as the 1992 Scheme is closed to re-joiners. As a consequence, the member is not treated as active for certain purposes in the 1992 Scheme once they leave pensionable service in the 2015 Scheme. In such instances they would become a deferred member of the 1992 Scheme. If the member elects to re-join a firefighters' pension scheme while still transitionally or fully protected, they would join the 2007 Scheme, rather than the 2015 Scheme. However, a member of the 1992 Scheme who is in continuous pensionable service in that Scheme before the transition date and remains in continuous pensionable service in the 2015 Scheme until they leave pensionable service or retire, is treated as an active member of the 1992 Scheme for certain purposes.

**End of active membership in one of the final-salary schemes (Amended Parts A and B of Schedule 2 to the 1992 Order and amended Parts 2 and 3 of Schedule 1 to the 2007 Order)**

20. These provisions ensure that the transitional protections set out in the 2015 Regulations are reflected in the 1992 and 2007 Scheme Orders. The transitional protections set out when a member of the 1992 and 2007 schemes must move into the 2015 Scheme, or else become a deferred member of their scheme.

**Qualifying for benefits (New paragraphs 40 and 41 of Schedule 2 of the 2015 Regulations; amended Rule 1 of Part 10 of the 2007 Order and amended Rule F2 of the 1992 Order)**

21. Two years' membership of the 1992 Scheme is the minimum amount required in order to qualify for benefits in that scheme. The equivalent provision in the 2007 and 2015 schemes is three months. In considering whether a 2015 scheme member with service in either the 2007 or 1992 scheme qualifies for benefits in either the member's previous scheme or in the 2015 Scheme, any linked 1992, 2007 and 2015 Scheme service is to be taken into account. For qualifying purposes, transferred-in service in the 1992 or 2007 Scheme is counted on the same basis as before 1 April 2015.

**Accrual rate (New paragraphs 31 and 34 of Schedule 2 of the 2015 Regulations and new Part 2A of Schedule 2 of the 1992 Order)**

22. At present 1992 Scheme members can benefit from "double accrual", which takes effect after 20 years' service. Members of the 2015 Scheme with 1992 Scheme benefits who remain in continuous pensionable service in the 2015 Scheme, will have those benefits calculated on the basis of the accrual rate that they would have received had they remained in the 1992 Scheme until retirement. This is achieved by taking into account the pensionable service accrued in the 2015 Scheme. For example, if a member accrued 30 years' continuous service between the 1992 and 2015 Scheme, their accrual rate for any service accrued under the 1992 Scheme will be calculated on the basis of 1/45<sup>th</sup> of pensionable salary for each year of such service. A formula that provides for this effect is set out in new Part 2A of Schedule 2 to the 1992 Scheme.

**Final pensionable pay (New paragraphs 32, 33, 34, 42 and 43 of Schedule 2 of the 2015 Regulations; amended Rule 2 of Part 11 and Rule 8 of Part 12 of the 2007 Order; and Rules B1A, B5A, G1 of the 1992 Order)**

23. Schedule 7 to the 2013 Act requires that the old scheme retirement pension is calculated using earnings at retirement or upon leaving the new scheme so enabling the old scheme pension rights to be honoured in full ("the final salary link"). Paragraphs 42 and 43 of schedule 2 provide that this right may only be exercised once and that any subsequent period of employment and scheme membership will not lead to a recalculation of any old scheme pension that is in payment.

24. Where a member of the 2015 Scheme has service that is continuous from the 1992 or 2007 Scheme, the member's final pensionable pay is used. Service is still regarded as "continuous" so long as any break in service is no more than five years, or if any longer, spent in pensionable public service. Provided that continuity of service is maintained in this way, benefits relating to the member's earlier scheme will be linked to their final salary when the member ceases active membership of the 2015 Scheme.

25. Where the “final salary link” applies, there is a requirement in the 2013 Act that the member’s “pensionable pay” in the 2015 Scheme is not less generous than it would have been in their previous scheme. This includes certain allowances and supplements that would previously have been deemed to be pensionable and could also apply if the member has seen a reduction in salary. The Regulations, therefore, ensure that a member is not disadvantaged if the definition of final salary used to determine their benefits would have been higher in their original scheme than under the 2015 Scheme.

26. When a decrease in pay occurs before the member becomes a member of the 2015 Scheme and pay does not again rise above that high point, final pensionable pay is determined using the member’s 1992 or 2007 scheme pensionable pay and rules. When the decrease occurs after transition, the member’s pensionable pay in the last year of service before the decrease occurred is used. When a member joins the 2015 Scheme, but does not re-join the scheme in time to retain continuity of service, final pensionable pay would be that at the point of deferment from the member’s original membership.

**Additional pension (New paragraphs 31 and 34 of Schedule 2 of the 2015 Regulations; Rule 7 of Part 11 of the 2007 Order and Rules B5D, G2A, G7 and G8 of the 1992 Order)**

27. If a member has already arranged to purchase additional service or increased benefits in the 1992 or 2007 scheme, the arrangement will remain valid even after the member transfers to the 2015 Scheme provided that they had remained in continuous pensionable service in the 2015 Scheme if they were members of the 1992 Scheme, or if they were members of the 2007 Scheme who had continuity of service. These members will continue to pay additional contributions on the same basis as they did before transferring from their final-salary scheme.

**Transfer of final-salary benefits (New paragraphs 44, 45 and 46 of Schedule 2 of the 2015 Regulations and amended Rules 1, 8, 9 and 10 of Part 12 of the 2007 Order)**

28. These provisions are necessary to cater for individuals wishing to transfer in membership of another public service pension scheme, which has accrued on a final-salary basis. Upon joining, although their active membership may be in the 2015 Scheme, the transferred-in amount should be transferred into the 2007 Scheme. This is because the 2015 Scheme is operated wholly on a career-average basis and does not provide for final salary pensions.

**Authority-initiated early retirement (Amended Regulation 71 of the 2015 Regulations and Rule 6 of Part 3 of the 2007 Order)**

29. Where a firefighter with 2007 Scheme membership is subject to authority initiated early retirement in the 2015 Scheme, the employing authority must at the same time consider using the equivalent provisions in the 2007 Scheme.

**Refunds of contributions (New paragraph 39 of Schedule 2 of the 2015**

## Regulations)

30. If a member with existing 2007 Scheme service ceases active membership after transferring to the 2015 Scheme, contributions are refunded if the member has in total less than three months' qualifying service across both schemes and any further contributions for additional service cease to be payable.

### **Ill-Health (Regulations 60, 68, 74, 75, 78A and 80A of the 2015 Regulations, new paragraphs 22, 23, 24, 25, 37 and 38 of Schedule 2 of the 2015 Regulations; new paragraph 2A of Part 12 and Annex 1 of the 2007 Order; and Rules B3, B7 and F9 of the 1992 Order)**

31. These Regulations set down how the ill-health benefits of individuals who have participated in the 2015 Scheme and in one of the final-salary schemes should be determined.

32. The Transitional Regulations provide that where a 2015 Scheme member who was previously in the 1992 or 2007 scheme becomes entitled to a lower-tier ill-health pension, their entitlement is paid from the 2015 Scheme. However, to ensure that connected service in the 1992 or 2007 Scheme is also recognised, an equivalent amount of benefit is calculated in accordance with the rules of their earlier scheme, and this 'equivalent amount' is paid from the 2015 Scheme. Commuted lump sums are paid and determined on the same basis.

33. Any entitlement to a higher tier pension is calculated in accordance with the 2015 Scheme. However, the higher tier enhancement is applied to the lower tier pension, including the "equivalent amount" calculated in accordance with the member's earlier scheme rules, but "adjusted" so that added pension is not taken into account.

34. As the member's 1992 or 2007 scheme pension is left in their previous scheme, it is possible for that pension to be transferred to another pension scheme, even if they are already receiving ill-health benefits from the 2015 Scheme in respect of their prior scheme service. Consequently, if that pension is transferred out to another pension scheme, the corresponding 'equivalent portion' of ill-health pension is deducted from the ill-health pension being paid out of the 2015 Scheme.

35. When a member who has moved into the 2015 scheme from either the 1992 or 2007 scheme reaches the Normal Pension Age in their previous scheme, the 'equivalent amount' ceases to be payable from the 2015 Scheme and is replaced by a continued pension from the member's previous scheme payable from normal pension age.

36. There are special provisions to deal with the cases where any member is being considered for an ill-health award at the time of their transition.

37. Members with 1992 Scheme service who are awarded a lower-tier ill-health pension which is payable under the 2015 Scheme as an 'equivalent amount' will continue to be able to commute a proportion of these those benefits

to a lump sum under the 1992 Scheme terms, using actuarially neutral factors. Any connected 2015 Scheme service will count towards determining whether the member can commute the maximum 25% of their 1992 Scheme pension if they retire before age 55.

**Death benefits (Amended Regulations 87, 95, 102 and 105, and new paragraphs 26, 27, 28, 29 and 30 of Schedule 2 of the 2015 Regulations and Rules C1, D1, E1, E3, E4 and E8A of the 1992 Order)**

38. Under the 2015 Scheme, survivor benefits are provided in the form of surviving partners' pension, bereavement pension, children's pension and lump sum death benefits, which reflects similar provision in the 2007 Scheme. Surviving partners of all 2015 Scheme members who are not deferred members of the 1992 or 2007 scheme, who die in pensionable service in the 2015 Scheme, will have their benefits determined under the 2015 Scheme. Similarly, where these members die in service and have eligible children, they will also receive benefits under the 2015 Scheme, rather than under the member's previous scheme. However, if the individual was a deferred member of the 1992 or 2007 scheme, the survivor will receive deferred survivor benefits in accordance with those scheme rules. The provisions for lump sum death payments are no less than they would have been under the 1992 or 2007 scheme.

• **The Firefighters' Compensation Scheme and Pension Scheme (Wales) (Amendment) Order 2015**

39. This Order amends Schedule 1 to the Firefighters' Compensation Scheme (Wales) Order 2007 (SI 2007/1073 (W. 111)) which provides a compensation scheme for firefighters and dependants of firefighters in Wales ("the Compensation Scheme") in consequence of the coming into force of the 2015 Scheme.

40. This Order also amends Schedule 1 to the Firefighters' Pension Scheme (Wales) Order 2007 (SI 2007/1072 (W. 110)). The amendments:

- clarify provisions in the 2007 Scheme;
- extend the period that members can elect to join the modified schemes, by identifying eligible members and extending the period for which they can make an election to pay additional pension contributions during the specified period in respect of their service during the specified period;
- clarify provisions relating to the payment of interest in respect of contributions payable during the period 6 April 2006 and the date that an eligible individual joined the standard 2007 Scheme;
- amend the commutation factors table set out in Annex ZA of the 2007 Scheme to reflect the commutation factors as on 31 March 2014;
- update provisions and terminology as a consequence of the coming into force of the 2015 Scheme;
- revise the 2007 Scheme pensionable pay bands to include a 1% annual uprating for the next four years from 1 April 2015.

41. The amendments update provisions as a consequence of the coming into force of the 2015 Scheme, to ensure that members of the 2015 Scheme, firefighters eligible to be members of the 2015 Scheme, and their qualifying survivors, receive compensation awards in the event of a qualifying injury or death in service in accordance with the Compensation Scheme.

42. Retained Duty System (RDS) firefighters are a group that is distinctly identifiable from regular firefighters in that they only attend a fire station when they receive an emergency callout or undertake other activities. They were historically precluded from membership of the 1992 Scheme but have been entitled to join the 2007 Scheme since 6th April 2006.

43. Following a series of appeals by retained firefighters to the Employment Tribunal and the House of Lords claiming access to the 1992 Scheme under the Part time Workers (Prevention of Less Favourable Treatment) Regulations (S.I.2000/1551), the 2007 Scheme was amended in December 2014 to introduce a 'modified section'. This is known as the "Modified Scheme" and provides individuals employed as retained firefighters during the period 1 July 2000 and 5 April 2006, with an opportunity to purchase pension benefits in respect of this employment. The benefits provided by the Modified Scheme are comparable to those that are available to members of the 1992 Scheme. Fire and rescue authorities have until 31 December 2015 to undertake and conclude, an options exercise to identify all those former and current employees with an entitlement to join the Modified Scheme; inform them of this entitlement to join; provide a quote advising them of the costs of purchasing their past service; and ultimately enrol those individuals who then elect to join into the Modified Scheme.

44. This Order extends the time available to fire and rescue authorities to complete the options exercise by 2 months, meaning that the new deadline will be 29 February 2016.

45. The Modified Scheme requires the application of interest to any retrospective pension or lump sum paid, and on any employee contributions paid in respect of purchasing past service. The current provisions regarding individuals who elect to convert special service to their standard membership, and are required to buy any break in scheme membership between 6 April 2006 and the date they joined the standard 2007 Scheme, did not address the interest payable during this period. Amending the 2007 Scheme provisions is required to reflect the original policy intention.

46. The amendments to the 2007 Scheme also correct a number of small errors in the commutation factor tables that apply to special members who retire. These corrections ensure that the original policy intention to provide special members with fixed commutation factors – that reflect those in the 1992 Scheme as at 31 March 2014 – is achieved.



## **Changes to the compensation scheme (Schedule 1)**

### **Amendment of Part 1 (interpretation)**

47. Part 1 provides definitions for specific terminology used within the Scheme's regulations. Paragraph 4 of Schedule 1 to this Order amends this part to:

- provide definitions for the additional terms used in respect of members of the 2015 Scheme;
- provide for the "normal pension age" in the 2015 Scheme to be determined by the 2013 Act (section 10), which is currently set at 60 years;
- correct an existing error so that it is clear that the "normal pension age" in relation to the 2007 Scheme is 60 years;
- Increase the scope of the definition of "pensionable service" so that it also applies to members of the 2015 Scheme. In addition, the amendments ensures that the provision encapsulates linked service accrued by members of the existing 1992 and 2007 Schemes who subsequently transfer into the 2015 Scheme on or after 1 April 2015;
- increase the scope of the definition of 'relevant service' so that it also applies to those individuals who have an entitlement to join the 2015 Scheme but did not make an election to join, in keeping with the current arrangements for persons who are eligible to be members of the 1992 or 2007 Schemes, who have not joined those schemes.

### **Amendment of Parts 2, 3, and 5 (injury awards and duty related compensation; awards on death)**

48. Paragraphs 5, 6 and 7 of Schedule 1 to this Order amend Parts 2, 3 and 4 of the Compensation Scheme, to ensure the following provisions apply to the members, or eligible members of the 2015 Scheme:

- 'compensation for death or permanent incapacity while on work',
- 'awards on death; spouses and civil partners', and
- 'awards on death; additional provisions.'

49. The amendments also make provision for the commutation of small compensation pensions payable to members of the 2015 Scheme.

### **Amendment of Parts 7 and 7A (servicemen and reservists)**

50. Paragraphs 8 and 9 of Schedule 1 to this Order amend Parts 7 and 7A of the Compensation Scheme to ensure that the compensation provisions relating to armed forces' 'reservists' and 'servicemen' also apply to members of the 2015 Scheme.

### **Amendment of Part 8 (special cases)**

51. Paragraph 10 of Schedule 2 to this Order amends Part 8 of the Compensation Scheme to ensure that the 'special cases' provisions also apply to volunteer members employed on or after 1st April 2015. As such, volunteer firefighters who suffer a qualifying injury on or after 1st April are to be treated as whole-time, regular firefighters for the purposes of calculating an injury award. This reflects the current application for volunteer firefighters in respect of the existing 1992 and 2007 Schemes.

