

Agenda – Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Lleoliad: I gael rhagor o wybodaeth cysylltwch a:
Ystafell Bwyllgora 1 – Y Senedd Gareth Williams
Dyddiad: Dydd Llun, 21 Mai 2018 Clerc y Pwyllgor
Amser: 14.30 0300 200 6362
SeneddMCD@cynulliad.cymru

- 1 Cyflwyniad, ymddiheuriadau, dirprwyon a datgan buddiannau

- 2 Offerynnau nad ydynt yn cynnwys materion i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 na 21.3
14.30 (Tudalennau 1 – 2)
CLA(5)–15–18 – Papur 1 – Offerynnau statudol sydd ag adroddiadau clir
Offerynnau'r Weithdrefn Penderfyniad Negyddol
 - 2.1 SL(5)213 – Rheoliadau Gwarcheidiaeth Arbennig (Cymru) (Diwygio) 2018

 - 2.2 SL(5)214 – Cod Ymarfer ar weithredu swyddogaethau gwasanaethau cymdeithasol mewn cysylltiad â gorchmynion gwarcheidiaeth arbennig

- 3 Offerynnau sy'n cynnwys materion i gyflwyno adroddiad arnynt i'r Cynulliad o dan Reol Sefydlog 21.2 neu 21.3 neu 21.7
14.35
Offerynnau'r Weithdrefn Penderfyniad Negyddol
 - 3.1 SL(5)215 – Rheoliadau Cynllun Pensiwn y Diffoddwyr Tân (Cymru) (Diwygio) 2018

(Tudalennau 3 – 14)
CLA(5)–15–18 – Papur 2 – Rheoliadau
CLA(5)–15–18 – Papur 3 – Memorandwm Esboniadol
CLA(5)–15–18 – Papur 4 – Adroddiad



3.2 SL(5)216 – Gorchymyn Cynlluniau Pensiwn a Chynllun Digolledu'r Diffoddwyr Tân (Cymru) (Diwygio) 2018

(Tudalennau 15 – 34)

CLA(5)–15–18 – Papur 5 – Gorchymyn

CLA(5)–15–18 – Papur 6 – Memorandwm Esboniadol

CLA(5)–15–18 – Papur 7 – Adroddiad

4 Papurau i'w nodi

14.40

(Tudalennau 35 – 42)

CLA(5)–15–18 – Papur 8 – Llythyr at Bwyllgor Gweithdrefnau Tŷ'r Cyffredin

CLA(5)–15–18 – Papur 9 – Llythyr at yr Ysgrifennydd Gwladol

5 Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y cyhoedd o'r cyfarfod ar gyfer y busnes canlynol:

14.40

6 Gohebiaeth gan y Llywydd

(Tudalen 43)

CLA(5)–15–18 – Papur 10 – Llythyr oddi wrth y Llywydd

7 Gohebiaeth gan y Pwyllgor Busnes

(Tudalennau 44 – 48)

CLA(5)–15–18 – Papur 11 – Llythyr oddi wrth y Pwyllgor Busnes

CLA(5)–15–18 – Papur 11a – Papur cefndirol

8 Materion gweithredol yn ymwneud â rheoliadau a wneir o dan Fil yr UE (Ymadael)

(Tudalennau 49 – 80)

CLA(5)–15–18 – Papur 12 – Papur cefndirol

Dyddiad y cyfarfod nesaf

11 Mehefin 2018

Offerynnau Statudol sydd ag Adroddiadau Clir

21 Mai 2018

SL(5)213 – Rheoliadau Gwarcheidiaeth Arbennig (Cymru) (Diwygio) 2018

Gweithdrefn: Negyddol

Mae'r Rheoliadau yn diwygio Rheoliadau Gwarcheidiaeth Arbennig (Cymru) (Diwygio) 2005 mewn perthynas â materion y mae rhaid i awdurdod lleol ymdrin â hwy yn ei adroddiad ar gyfer y llys, a'r ddarpariaeth o wasanaethau cymorth gwarcheidiaeth arbennig i blant a oedd gynt yn derbyn gofal mewn ardal awdurdod lleol arall.

Rhiant-Ddeddf:

Fe'u gwnaed ar: 02 Mai 2018

Fe'u gosodwyd ar: 08 Mai 2018

Yn dod i rym ar: 02 Gorffennaf 2018

SL(5)214 – Cod Ymarfer ar weithredu swyddogaethau gwasanaethau cymdeithasol mewn cysylltiad â gorchmynion gwarcheidiaeth arbennig

Gweithdrefn: Negyddol

Caiff y cod ymarfer hwn ei gyhoeddi yn unol ag adran 145 o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 ('Deddf 2014'), sy'n rhoi grym i Weinidogion Cymru gyhoeddi deddfwriaeth ynglŷn ag arfer swyddogaethau gwasanaethau cymdeithasol. Mae'n rhaid i awdurdodau lleol, wrth arfer eu swyddogaethau gwasanaethau cymdeithasol mewn cysylltiad â gorchmynion gwarcheidiaeth arbennig, weithredu yn unol â'r gofynion sydd wedi eu cynnwys yn y cod hwn. Nid yw adran 147 o'r Ddeddf (eithrio o ofynion deddfwriaeth) yn berthnasol i unrhyw un o'r gofynion sydd wedi eu



cynnwys yn y cod hwn, felly mae'n rhaid dilyn y cod hwn yn ei gyfanrwydd.

Yn y cod hwn, mae rheidrwydd wedi ei fynegi fel 'rhaid' a 'ni chaiff'. Caiff canllawiau eu mynegi fel 'gall / gellir' ac 'nid oes rhaid' neu 'dylai' ac 'ni ddylai'.

