

# **SL(6)441 – The Firefighters’ Pension Schemes and Compensation Scheme (Amendment) (Wales) Order 2024**

## **Background and Purpose**

This Order amends Schedule 2 to the Firemen’s Pension Scheme Order 1992 (which sets out the Firefighters’ Pension (Wales) Scheme) and Schedule 1 to the Firefighters’ Pension Scheme (Wales) Order 2007 (which sets out the New Firefighters’ Pension Scheme (Wales)) to extend the period during which persons who were employed in Wales as retained firefighters have access to a pension scheme.

This Order also amends the Firefighters’ Compensation Scheme (Wales) Order 2007 to allow awards to be made in relation to injury sustained while a person is performing certain duties other than fire-fighting under a temporary secondary employment with the same fire and rescue authority. In those cases, any injury will be treated as if it were sustained under the person’s primary employment, and consequently an award will be based on service and pay under that primary employment. The amendments also provide that where a person is performing duties under a secondary retained employment with the same fire and rescue authority, any injury will be treated as if it were sustained under the person’s regular service employment, meaning that an award will be based on the person’s service and pay under that regular service contract.

## **Procedure**

Negative.

This Order was made by the Welsh Ministers before it was laid before the Senedd. The Senedd can annul the Order within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date it was laid before the Senedd.

## **Technical Scrutiny**

The following 6 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### **1. Standing 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In article 3(1) of the Order, there is a difference between the English and Welsh texts in terms of the reference to the heading of Schedule 2 of the Firemen’s Pension Scheme Order 1992.

The English text refers to “*the Firefighters’ Pension Scheme*”, whereas the Welsh text refers to “*Cynllun Pensiwn y Dynion Tân **1992***” (emphasis added).



## **2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

In Schedule 1 to the Order, in paragraph 1(2)(a), the new definitions are described as being inserted “*at the appropriate place*” in rule 2(1) of the New Firefighters’ Pension Scheme (Wales). However, in the Welsh text, the definitions have not been listed in alphabetical order. The second definition “*cyfnod cyflogaeth arbennig*” (“*special employment period*”) should appear before the first definition “*cyfnod cyfyngedig estynedig*” (“*extended limited period*”).

This has the potential to confuse the instruction to insert the definitions in the appropriate place in rule 2(1) of the New Firefighters’ Pension Scheme (Wales) in the Welsh text.

## **3. Standing 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In Schedule 1 to the Order, in paragraph 6(3), in the new rule 5C(7), there is a difference between the English and Welsh texts.

In the English text, it states “*Where the authority **do not** hold records of that person’s pay for that period...*” (emphasis added). However, in the corresponding Welsh text, those words are translated as meaning “*Where the authority **do** hold records of that person’s pay for that period...*” (emphasis added). This means that both language texts have the opposite meaning and contradict each other.

## **4. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

In Schedule 1 to the Order, in paragraph 6(3), in the new rule 5C(8), reference is made to “*a whole-time regular **competent** firefighter*” (emphasis added). This is the only occasion that “*regular **competent** firefighter*” (emphasis added) is used, rather than the defined term “*regular firefighter*” (as defined in the New Firefighters’ Pension Scheme (Wales)).

Further information is required as to whether the use of this undefined term is intentional and, if so, why the term has not been defined for the purposes of the New Firefighters’ Pension Scheme (Wales).

## **5. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

In Schedule 1 to the Order, in paragraph 7(3), the opening words state that the subsequent amendments numbered as paragraphs (a) to (c) are made “*In rule 16...*” (of Part 12 of the New Firefighters’ Pension Scheme (Wales)). However, in paragraph 7(4), a further amendment is made to another paragraph in the same rule but without identifying that the paragraph to be amended is also found in rule 16 of Part 12.

Therefore, the structure of the paragraph is incorrect and paragraph 7(4) should have been numbered as paragraph (d) of paragraph 7(3) in Schedule 1 to this Order. The numbering of



the following sub-paragraphs in paragraph 7 would also need to be adjusted to follow this re-numbering.

A similar error also occurs in paragraph 7(6) and (7) of Schedule 1 to the Order, where sub-paragraph (7) should have been numbered as paragraph 7(6)(d), with the subsequent sub-paragraphs re-numbered to facilitate this correction.

#### **6. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In Schedule 2 to the Order, in the heading of paragraph 1, there is a difference between the English and Welsh text. The English text refers to “Part 1” but in the Welsh text it is translated as “Schedule 1”.

### **Merits Scrutiny**

The following 2 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

#### **7. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd**

The name used to refer to the pension scheme set out in Schedule 2 to the Firemen’s Pension Scheme Order 1992 is inconsistent in both the English and Welsh texts.

The correct legal name of the scheme is the Firefighters’ Pension (Wales) Scheme, as renamed by the Fire and Rescue Services Act 2004 (Firefighters’ Pension Scheme) (Wales) Order 2004.

However, to use examples in the English text, in the Explanatory Note to the Order the Firefighters’ Pension (Wales) Scheme is referred to as “*the Firefighters’ Pension Scheme (Wales) 1992*”. Whereas in footnote (1) on page 4 of the Order, the Scheme is referred to as “*the 1992 Firefighters’ Pension Scheme*”.

This Order is complex and technical in nature and it is considered that the use of different names to refer to the same pension scheme is likely to cause confusion for the reader.

#### **8. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd**

The Explanatory Memorandum (“EM”) states as follows, at paragraph 2.1:

*“The Committee will wish to note that neither the Firefighters’ Pension (Wales) Scheme Order 1992 [sic] nor the Firefighters’ Compensation Scheme (Wales) Order 2007 was created bilingually, hence the form of the 2024 Orders amending those earlier orders. Welsh Ministers have determined that it would not be proportionate to revoke and remake the 1992 Order or the 2007 Order bilingually.”*

By way of clarification (aside from the substantive point explained in the EM), it should be noted that the reference above to the “*Firefighters’ Pension (Wales) Scheme Order 1992*”



should instead be a reference to the Firemen's Pension Scheme Order 1992, which was made monolingually. As explained, the Firefighters' Compensation Scheme (Wales) Order 2007 was also made monolingually. The Firefighters' Pension Scheme (Wales) Order 2007 was made bilingually.

## Welsh Government response

A Welsh Government response is required in relation to reporting points 1 to 7.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**23 January 2024**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

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Welsh Parliament

**Legislation, Justice and Constitution Committee**