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

52. Paragraph 11 of Schedule 1 to this Order amends Part 9 of the Compensation Scheme to apply the 'review, withdrawal and forfeiture of awards' provisions to members of 2015 Scheme. Part 9 makes provision for the reduction of a 2015 Scheme member's injury award where the permanent disablement that gives entitlement to the injury award has been caused, or contributed to, by the member's own default. This is in line with the current application for existing members of the 1992 and 2007 Schemes.

### **Amendment of Part 10 (payment of awards and financial provisions)**

53. The current 'prevention of duplication' provisions are extended to members of the 2015 Scheme as a result of the amendments at paragraph 12 of Schedule 1 to this Order to Part 10 of the Compensation Scheme. The amendments ensure that where a member of the 2015 Scheme has other separate employments as a firefighter that confer an additional entitlement to join one of the other firefighter pension schemes (namely, any one of the 1992, 2007 or 2015 Schemes), should they subsequently suffer a qualifying injury, they will not receive duplicate injury awards in respect of each employment. This reflects the current application of the provision to members of the existing 1992 and 2007 Schemes.

54. The amendments also ensure that, where a 2015 Scheme member dies from the effects of a qualifying injury whilst employed as a regular firefighter and retained firefighter, duplicate survivor benefits will not be payable. Where survivor benefits are payable from both the Compensation Scheme and the 2015 Scheme, only the survivor benefits from the 2015 Scheme will be payable. This reflects the current application of the provisions to members of the existing 1992 and 2007 Schemes in the same position.

### **Amendment of Schedule 1 (injury awards and duty related compensation)**

55. Paragraph 13 of Schedule 1 to this Order amends Schedule 1 to the Compensation Scheme ensure that where an individual is entitled to an injury award but is not an active member of the 2015 Scheme, the award is determined by reference to the person's 'relevant service'. Effectively, this is the service that the person would have accrued if they had become an active member of the 2015 Scheme.

56. The amendment also ensures that any service, in respect of the same/similar employment, prior to 1 April 2015, where the individual had an entitlement to join either the 1992 or 2007 Schemes, is also to be included as relevant service for the purposes of calculating any injury award entitlement. This reflects the current position for those individuals that have elected not to join the 1992 or 2007 Schemes.

#### **Amendment of Schedules 2, 3 and 4 (awards for spouses and civil partners, awards on death)**

57. The provisions in paragraphs 14, 15 and 16 of Schedule 1 to this Order ensure that the 'special pension', 'child's special allowance', and 'adult dependent relative's special pension' provisions apply in respect of deceased members of the 2015 Scheme. It also provides for the calculation of the 'special pension', 'child's special allowance' and 'adult dependent relative's special pension' on the basis of the deceased's relevant service where they had an entitlement to join the 2015 Scheme but did not elect to join. This reflects the current position for those individuals that have decided not to join the 1992 or 2007 Schemes.

#### **Changes to the Modified Section of the 2007 Scheme (Schedule 2)**

##### **Amendment of Part 1 (citation and interpretation)**

58. Paragraph 1 of Schedule 2 to this Order amends the 2007 Scheme to:

- introduce definitions for specific terminology used in respect of the 2015 Scheme;
- make provision for the 'limited period' to end on 1 April 2015 for those individuals that have no transitional protections and that are provisionally enrolled to the Modified Scheme; and for the 'limited period' to end on the date that they join the 2015 Scheme in respect of those provisionally enrolled members who have full or tapered protections;
- to clarify references in the definitions of special deferred member, special eligibility criteria, special firefighter member, and special pensioner member.

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

59. The amendments in paragraph 2 of Schedule 2 to this Order permit provisionally enrolled members to temporarily join the Modified Scheme. Part 2 is also amended to provide clarity that the retrospective award on ill-health retirement being referred to is paid under Part 3 of the 2007 Scheme regulations.

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

60. The amendments in paragraph 3 of Schedule 2 to this Order:

- provide clarity that interest should be payable on any pension contributions owing where a special member converts their standard service in the 2007 Scheme to special pensionable service in the Modified Scheme. This provision was previously inadvertently omitted;
- to make provision for individuals that have an eligibility to join the Modified Scheme to be provisionally enrolled for up to a maximum of 2 months, until 29 February 2016, to enable the responsible fire and rescue authority to conclude the options exercise of giving them the opportunity to make an election to join.

### ***Amendment of Part 15 (miscellaneous provisions)***

61. The provisions in paragraphs 4 of Schedule 2 to this Order correct an error in the commutation factors set out in Annex ZA of the 2007 Scheme so that they reflect the commutation factors of the 1992 Scheme as on 31 March 2014.

### **Amendments to the 2007 Scheme contribution bands (Schedule 3)**

62. Paragraphs 5 and 6 of Schedule 2 to this Order sets out the revised 2007 scheme pensionable pay bands including the 1% annual uprating for the next four years from 1 April 2015. The contribution bands for special members have also been uprated. The figures have been rounded down to the nearest pound to simplify the administration of the scheme. These amendments have been made to Annex A1 (pension contributions) and Annex AB1 (pension contributions for special members).

#### **• The Firefighters' Pension (Wales) Scheme (Contributions) (Amendment) Order 2015**

63. Article 3 of the Order sets out the revised 1992 Scheme pensionable pay bands to include the 1% annual uprating for the next four years from 1 April 2015. The figures have been rounded down to the nearest pound to simplify the administration of the scheme.

64. It is intended that -. (a) the Firefighters' Pension Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015 and the Firefighters' Pension (Wales) Scheme (Contributions) (Amendment) Order 2015 will come into force on 1 April 2015; and  
(b); the Firefighters' Compensation Scheme and Pension Scheme (Wales) (Amendment) Order 2015 will come into force on 31 March 2015;

### **Consultation**

65. Consultation was undertaken for four weeks from 9 February to 9 March 2015 with Chief Fire Officers, Chief Executives of local authorities, Welsh Local Government Association and representative bodies including the Fire Brigades Union, the Retained Firefighters' Union and the Association of Principal Fire Officers. Please refer to the Regulatory Impact Assessment consultation paragraph below for further information.

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

### **a) Options**

**Do Nothing** – The Public Services Pension Act 2013 provides for the establishment of new public service pension schemes from 1 April 2015. The 2013 Act provides that no benefits are to be provided under an existing scheme to or in respect of person in relation to the person's service after the closing date which for these regulations is 31 March 2015. If these statutory instruments were not established then serving firefighters in Wales would not have access to a public service pension scheme.

**Make the Legislation** – The statutory instruments will ensure serving firefighters in Wales are able to access to a pension scheme established under the Public Services Pension Act 2013.

### **b) Benefits**

The Transitional Regulations cover the detailed transitional arrangements for those current firefighter members who transfer across from either the 1992 Scheme or the 2007 Scheme to the 2015 scheme, either on 1 April 2015 or in the subsequent 7 years. In particular the Regulations cover:

- retirement pension
- ill-health benefits
- survivor benefits
- refunds of contributions
- transfers between different pension schemes.

### **c) Costs**

Costs for the firefighters' pension scheme in Wales are covered by employer and employee contributions, along with grant funding through Annual Managed Expenditure (AME) which is used to top up the difference between scheme income and expenditure, funded by HM Treasury. This procedure will not change when the new scheme is introduced from 1 April 2015.

## **Consultation**

66. This was the third consultation in respect of the introduction of the new Firefighters' Pension Scheme in Wales from April 2015 and was published on 9 February 2015 for 4 weeks to 9 March 2015; four responses were received to the consultation. The consultation sought views on whether the draft regulations met the transitional arrangements required to introduce the new scheme including the calculation of ill-health, new and old members' eligibility for compensatory benefits, additional time for enrolment onto the Modified Pension Scheme and proposals to uprate the pensionable pay bands in the 1992 and 2007 in line with the 2015 Scheme.

67. All four respondents were in agreement with each of the areas highlighted within the consultation document. Comments were expressed that the draft Regulations met the policy intention required and the ill health benefits calculations were correct for transition members. In terms of the Compensation

Scheme, all agreed the proposals would allow these benefits to be calculated on a consistent basis.

68. Three of the respondents noted the administrative burden of the Modified Scheme on Fire and Rescue Authorities and so welcomed the proposal to amend the scheme so that all outstanding cases that are still being processed on 31 March 2015 will be provisionally enrolled to the modified scheme on that date. The proposed amendment will provide authorities with an additional 6 months to finalise all those cases where the individual has been provisionally enrolled.

69. All respondents commented that for consistency purposes it would be appropriate for the pay bands for the 1992 and 2007 Schemes to be updated.

### **Welsh Government Response**

70. The Welsh Government has considered the responses to the consultation and remains committed to public service pension schemes which are affordable, sustainable and fair for public service workers. The draft Statutory Instruments attached to the consultation were incomplete at the consultation stage and the policy proposals were detailed within the consultation document. Based on the positive comments received to the consultation, the Statutory Instruments will be introduced as consulted on.

### **Competition Assessment**

71. Not applicable.

### **Post implementation review**

72. The Welsh Government will continue to review the Statutory Instruments, as advised by the Firefighters' Pension Scheme Advisory Board for Wales.

### **Equality Impact Assessment**

73. An equality impact assessment will be published on the Welsh Government Equality and Diversity webpage when the 2015 Scheme regulations are introduced.

# Agenda Item 4.2

## **Constitutional and Legislative Affairs Committee Draft Report CLA**

### **Title: The Firefighters' Compensation Scheme and Pension Scheme (Wales) (Amendment) Order 2015**

This Order amends Schedule 1 to the Firefighters' Compensation Scheme (Wales) Order 2007 (SI 2007/1073) which provides for a compensation scheme for firefighters and dependants of firefighters in Wales ("the Compensation Scheme"). The amendments to the Compensation Scheme set out in Schedule 1 to this Order are consequential on the coming into force of the Firefighter's Pensions Scheme (Wales) 2015 set out in the Firefighters' Pension (Wales) Regulations 2015 (SI 2015/622) for firefighters employed by fire and rescue authorities in Wales.

Further, this Order also amends Schedule 1 to the Firefighters' Pension Scheme (Wales) Order 2007 (SI 2007/1072) which set out the New Firefighters' Pension Scheme (Wales) ("the 2007 Scheme").

**Procedure:** Negative

### **Technical Scrutiny**

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### **Merits Scrutiny**

The following points are identified for reporting under Standing Order 21.3(ii) in respect of this instrument.

Section 11A(4) of the Statutory Instruments Act 1946, as inserted by paragraph 3 of Schedule 10 to the Government of Wales Act 2006 (which affords the rule that statutory instruments come into force at least 21 days from the date of laying) is breached for the introduction of the above-mentioned statutory instrument.

In a letter dated 31 March 2015 to the Presiding Officer, the Welsh Government's response was:

"... the Welsh Ministers have already made regulations establishing a new Pension Scheme for firefighters, from 1 April this year. This Scheme differs in two critical areas from that to be established in England. However,

the Regulations referred to in this correspondence, which deal with the transition of existing unprotected scheme members into a new 2015 Scheme, do not depend at all on the design of that new Scheme.

Furthermore, these Regulations deal in large measure with the terms of the Firefighters' Pension Scheme 1992, which predates devolution and on which there is little policy or legal expertise outside the UK Government.

Thus, the final versions of the Instruments made in England have been replicated with the only amendments made in Wales being to provide a Welsh language text, to reflect the Welsh SI format and to provide for gender-neutral drafting. This has meant significant delays in introducing the regulations as the final English regulations were not available to Welsh Government until 6 March 2015. In order for these to be in force for 1 April 2015 it is necessary to breach the 21 day rule. If the Orders were brought into force on a date later than 1 April 2015, under Section 18(1) of the 2013 Act this would mean that all scheme members would stop accruing pension benefits in the old Schemes. That would mean that members would need to be auto-enrolled into the new Pension Scheme by the next day including those who have protected rights to remain in their current Scheme."

## **Legal Advisers**

Constitutional and Legislative Affairs Committee

**April 2015**



**2015 No. 1013 (W. 69)**

**FIRE AND RESCUE  
SERVICES, WALES**

**PENSIONS, WALES**

**The Firefighters' Compensation  
Scheme and Pension Scheme  
(Wales) (Amendment) Order 2015**

**EXPLANATORY NOTE**

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

This Order amends Schedule 1 to the Firefighters' Compensation Scheme (Wales) Order 2007 (S.I. 2007/1073 (W. 111)) which provides for a compensation scheme for firefighters and dependants of firefighters in Wales ("the Compensation Scheme"). The amendments to the Compensation Scheme set out in Schedule 1 to this Order are consequential on the coming into force of the Firefighter's Pension Scheme (Wales) 2015 ("the 2015 Scheme") set out in the Firefighters' Pension (Wales) Regulations 2015 (S.I. 2015/622 (W. 50)) for firefighters employed by fire and rescue authorities in Wales.

This Order also amends Schedule 1 to the Firefighters' Pension Scheme (Wales) Order 2007 (S.I. 2007/1072 (W. 110)) which sets out the New Firefighters' Pension Scheme (Wales) ("the 2007 Scheme").

Some of the amendments made by article 3 of this Order have effect from 1 April 2014. The power to provide for an order to have effect from a date that is earlier than that on which it is made is conferred by section 34(3) of the Fire and Rescue Services Act 2004 (c. 21).

The main effects of the amendments made by Schedule 1 to this Order to the Compensation Scheme are the insertion of references to relevant provisions of the 2015 Scheme to ensure that the provisions of the Compensation Scheme apply to members of the 2015 Scheme, the 2007 Scheme and the Firefighters'

Pension Scheme (set out in Schedule 2 to S.I. 1992/129).

The main effects of the amendments made by Schedule 2 to this Order to the 2007 Scheme are to:

- (a) update provisions and terminology as a consequence of the coming into force of the 2015 Scheme;
- (b) make minor amendments to clarify references in the definitions of special deferred member, special eligibility criteria, special firefighter member, and special pensioner member;
- (c) clarify provisions relating to the payment of interest;
- (d) to extend the time available to fire and rescue authorities to complete the options exercise for the 'modified scheme' up to a maximum of 2 months. The 2007 Scheme was amended in December 2014 to introduce provisions enabling individuals employed as retained firefighters during the period 1 July 2000 to 5 April 2006, to purchase pension benefits in respect of this employment ("the Modified Scheme"). Fire and rescue authorities had until 31 December 2015 to undertake and conclude an options exercise to identify all those former and current employees with an entitlement to join the Modified Scheme. The provisions extend this time period by 2 months ;
- (e) amend the commutation factors table set out in Annex ZA to reflect the commutation factors as on 31 March 2014;
- (f) uprate the contribution bands by 1% per annum each year until 1 April 2018. Annex A1 of the 2007 Scheme sets out the contribution rates payable by members which are determined by reference to the applicable pensionable pay band. Annex AB1 sets out the contribution rates for special members. This Order amends both tables to provide an annual 1% uplift in the pay bands until 2018.

The Welsh Ministers' Code of Practice on the carrying out of a Regulatory Impact Assessment 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 Fire and Armed Forces Branch, Welsh Government, Rhydycar, Merthyr Tydfil, CF48 1UZ or by calling 0300 062 8221.

**2015 No. 1013 (W. 69)**

**FIRE AND RESCUE  
SERVICES, WALES**

**PENSIONS, WALES**

**The Firefighters' Compensation  
Scheme and Pension Scheme  
(Wales) (Amendment) Order 2015**

*Made*

*30 March 2015*

*Laid before the National Assembly for Wales*

*31 March 2015*

*Coming into force in accordance with article 1*

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' Compensation Scheme and Pension Scheme (Wales) (Amendment) Order 2015.