Mae'r cod ymarfer hwn yn disodli'r canllawiau statudol ar warcheidiaeth arbennig a gyhoeddwyd gan Lywodraeth Cymru ym mis Ebrill 2006.

Yn ystod 2016–17 aeth Llywodraeth Cymru ati i adolygu gorchmynion gwarcheidiaeth yng Nghymru. Mae'r cod ymarfer hwn yn deillio o'r adolygiad hwnnw. Hoffai Llywodraeth Cymru ddiolch i aelodau'r Grŵp Technegol Gwarcheidiaeth Arbennig a gynorthwyodd Llywodraeth Cymru gyda'r adolygiad hwn.

Rhiant–Ddeddf: Cyhoeddwyd o dan Adran 145 o Ddeddf Gwasanaethau Cymdeithasol a Llesaint (Cymru) 2014

Fe'u gosodwyd ar: 09 Mai 2018



OFFERYNNAU STATUDOL
CYMRU

2018 Rhif 576 (Cy. 103)

**PENSIYNAU
GWASANAETHAU
CYHOEDDUS, CYMRU**

**Rheoliadau Cynllun Pensiwn y
Diffoddwyr Tân (Cymru)
(Diwygio) 2018**

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Cynllun Pensiwn y Diffoddwyr Tân (Cymru) 2015 ("Rheoliadau 2015") a oedd yn sefydlu cynllun ar gyfer talu pensiynau a buddion eraill i ddiffoddwyr tân yng Nghymru o 1 Ebrill 2015 ymlaen.

Mae rheoliadau 3, 5, 6, 7 ac 8(2) yn gwneud mân ddiwygiadau i egluro darpariaethau Rheoliadau 2015.

Mae rheoliad 4 yn diwygio rheoliad 80A o Reoliadau 2015 i egluro sut y dylid cyfrifo'r cyfandaliad pan fo hawl gan aelod i gael taliad ar unwaith o swm cyfwerth â'r pensiwn afiechyd haen isaf yng Nghynllun Pensiwn y Dynion Tân (Cymru) 1992 (a nodir yn Atodlen 2 i Orchymyn Cynllun Pensiwn y Dynion Tân 1992) ac yntau'n arfer yr opsiwn i gymudo rhan o'r pensiwn am gyfandaliad.

Mae rheoliad 8(3) yn diwygio paragraffau 37 a 38 o Atodlen 2 i Reoliadau 2015 er mwyn darparu ar gyfer y trefniadau trosiannol mewn achos pan fo'r awdurdod yn penderfynu cael barn ysgrifenedig ymarferydd meddygol cymwysedig annibynnol (ymarferydd meddygol fel y'i diffinnir yn Rheoliadau 2015) cyn penderfynu ynghylch hawlogaeth aelod i gael dyfarniad afiechyd ac nad yw'r penderfyniad wedi ei wneud cyn dyddiad trosiant yr aelod. Mae'r diwygiadau yn darparu bod aelodau y rhoddir dyfarniad afiechyd iddynt wedi hynny yn parhau yn eu cynllun pensiwn presennol.

Mae rheoliad 9 yn cywiro mân wall yn Rheoliadau Cynllun Pensiwn y Diffoddwyr Tân (Cymru) (Darpariaethau Trosiannol a Chanlyniadol) 2015.

Mae'r diwygiadau a wneir gan y Rheoliadau yn cael effaith o 1 Ebrill 2015 ymlaen, ac eithrio'r rhai a wneir gan reoliad 8(3) sy'n cael effaith o 1 Mehefin 2018 ymlaen.

Ystyriwyd Cod Aseidiadau Effaith Rheoleiddiol Gweinidogion Cymru ar Is-ddeddfwriaeth mewn perthynas â'r Rheoliadau hyn. O ganlyniad, ystyriwyd nad oedd yn angenrheidiol cynnal asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn.

OFFERYNNAU STATUDOL
CYMRU

2018 Rhif 576 (Cy. 103)

**PENSIYNAU
GWASANAETHAU
CYHOEDDUS, CYMRU**

**Rheoliadau Cynllun Pensiwn y
Diffoddwyr Tân (Cymru)
(Diwygio) 2018**

Gwnaed 9 Mai 2018

*Gosodwyd gerbron Cynulliad Cenedlaethol
Cymru* 10 Mai 2018

Yn dod i rym 1 Mehefin 2018

Mae Gweinidogion Cymru yn gwneud y Rheoliadau hyn drwy arfer y pwerau a roddir gan adrannau 1(1) a (2)(f)(1), 2(1), 3(1) i (3) a 18(5)(a) a (6) o Ddeddf Pensiynau'r Gwasanaethau Cyhoeddus 2013(2) ac Atodlenni 2 (paragraff 6(b)) a 3 (paragraffau 1 i 4) iddi.

Yn unol ag adran 21 o'r Ddeddf honno, mae Gweinidogion Cymru wedi ymgynghori â chynrychiolwyr y personau hynny y mae'n ymddangos yn debygol i Weiniogion Cymru y bydd y Rheoliadau hyn yn effeithio arnynt.

Enwi a chychwyn

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Cynllun Pensiwn y Diffoddwyr Tân (Cymru) (Diwygio) 2018.

(2) Daw'r Rheoliadau hyn i rym ar 1 Mehefin 2018.

(3) Yn ddarostyngedig i baragraff (4), mae'r diwygiadau a wneir gan y Rheoliadau hyn yn cael effaith o 1 Ebrill 2015 ymlaen.

(4) Mae'r diwygiadau a wneir gan reoliad 8(3) yn cael effaith o 1 Mehefin 2018 ymlaen.