(2) Subject to paragraph (3), this Order comes into force on 31 March 2015.

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(1) 2004 c. 21. The powers conferred by sections 34 and 60 of the Fire and Rescue Services Act 2004 are now vested in Welsh Ministers so far as they are exercisable in relation to Wales. They were previously vested in the National Assembly for Wales by virtue of section 62 of that Act. 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. Section 34 was amended by paragraph 27 of Schedule 8 to the Public Service Pensions Act 2013 (c. 25).

(3) The amendments made by the following provisions come into force on 1 April 2015—

(a) article 2; and

(b) paragraphs 5 and 6 of Schedule 2 to this Order and article 3 so far as it relates to those paragraphs.

(4) The amendments made by paragraphs 1, 2(1) and (3), 3(1) and (2) and 4 of Schedule 2 to this Order, and by article 3 so far as it relates to those paragraphs, have effect from 1 April 2014<sup>(1)</sup>.

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

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

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

3. Schedule 1 to the Firefighters' Pension Scheme (Wales) Order 2007<sup>(3)</sup> is amended in accordance with Schedule 2 to this Order.

*Leighton Andrews*

Minister for Public Services, one of the Welsh Ministers

30 March 2015

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- (1) See section 34(3) of the Fire and Rescue Services Act 2004 (c. 21). An order made under this section may take effect from a date which is earlier than that on which the order is made.
- (2) S.I. 2007/1073 (W. 111) amended by S.I. 2014/3256 (W. 331).
- (3) 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), 2014/523 (W. 64) and 2014/3254 (W. 330).

## Amendment of the Firefighters’ Compensation Scheme (Wales) Order 2007

### Amendment of Part 1 (general provisions)

1.—(1) Part 1 is amended as follows.

(2) In rule 2(1) (interpretation)—

(a) at the appropriate places insert—

□“the 2015 Regulations” means the Firefighters’ Pension Scheme (Wales) Regulations 2015<sup>(1)</sup>;□;

□“the 2015 Scheme” means the Firefighters’ Pension Scheme 2015 set out in the 2015 Regulations;□;

□“active member of the 2015 Scheme” has the meaning given in regulation 28 (active membership) of the 2015 Regulations;”;

□“active member’s account” means the account established under regulation 40 (establishment of active member’s account) of the 2015 Regulations;□;

□“eligible child’s pension” has the meaning given in regulation 91 (eligible child’s pension) of the 2015 Regulations;”;

□“final pay” has the meaning given in regulation 102 (meaning of “final pay”) of the 2015 Regulations;□;

□“member of the 2015 Scheme” has the same meaning as “member” in regulation 3 (interpretation) of the 2015 Regulations;□;

□“scheme employment” has the meaning given in regulation 15 (scheme employment) of the 2015 Regulations;□;

(b) for the definition of “normal pension age” substitute—

□“normal pension age” in relation to employees of a fire and rescue authority appointed on terms under which they are or may be required to engage in firefighting—

(a) in relation to the 1992 Scheme, means 55;

(b) in relation to the 2007 Scheme, means 60;

(c) in relation to the 2015 Scheme, means 60<sup>(2)</sup>;□;

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(1) S.I. 2015/622 (W. 50).

(c) in the definition of “pensionable pay”, for sub-paragraph (c) substitute—

□(c)in relation to a person who is a member of the 2015 Scheme, shall be construed in accordance with regulation 26 (pensionable pay) of the 2015 Regulations;

(d) in the case of a person who is not a member of any of these schemes, shall be construed in accordance with rule 11 of this Part;□;

(d) in the definition of “pensionable service”, at the end insert—

□(c)in relation to the 2015 Scheme, means the continuous period of pensionable service, in relation to an active member’s account for the scheme employment in respect of which the award under this scheme is payable and any of the following types of service that have been added to, or transferred to, that account—

(i) if applicable, any periods of pensionable service in relation to the 1992 Scheme or the 2007 Scheme that relate to the person’s employment which is the same as, or most similar to, the employment in respect of which the award is payable;

(ii) if applicable, any periods of pensionable service relating to any transfer value payments accepted under Part 10 (transfers) of the 2015 Regulations in respect of the person’s accrued rights under another occupational pension scheme;

(iii) if applicable, any periods of service relating to any pension account entries transferred in accordance with regulation 158 (transfer of pension account entries) of the 2015 Regulations; and

(iv) if applicable, any periods of service relating to an added pension account established under regulation 47 (establishment of added pension account) of the 2015 Regulations relating to the member’s scheme employment in

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(2) See section 10(2) of the Public Service Pensions Act 2013 (c. 25).

respect of which the award is payable, such periods of service are to be calculated in accordance with such guidance as is provided for the purpose by the Government Actuary;□;

- (e) for the definition of “relevant service” substitute—

□“relevant service”, except in rule 1 of Part 7 (servicemen) and rule 1 of Part 7A (reservists), means service which either was, or would have been, reckonable as pensionable service but for—

- (a) an election under rule G3 of the 1992 Scheme;
- (b) an election under rule 5 of Part 2 of the 2007 Scheme;
- (c) the exercise of an option not to become an active member of the 2015 Scheme in accordance with Chapter 2 (pensionable service) of Part 3 of the 2015 Regulations;
- (d) a failure to elect under—
  - (i) rule G2A(1) of the 1992 Scheme;
  - (ii) rule 4 of Part 11 of the 2007 Scheme; or
  - (iii) regulation 122(3) (contributions during child-related leave) of the 2015 Regulations; or
- (e) a failure to exercise an option to become an active member of the 2015 Scheme in accordance with regulation 21 (opting into this scheme) of the 2015 Regulations;□.

- (3) In rule 11(1) (determining pensionable pay in certain cases)—

- (a) after the words “the 2007 Scheme”, where they occur for the first time, insert “or the 2015 Scheme”;
- (b) for sub-paragraph (c) substitute—
  - (c)regulation 26 of the 2015 Regulations in the case of a person who—
    - (i) exercised an option not to become an active member of the 2015 Scheme in accordance with Chapter 2 of Part 3 of the 2015 Regulations; or
    - (ii) did not exercise an option to become an active member of the

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(1) Rule G2A was inserted by S.I. 2004/1912 and amended by S.I. 2006/1672 (W. 160).

2015 Scheme in accordance with regulation 21 of the 2015 Regulations;

(d) rule 1 of Part 11 of the 2007 Scheme, where an election had been made at different times under the 1992 Scheme and the 2007 Scheme;

(e) except where sub-paragraph (d) applies, regulation 26 of the 2015 Regulations, in the case of a person who had at different times, in relation to all of the schemes (namely, the 1992 Scheme, the 2007 Scheme and the 2015 Scheme), or a combination of any two of them—

(i) made an election referred to in sub-paragraph (a) or sub-paragraph (b); or

(ii) exercised or not exercised an option referred to in sub-paragraph (c),

as the case may be.□;

(c) after paragraph (3) insert—

□(3A) Where, in accordance with paragraph (1), the definition of pensionable pay is to be construed in the case of a person in accordance with the 2015 Scheme, the award must be calculated on the basis of the pay which would have been the final pay if the person had not, in respect of sub-paragraph (c)(i), exercised an option, or in respect of sub-paragraph (c)(ii) failed to exercise an option.□

#### **Amendment of Part 2 (injury awards and duty related compensation)**

2.—(1) Part 2 is amended as follows.

(2) In rule 3 (compensation for death or permanent incapacity while on duty), in paragraph (8), after “the 2007 Scheme” insert “or the 2015 Scheme”.

(3) In rule 4 (commutation of small compensatory pensions), in paragraph (1)(b), after “the 2007 Scheme (pension credit member’s entitlement to pension)” insert “or regulation 114 of the 2015 Regulations (entitlement to pension credit members’ pension)”.

#### **Amendment of Part 3 (awards on death: spouses and civil partners)**

3.—(1) Part 3 is amended as follows.

(2) In rule 1 (special award for spouse or civil partner)—

(a) in paragraph (3)—



- (i) for “or, as the case may be, his final pensionable pay”, in each place where the words occur, substitute “or the deceased’s final pensionable pay or the deceased’s final pay, as the case may be”;
  - (ii) in paragraph (3)(a)(ii), after “the 2007 Scheme (ill health award)” insert “or regulation 74 of the 2015 Regulations”;
  - (b) in paragraph (4), for “as the case may be, his final pensionable pay” substitute “the deceased’s final pensionable pay or the deceased’s final pay, as the case may be”.
- (3) In rule 4 (limitation where spouse or civil partner is living apart), for paragraph (1A) substitute—
- (1A) Paragraph (1) does not apply to a person—
- (a) who is a member of the 2007 Scheme;
  - (b) who first takes up employment with a fire and rescue authority on or after 6 April 2006 and is entitled to be a member of the 2007 Scheme but elects not to pay pension contributions;
  - (c) who is a member of the 2015 Scheme; or
  - (d) who is eligible to be an active member of the 2015 Scheme and—
    - (i) exercises an option not to become an active member of that scheme in accordance with Chapter 2 of Part 3 of the 2015 Regulations; or
    - (ii) does not exercise an option to become an active member of that scheme in accordance with regulation 21 of the 2015 Regulations.□
- (4) In rule 5 (effect of new relationship), for paragraph (3) substitute—
- (3) Paragraphs (1) and (2) do not apply to a person—
- (a) who is a member of the 2007 Scheme;
  - (b) who first takes up employment with a fire and rescue authority on or after 6 April 2006 and is entitled to be a member of the 2007 Scheme, but elects not to pay pension contributions;
  - (c) who is a member of the 2015 Scheme; or
  - (d) who is eligible to be an active member of the 2015 Scheme and—
    - (i) exercises an option not to become an active member of that scheme

in accordance with Chapter 2 of Part 3 of the 2015 Regulations; or

- (ii) does not exercise an option to become an active member of that scheme in accordance with regulation 21 of the 2015 Regulations.□

(5) In rule 6 (amount of survivor's pension: special cases), for paragraph (1) substitute—

□(1) This rule applies in relation to a person—

- (a) who is a member of the 2007 Scheme on the day on which the person dies;
- (b) in respect of whom an election under rule 5(1) of Part 2 of the 2007 Scheme not to make pension contributions has effect on the day on which the person dies;
- (c) who is a member of the 2015 Scheme on the day on which the person dies; or
- (d) who is eligible to be an active member of the 2015 Scheme and—
  - (i) has exercised an option not to become an active member of that scheme in accordance with Chapter 2 of Part 3 of the 2015 Regulations which has effect on the day on which the person dies; or
  - (ii) has not exercised an option to become an active member of that scheme in accordance with regulation 21 of the 2015 Regulations on the day on which the person dies.□

**Amendment of Part 5 (awards on death: additional provisions)**

4. In Part 5, in rule 5 (increase of pensions and allowances during first 13 weeks)—

- (a) at the end of paragraph (2)(c) insert—

□and

- (d) any eligible child's pension under the 2015 Regulations,□;
- (b) in paragraph (5), after “the 2007 Scheme” insert “or an eligible child's pension under the 2015 Regulations”; and
- (c) in paragraph (7), after “the 2007 Scheme” insert “or the 2015 Scheme”.

### **Amendment of Part 7 (servicemen)**

5. In Part 7, in rule 2 (awards to servicemen), in paragraph (3)(b), after “the 2007 Scheme” insert “or the 2015 Scheme”.

### **Amendment of Part 7A (reservists)**

6.—(1) Part 7A is amended as follows.

(2) In rule 1 (interpretation of Part 7A), in paragraph (1)(a)(ii), after “the 2007 Scheme” insert “or the 2015 Scheme”.

(3) In rule 2 (awards to reservists)—

(a) in paragraph (2), for “has effect” substitute “and regulation 65 (entitlement to lower tier ill-health pension and higher tier ill-health pension) of the 2015 Regulations have effect”;

(b) for paragraph (3)(a) substitute—

□(a) pay the reservist, instead of an ill-health pension under rule 2 of Part 3 of the 2007 Scheme or under regulation 65 of the 2015 Regulations, a pension at the rate of one twelfth of the reservist’s final pensionable pay or final pay, as the case may be, and □.

(4) In rule 3 (awards on death of reservists), at the end of paragraph (2) insert “or increase any pension or eligible child’s pension payable under Chapter 3 of Part 6 of the 2015 Regulations.”

### **Amendment of Part 8 (special cases)**

7. In Part 8, in rule 2 (award for or in relation to a volunteer firefighter)—

(a) in paragraph (1), after “the 2007 Scheme” insert “or the 2015 Scheme”;

(b) for paragraph (3) substitute—

□(3) The following provisions apply in relation to the awards to which a person, by virtue of paragraph (2), may be entitled:

(a) rules B7 (commutation), B9 (allocation) and B10 (limitation of commuted or allocated portion) of the 1992 Scheme;

(b) rule 9 (commutation: general) or rule 11 (allocation of pension) of Part 3 of the 2007 Scheme;

(c) regulation 118 (commutation of part of pension) or Chapter 6 (allocation of part of pension) of Part 5 of the 2015 Regulations. □;

(c) for paragraph (4) substitute—

□(4) Subject to paragraph (4A)—

- (a) a person to whom paragraph (1) applies must be treated for the purposes of rule B3 (ill-health awards) of the 1992 Scheme as having been a regular firefighter falling within the description in paragraph (10) below; and rules B7 (commutation), B9 (allocation), B10 (limitation of commuted or allocated portion), K1 (review of ill-health and certain deferred pensions), K1A (consequences of review) and K3 (reduction in case of default) of the 1992 Scheme apply accordingly in relation to the awards to which the person is thus entitled;
- (b) if a person to whom paragraph (1) applies—
  - (i) has become a member of the 2007 Scheme, rule 9 or 11 of Part 3 of the 2007 Scheme, rule 1 of Part 9 of that Scheme (review of ill-health pension) and rule 2 of that Part (consequences of review) apply accordingly in relation to the awards to which the person is thus entitled;
  - (ii) has become a member of the 2015 Scheme, regulation 109 (commutation of part of pension), Chapter 6 (allocation of part of pension) of Part 5, regulation 77 (review of ill-health award or early payment of retirement pension) and regulation 78 (consequences of review) of the 2015 Regulations apply accordingly in relation to the awards to which the person is thus entitled.□; and
- (d) in paragraph (4A)—
  - (i) after the words “the 2007 Scheme”, where they occur for the first time, insert “or the 2015 Scheme”;
  - (ii) after the words “the 2007 Scheme (award on ill-health retirement)” insert “or under regulation 74 (entitlement to lower tier ill-health pension and higher tier ill-health pension) of the 2015 Regulations”.

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

8. In Part 9 (review, withdrawal and forfeiture of awards), in rule 2 (reduction of award in case of default)—

- (a) after paragraph (2)(b)(ii) insert—
  - (iii) if the person is a member of the 2015 Scheme, their state pension age, or 65 if that is higher<sup>(1)</sup>,□;
- (b) in paragraph (3), after “the 2007 Scheme” insert “or Chapter 7 of Part 4 of the 2015 Regulations”.

**Amendment of Part 10 (payment of awards and financial provisions)**

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

(2) In rule 3 (prevention of duplication)—

- (a) in paragraph (1)(b), after “the 2007 Scheme” insert “or the 2015 Scheme”;
- (b) in paragraph (2)—
  - (i) in sub-paragraph (a), for “or rule 11 of the 2007 Scheme” substitute “, rule 11 of Part 3 of the 2007 Scheme or Chapter 6 of Part 5 of the 2015 Regulations”;
  - (ii) in sub-paragraph (b), after “2007 Scheme (pension credit member’s entitlement to pension)” insert “or regulation 114 (entitlement to pension credit members’ pension) of the 2015 Regulations”; and
  - (iii) in sub-paragraph (c), after “2007 Scheme (guaranteed minimum pensions)” insert “or regulation 175 (guaranteed minimum pension) of the 2015 Regulations”;
- (c) in paragraph (3), for “as the case may be, rule 4 of Part 14 of the 2007 Scheme” substitute “rule 4 of Part 14 of the 2007 Scheme, or regulation 17 (service in two or more scheme employments) and regulation 18 (application of Chapter 2 – Pensionable service) of the 2015 Regulations, as the case may be”; and
- (d) in paragraph (4)(a), at the end insert—
  - (m) under regulation 67 or 74 of the 2015 Regulations, a retirement pension or a lower tier ill-health pension or a higher tier ill-health pension, or□.

(3) In rule 4 (prevention of duplication: other injury awards)—

- (a) in paragraph (1), at the appropriate place insert—
  - “regulation 74 award” means an entitlement to a lower tier ill-health pension or a higher tier ill-health pension under regulation 74 of the 2015 Regulations;”;

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(1) See section 10 of the Public Service Pensions Act 2013 (c. 25) for meaning of “state pension age”.

(b) in paragraph (2)(b)(i), after “a rule 2 award,” insert “a regulation 74 award,”;

(c) in paragraphs (3) and (4), for “or, as the case may be, the rule 2 award”, in each place where the words occur, substitute “or the rule 2 award or the regulation 74 award, as the case may be,”.

(4) In rule 5 (prevention of duplication: other awards for spouses or children of persons who are both regular and retained firefighters), after paragraph (3)(l) insert—

- (m) a surviving partner’s pension under regulations 87, 88 or 89 of the 2015 Regulations,
- (n) a surviving partner’s bereavement pension under regulation 90 of the 2015 Regulations,
- (o) an eligible child’s pension under regulations 95, 96 or 97 of the 2015 Regulations,
- (p) an eligible child’s bereavement pension under regulation 101 of the 2015 Regulations,
- (q) a lump sum payable on death under regulations 105 and 106 of the 2015 Regulations.□

#### **Amendment of Schedule 1 (injury awards and duty-related compensation)**

**10.**—(1) Schedule 1 is amended as follows.

(2) In Part 1 (calculation of awards for full-time service)—

(a) after paragraph 1 insert—

□**1A.**—(1) In the event that an award becomes payable in respect of a qualifying injury sustained in the course of employment in relation to which a person is or is eligible to be an active member in the 2015 Scheme, “relevant service” in the Table means the total of—

- (a) any relevant service in relation to the 2015 Scheme that relates to the person’s scheme employment which is the same as, or most similar to, the scheme employment in respect of which the award is payable; and
- (b) if applicable, any relevant service in relation to the 1992 Scheme or the 2007 Scheme that relates to the person’s employment which is the same as, or most similar to, the employment in respect of which the award is payable.

(2) In the event that an award is payable to a person who is not an active member of the 2015 Scheme, or has elected not to make pension contributions under the 2007 Scheme or the 1992 Scheme, when calculating an award payable under this scheme, the person's 'relevant service' is determined according to the pension scheme the person would have been eligible to be a member of when they sustained the qualifying injury.

(3) In sub-paragraph (2), "eligible to be a member" means a person's eligibility to be a member of any of the 1992 Scheme, the 2007 Scheme and the 2015 Scheme, pursuant to rule A3 (exclusive application to regular firefighters) of the 1992 Scheme, rule 1 of Part 2 of the 2007 Scheme or regulation 16 of, or Schedule 2 to, the 2015 Regulations, as the case may be.□;

- (b) in paragraph 1, in the headings in the Table, for "or, as the case may be, final pensionable pay" in both places where the words occur substitute "final pensionable pay or final pay, as the case may be";
- (c) in paragraph 2(1), after "the 2007 Scheme" insert "or regulation 74 of the 2015 Regulations";
- (d) in paragraph 2(2), after "the 2007 Scheme"—
  - (i) where the words occur for the first time, insert "or the exercise of an option not to become an active member of the 2015 Scheme in accordance with Chapter 2 of Part 3 of the 2015 Regulations";
  - (ii) where the words occur for the second time, insert "or regulation 122(3) of the 2015 Regulations or failed to exercise an option to become an active member of the 2015 Scheme in accordance with regulation 21 of the 2015 Regulations";
- (e) in paragraph 2(3)(a), after "the 2007 Scheme" insert "or regulation 118 (commutation of part of pension) or Chapter 6 (allocation of part of pension) of Part 5 of the 2015 Regulations".

(3) In Part 2 (calculation of awards for part-time service)—

- (a) in paragraph 2(1), for "or, as the case may be, the final pensionable pay" substitute "final pensionable pay or final pay, as the case may be";
- (b) after paragraph 2(2) insert—

□(3) Where the person is or is eligible to be an active member in the 2015 Scheme, "relevant service" in B, C and D means the total of the service referred to in paragraph 1A(1)(a) and (b) of Part 1 of Schedule 1.□

(4) In Part 3 (calculation of awards for retained or volunteer service), in paragraph 1, for “paragraph 1” substitute “the table in paragraph 1 of Part 1 of this Schedule”.

**Amendment of Schedule 2 (awards for spouses and civil partners)**

**11.**—(1) Schedule 2 is amended as follows.

(2) In Part 1 (special pension)—

- (a) in paragraph 1, for “or, as the case may be, final pensionable pay” substitute “final pensionable pay or final pay, as the case may be”;
- (b) in paragraph 2—
  - (i) in sub-paragraph (1), for “or, as the case may be, the final pensionable pay” substitute “, the final pensionable pay or the final pay, as the case may be”;
  - (ii) after sub-paragraph (2) insert—

□(3) Where the person is or is eligible to be an active member in the 2015 Scheme, “relevant service” in B, C and D means the total of the service referred to in paragraph 1A(1)(a) and (b) of Part 1 of Schedule 1.□;

(c) after paragraph 3(2) insert—

□(3) Where the person is or is eligible to be an active member in the 2015 Scheme, “relevant service” in C means the total of the service referred to in paragraph 1A(1)(a) and (b) of Part 1 of Schedule 1.□

(3) In Part 2 (award for surviving spouse of post-retirement marriage where deceased is a member of the 1992 Scheme but not a member of the 2007 Scheme), in paragraph 1(1)(b), after “2007 Scheme” insert “or the 2015 Scheme”.

**Amendment of Schedule 3 (awards on death: children)**

**12.** In Part 1 (child’s special allowance) of Schedule 3—

- (a) in paragraph 1, for “or, as the case may be, his final pensionable pay” substitute “, the deceased’s final pensionable pay or final pay, as the case may be”;
- (b) in paragraph 4(2), for “or, as the case may be, the final pensionable pay”, substitute “, the final pensionable pay or the final pay, as the case may be,”;
- (c) in paragraph 5—
  - (i) the existing provision becomes sub-paragraph (1);



(ii) after sub-paragraph (1) insert—

□(2) Where the person is or is eligible to be an active member in the 2015 Scheme, “relevant service” in C means the total of the service referred to in paragraph 1A(1)(a) and (b) of Part 1 of Schedule 1.□

**Amendment of Schedule 4 (awards on death: additional provisions)**

**13.** In Part 1 (adult dependent relative’s special pension) of Schedule 4—

(a) in paragraphs 1, 2 and 3, for “or, as the case may be, his final pensionable pay”, in each place where the words occur, substitute “, final pensionable pay or final pay, as the case may be”;

(b) in paragraph 4—

(i) after “final pensionable pay” insert “or final pay”;

(ii) the existing provision becomes sub-paragraph (1);

(iii) after sub-paragraph (1) insert—

□(2) Where the person is or is eligible to be an active member in the 2015 Scheme, “relevant service” in C means the total of the service referred to in paragraph 1A(1)(a) and (b) of Part 1 of Schedule 1.□

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

## Amendment of Part 1 (citation and interpretation)

### 1. In Part 1, in rule 2(1) (interpretation)—

#### (a) at the appropriate places insert—

□“the 2015 Regulations” (“*Rheoliadau 2015*”) means the Firefighters’ Pension Scheme (Wales) Regulations 2015<sup>(1)</sup> which established the Firefighters’ Pension Scheme (Wales) 2015;□;

□“full protection member of this Scheme” (“*aelod diogelwch llawn o’r Cynllun hwn*”) means a person who is a full protection member of this Scheme by virtue of paragraph 9 of Schedule 2 to the 2015 Regulations;□;

□“provisionally enrolled member” (“*aelod cofrestredig dros dro*”) has the meaning given in rule 1(11) of Part 2;□;

□“tapered protection member of this Scheme” (“*aelod diogelwch taprog o’r Cynllun hwn*”) means a person who is a tapered protection member of this Scheme by virtue of paragraph 15 of Schedule 2 to the 2015 Regulations;□;

#### (b) for the definition of “limited period” substitute—

□“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—

#### (a) the earlier of—

(i) 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, and

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

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(1) S.I. 2015/622 (W. 50).

- (b) in the case of a person who joins this Scheme as a provisionally enrolled member on 31 March 2015 and who on or after 1 April 2015—
  - (i) does not become a full protection member of this Scheme or a tapered protection member of this Scheme, 31 March 2015,
  - (ii) becomes a full protection member of this Scheme, the date on which that person joins this Scheme as a special member,
  - (iii) becomes a tapered protection member of this Scheme, the earlier of the date the person joins this Scheme as a special member, and the member's tapered protection closing date, within the meaning given in paragraph 3 of Schedule 2 to the 2015 Regulations;□;
- (c) in the definition of “special deferred member”, for “1A(5) to (8)” substitute “1A(6) to (9)”;
- (d) in the definition of “special eligibility conditions”, for “has the meaning given” substitute “means the conditions specified”;
- (e) in the definition of “special firefighter member”, for “1A(1) to (4)” substitute “1A(1) to (5)”;
- (f) in the definition of “special pensioner member”, for “1A(9) to (13)” substitute “1A(10) to (14)”.

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

2.—(1) Part 2 is amended as follows.

(2) In rule 1 (scheme membership), after paragraph (10) insert—

□(11) A person is a provisionally enrolled member of this Scheme if the person—

- (a) satisfies the conditions in rule 6C(2) of Part 11; and
- (b) is not eligible to become a provisionally enrolled member pursuant to rule 6C(3) of Part 11.□

(3) In rule 2A(2) (special eligibility conditions), after “(retrospective award on ill-health retirement)” insert “of Part 3”.

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

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

(2) In rule 6A (election to purchase service during the limited period)—

- (a) in paragraph (2) of the English text, before “which they are” insert “to”; and
- (b) after paragraph (13) insert—

□(14) In respect of the pension contributions referred to at paragraph (12), interest is payable in respect of contributions payable from and including 6 April 2006 until the date on which the person joins this Scheme as a standard member (“the assumed standard period”).

(15) Interest is payable in respect of the pension contribution required to be paid in respect of a special member’s service during the assumed standard period as follows—

- (a) for the purposes of calculating interest under this paragraph, it must be assumed that in respect of the assumed standard period, pension contributions were payable by monthly periodic contributions from the date that the member’s first standard monthly contribution would have been paid;
- (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 assumed standard 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(1) 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 assumed standard 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—

“assumed standard period pension contributions” (“*cyfraniadau pensiwn cyfnod safonol tybiedig*”) means the pension contribution payable in respect of a special member’s service during the assumed standard period under rule 6A of Part 11;

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

- (a) in the case of a lump sum contribution, the date when the lump sum is paid; and
- (b) in the case of payment of the assumed standard 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%;

“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. □

(3) In rule 6B (election to purchase service during the limited period: supplemental provision), at the end of paragraph (12) insert “except where an election is made by a provisionally enrolled member, in which case, the election may not take effect after 29 February 2016”.

(4) After rule 6B insert—

**□ Election to purchase service: provisional enrolment**

**6C.**—(1) Subject to paragraph (3), a person who satisfies the conditions in paragraph (2) of this rule joins this Scheme as a provisionally enrolled member on 31 March 2015.

(2) The conditions are that—

(a) on or before 31 March 2015—

- (i) the person has been notified by the authority, that they may be entitled to join this Scheme as a special member, pursuant to rule 5A(4) of this Part; or
- (ii) the authority, referred to at rule 5A(4) of this Part, has received from the person an application for a statement of service, pursuant to rule 5A(5) of this Part.

(3) A person cannot become a provisionally enrolled member if, on or before 31 March 2015, the person—

- (a) has become a special member of this Scheme;
- (b) has informed the authority that they do not want to elect to join this Scheme as a special member; or
- (c) has been notified by the authority that they are no longer eligible to join this Scheme as a special member.

(4) On or before 31 May 2015 the authority must give a provisionally enrolled member a notice as referred to under rule 5A(13) of this Part, unless the authority has already provided the person with such a notice.

(5) Subject to rule 6B(12) of this Part, if a provisionally enrolled member—

- (a) gives the authority written notice of their election to pay mandatory special period pension contributions in respect of their service during the mandatory special period under rule 6A of this Part, the election takes effect on the day on which the notice of election is received by the authority, and the person ceases to be a provisionally enrolled member of this Scheme and becomes a special member of this Scheme;
- (b) does not give the authority written notice on or before 29 February 2016 of their election to pay mandatory special period pension contributions in respect of their service during the mandatory special period under rule 6A of this Part, the person ceases to be a provisionally enrolled member of this Scheme.□

**Amendment of Annex ZA (commuted portion: special members)**

4. In Annex ZA, for the Table substitute—

□ Year s	Age in years and completed months on day pension commences											
	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	21.0	21.0	21.0	21.0	20.9	20.9	20.9	20.9	20.8
55	20.8	20.8	20.8	20.7	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	18.7	18.7	18.7	18.6	18.6	18.6	18.5	18.5	18.5
61	18.4	18.4	18.4	18.3	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	17.4	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)**

5. For the Table in paragraph 5 of Annex A1 substitute the following Table—

<i>“Pensionable pay</i>	<i>Contribution rate from 1 April 2015 to 31 March 2016 (percentage of pensionable pay)</i>
Up to and including £15,150	8.5%
More than £15,150 and up to and including £21,210	9.4%
More than £21,210 and up to and including £30,300	10.4%
More than £30,300 and up to and including £40,400	10.9%
More than £40,400 and up to and including £50,500	11.2%
More than £50,500 and up to and including £60,600	11.3%
More than £60,600 and up to and including £101,000	11.7%
More than £101,000 and up to and including £121,200	12.1%
More than £121,200	12.5%

<i>Pensionable pay</i>	<i>Contribution rate from 1 April 2016 to 31 March 2017 (percentage of pensionable pay)</i>
Up to and including £15,301	8.5%
More than £15,301 and up to and including £21,422	9.4%
More than £21,422 and up to and including £30,603	10.4%
More than £30,603 and up to and including £40,804	10.9%
More than £40,804 and up to and including £51,005	11.2%
More than £51,005 and up to and including £61,206	11.3%
More than £61,206 and up to and including £102,010	11.7%
More than £102,010 and up to and including £122,412	12.1%
More than £122,412	12.5%

<i>Pensionable pay</i>	<i>Contribution rate from 1 April 2017 to 31 March 2018 (percentage of pensionable pay)</i>
Up to and including £15,454	8.5%
More than £15,454 and up to and including £21,636	9.4%
More than £21,636 and up to and including £30,909	10.4%
More than £30,909 and up to and including £41,212	10.9%
More than £41,212 and up to and including £51,515	11.2%
More than £51,515 and up to and including £61,818	11.3%
More than £61,818 and up to and including £103,030	11.7%
More than £103,030 and up to and including £123,636	12.1%
More than £123,636	12.5%

<i>Pensionable pay</i>	<i>Contribution rate from 1 April 2018 (percentage of pensionable pay)</i>
Up to and including £15,609	8.5%
More than £15,609 and up to and including £21,852	9.4%
More than £21,852 and up to and including £31,218	10.4%
More than £31,218 and up to and including £41,624	10.9%



More than £41,624 and up to and including £52,030	11.2%
More than £52,030 and up to and including £62,436	11.3%
More than £62,436 and up to and including £104,060	11.7%
More than £104,060 and up to and including £124,872	12.1%
More than £124,872	12.5%”.