(1) *Gweler* hefyd adran 1(3) ac Atodlen 1.
(2) 2013 p. 25.

Diwygio Rheoliadau Cynllun Pensiwn y Diffoddwyr Tân (Cymru) 2015

2. Mae Rheoliadau Cynllun Pensiwn y Diffoddwyr Tân (Cymru) 2015(1) sy'n sefydlu Cynllun Pensiwn y Diffoddwyr Tân (Cymru) 2015 wedi eu diwygio yn unol â rheoliadau 3 i 8.

Diwygio Rhan 3 (aelodaeth o'r cynllun)

3. Yn Rhan 3 (aelodaeth o'r cynllun), yn nhestun Saesneg rheoliad 30 (aelod â chredyd pensiwn), yn lle "WRPA 1999" rhodder "WRPA 1999"(2).

Diwygio Rhan 5 (buddion ymddeol)

4. Yn Rhan 5 (buddion ymddeol), yn rheoliad 80A(3) (opsiwn i gymudo rhan o swm cyfwerth), ar ôl paragraff (3) mewnosoder—

“(4) Pan fo hawl gan y person i gael taliad ar unwaith o swm cyfwerth â phensiwn afiechyd haen isaf Cynllun 1992 ac yntau'n arfer yr opsiwn i gymudo o dan y rheoliad hwn, cyfrifir y cyfandaliad yn unol â rheol B7 (cymudo – darpariaeth gyffredinol) o Gynllun 1992.”

Diwygio Rhan 6 (buddion marwolaeth)

5.—(1) Mae Rhan 6 (buddion marwolaeth) wedi ei diwygio fel a ganlyn.

(2) Yn rheoliad 87(1) (pensiwn sy'n daladwy i bartner sy'n goroesi, ar farwolaeth aelod actif) yn lle “gyda mwy na thri” rhodder “gydag o leiaf dri”.

(3) Yn rheoliad 101(3) a (4) (pensiwn profedigaeth: plentyn cymwys), yn lle “pensiwn partner sy'n goroesi”, ym mhob lle y mae'r geiriau'n digwydd, rhodder “pensiwn plentyn cymwys”.

Diwygio Rhan 8 (cyfraniadau)

6.—(1) Mae Rhan 8 (cyfraniadau) wedi ei diwygio fel a ganlyn.

(2) Yn rheoliad 120(2) (cyfraniadau yn ystod absenoldeb o'r gwaith oherwydd salwch, anaf, anghydfod undebol neu absenoldeb awdurdodedig), ar ôl “hwnnw” mewnosoder “wneud dewisiad i”.

(3) Yn rheoliad 128(5) (ad-dalu cyfraniad ychwanegol cyflogwr ar gyfer dyfarniad afiechyd, yn dilyn adolygiad) ar ôl “mewn cysylltiad â P” yn y lle

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- (1) O.S. 2015/622 (Cy. 50), a ddiwygiwyd gan O.S. 2015/1016 (Cy. 71).
- (2) Ystyr “WRPA 1999” yw Deddf Diwygio Lles a Phensiynau 1999 (p. 30); gweler rheoliad 3 o O.S. 2015/622 (Cy. 50).
- (3) Mewnosodwyd rheoliad 80A gan reoliad 2 o O.S. 2015/1016 (Cy. 71) a pharagraff 5(f) o Atodlen 1 iddo.

cyntaf y mae'r geiriau hynny'n digwydd, mewnosoder "o'r dyddiad pan ddaeth yr hawlogaeth i ben".

Diwygio Rhan 9 (cronfa bensiwn y diffoddwyr tân)

7. Yn Rhan 9 (cronfa bensiwn y diffoddwyr tân), yn nhestun Saesneg rheoliad 137(2)(b) (diffygion gwirioneddol), ar ôl "must repay it" mewnosoder "to".

Diwygio Atodlen 2 (darpariaethau trosiannol)

8.—(1) Mae Atodlen 2 wedi ei diwygio fel a ganlyn.

(2) Yn Rhan 3A(1) (talw buddion afiechyd i aelodau trosiannol)—

- (a) ym mharagraff 22(2)(a), ar ôl "reol 2" mewnosoder "o Ran 3"; a
- (b) ym mharagraff 25(2), yn lle "B1A(3)(i)" yn y ddau le y mae'n digwydd rhodder "B1A(3)(a)".

(3) Yn Rhan 3C(2) (darpariaethau trosiannol mewn perthynas ag CPNDT a Chynllun 1992)—

- (a) ym mharagraff 37—
 - (i) yn lle'r pennawd "Rheolwr cynllun yn penderfynu nad oes gan aelod o CPNDT hawl i ddyfarniad afiechyd" rhodder "Awdurdod yn penderfynu a oes hawlogaeth gan aelod o CPNDT i gael dyfarniad afiechyd";
 - (ii) yn is-baragraff (2), yn lle "Os yw'r paragraff hwn yn gymwys" rhodder "Os yw'r awdurdod yn penderfynu wedi hynny nad oes hawl gan yr aelod o CPNDT i gael dyfarniad afiechyd"; a

(iii) ar ôl is-baragraff (2) mewnosoder—

"(3) Os yw'r awdurdod yn penderfynu wedi hynny bod hawl gan yr aelod o CPNDT i gael dyfarniad afiechyd—

- (a) nid yw'r aelod yn ymuno â'r cynllun hwn;
- (b) mae'r aelod yn parhau i fod yn aelod o CPNDT; ac
- (c) mae'r dyfarniad afiechyd yn daladwy o dan reol 2 o Ran 3 (dyfarndal yn sgil ymddeoliad oherwydd afiechyd) o CPNDT."; a

(b) ym mharagraff 38—

(1) Mewnosodwyd Rhan 3A gan reoliad 2 o O.S. 2015/1016 (Cy. 71), a pharagraff 7(d) o Atodlen 1 iddo.
 (2) Mewnosodwyd Rhan 3C gan reoliad 2 o O.S. 2015/1016 (Cy. 71), a pharagraff 7(d) o Atodlen 1 iddo.

- (i) yn lle'r pennawd "Rheolwr cynllun yn penderfynu nad oes gan aelod o Gynllun 1992 hawl i ddyfarniad afiechyd" rhodder "Awdurdod yn penderfynu a oes hawlogaeth gan aelod o Gynllun 1992 i gael dyfarniad afiechyd";
- (ii) yng ngeiriau agoriadol is-baragraff (2), yn lle "Os yw'r paragraff hwn yn gymwys" rhodder "Os yw'r awdurdod yn penderfynu wedi hynny nad oes hawl gan yr aelod o Gynllun 1992 i gael dyfarniad afiechyd,";
- (iii) yn is-baragraff (2)(b), yn lle "H2A (apelau yn erbyn barn sy'n seiliedig ar gyngor meddygol)" rhodder "H2 (apêl yn erbyn barn ar fater meddygol)"; a
- (iv) ar ôl is-baragraff (2) mewnosoder—

"(3) Os yw'r awdurdod yn penderfynu wedi hynny bod hawl gan yr aelod o Gynllun 1992 i gael dyfarniad afiechyd—

 - (a) nid yw'r aelod yn ymuno â'r cynllun hwn;
 - (b) mae'r aelod yn parhau i fod yn aelod o Gynllun 1992; ac
 - (c) mae'r dyfarniad afiechyd yn daladwy o dan reol B3 (dyfarniadau afiechyd) o Gynllun 1992."

Diwygio Rheoliadau Cynllun Pensiwn y Diffoddwyr Tân (Cymru) (Darpariaethau Trosiannol a Chanlyniadol) 2015

9. Yn y rhaglith i Reoliadau Cynllun Pensiwn y Diffoddwyr Tân (Cymru) (Darpariaethau Trosiannol a Chanlyniadol) 2015⁽¹⁾ hepgorer "(6) a (7)".

Alun Davies

Ysgrifennydd y Cabinet dros Lywodraeth Leol a
Gwasanaethau Cyhoeddus, un o Weinidogion Cymru
9 Mai 2018

⁽¹⁾ O.S. 2015/1016 (Cy. 71).

Explanatory Memorandum to ‘The Firefighters’ Pension Scheme (Wales) (Amendment) Regulations 2018’

This Explanatory Memorandum has been prepared by the Department for Education and Public Services and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary’s Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of **The Firefighters’ Pension Scheme (Wales) (Amendment) Regulations 2018..**

Alun Davies

Cabinet Secretary for Local Government and Public Services

10 May 2018

1. Description

The Firefighters' Pension Scheme (Wales) Regulations 2015 established a scheme for the payment of pensions and other benefits to firefighters in Wales from 1 April 2015 ("the 2015 Scheme"). A number of ambiguities and typographical errors have been identified within the provisions which The Firefighters' Pension Scheme (Wales) (Amendment) Regulations 2018 ("the Order") seek to amend.

The Regulations also amend The Firefighters' Pension Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015 which govern the transfer of members from the 1992 and 2006 schemes into the 2015 scheme.

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

The provisions within The Firefighters' Pension Scheme (Wales) (Amendment) Regulations 2018 are retrospective and have effect from 1 April 2015, the date on which the 2015 Scheme came into force. Regulation 8(3) is an exception to this. In order to achieve more efficient administration, this regulation comes into force on 1 June 2018. The power to make retrospective provision in regulations is conferred by section 3(3)(b), subject to section 23, of the Public Service Pensions Act 2013.

3 Legislative background

The 2015 Scheme came into force on 1 April 2015 by means of the Firefighters' Pension Scheme (Wales) Regulations 2015 ("the 2015 Regulations", S.I. 2015/622 (W 50)). The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 1(1) and (2)(F)1, 2(1), 3(1) to (3), 18(5)(a) and (6) of Schedules 2 (paragraph 6(b)) and 3 (paragraphs (1) to (4)) to the Public Service Pensions Act 2013.

There are two further principal pension schemes for firefighters. These are governed by the Firemen's Pension Scheme Order 1992 (S.I. 1992 No 129), ("the 1992 Scheme") and the Firefighters' Pension Scheme (Wales) Order 2007 (S.I. 2007/1072 (W 110), "the 2007 Scheme"). The 2007 Scheme was closed to new firefighters on 31 March 2015, and the 1992 Scheme had already closed to new firefighters in April 2006. Firefighters with membership of those schemes are subject to the transitional arrangements set out in Schedule 2 to the 2015 Regulations and the Firefighters' Pension Scheme (Wales)(Transitional and Consequential Provisions) Regulations 2015 ("the 2015 Transitional Provisions Regulations", SI 2015/1016 (W 71)).

The Order seeks to rectify minor errors and ambiguities within the 2015 Regulations, and the 2015 Transitional Provisions Regulations.

This instrument is subject to the negative resolution procedure.