**Amendment of Annex AB1 (pension contributions for special members)**

6.—(1) In the Table in paragraph 6 of Annex AB1, in the heading of the fourth column, after “2014” insert “to 31 March 2015”.

(2) After the Table in paragraph 6 of Annex AB1 insert—

<i>“Pensionable pay</i>	<i>Contribution rate from 1 April 2015 to 31 March 2016 (percentage of pensionable pay)</i>
Up to and including £15,150	11.0%
More than £15,150 and up to and including £21,210	12.2%
More than £21,210 and up to and including £30,300	14.2%
More than £30,300 and up to and including £40,400	14.7%
More than £40,400 and up to and including £50,500	15.2%
More than £50,500 and up to and including £60,600	15.5%
More than £60,600 and up to and including £101,000	16.0%
More than £101,000 and up to and including £121,200	16.5%
More than £121,200	17.0%

<i>Pensionable pay</i>	<i>Contribution rate from 1 April 2016 to 31 March 2017 (percentage of pensionable pay)</i>
Up to and including £15,301	11.0%
More than £15,301 and up to and including £21,422	12.2%
More than £21,422 and up to and including £30,603	14.2%
More than £30,603 and up to and including £40,804	14.7%
More than £40,804 and up to and including £51,005	15.2%
More than £51,005 and up to and including £61,206	15.5%
More than £61,206 and up to and including £102,010	16.0%

More than £102,010 and up to and including £122,412	16.5%
More than £122,412	17.0%

<i>Pensionable pay</i>	<i>Contribution rate from 1 April 2017 to 31 March 2018 (percentage of pensionable pay)</i>
Up to and including £15,454	11.0%
More than £15,454 and up to and including £21,636	12.2%
More than £21,636 and up to and including £30,909	14.2%
More than £30,909 and up to and including £41,212	14.7%
More than £41,212 and up to and including £51,515	15.2%
More than £51,515 and up to and including £61,818	15.5%
More than £61,818 and up to and including £103,030	16.0%
More than £103,030 and up to and including £123,636	16.5%
More than £123,636	17.0%

<i>Pensionable pay</i>	<i>Contribution rate from 1 April 2018 (percentage of pensionable pay)</i>
Up to and including £15,609	11.0%
More than £15,609 and up to and including £21,852	12.2%
More than £21,852 and up to and including £31,218	14.2%
More than £31,218 and up to and including £41,624	14.7%
More than £41,624 and up to and including £52,030	15.2%
More than £52,030 and up to and including £62,436	15.5%
More than £62,436 and up to and including £104,060	16.0%
More than £104,060 and up to and including £124,872	16.5%
More than £124,872	17.0%”.

**EXPLANATORY MEMORANDUM TO THE FIREFIGHTERS' PENSION SCHEME (WALES) (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) REGULATIONS 2015; THE FIREFIGHTERS' COMPENSATION SCHEME AND PENSION SCHEME (WALES) (AMENDMENT) ORDER 2015; THE FIREFIGHTERS' PENSION (WALES) SCHEME (CONTRIBUTIONS) (AMENDMENT) ORDER 2015**

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 Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015, the Firefighters' Compensation Scheme and Pension Scheme (Wales) (Amendment) Order 2015 and the Firefighters' Pension (Wales) Scheme (Contributions) (Amendment) Order 2015. I am satisfied the benefits of making these Statutory Instruments outweigh any costs.

**Leighton Andrews AM**  
**Minister for Public Services**  
**DATE**

## **Description**

1. The making of the Firefighters' Pension Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015 and the Firefighters' Compensation Scheme and Pension Scheme (Wales) (Amendment) Order 2015 to (a) provide transitional arrangements for members who transfer to the new Firefighters' Pension Scheme (Wales) 2015 from 1 April 2015 onwards and to amend the 2007 Compensation Scheme to make provision for members of the Firefighters' Pension Scheme 2015 and (b) amend the new Firefighters' Pension Scheme 2007 in respect of special members of the modified 2007 Scheme and to amend the Firefighter Pension Scheme 1992.

2. The third instrument, the Firefighters' Pension (Wales) Scheme (Contributions) (Amendment) Order 2015, substitutes the table of firefighter contributions under the 1992 Pension Scheme to provide an annual one per cent uplift in the pay bands until 2018

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

3. In most cases the policy approach to the Welsh Ministers' making of instruments under the above provisions (and, to a similar extent, that of the Scottish Ministers) has been to replicate the provision which is made for England. The main exception has been in relation to the regulations making the first scheme under the Public Service Pensions Act 2013 (2013 Act) where two features of the new scheme differ from the England scheme. However, these statutory instruments, which deal with the transition of existing unprotected scheme members into a new 2015 Scheme, do not depend at all on the design of that new Scheme.

4. Thus, the final versions of the instruments made in England have been replicated with the only amendments made in Wales being to reflect the Welsh SI format and to provide for gender-neutral drafting. This has meant significant delays in introducing the statutory instruments as the final English statutory instruments were not available to the Welsh Government until 6 March 2015. In order for these to be in force for 1 April 2015 it is necessary to breach the 21 day rule. The Presiding Officer has been notified of the breach by letter. The Treasury have advised that if the Orders were brought into force on a date later than the 1 April 2015, under Section 18(1) of the 2013 Act this would mean that all scheme members would stop accruing pension benefits in the old Schemes. That would mean that members would need to be auto-enrolled into the new Pension Scheme by the next day – including those who have protected rights to remain in their current Scheme.

5. Some of provisions in the Firefighters' Compensation Scheme and Pension Scheme (Wales) (Amendment) Order 2015 have retrospective effect. These are explained in paragraphs 42-46 of this Memorandum and replicate similar provisions made in England and in Scotland.

## Legislative background

6. The Firefighters' Pension Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015 are made under sections 1(1) and (2), 2(1), 3(1), (2), (3)(a) and (c), (6) and (7), 18(5) and (6), paragraph 6(b) of Schedule 2, Schedule 3 and paragraphs 1(2)(ii), 2(2)(ii) and 5(1) of Schedule 7 to the 2013 Act and deal with the benefits of firefighters who are members of the Firefighters' Pension Scheme 1992 ("the 1992 Scheme") or the Firefighters' Pension Scheme 2007 ("the 2007 Scheme") and subsequently under the 2015 Scheme.

7. The main provisions for the 2015 Scheme are set down in the Firefighters' Pension Scheme (Wales) Regulations 2015 (SI 2015/622 (W. 50)). In addition, the Firefighters' Pension Scheme (Wales) (Consequential Provisions) Regulations 2015 made additional provisions in relation to certain taxation matters.

8. The Firefighters' Compensation Scheme and Pension Scheme (Wales) (Amendment) Order 2015 is made under the following powers:

- Sections 34 and 60 of the Fire and Rescue Services Act 2004 ("the 2004 Act") allows the Welsh Ministers, by order, to make provision for a pension scheme for firefighters.
- Section 34 of the 2004 Act also allows the Welsh Ministers, by order, to make a scheme for the payment of compensation to, or in respect of, firefighters who have been injured or who have died. Section 34(3) provides that an order under that section may take effect from a date which is earlier than that on which the order is made.

9. This Order complies with section 34, which was amended by the 2013 Act with the insertion of sub-paragraph (1A) which introduces a restriction (pursuant to sections 18 and 19 of the 2013 Act) on benefits provided under existing schemes for firefighters regarding the payment of pensions, allowances and gratuities to or in respect of persons who are or have been employed by a fire and rescue authority and persons who die or have died while so employed.

10. The Firefighters' Pension (Wales) Scheme (Contributions) (Amendment) Order 2015 is made under Section 26 of the Fire Services Act 1947 which enables the Welsh Ministers to establish a pension scheme, by order, for the payment of pensions, allowances and gratuities to employees of fire brigades and includes provision for the making of employee contributions.

11. The Firefighters' Pension Scheme 1992 was established under this power and is set out in Schedule 2 to the Firemen's Pension Scheme Order 1992 (S.I. 1992/129). In relation to Wales the name of the scheme was changed to the Firefighters' Pension Scheme by article 4(1) of S.I. 2004/2917. The Fire Services Act 1947 was repealed by sections 52 and 54 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c.21). Subsections (1) to (5) continue to have effect

in relation to England, Scotland and Wales for the purposes of the Firefighters' Pension Scheme 1992 by virtue of S.I.2004/2917 and S.I. 2004/2918.

12. These Regulations and Orders will follow the negative resolution procedure.

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

#### **• The Firefighters' Pension Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015**

13. Both the 1992 and the 2007 Schemes calculated pensions on a final salary basis, that is, the amount of pensionable salary earned at the point of retirement. As required by the 2013 Act, the 2015 Scheme is a career average scheme, under which pensions are calculated on the basis of the average salary earned over the course of pensionable service.

14. The aim of these Regulations is to set out how members move from a final salary Scheme (ie, the 1992 or 2007 Schemes) to the career-average 2015 Scheme. In particular, the Regulations protect the rights that members have accrued in the 1992 and 2007 schemes, ensuring that these rights will be correctly represented and administered from the time that the member joins the 2015 Scheme under the Firefighters' Pension Scheme (Wales) Regulations 2015 (WSI 2015/622 (W. 50)).

15. Welsh Fire and Rescue Services Circular (W-FRSC(2015)04) issued on 16 February 2015 set out the design for the 2015 Scheme and stated that there would be full statutory protection for accrued rights for all members as follows:

- All accrued rights are protected and those past benefits will be linked to final salary when members leave the Firefighters' Pension Scheme 2015.
- For members of the 1992 scheme the Welsh Government will further meet:
  - (a) Members' expectation of double accrual for service accrued under the Firefighters' Pension Scheme 1992; so that a member's full continuous pensionable service upon retirement will be used to calculate an averaged accrual rate up to a maximum accrual rate of 1/45th.
  - (b) Members' expectation of being able to access their 1992 scheme benefits when they retire at that scheme's 'ordinary pension' age (i.e. from age 50 with 25 or more years pensionable service), subject to abatement rules for that scheme.
- Pensionable service for the purpose of calculating the ordinary pension age will include any continuous pensionable service accrued under both the 1992 scheme and the 2015 scheme members' expectation of an actuarially assessed commutation factor for benefits accrued under the 1992 Scheme.

16. The Firefighters' Pension Scheme (Wales) Regulations 2015 set out the conditions for full and tapered protection for members of the 1992 and 2007 schemes, and detailed when those members should transfer into the 2015 Scheme. These Regulations address the remaining issues, describing how those members will access their accrued rights. The purpose of the Regulations is to resolve matters arising from the accrual of pension in both one of the final salary schemes and in the career-average Firefighters' Pension Scheme 2015.

**Active and deferred membership (New paragraphs 34, 35 and 36 of Schedule 2 of the 2015 Regulations; Rules 1C and 4 of Part 2 and Rules 3 and 4 of Part 3 of the 2007 Order; and Rules A3, A13A, B1A, B1B, B5 and F2 of the 1992 Order)**

17. These provisions determine when a member is active or deferred in each of the 1992, 2007 and 2015 schemes, having participated in more than one of those schemes.

18. For members of the 2007 Scheme other than special members, the Regulations ensure that if a member ceases to have active membership in the 2015 Scheme but returns after a gap of not more than five years, their previous 2015 Scheme service and any connected 2007 Scheme service will no longer be deferred. Instead, it will be treated as active for certain purposes and as continuous with any new 2015 Scheme service. If a member re-joins and the gap in membership exceeds five years, the earlier membership in both the 2015 Scheme and the 2007 Scheme will remain deferred and the new membership in the 2015 Scheme is treated as a separate pension entitlement.

19. A different approach applies in respect of 1992 Scheme members and special members of the 2007 Scheme, as the 1992 Scheme is closed to re-joiners. As a consequence, the member is not treated as active for certain purposes in the 1992 Scheme once they leave pensionable service in the 2015 Scheme. In such instances they would become a deferred member of the 1992 Scheme. If the member elects to re-join a firefighters' pension scheme while still transitionally or fully protected, they would join the 2007 Scheme, rather than the 2015 Scheme. However, a member of the 1992 Scheme who is in continuous pensionable service in that Scheme before the transition date and remains in continuous pensionable service in the 2015 Scheme until they leave pensionable service or retire, is treated as an active member of the 1992 Scheme for certain purposes.

**End of active membership in one of the final-salary schemes (Amended Parts A and B of Schedule 2 to the 1992 Order and amended Parts 2 and 3 of Schedule 1 to the 2007 Order)**

20. These provisions ensure that the transitional protections set out in the 2015 Regulations are reflected in the 1992 and 2007 Scheme Orders. The transitional protections set out when a member of the 1992 and 2007 schemes must move into the 2015 Scheme, or else become a deferred member of their scheme.

**Qualifying for benefits (New paragraphs 40 and 41 of Schedule 2 of the 2015 Regulations; amended Rule 1 of Part 10 of the 2007 Order and amended Rule F2 of the 1992 Order)**

21. Two years' membership of the 1992 Scheme is the minimum amount required in order to qualify for benefits in that scheme. The equivalent provision in the 2007 and 2015 schemes is three months. In considering whether a 2015 scheme member with service in either the 2007 or 1992 scheme qualifies for benefits in either the member's previous scheme or in the 2015 Scheme, any linked 1992, 2007 and 2015 Scheme service is to be taken into account. For qualifying purposes, transferred-in service in the 1992 or 2007 Scheme is counted on the same basis as before 1 April 2015.

**Accrual rate (New paragraphs 31 and 34 of Schedule 2 of the 2015 Regulations and new Part 2A of Schedule 2 of the 1992 Order)**

22. At present 1992 Scheme members can benefit from "double accrual", which takes effect after 20 years' service. Members of the 2015 Scheme with 1992 Scheme benefits who remain in continuous pensionable service in the 2015 Scheme, will have those benefits calculated on the basis of the accrual rate that they would have received had they remained in the 1992 Scheme until retirement. This is achieved by taking into account the pensionable service accrued in the 2015 Scheme. For example, if a member accrued 30 years' continuous service between the 1992 and 2015 Scheme, their accrual rate for any service accrued under the 1992 Scheme will be calculated on the basis of 1/45<sup>th</sup> of pensionable salary for each year of such service. A formula that provides for this effect is set out in new Part 2A of Schedule 2 to the 1992 Scheme.

**Final pensionable pay (New paragraphs 32, 33, 34, 42 and 43 of Schedule 2 of the 2015 Regulations; amended Rule 2 of Part 11 and Rule 8 of Part 12 of the 2007 Order; and Rules B1A, B5A, G1 of the 1992 Order)**

23. Schedule 7 to the 2013 Act requires that the old scheme retirement pension is calculated using earnings at retirement or upon leaving the new scheme so enabling the old scheme pension rights to be honoured in full ("the final salary link"). Paragraphs 42 and 43 of schedule 2 provide that this right may only be exercised once and that any subsequent period of employment and scheme membership will not lead to a recalculation of any old scheme pension that is in payment.