4. Purpose & intended effect of the legislation

The Order amends the Firefighters' Pension Scheme (Wales) Regulations 2015 to rectify minor errors and ambiguities identified within the current provisions as follows :-

- **Regulations 3, 5, 6, 7 and 8(2)** make minor amendments to correct minor errors in regulations 30, 87, 103, 120, 128, 137 of and Part 3A of Schedule 2 to of the Firefighters' Pension Scheme (Wales) Regulations 2015.
- **Regulation 4** of the Order amends Regulation 80A of the 2015 Regulations (inserted by Schedule 1 to the 2015 Transitional Provisions Regulations), which provides for a member's entitlement to commute part of a pension into a lump sum. The amendments clarify how the lump sum should be calculated where a member is entitled to the immediate payment of an equivalent amount to the lower tier ill health pension in the Firefighters' Pension (Wales) Scheme 1992 and exercises the option to commute part of the pension for a lump sum.
- **Regulation 5** deals with survivors' benefits, making it clear that three months' service is sufficient to achieve qualification and stipulating, where applicable, that bereavement pension is for the benefit of eligible children.
- **Regulation 8(3)** amends Paragraphs 37 and 38 of Schedule 2 to the 2015 Regulations (inserted by Schedule 1 of the 2015 Transitional Provisions Regulations), which includes provisions that deal with the position of members who are being considered for ill-health retirement by an independent qualified medical practitioner at the time of their transition date, and who subsequently continue as active members of the 2015 Scheme. It was still necessary to provide for the transitional arrangements in the event that the authority decides to obtain the written opinion of an independent qualified medical practitioner before making a determination about a member's entitlement to an ill health award and the determination has not been made before the member's transition date. The amendments provide that members who are subsequently granted an ill health award remain in their existing pension scheme, avoiding the necessity for a minimal period of membership in the 2015 Scheme.

Regulation 9 corrects a minor error in the Firefighters' Pension Scheme (Wales) Transitional and Consequential Provisions) Regulations 2015.

The amendments made by the Regulations have effect from the 1 April 2015, except for those made by Regulation 8(3) which have effect from 1 June 2018.

5. Consultation

Section 21 of the Public Services Act 2013 requires the authority responsible for making the regulations to consult either those who are likely to be affected by them, or the representatives of those persons, before making any regulations. The Welsh Government conducted a 12 week consultation from the 27 September to 21 December 2017 inviting stakeholder views on proposed amendments to the Firefighters' Pension Scheme (Wales) Regulations 2015 and the Firefighters' Pension Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015. The consultation outlined amendments required in order to rectify minor errors which had been identified by the Home Office and National Assembly Lawyers.

The Welsh Government received three consultation responses from North Wales Fire and Rescue Authority, South Wales Fire and Rescue Authority and Mid and West Wales Fire and Rescue Authority. The FRAs expressed support for the proposed amendments and confirmed that they were in favour of scheme members who are granted an ill health award to remain within the terms of the original pension scheme, thus avoiding the condition for a minimal period membership under the 2015 scheme.

6. Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment has been considered, but has not been conducted in this instance as the Order will not introduce any additional costs to charities, and the private or third sector.

7. Equality Impact Assessment

An Equality Impact Assessment and Welsh Language Impact Assessment have been completed and can be accessed by request to fire@wales.gsi.gov.uk

8. Competition Assessment

Not Applicable

9. Post Implementation Review.

The Welsh Government will work with Fire and Rescue Authorities and employee representative bodies to ensure the impact of these regulatory amendments are fully understood.

SL(5)215 – Rheoliadau Cynllun Pensiwn y Diffoddwyr Tân (Cymru) (Diwygio) 2018

Cefndir a Diben

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Cynllun Pensiwn y Diffoddwyr Tân (Cymru) (OS 2015/622) ('Rheoliadau 2015') drwy wneud nifer o welliannau technegol. Sefydlodd Rheoliadau 2015 gynllun ('cynllun 2015') ar gyfer talu pensiynau a buddion eraill i ddiffoddwyr tân yng Nghymru o 1 Ebrill 2015.

Yn ogystal, mae'r Rheoliadau hyn hefyd yn diwygio Rheoliadau Cynllun Pensiwn y Diffoddwyr Tân (Cymru) (Darpariaethau Trosiannol a Chanlyniadol) 2015 (sy'n llywodraethu'r broses o drosglwyddo aelodau o gynlluniau 1992 a 2007 i gynllun 2015) i wneud mân welliant technegol.

Y weithdrefn

Negyddol

Materion technegol: craffu

Ni nodwyd unrhyw bwyntiau i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn.

Craffu ar y rhinweddau

Nodir pwynt i gyflwyno adroddiad arno o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

Mae'r darpariaethau yn Rheoliadau Cynllun Pensiwn y Diffoddwyr Tân (Cymru) (Diwygio) 2018 yn ôl-weithredol ac yn dod i rym ar 1 Ebrill 2015, sef y dyddiad y daeth cynllun 2015 i rym, (ac eithrio rheoliad 8(3) sy'n dod i rym ar 1 Mehefin 2018).

Rhoddir y pŵer i wneud darpariaeth ôl-weithredol mewn rheoliadau gan adran 3(3)(b) o Ddeddf Pensiynau'r Gwasanaethau Cyhoeddus 2013 ('Deddf 2013'). Mae adran 23 o Ddeddf 2013 yn nodi gweithdrefn ar gyfer gwneud darpariaeth ôl-weithredol, gan gynnwys:

- o dan isadran (1), gofyniad am gael cydsyniad gan bersonau y mae'n debygol y bydd y darpariaethau'n effeithio arnynt lle'r ymddengys bod darpariaeth ôl-weithredol yn cael effeithiau andwyol sylweddol mewn perthynas â'r pensiwn sy'n daladwy neu mewn perthynas ag aelodau'r cynllun: neu
- o dan isadran (2), gofyniad i ymgynghori â phersonau y mae'n debygol y bydd y darpariaethau'n effeithio arnynt (gyda'r bwriad o ddod i gytundeb â phersonau o'r fath), lle'r ymddengys nad yw'r ddarpariaeth ôl-weithredol yn cael effeithiau andwyol sylweddol fel y nodir yn isadran (1) ond yn cael effeithiau andwyol sylweddol mewn unrhyw ffordd arall mewn perthynas ag aelodau'r cynllun.