24. Where a member of the 2015 Scheme has service that is continuous from the 1992 or 2007 Scheme, the member's final pensionable pay is used. Service is still regarded as "continuous" so long as any break in service is no more than five years, or if any longer, spent in pensionable public service. Provided that continuity of service is maintained in this way, benefits relating to the member's earlier scheme will be linked to their final salary when the member ceases active membership of the 2015 Scheme.



25. Where the “final salary link” applies, there is a requirement in the 2013 Act that the member’s “pensionable pay” in the 2015 Scheme is not less generous than it would have been in their previous scheme. This includes certain allowances and supplements that would previously have been deemed to be pensionable and could also apply if the member has seen a reduction in salary. The Regulations, therefore, ensure that a member is not disadvantaged if the definition of final salary used to determine their benefits would have been higher in their original scheme than under the 2015 Scheme.

26. When a decrease in pay occurs before the member becomes a member of the 2015 Scheme and pay does not again rise above that high point, final pensionable pay is determined using the member’s 1992 or 2007 scheme pensionable pay and rules. When the decrease occurs after transition, the member’s pensionable pay in the last year of service before the decrease occurred is used. When a member joins the 2015 Scheme, but does not re-join the scheme in time to retain continuity of service, final pensionable pay would be that at the point of deferment from the member’s original membership.

**Additional pension (New paragraphs 31 and 34 of Schedule 2 of the 2015 Regulations; Rule 7 of Part 11 of the 2007 Order and Rules B5D, G2A, G7 and G8 of the 1992 Order)**

27. If a member has already arranged to purchase additional service or increased benefits in the 1992 or 2007 scheme, the arrangement will remain valid even after the member transfers to the 2015 Scheme provided that they had remained in continuous pensionable service in the 2015 Scheme if they were members of the 1992 Scheme, or if they were members of the 2007 Scheme who had continuity of service. These members will continue to pay additional contributions on the same basis as they did before transferring from their final-salary scheme.

**Transfer of final-salary benefits (New paragraphs 44, 45 and 46 of Schedule 2 of the 2015 Regulations and amended Rules 1, 8, 9 and 10 of Part 12 of the 2007 Order)**

28. These provisions are necessary to cater for individuals wishing to transfer in membership of another public service pension scheme, which has accrued on a final-salary basis. Upon joining, although their active membership may be in the 2015 Scheme, the transferred-in amount should be transferred into the 2007 Scheme. This is because the 2015 Scheme is operated wholly on a career-average basis and does not provide for final salary pensions.

**Authority-initiated early retirement (Amended Regulation 71 of the 2015 Regulations and Rule 6 of Part 3 of the 2007 Order)**

29. Where a firefighter with 2007 Scheme membership is subject to authority initiated early retirement in the 2015 Scheme, the employing authority must at the same time consider using the equivalent provisions in the 2007 Scheme.

**Refunds of contributions (New paragraph 39 of Schedule 2 of the 2015**

## Regulations)

30. If a member with existing 2007 Scheme service ceases active membership after transferring to the 2015 Scheme, contributions are refunded if the member has in total less than three months' qualifying service across both schemes and any further contributions for additional service cease to be payable.

### **Ill-Health (Regulations 60, 68, 74, 75, 78A and 80A of the 2015 Regulations, new paragraphs 22, 23, 24, 25, 37 and 38 of Schedule 2 of the 2015 Regulations; new paragraph 2A of Part 12 and Annex 1 of the 2007 Order; and Rules B3, B7 and F9 of the 1992 Order)**

31. These Regulations set down how the ill-health benefits of individuals who have participated in the 2015 Scheme and in one of the final-salary schemes should be determined.

32. The Transitional Regulations provide that where a 2015 Scheme member who was previously in the 1992 or 2007 scheme becomes entitled to a lower-tier ill-health pension, their entitlement is paid from the 2015 Scheme. However, to ensure that connected service in the 1992 or 2007 Scheme is also recognised, an equivalent amount of benefit is calculated in accordance with the rules of their earlier scheme, and this 'equivalent amount' is paid from the 2015 Scheme. Commuted lump sums are paid and determined on the same basis.

33. Any entitlement to a higher tier pension is calculated in accordance with the 2015 Scheme. However, the higher tier enhancement is applied to the lower tier pension, including the "equivalent amount" calculated in accordance with the member's earlier scheme rules, but "adjusted" so that added pension is not taken into account.

34. As the member's 1992 or 2007 scheme pension is left in their previous scheme, it is possible for that pension to be transferred to another pension scheme, even if they are already receiving ill-health benefits from the 2015 Scheme in respect of their prior scheme service. Consequently, if that pension is transferred out to another pension scheme, the corresponding 'equivalent portion' of ill-health pension is deducted from the ill-health pension being paid out of the 2015 Scheme.

35. When a member who has moved into the 2015 scheme from either the 1992 or 2007 scheme reaches the Normal Pension Age in their previous scheme, the 'equivalent amount' ceases to be payable from the 2015 Scheme and is replaced by a continued pension from the member's previous scheme payable from normal pension age.

36. There are special provisions to deal with the cases where any member is being considered for an ill-health award at the time of their transition.

37. Members with 1992 Scheme service who are awarded a lower-tier ill-health pension which is payable under the 2015 Scheme as an 'equivalent amount' will continue to be able to commute a proportion of these those benefits

to a lump sum under the 1992 Scheme terms, using actuarially neutral factors. Any connected 2015 Scheme service will count towards determining whether the member can commute the maximum 25% of their 1992 Scheme pension if they retire before age 55.

**Death benefits (Amended Regulations 87, 95, 102 and 105, and new paragraphs 26, 27, 28, 29 and 30 of Schedule 2 of the 2015 Regulations and Rules C1, D1, E1, E3, E4 and E8A of the 1992 Order)**

38. Under the 2015 Scheme, survivor benefits are provided in the form of surviving partners' pension, bereavement pension, children's pension and lump sum death benefits, which reflects similar provision in the 2007 Scheme. Surviving partners of all 2015 Scheme members who are not deferred members of the 1992 or 2007 scheme, who die in pensionable service in the 2015 Scheme, will have their benefits determined under the 2015 Scheme. Similarly, where these members die in service and have eligible children, they will also receive benefits under the 2015 Scheme, rather than under the member's previous scheme. However, if the individual was a deferred member of the 1992 or 2007 scheme, the survivor will receive deferred survivor benefits in accordance with those scheme rules. The provisions for lump sum death payments are no less than they would have been under the 1992 or 2007 scheme.

• **The Firefighters' Compensation Scheme and Pension Scheme (Wales) (Amendment) Order 2015**

39. This Order amends Schedule 1 to the Firefighters' Compensation Scheme (Wales) Order 2007 (SI 2007/1073 (W. 111)) which provides a compensation scheme for firefighters and dependants of firefighters in Wales ("the Compensation Scheme") in consequence of the coming into force of the 2015 Scheme.

40. This Order also amends Schedule 1 to the Firefighters' Pension Scheme (Wales) Order 2007 (SI 2007/1072 (W. 110)). The amendments:

- clarify provisions in the 2007 Scheme;
- extend the period that members can elect to join the modified schemes, by identifying eligible members and extending the period for which they can make an election to pay additional pension contributions during the specified period in respect of their service during the specified period;
- clarify provisions relating to the payment of interest in respect of contributions payable during the period 6 April 2006 and the date that an eligible individual joined the standard 2007 Scheme;
- amend the commutation factors table set out in Annex ZA of the 2007 Scheme to reflect the commutation factors as on 31 March 2014;
- update provisions and terminology as a consequence of the coming into force of the 2015 Scheme;
- revise the 2007 Scheme pensionable pay bands to include a 1% annual uprating for the next four years from 1 April 2015.

41. The amendments update provisions as a consequence of the coming into force of the 2015 Scheme, to ensure that members of the 2015 Scheme, firefighters eligible to be members of the 2015 Scheme, and their qualifying survivors, receive compensation awards in the event of a qualifying injury or death in service in accordance with the Compensation Scheme.

42. Retained Duty System (RDS) firefighters are a group that is distinctly identifiable from regular firefighters in that they only attend a fire station when they receive an emergency callout or undertake other activities. They were historically precluded from membership of the 1992 Scheme but have been entitled to join the 2007 Scheme since 6th April 2006.

43. Following a series of appeals by retained firefighters to the Employment Tribunal and the House of Lords claiming access to the 1992 Scheme under the Part time Workers (Prevention of Less Favourable Treatment) Regulations (S.I.2000/1551), the 2007 Scheme was amended in December 2014 to introduce a 'modified section'. This is known as the "Modified Scheme" and provides individuals employed as retained firefighters during the period 1 July 2000 and 5 April 2006, with an opportunity to purchase pension benefits in respect of this employment. The benefits provided by the Modified Scheme are comparable to those that are available to members of the 1992 Scheme. Fire and rescue authorities have until 31 December 2015 to undertake and conclude, an options exercise to identify all those former and current employees with an entitlement to join the Modified Scheme; inform them of this entitlement to join; provide a quote advising them of the costs of purchasing their past service; and ultimately enrol those individuals who then elect to join into the Modified Scheme.

44. This Order extends the time available to fire and rescue authorities to complete the options exercise by 2 months, meaning that the new deadline will be 29 February 2016.

45. The Modified Scheme requires the application of interest to any retrospective pension or lump sum paid, and on any employee contributions paid in respect of purchasing past service. The current provisions regarding individuals who elect to convert special service to their standard membership, and are required to buy any break in scheme membership between 6 April 2006 and the date they joined the standard 2007 Scheme, did not address the interest payable during this period. Amending the 2007 Scheme provisions is required to reflect the original policy intention.

46. The amendments to the 2007 Scheme also correct a number of small errors in the commutation factor tables that apply to special members who retire. These corrections ensure that the original policy intention to provide special members with fixed commutation factors – that reflect those in the 1992 Scheme as at 31 March 2014 – is achieved.

## **Changes to the compensation scheme (Schedule 1)**

### **Amendment of Part 1 (interpretation)**

47. Part 1 provides definitions for specific terminology used within the Scheme's regulations. Paragraph 4 of Schedule 1 to this Order amends this part to:

- provide definitions for the additional terms used in respect of members of the 2015 Scheme;
- provide for the "normal pension age" in the 2015 Scheme to be determined by the 2013 Act (section 10), which is currently set at 60 years;
- correct an existing error so that it is clear that the "normal pension age" in relation to the 2007 Scheme is 60 years;
- Increase the scope of the definition of "pensionable service" so that it also applies to members of the 2015 Scheme. In addition, the amendments ensures that the provision encapsulates linked service accrued by members of the existing 1992 and 2007 Schemes who subsequently transfer into the 2015 Scheme on or after 1 April 2015;
- increase the scope of the definition of 'relevant service' so that it also applies to those individuals who have an entitlement to join the 2015 Scheme but did not make an election to join, in keeping with the current arrangements for persons who are eligible to be members of the 1992 or 2007 Schemes, who have not joined those schemes.

### **Amendment of Parts 2, 3, and 5 (injury awards and duty related compensation; awards on death)**

48. Paragraphs 5, 6 and 7 of Schedule 1 to this Order amend Parts 2, 3 and 4 of the Compensation Scheme, to ensure the following provisions apply to the members, or eligible members of the 2015 Scheme:

- 'compensation for death or permanent incapacity while on work',
- 'awards on death; spouses and civil partners', and
- 'awards on death; additional provisions.'

49. The amendments also make provision for the commutation of small compensation pensions payable to members of the 2015 Scheme.

### **Amendment of Parts 7 and 7A (servicemen and reservists)**

50. Paragraphs 8 and 9 of Schedule 1 to this Order amend Parts 7 and 7A of the Compensation Scheme to ensure that the compensation provisions relating to armed forces' 'reservists' and 'servicemen' also apply to members of the 2015 Scheme.

### **Amendment of Part 8 (special cases)**

51. Paragraph 10 of Schedule 2 to this Order amends Part 8 of the Compensation Scheme to ensure that the 'special cases' provisions also apply to volunteer members employed on or after 1st April 2015. As such, volunteer firefighters who suffer a qualifying injury on or after 1st April are to be treated as whole-time, regular firefighters for the purposes of calculating an injury award. This reflects the current application for volunteer firefighters in respect of the existing 1992 and 2007 Schemes.

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

52. Paragraph 11 of Schedule 1 to this Order amends Part 9 of the Compensation Scheme to apply the 'review, withdrawal and forfeiture of awards' provisions to members of 2015 Scheme. Part 9 makes provision for the reduction of a 2015 Scheme member's injury award where the permanent disablement that gives entitlement to the injury award has been caused, or contributed to, by the member's own default. This is in line with the current application for existing members of the 1992 and 2007 Schemes.

### **Amendment of Part 10 (payment of awards and financial provisions)**

53. The current 'prevention of duplication' provisions are extended to members of the 2015 Scheme as a result of the amendments at paragraph 12 of Schedule 1 to this Order to Part 10 of the Compensation Scheme. The amendments ensure that where a member of the 2015 Scheme has other separate employments as a firefighter that confer an additional entitlement to join one of the other firefighter pension schemes (namely, any one of the 1992, 2007 or 2015 Schemes), should they subsequently suffer a qualifying injury, they will not receive duplicate injury awards in respect of each employment. This reflects the current application of the provision to members of the existing 1992 and 2007 Schemes.

54. The amendments also ensure that, where a 2015 Scheme member dies from the effects of a qualifying injury whilst employed as a regular firefighter and retained firefighter, duplicate survivor benefits will not be payable. Where survivor benefits are payable from both the Compensation Scheme and the 2015 Scheme, only the survivor benefits from the 2015 Scheme will be payable. This reflects the current application of the provisions to members of the existing 1992 and 2007 Schemes in the same position.

### **Amendment of Schedule 1 (injury awards and duty related compensation)**

55. Paragraph 13 of Schedule 1 to this Order amends Schedule 1 to the Compensation Scheme ensure that where an individual is entitled to an injury award but is not an active member of the 2015 Scheme, the award is determined by reference to the person's 'relevant service'. Effectively, this is the service that the person would have accrued if they had become an active member of the 2015 Scheme.

56. The amendment also ensures that any service, in respect of the same/similar employment, prior to 1 April 2015, where the individual had an entitlement to join either the 1992 or 2007 Schemes, is also to be included as relevant service for the purposes of calculating any injury award entitlement. This reflects the current position for those individuals that have elected not to join the 1992 or 2007 Schemes.

#### **Amendment of Schedules 2, 3 and 4 (awards for spouses and civil partners, awards on death)**

57. The provisions in paragraphs 14, 15 and 16 of Schedule 1 to this Order ensure that the 'special pension', 'child's special allowance', and 'adult dependent relative's special pension' provisions apply in respect of deceased members of the 2015 Scheme. It also provides for the calculation of the 'special pension', 'child's special allowance' and 'adult dependent relative's special pension' on the basis of the deceased's relevant service where they had an entitlement to join the 2015 Scheme but did not elect to join. This reflects the current position for those individuals that have decided not to join the 1992 or 2007 Schemes.