Mewn perthynas â'r weithdrefn ôl-weithredol o dan adran 23 o Ddeddf 2014, mae Llywodraeth Cymru wedi egluro i Wasanaethau Cyfreithiol y Cynulliad nad yw'r Rheoliadau hyn yn ddarostyngedig i adran 23 oherwydd nad oes unrhyw effaith andwyol sylweddol ar aelodau'r cynllun ac mai diben y Rheoliadau yw cywiro gwallau a/neu egluro materion neu mewn perthynas â'r darpariaethau eraill sy'n cael effaith ôl-weithredol. Mae'r esboniad hwn i'w weld yn foddhaol. Yn ogystal, cadarnhaodd Llywodraeth Cymru



hefyd fod ymarfer ymgynghori llawn wedi'i wneud wrth ddatblygu'r Rheoliadau hyn gyda chyrff sy'n cynrychioli aelodau'r cynllun pensiwn.

Y goblygiadau yn sgil gadael yr Undeb Ewropeaidd

Ni nodwyd unrhyw bwyntiau i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

Ymateb y Llywodraeth

Mae Llywodraeth Cymru yn gwbl ymwybodol o effaith adran 23 o Ddeddf Pensiynau'r Gwasanaethau Cyhoeddus 2013. Mae'n ei gwneud yn ofynnol i Weinidogion Cymru ymgynghori ag aelodau'r cynllun neu eu cynrychiolwyr ynghylch unrhyw newidiadau ôl-weithredol i reolau'r cynllun a fyddai'n cael effaith andwyol sylweddol ar aelodau'r cynllun, a/neu geisio eu cydsyniad i'r newidiadau hynny. Nid yw Llywodraeth Cymru yn credu y bydd y rheoliadau hyn yn cael unrhyw effaith o'r fath. Eu hunig ddiben yw cywiro camgymeriadau technegol ac amwyseddau yn rheolau'r cynllun, felly mae unrhyw effaith ar aelodau yn niwtral neu'n gadarnhaol. Serch hynny, cynhaliwyd ymarfer ymgynghori llawn gan atodi fersiwn ddrafft o'r OS. Ni chododd yr un o'r ymatebwyr, gan gynnwys holl brif undebau'r diffoddwyr tân, unrhyw faterion mewn perthynas ag unrhyw effeithiau andwyol sylweddol.

Cynghorwyr Cyfreithiol

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

15 Mai 2018



OFFERYNNAU STATUDOL
CYMRU

2018 Rhif 577 (Cy. 104)

**GWASANAETHAU TÂN AC
ACHUB, CYMRU**

PENSIYNAU, CYMRU

**Gorchymyn Cynlluniau Pensiwn a
Chynllun Digolledu'r Diffoddwyr
Tân (Cymru) (Diwygio) 2018**

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Gorchymyn)

Mae'r Gorchymyn hwn yn diwygio Cynllun Pensiwn y Dynion Tân (Cymru) (a nodir yn Atodlen 2 i Orchymyn Cynllun Pensiwn y Dynion Tân 1992) fel y mae'n cael effaith yng Nghymru ("Cynllun 1992"); Cynllun Pensiwn Newydd y Diffoddwyr Tân (Cymru) (a nodir yn Atodlen 1 i Orchymyn Cynllun Pensiwn y Diffoddwyr Tân (Cymru) 2007); Cynllun Digolledu'r Diffoddwyr Tân (Cymru) (a nodir yn Atodlen 1 i Orchymyn Cynllun Digolledu'r Diffoddwyr Tân (Cymru) 2007) ("Cynllun Digolledu 2007") a Gorchymyn Cynllun Pensiwn y Dynion Tân (Cymru) (Diwygio a Darpariaethau Trosiannol) 2016.

Mae erthygl 2 yn diwygio Cynllun 1992, yn benodol, er mwyn darparu bod priod neu bartner sifil sy'n goroesi diffoddwr tân a fu farw o ganlyniad i anaf a gafwyd wrth gyflawni dyletswydd, neu wrth deithio i gyflawni dyletswydd neu o'i chyflawni, i gadw ei hawlogaeth i bensiwn neu arian rhodd o dan Ran C o Gynllun 1992 os yw'n priodi, yn ailbriodi, yn ffurfio partneriaeth sifil neu bartneriaeth sifil ddilynol ar 1 Ebrill 2015 neu wedi hynny. Mae hefyd yn darparu bod pensiwn neu arian rhodd a dynnwyd yn ôl am y rhesymau hyn cyn 1 Ebrill 2015 yn cael ei adfer gydag effaith o'r dyddiad hwnnw. Mae erthygl 2 hefyd yn gwneud nifer o ddiwygiadau i Gynllun 1992 nad ydynt yn gysylltiedig, gan gynnwys er mwyn egluro, o dan Ran G o Gynllun 1992, fod diffoddwr tân o dan 50

oed sydd wedi cyfrif 30 mlynedd o wasanaeth pensiynadwy yn cael ei drin fel cyflogai i'r awdurdod tân ac achub at ddibenion cyfraniadau blynyddol y cyflogwr, a phan fo diffoddwr tân o'r fath wedi trefnu ar gyfer buddion pensiwn ychwanegol bod rhaid i'r diffoddwr tân dalu cyfraniadau mewn perthynas â'r rhain hyd nes y bydd y diffoddwr tân yn cyrraedd 50 oed. Pan fo'r diffoddwr tân yn cyrraedd 50 oed bydd y gofynion yn rheol G2(1) o Gynllun 1992 yn gymwys i'r diffoddwr tân. Yn gysylltiedig â hyn, mae erthygl 5 yn diwygio'r ddarpariaeth drosiannol a wneir gan Orchymyn Cynllun Pensiwn y Dynion Tân (Cymru) (Diwygio a Darpariaethau Trosiannol) 2016 i'w gwneud yn glir nad yw taliadau a wneir gan awdurdod tân ac achub o dan y ddarpariaeth honno yn cynnwys unrhyw swm mewn cysylltiad â chyfraniad diffoddwr tân mewn perthynas â budd pensiwn ychwanegol.