#### **Changes to the Modified Section of the 2007 Scheme (Schedule 2)**

##### **Amendment of Part 1 (citation and interpretation)**

58. Paragraph 1 of Schedule 2 to this Order amends the 2007 Scheme to:

- introduce definitions for specific terminology used in respect of the 2015 Scheme;
- make provision for the 'limited period' to end on 1 April 2015 for those individuals that have no transitional protections and that are provisionally enrolled to the Modified Scheme; and for the 'limited period' to end on the date that they join the 2015 Scheme in respect of those provisionally enrolled members who have full or tapered protections;
- to clarify references in the definitions of special deferred member, special eligibility criteria, special firefighter member, and special pensioner member.

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

59. The amendments in paragraph 2 of Schedule 2 to this Order permit provisionally enrolled members to temporarily join the Modified Scheme. Part 2 is also amended to provide clarity that the retrospective award on ill-health retirement being referred to is paid under Part 3 of the 2007 Scheme regulations.

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

60. The amendments in paragraph 3 of Schedule 2 to this Order:

- provide clarity that interest should be payable on any pension contributions owing where a special member converts their standard service in the 2007 Scheme to special pensionable service in the Modified Scheme. This provision was previously inadvertently omitted;
- to make provision for individuals that have an eligibility to join the Modified Scheme to be provisionally enrolled for up to a maximum of 2 months, until 29 February 2016, to enable the responsible fire and rescue authority to conclude the options exercise of giving them the opportunity to make an election to join.

### ***Amendment of Part 15 (miscellaneous provisions)***

61. The provisions in paragraphs 4 of Schedule 2 to this Order correct an error in the commutation factors set out in Annex ZA of the 2007 Scheme so that they reflect the commutation factors of the 1992 Scheme as on 31 March 2014.

### **Amendments to the 2007 Scheme contribution bands (Schedule 3)**

62. Paragraphs 5 and 6 of Schedule 2 to this Order sets out the revised 2007 scheme pensionable pay bands including the 1% annual uprating for the next four years from 1 April 2015. The contribution bands for special members have also been uprated. The figures have been rounded down to the nearest pound to simplify the administration of the scheme. These amendments have been made to Annex A1 (pension contributions) and Annex AB1 (pension contributions for special members).

#### **• The Firefighters' Pension (Wales) Scheme (Contributions) (Amendment) Order 2015**

63. Article 3 of the Order sets out the revised 1992 Scheme pensionable pay bands to include the 1% annual uprating for the next four years from 1 April 2015. The figures have been rounded down to the nearest pound to simplify the administration of the scheme.

64. It is intended that -. (a) the Firefighters' Pension Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015 and the Firefighters' Pension (Wales) Scheme (Contributions) (Amendment) Order 2015 will come into force on 1 April 2015; and  
(b); the Firefighters' Compensation Scheme and Pension Scheme (Wales) (Amendment) Order 2015 will come into force on 31 March 2015;

### **Consultation**

65. Consultation was undertaken for four weeks from 9 February to 9 March 2015 with Chief Fire Officers, Chief Executives of local authorities, Welsh Local Government Association and representative bodies including the Fire Brigades Union, the Retained Firefighters' Union and the Association of Principal Fire Officers. Please refer to the Regulatory Impact Assessment consultation paragraph below for further information.



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

### **a) Options**

**Do Nothing** – The Public Services Pension Act 2013 provides for the establishment of new public service pension schemes from 1 April 2015. The 2013 Act provides that no benefits are to be provided under an existing scheme to or in respect of person in relation to the person's service after the closing date which for these regulations is 31 March 2015. If these statutory instruments were not established then serving firefighters in Wales would not have access to a public service pension scheme.

**Make the Legislation** – The statutory instruments will ensure serving firefighters in Wales are able to access to a pension scheme established under the Public Services Pension Act 2013.

### **b) Benefits**

The Transitional Regulations cover the detailed transitional arrangements for those current firefighter members who transfer across from either the 1992 Scheme or the 2007 Scheme to the 2015 scheme, either on 1 April 2015 or in the subsequent 7 years. In particular the Regulations cover:

- retirement pension
- ill-health benefits
- survivor benefits
- refunds of contributions
- transfers between different pension schemes.

### **c) Costs**

Costs for the firefighters' pension scheme in Wales are covered by employer and employee contributions, along with grant funding through Annual Managed Expenditure (AME) which is used to top up the difference between scheme income and expenditure, funded by HM Treasury. This procedure will not change when the new scheme is introduced from 1 April 2015.

## **Consultation**

66. This was the third consultation in respect of the introduction of the new Firefighters' Pension Scheme in Wales from April 2015 and was published on 9 February 2015 for 4 weeks to 9 March 2015; four responses were received to the consultation. The consultation sought views on whether the draft regulations met the transitional arrangements required to introduce the new scheme including the calculation of ill-health, new and old members' eligibility for compensatory benefits, additional time for enrolment onto the Modified Pension Scheme and proposals to uprate the pensionable pay bands in the 1992 and 2007 in line with the 2015 Scheme.

67. All four respondents were in agreement with each of the areas highlighted within the consultation document. Comments were expressed that the draft Regulations met the policy intention required and the ill health benefits calculations were correct for transition members. In terms of the Compensation

Scheme, all agreed the proposals would allow these benefits to be calculated on a consistent basis.

68. Three of the respondents noted the administrative burden of the Modified Scheme on Fire and Rescue Authorities and so welcomed the proposal to amend the scheme so that all outstanding cases that are still being processed on 31 March 2015 will be provisionally enrolled to the modified scheme on that date. The proposed amendment will provide authorities with an additional 6 months to finalise all those cases where the individual has been provisionally enrolled.

69. All respondents commented that for consistency purposes it would be appropriate for the pay bands for the 1992 and 2007 Schemes to be updated.

### **Welsh Government Response**

70. The Welsh Government has considered the responses to the consultation and remains committed to public service pension schemes which are affordable, sustainable and fair for public service workers. The draft Statutory Instruments attached to the consultation were incomplete at the consultation stage and the policy proposals were detailed within the consultation document. Based on the positive comments received to the consultation, the Statutory Instruments will be introduced as consulted on.

### **Competition Assessment**

71. Not applicable.

### **Post implementation review**

72. The Welsh Government will continue to review the Statutory Instruments, as advised by the Firefighters' Pension Scheme Advisory Board for Wales.

### **Equality Impact Assessment**

73. An equality impact assessment will be published on the Welsh Government Equality and Diversity webpage when the 2015 Scheme regulations are introduced.



Llywodraeth Cymru  
Welsh Government

Jane Hutt AC / AM  
Y Gweinidog Cyllid a Busnes y Llywodraeth  
Minister for Finance and Government Business

Ein cyf/Our ref: LF-JH-0382-15

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

16 April 2015

Dear David,

Following my attendance at the Constitutional and Legislative Affairs Committee to give evidence on Making Laws in the Fourth Assembly, I am pleased to respond to your request for supplementary information.

Firstly, I mentioned the protocol for the Welsh Government's consultations on White Papers and draft Bills (paragraphs 18 and 39 of the draft transcript). I attach a copy of the protocol and the First Minister's letter to the Presiding Officer on this subject from 17 October 2011.

Secondly, you asked for information on changes to the Human Transplantation (Wales) Bill between the draft Bill consultation and the Bill's Introduction. I include this information in an annex to this letter.

You also raised a number of questions regarding Members' Bills in your letter. The point at which the Welsh Government engages with a Member in Charge of a Member's Bill will be different depending on the circumstances of the individual Bill. One factor is the extent to which the Member in Charge of the Bill wishes to engage with the Government.

Other factors include whether the Welsh Government is supportive of the Member's Bill in the context of our legislative commitments with the need to prioritise delivery of our own legislative programme.

The Welsh Government can liaise with the UK Government and can also make approaches on behalf of the Member in Charge. However, its ability to do this will depend on the amount of information it has regarding the Bill before it is introduced. In some cases the Welsh Government may not be aware of the detailed content of the Bill before it is introduced.

Consequently, there is no general rule for our stage-by-stage approach to Members' Bills. In all cases, however, the Government will present its view on the proposed Bill and seek to ensure it can implement any legislation brought forward if it should progress.

*Yours sincerely,*  
*Jane*

**Jane Hutt AC / AM**

Y Gweinidog Cyllid a Busnes y Llywodraeth  
Minister for Finance and Government Business

## Annex: Changes to the Human Transplantation (Wales) Bill before Introduction

A small number of changes were made to the Human Transplantation (Wales) Bill as a direct result of consultation on a draft Bill. Other changes were made because there was sufficient scope within the timetable to pause and reflect on various points of drafting. The following table shows the changes made to the Human Transplantation (Wales) Bill (as introduced). We have indicated below which changes were made as a direct consequence of comments received during the consultation and which were a result of further consideration given to the drafting of the Bill during that period (the section numbers below refer to the sections in the Bill at introduction).

Changes made	Reason
Some revisions to the terminology in a number of sections to better reflect, and sit alongside, the Human Tissue Act 2004	Identified by drafter*
Inclusion of “for a significant period before dying” in section 5 on excepted adults in relation to an adult who lacked capacity to understand the notion of deemed consent	Raised during consultation
Technical changes to provide clarity in the wording of various sections, in particular sections 3 relating to transplantation activities and sections 4 and 5 relating to consent from adults	Identified by drafter*
Minor adjustment to the wording relating to a qualifying relation being able to show that the deceased “would not have consented” rather than proving they would have “objected”	Raised during consultation
Various meanings moved from the main sections to an interpretation section	Identified by drafter*
Recognition in section 7 that an appointment made under the Human Tissue Act 2004 would be recognised in Wales	Identified by drafter*
Some further clarification made to section 8 in relation to (living) adults who lack capacity to consent	Raised during consultation
The removal of a section (former section 10) in relation to restriction of activities in relation to donated material, since this was considered unnecessary as it did not relate to consent	Identified by drafter*
Creation of a separate section 14 on the Codes of Practice setting out the amendments to be made to the Human Tissue Act 2004, together with some further clarification on the approval of the Codes	Identified by drafter*
Inclusion, at section 17, of a definition of qualifying relationships for the purposes of the Act	Identified by drafter*
Clarification of the commencement provisions in section 19 to take account of the need to undertake a two-year communication campaign before the main provisions of the legislation come into effect	Identified by drafter*

\*Some changes were made in discussion with Parliamentary Counsel and/or take account of points raised by the UK Government.



Ein cyf/Our ref: LF/FM/5121/11

Rosemary Butler AM  
Presiding Officer  
Chair, Business Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

17 October 2011

Dear Rosemary

I am writing to you to clarify the Welsh Government's position in relation to the handling of its White Paper and Draft Bill consultations.

The Welsh Government has made a commitment to consulting prior to introducing legislation, whether it be at policy stage, White Paper stage, or by way of a Draft Bill. We have already published a White Paper relation to the School Standards and Organisation Bill, and will shortly be publishing a White Paper on Organ Donation. Later this year we will also publish a number of Draft Bills for consultation.

While I consider both White Papers and Draft Bills to be primarily Government consultations, I have asked Ministers to ensure that Assembly Members are informed prior to publication by way of a Written Ministerial Statement. These consultations are however an exercise in listening to and engaging with stakeholders and the wider public.

We would of course welcome the views the Assembly may have in relation to the proposals outlined in these consultations, whether they come from individual Assembly Members or an Assembly Committee.

However, the appropriate time for the Assembly to properly scrutinise Ministers on Welsh Government legislative proposals is during the formal scrutiny stages once the Bill is formally introduced. We would not wish to undermine the Assembly's scrutiny of Government legislation by circumventing these proceedings.

As such, we would not expect Ministers to be called to appear before Committees during these consultations to discuss a White Paper or Draft Bill. We would however be happy to arrange for officials to provide technical briefings to Committees on individual White Papers or Draft Bills.

It is of course for Committees to decide how best to consider these consultations, if they wish to do so, and they may wish to invite evidence from key stakeholders. The Government's position will be clearly set out in each White Paper or Draft Bill, on which we are seeking the views of stakeholders.

I hope that this letter clarifies the Government's position on this matter

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a smaller 'J' and a short horizontal stroke.

**CARWYN JONES**

## **Protocol for Welsh Government White Papers and Draft Bills**

To ensure consistency, when publishing White Papers or Draft Bills for consultation Welsh Ministers are asked to follow the below protocol:

### ***Launch***

1. White Papers and Draft Bills are primarily Welsh Government consultations; however it is recognised that as both relate to future Government legislation it is appropriate that Assembly Members be notified first.
2. When sent to Assembly Members, the White Paper or Draft Bill will be accompanied by a Written Statement. Welsh Ministers have the discretion to provide an Oral Statement in Plenary; however Ministers will bear in mind the need to provide an advance copy of the consultation documents to Members in advance of an oral statement.
3. Welsh Ministers may launch the White Paper or Draft Bill consultation outside of the Assembly, however in order to do so, a Written Statement and consultation document will be provided to Assembly Members shortly before the launch.

### ***Committee Consideration***

4. It is of course for the Assembly to decide whether to consider a White Paper or Draft Bill consultation, however the Welsh Government will welcome the Assembly's consideration of the proposals.
5. In addition to Assembly Members being provided with a copy of the documentation, a courtesy copy will be provided to the Clerk of the responsible Assembly Committee.
6. If invited to appear before an Assembly Committee to discuss the White Paper or Draft Bill, it is not expected that Welsh Ministers will attend. The Government position would have been set out in the consultation document, and the purpose is to seek the views of stakeholders. Welsh Ministers will of course appear before Committee during their scrutiny of the Bill once it is formally introduced.
7. If the Committee desired it, Government officials will be made available to provide a technical briefing on the content of the White Paper or Draft Bill.
8. If the Assembly Committee chooses not to participate in a White Paper or Draft Bill consultation, this does not prevent individual Assembly Members from providing comments directly to the Welsh Government.

### ***Further Advice***

9. The Legislative Programme Team can provide further advice on this protocol and any associated issues.





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

20 April 2015

Dear Deputy Presiding Officer,

**Inquiry: Making Laws in the Fourth Assembly**

Thank you for your letter of 26 March.

Overview provisions can in our view provide useful summaries of the content of Bills or help the reader navigate larger Bills. Overviews must however be carefully drafted and be succinct in order to be effective.

I should say that some people take a different view as to the usefulness of such provisions, for example arguing that legislation should only contain provisions which have legal effect or opposing them as they may duplicate the content of (currently obligatory) long titles. Practical problems may also occur where Bills are changed during amending stages and care must be taken to ensure that any overview provision remains accurate.

I do not share these views and believe that the main problem with overview provisions can be overcome if they were to replace long titles.

As referred to in "Craies on Legislation" the purpose of the long title of legislation is to give a general, but comprehensive, indication of the contents of a Bill. The purpose of the long title is therefore very similar to the purpose of an overview provision. In the course of UK Parliament Bills long titles will often be influenced by the rules on form and scope. For that reason they generally take the form a number of subjects strung out in one very long sentence, which, dare I say, is often not easy to follow and is inconsistent with modern drafting trends.

In view of the fact that the Presiding Officer may change the rules on the form of long titles and the different rules that the Assembly has on scope, it seems sensible to us to replace them with a more modern overview provision. This would aid accessibility by succinctly setting out the content of a Bill. Where that is not practically possible due to the size of a Bill, we envisage that the role of the



(main) overview would be to aid the reader to navigate the different Parts of the Bill, with more comprehensive overviews being included at the beginning of the Parts (in a way that is similar to existing practice). Our hope is that readers of legislation will become familiar with the practice and use the overview routinely as a starting point to reading an Act.

Although there are limitations to this because of the overarching need for an overview to remain succinct (in order to be effective), where a Bill makes significant amendments to existing legislation an overview provision could be useful by explaining the effect of the amendment. In such cases the text of the amendment itself will generally not be understandable without having the existing legislation to hand (the overview of the very short National Health Service Finance (Wales) Act 2013 is an example).

Like in the case of long titles, overviews should not have substantive effect and we assume for that reason that the courts could consider an overview provision for the purpose of resolving an ambiguity, but it would not be used to displace the clear meaning of the text of a substantive provision. In terms of having two kinds of legislative text, we don't see this as a problem as this distinction already exists and arguably setting it out as an overview that is aside from the main sections and Schedules would make that distinction clearer. As it would not be intended to be a substantive provision it should also in our view be possible to amend it in a similar way to amending headings; thus dealing with the potential for the overview to 'go toxic' by becoming inconsistent with the remainder of a Bill.

I attach two examples of a how an overview on the new form could look for your consideration.

Please let me know if I can be of further assistance.

Yours sincerely,



**DYLAN M HUGHES**

Y Prif Gwnsler Deddfwriaethol

First Legislative Counsel

# Social Services and Well-being (Wales) Bill

[DRAFT]

## Overview

- (1) *This Act of the National Assembly for Wales reforms social services law by making provision—*
- (a) *improving the well-being outcomes for people who need care and support and carers who need support,*
  - (b) *about co-operation and partnership by public authorities with a view to improving the well-being of people,*
  - (c) *about complaints relating to social care and palliative care, and*
  - (d) *for connected purposes.*
- (2) *The Act contains ten Parts; see each Part for a further overview of content.*

The following is enacted:

## PART 1

### INTRODUCTION

#### Key terms

#### 1 Meaning of “well-being”

- (1) This section applies for the purpose of this Act.
- (2) “Well-being”, in relation to a person, means well-being in relation to any of the following—
- (a) physical and mental health and emotional well-being;
  - (b) protection from abuse and neglect;
  - (c) education, training or recreation;
  - (d) domestic, family and personal relationships;
  - (e) contribution made to society;
  - (f) securing rights and entitlements;
  - (g) social and economic well-being;
  - (h) suitability of living accommodation.
- (3) In relation to a child, “well-being” also includes—
- (a) physical, intellectual, emotional, social and behavioural development;
  - (b) “welfare” as that word is interpreted for the purposes of the Children Act 1989.
- (4) In relation to an adult, “well-being” also includes—
- (a) control over day to day life;

- (b) participation in work.

## 2 Meaning of “adult”, “child”, “carer” and “disabled”

- (1) This section applies for the purposes of this Act.
- (2) “Adult” means a person who is aged 18 or over.
- 5 (3) “Child” means a person who is aged under 18.
- (4) “Carer” means a person who provides or intends to provide care for an adult or disabled child; but see subsections (7) and (8).
- (5) A person is “disabled” if the person has a disability for the purposes of the Equality Act 2010, subject to provision made under subsection (6).
- 10 (6) Regulations may provide that a person falling within a specified category is or is not to be treated as disabled for the purposes of this Act.
- (7) A person is not a carer for the purposes of this Act if the person provides or intends to provide care—
  - (a) under or by virtue of a contract, or
  - 15 (b) as voluntary work.
- (8) But a local authority may treat a person as a carer for the purposes of any of its functions under this Act if the authority considers that the relationship between the person providing or intending to provide care and the person for whom that care is, or is to be, provided is such that it would be appropriate for the former to be treated as a carer for the purposes of that function or those functions.
- 20

## PART 2

### GENERAL FUNCTIONS

#### Overview

##### *This Part—*

- 25 (a) *imposes overarching duties on persons exercising functions under this Act in relation to persons who need or may need care and support or carers who need or may need support, so as to give effect to certain key principles (section 3);*
- (b) *requires the Welsh Ministers to issue a statement specifying the well-being outcomes that are to be achieved for people who need care and support and carers who need support*
- 30 *and to issue a code to help achieve those outcomes (sections 4 to 9);*
- (c) *requires local authorities to assess the needs in their areas for care and support, support for carers and preventative services (section 10);*
- (d) *requires the provision of preventative services by local authorities (section 11);*
- 35 (e) *requires the promotion by local authorities of social enterprises, co-operatives, user led services and the third sector in the provision in their areas of care and support and support for carers (section 12);*

(f) *requires the provision by local authorities of a service providing information and advice relating to care and support and support for carers and assistance in accessing it (section 14);*

(g) *requires local authorities to establish and maintain registers of sight-impaired, hearing-impaired and other disabled people (section 15).*

### Overarching duties

## 3 Overarching duties

(1) A person exercising functions under this Act must seek to promote the well-being of—

(a) people who need care and support, and

(b) carers who need support.

(2) A person exercising functions under this Act in relation to—

(a) an individual who has, or may have, needs for care and support, or

(b) a carer who has, or may have, needs for support,

must comply with the duties in subsection (3).

(3) The person must—

(a) in so far as is reasonably practicable, ascertain and have regard to the individual's views, wishes and feelings,

(b) have regard to the importance of promoting and respecting the dignity of the individual,

(c) have regard to the characteristics, culture and beliefs of the individual (including, for example, language), and

(d) have regard to the importance of providing appropriate support to enable the individual to participate in decisions that affect him or her to the extent that is appropriate in the circumstances, particularly where the individual's ability to communicate is impaired through age, disability or otherwise.

(4) A person exercising functions under this Act in relation to an adult falling within subsection (2)(a) or (b) must, in addition, have regard to—

(a) the importance of beginning with the presumption that the adult is best placed to judge the adult's well-being, and

(b) the importance of promoting the adult's independence where possible.

(5) A person exercising functions under this Act in relation to a child falling within subsection (2)(a) or (b), in addition—

(a) must have regard to the importance of promoting the upbringing of the child by the child's family, in so far as doing so is consistent with promoting the well-being of the child, and

(b) where the child is under the age of 16, must ascertain and have regard to the views, wishes and feelings of the persons with parental responsibility for the child, in so far as doing so is—

(i) consistent with promoting the well-being of the child, and

(ii) reasonably practicable.

# Human Transplantation (Wales) Bill

[DRAFT]

## Overview

*The main provisions of this Act of the National Assembly for Wales—*

- (a) impose a duty on the Welsh Ministers to promote transplantation (section 1);*
- (b) provide that certain activities done in Wales for the purpose of transplantation are lawful if done with consent (section 2);*
- (c) set out how consent is given to transplantation activities, including the circumstances in which consent is deemed to be given in the absence of express consent (sections 3 to 7);*
- (d) make it an offence for transplantation activities to be done in Wales without consent (section 8);*
- (e) make amendments (sections 13 and 14) to the Human Tissue Act 2004, including in relation to a code of practice issued under that Act which—*
  - (i) gives practical guidance to persons that do transplantation activities, and*
  - (ii) lays down the standards expected in relation to the doing of such activities, including how consent is to be obtained.*

**The following is enacted:**

### *Promotion of transplantation*

#### **1 Duty of the Welsh Ministers to promote transplantation**

The Welsh Ministers must—

- (a) promote transplantation as a means of improving the health of the people of Wales,
- (b) provide information and increase awareness about transplantation, and
- (c) inform the public of the circumstances in which consent to transplantation activities is deemed to be given in the absence of express consent.

### *Lawful transplantation activities*

#### **2 Authorisation of transplantation activities**

(1) Transplantation activities are lawful if done in Wales—

- (a) with express consent where that is required (see sections 3 to 5), or
- (b) otherwise with deemed consent (see sections 3 and 7).

(2) The following are transplantation activities for the purpose of this Act—

- (a) storing the body of a deceased person for use for the purpose of transplantation;
- (b) removing from the body of a deceased person, for use for that purpose, any relevant material of which the body consists or which it contains;
- (c) storing for use for that purpose any relevant material which has come from a

David Melding AM  
Chair  
Constitutional and Legislative Affairs Committee

16 April 2015

Dear David,

**Inquiry: Making laws in the Fourth Assembly**

Thank you for your letter dated 26 March. Unfortunately, I am not in a position to provide further detail on any standing order changes at this stage.

Following the passing of the Wales Act the Assembly and the Welsh Government will need to look at the procedures needed for the scrutiny of the new borrowing and taxation powers, which will include finance Bills and the possibility of an annual budget Bill.

As you are aware the Finance Committee has published two reports on 'Best Practice Budget Procedures'. In these reports the Committee has refrained from prescribing any specific process which we believe should be adopted. We have made some suggestions but as a Committee we felt that the detail of the changes should be a matter for the Government and the Assembly to decide ensuring there is cross party agreement and the needs of the executive and the legislature are met.

That said, it is clear that there will need to be changes to standing orders, particularly in relation to the budget procedure. For example, the Committee have suggested a move to an annual budget Bill, and it is likely that a Bill of this





nature would require a distinct set of standing orders. You may find it helpful to look at the 'suggested outline budget process' (annex A, copy attached for your information) which we have published as part of our report. You will note that this suggests standing orders could provide for a fast track stage 1 process for a budget Bill.

In relation to taxation Bills, at this stage I would not envisage any change from the normal Bill 4-stage Bill procedure for the passing of these taxation Bills. Should the Government bring forward suggestions for changing the standing orders in relation to finance Bills then this is something which would need to be considered on the merit of the Government's suggestions at that time.

I am sure you will appreciate it is quite early in the process of devolving the new fiscal powers and as such it is difficult to detail standing order changes which may be required.

I hope the information I have detailed is helpful to your inquiry.

Yours sincerely,



**Jocelyn Davies AM**  
**Chair**





## **STATEMENT BY THE WELSH GOVERNMENT**

**TITLE** Update on implementation of the Social Services and Well-being (Wales) Act 2014

**DATE** 21 April 2015

**BY** Mark Drakeford AM, Minister for Health and Social Services

A year ago the Social Services and Well-being (Wales) Act completed its passage through the National Assembly. – It included provisions for a substantial range of regulations, codes of practice and statutory guidance all of which will return to this legislature this year for consideration. The purpose of this statement is to update Members on progress to date in developing the body of those regulations, to set out the work which is still to be undertaken and outline the additional support we have put in place.

I would like to begin by placing on record my thanks to the substantial body of stakeholders who have worked so hard over the past twelve months to help develop the practical detail of implementation. Mrs Gwenda Thomas, when taking the legislation through this Assembly, regularly referred to it as a “people’s Act”, and I think that we can say that this Act has been made by the people who will be delivering, planning and receiving services under it. In saying this, I want to pay particular tribute to the citizen’s panel, put in place by Mrs Thomas and which has advised us on every part of the Act.

As members will be aware, the subordinate legislation is being pursued in two tranches. The first tranche was issued for formal consultation between 6 November 2014 and 2 February 2015. Included in the tranche were regulations covering:

- Part 2 – General functions including social enterprise and population assessments,
- Part 3 – Assessing the needs of individuals,
- Part 4 – Meeting needs, including eligibility, and direct payments,
- Part 7 – Safeguarding, and

- Part 11 – Miscellaneous and General, including prisoners and ordinary residence.

Two consultation events were held as part of the tranche one process.

The first was held on 26 November in the Liberty Stadium, Swansea. The second took place on 9 December in Venue Cymru, Llandudno.

Both undoubtedly helped to generate the over 300 substantive written responses received to these consultations. The overall response was positive, with respondents expressing support for the principles and the detail of the draft regulations, codes of practice and statutory guidance.

There was general support for the proposed system change set out in parts 3 and 4 of the Act to an outcomes-based approach with a simplified assessment and care planning process and greater integration of services. As a result of the consultation, however, we will amend the draft code of practice to include a national template for assessment, and we will incorporate into the Statutory code both the key elements of the Children's Framework for Assessment and the key requirements of the 2001 statutory guidance on care for deaf blind children and adults.

There was also considerable support for the detailed approach proposed under part 2 of the Act to promotion of well-being, population assessment and prevention. Proposals under part two in relation to provision of information, advice and assistance were also broadly supported, with 84% of respondents responding positively to the National Standards for Information, Advice and Assistance, and agreeing that they would be fundamental to its success.

In relation to the promotion of social enterprises, also under part 2, we had invaluable advice from WCVA and others, which enabled us to amend our draft regulations to ensure that they incorporate the most recent definitions and better support our commitment to an inclusive approach which will encourage the development of business models like social enterprises, co-operatives and co-operative arrangements, user led services and the third sector.

Likewise, for part 7, on safeguarding, there was widespread support for the suggested approaches through the regulations and statutory guidance. We will bring forward regulations (under the negative procedure) to prescribe amongst other aspects the safeguarding board areas; the lead partner for each safeguarding board and the preparation and publication of annual plans and annual reports.

Llywydd, I hope it is clear that the formal consultation responses and feedback from the consultation events have provided us with much valuable input and we have used this evidence to make changes as a result, further developing and refining our regulations, codes of practice and statutory guidance ready for laying before this Assembly between May and July this year.

During the passage of the Act there was a strong call from members that the regulations on eligibility should be subject to enhanced scrutiny under the Super

Affirmative procedure and we have made provision for this. The eligibility regulations will be the first under the Act to be laid on 8 May and will provide the full 60 days scrutiny period under the Super Affirmative procedure. The Government's hope would be to bring the regulations for debate on the floor of the Assembly before the end of this summer term. It is also our intention that the remaining regulations under tranche 1, made using affirmative and negative procedures, will also be laid during this period and debated accounting to the same timetable. A number of these regulations will be laid using the affirmative procedure:

- regulations on the definitions of Social Enterprises, cooperatives and the third sector
- regulations putting in place partnership arrangements for population assessments
- regulations on the functions and procedures of Safeguarding Boards

These will be laid before the Assembly for 40 days and debated.

Other regulations in tranche 1 such as those on:

- undertaking of population assessments
- setting safeguarding board areas, lead partners and arrangements for the preparation and publication of annual plans and annual reports
- determining disputes about ordinary residence
- will be laid using the negative procedure.

Next month we will launch the second tranche of consultations covering the remaining parts of the Act, including subordinate legislation on:

- Part 5 – Charging and financial assessment,
- Part 6 – Looked after and accommodated children,
- Part 9 – Co-operation and partnership, and
- Part 10 –advocacy.

Work is already well advanced to prepare drafts of the regulations, codes of practice and statutory guidance that will serve tranche two. Formal consultation will begin on 8 May, and will run for 12 weeks until 31 July.

Following a period of analysis the final versions of this tranche of subordinate legislation will be ready for tabling in November this year. The regulations, codes of practice and statutory guidance to be made in relation to these areas will then complete the statutory framework to implement the Act.

Llywydd, alongside the work to be concluded through the National Assembly, there are a series of other actions being taken to ensure successful implementation of the Act.

The Care Council for Wales, as the lead body for workforce matters will take responsibility for the development and implementation of a national learning and development strategy, to ensure that those who deliver services will be fully prepared for the changes the Act introduces and the regulations it will bring into force.

More broadly the Welsh Government will continue to support local government and its partners in making the transition to the new arrangements. The new regional implementation arrangements are central to the Act and I am encouraged by the actions already taken by local authorities and their partners to prepare for implementation of the Act.

In support of this work the funding available through the Delivering Transformation grant has been doubled to £3m in 2015-16.

With only another year left until the implementation date of April 2016 there is still much to do, but we will deliver the Act, working in partnership with our stakeholders, and the resulting framework will reflect the efforts made by all those who have contributed. This is an exciting year, and a once in a generation opportunity to improve the standards of social care in Wales. We will continue to work with the national partnership forum, the leadership group and citizens panel to support our work, and ensure that people who use services remain at the heart of our programme for change.

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# Agenda Item 6.2

By virtue of paragraph(s) vi of Standing Order 17.42

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