Mae erthygl 3 yn diwygio Cynllun Pensiwn Newydd y Diffoddwyr Tân (Cymru) er mwyn cael gwared ar y gofyniad bod rhaid i bartner sy'n cydfyw sy'n goroesi fod wedi ei enwebu gan yr aelod o'r cynllun fel amod cymhwysra ar gyfer pensiwn goroeswr. Mae erthygl 3 hefyd yn gwneud nifer o ddiwygiadau i'r Cynllun hwnnw nad ydynt yn gysylltiedig er mwyn cywiro gwallau mewn croesgyfeiriadau.

Mae erthygl 4(3) yn dirymu rheol 5 o Ran 3 o Gynllun Digolledu 2007 er mwyn caniatáu, gydag effaith o 1 Ebrill 2015, i berson sydd â'r hawl i bensiwn neu arian rhodd o dan y cynllun hwnnw ei gadw ar ôl priodi, ailbriodi, neu ffurfio partneriaeth sifil neu bartneriaeth sifil ddilynol. Mae pensiynau neu arian rhodd a dynnwyd yn ôl cyn 1 Ebrill 2015 am y rhesymau hyn yn cael eu hadfer gydag effaith o'r dyddiad hwnnw.

Roedd Cynllun Digolledu 2007 yn disodli'r darpariaethau cyfatebol yng Nghynllun 1992. Mae erthygl 4(2) yn diwygio'r trefniadau trosiannol yn erthygl 4 o Orchymyn Cynllun Digolledu'r Diffoddwyr Tân (Cymru) 2007 fel y bydd darpariaeth gyfatebol yn gymwys i ddyfarndaliadau arbennig a dyfarndaliadau mwy o dan reol C2 neu C3 o Gynllun 1992 sy'n ymwneud â dyfarniadau neu benderfyniadau a wnaed cyn 1 Ebrill 2006 sy'n berthnasol i ba un a yw anaf cymwys wedi peri marwolaeth (yn rhinwedd erthygl 4(1) o'r Gorchymyn hwnnw mae Cynllun 1992 ar y ffurf yr oedd yn bodoli yn union cyn 1 Ebrill 2006 yn parhau i gael effaith o dan yr amgylchiadau hyn).

Mae'r diwygiadau a wneir gan erthygl 3(2) i (7) a (9) o'r Gorchymyn hwn yn cael effaith o 6 Ebrill 2006, mae'r diwygiadau a wneir gan erthygl 2(4)(b) yn cael effaith o 1 Rhagfyr 2006, mae'r diwygiad a wneir gan erthygl 5 yn cael effaith o 31 Rhagfyr 2016; mae'r diwygiadau eraill yn cael effaith o 1 Ebrill 2015. Rhoddir y pŵer i roi effaith ôl-weithredol i'r Gorchymyn hwn, mewn cysylltiad â Chynllun 1992, gan adran 12 o Ddeddf Blwydd-daliadau 1972 fel y'i cymhwysir gan adran 16(3) o'r Ddeddf honno ac, mewn cysylltiad â Chynllun Digolledu 2007 a Chynllun Pensiwn Newydd y Diffoddwyr Tân (Cymru), gan adran 34(3) o Ddeddf Gwasanaethau Tân ac Achub 2004.

Ystyriwyd Cod Asesiadau Effaith Rheoleiddiol Gweinidogion Cymru ar Is-ddeddfwriaeth mewn perthynas â'r Gorchymyn hwn. O ganlyniad, ystyriwyd nad oedd yn angenrheidiol cynnal asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Gorchymyn hwn.

OFFERYNNAU STATUDOL
CYMRU

2018 Rhif 577 (Cy. 104)

**GWASANAETHAU TÂN AC
ACHUB, CYMRU**

PENSIYNAU, CYMRU

Gorchymyn Cynlluniau Pensiwn a
Chynllun Digolledu'r Diffoddwyr
Tân (Cymru) (Diwygio) 2018

Gwnaed 9 Mai 2018

*Gosodwyd gerbron Cynulliad Cenedlaethol
Cymru* 10 Mai 2018

Yn dod i rym 1 Mehefin 2018

Gwneir y Gorchymyn hwn drwy arfer y pwerau a
roddir gan adran 26(1) i (5) o Ddeddf Gwasanaethau

Tân 1947(1) ac adran 12 o Ddeddf Blwydd-daliadau 1972(2) fel y'u cymhwysir gan adran 16(3)(3) o'r Ddeddf honno, a chan adrannau 34 a 62 o Ddeddf y Gwasanaethau Tân ac Achub 2004(4), ac a freinir bellach yng Ngweinidogion Cymru.

Cyn gwneud y Gorchymyn hwn, ac yn unol ag adran 34(5) o Ddeddf Gwasanaethau Tân ac Achub 2004, ymgynghorodd Gweinidogion Cymru â'r personau hynny yr oeddent yn ystyried eu bod yn briodol.

Mae Gweinidogion Cymru yn gwneud y Gorchymyn a ganlyn.

Enwi a chychwyn

1.—(1) Enw'r Gorchymyn hwn yw Gorchymyn Cynlluniau Pensiwn a Chynllun Digolledu'r

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- (1) 1947 p. 41, a ddiddymwyd gan adran 52 o Ddeddf y Gwasanaethau Tân ac Achub 2004 (p. 21), ac Atodlen 2 iddi. Mae is-adrannau (1) i (5) o adran 26 yn parhau i gael effaith, o ran Cymru, at ddibenion y cynllun a sefydlwyd o dan yr adran honno fel Cynllun Pensiwn y Dynion Tân ac a nodir yng Ngorchymyn Cynllun Pensiwn y Dynion Tân 1992 (O.S. 1992/129), yn rhinwedd erthygl 3 o O.S. 2004/2918 (Cy. 257). Newidiwyd enw'r cynllun i Gynllun Pensiwn y Dynion Tân (Cymru) gan erthygl 4 o'r offeryn hwnnw. Diwygiwyd adran 26 o Ddeddf Gwasanaethau Tân 1947 gan adran 1 o Ddeddf Gwasanaethau Tân 1951 (p. 27), adran 42 o Ddeddf y Lluoedd Wrth Gefn a'r Lluoedd Ategol (Diogelu Buddiannau Sifil) 1951 (p. 65), adran 33 o Ddeddf Dwyn 1968 (p. 60), ac Atodlen 3 iddi, adrannau 16 a 29 o Ddeddf Blwydd-daliadau 1972 (p. 11), ac Atodlen 8 iddi, adrannau 100 a 101 o Ddeddf Nawdd Cymdeithasol 1973 (p. 38), ac Atodlen 27 iddi, adran 1 o Ddeddf Nawdd Cymdeithasol (Darpariaethau Canlyniadol) 1975 (p. 18), ac Atodlen 1 iddi, adran 32(2) o Ddeddf Llysoedd Ynadon 1980 (p. 43), adran 1 o Ddeddf Pensiynau'r Heddlu a'r Dynion Tân 1997 (p. 52), adran 256 o Ddeddf Partneriaeth Sifil 2004 (p. 33), ac Atodlen 25 iddi, a chan O.S. 1976/551. I'r graddau y caiff Cynllun Pensiwn y Dynion Tân ei barhau mewn grym, o ran Cymru, yn rhinwedd O.S. 2004/2918 (erthygl 3(1)), mae adran 26(1) i (5) yn cael effaith fel pe rhoddid cyfeiriad at "National Assembly for Wales" yn lle pob cyfeiriad at "Secretary of State"; gweler erthygl 2 o O.S. 2006/1672 (Cy. 160). Yn rhinwedd paragraff 30 o Atodlen 11 i Ddeddf Llywodraeth Cymru 2006 (p. 32), mae swyddogaethau o dan adran 26 o Ddeddf Gwasanaethau Tân 1947 bellach wedi eu breinio yng Ngweinidogion Cymru i'r graddau y maent yn arferadwy o ran Cymru.
- (2) 1972 p. 11; diwygiwyd adran 12 gan Ddeddf Pensiynau (Darpariaethau Amrywiol) 1990 (p. 7).
- (3) Diddymwyd adran 16 gan adran 52 o Ddeddf Gwasanaethau Tân ac Achub 2004, ac Atodlen 2 iddi, ond mae'n parhau i gael effaith, o ran Cymru, yn rhinwedd erthygl 3(2) o O.S. 2004/2918 (Cy. 257).
- (4) 2004 p. 21. Mae'r pwerau a roddir gan adran 34 o Ddeddf Gwasanaethau Tân ac Achub 2004 bellach wedi eu breinio yng Ngweinidogion Cymru i'r graddau y maent yn arferadwy o ran Cymru. Yr oeddent wedi eu breinio'n flaenorol yng Nghynulliad Cenedlaethol Cymru yn rhinwedd adran 62 o'r Ddeddf honno. Yn rhinwedd paragraffau 30 a 32 o Atodlen 11 i Ddeddf Llywodraeth Cymru 2006, fe'u trosglwyddwyd i Weiniogion Cymru.

Diffoddwyr Tân (Cymru) (Diwygio) 2018 a daw i rym ar 1 Mehefin 2018.

(2) Mae'r diwygiadau a wneir gan—

(a) erthygl 2(2), (3), (4)(a) a (5); a

(b) erthyglau 3(8) a 4;

yn cael effaith o 1 Ebrill 2015.

(3) Mae'r diwygiadau a wneir gan erthygl 3(2) i (7) a (9) yn cael effaith o 6 Ebrill 2006.

(4) Mae'r diwygiadau a wneir gan erthygl 2(4)(b) yn cael effaith o 1 Rhagfyr 2006.

(5) Mae'r diwygiad a wneir gan erthygl 5 yn cael effaith o 31 Rhagfyr 2016(1).

Diwygio Gorchymyn Cynllun Pensiwn y Dynion Tân 1992

2.—(1) Mae Atodlen 2 i Orchymyn Cynllun Pensiwn y Dynion Tân 1992(2) (lle y mae Cynllun Pensiwn y Dynion Tân (Cymru) wedi ei nodi), wedi ei diwygio fel a ganlyn.

(2) Yn Rhan B (dyfarndaliadau personol)—

(a) yn rheol B1A(3)(3) (pensiwn gwasanaeth parhaus)—

(i) yn is-baragraff (a), yn lle “paragraph (1)(a)” rhodder “paragraph (1)(b)”; a

(ii) yn lle is-baragraff (b) rhodder—

“(b) paragraph (1) of this rule applies as if the age ascertained under subparagraph (a) were substituted for “normal pension age”.”;

(b) yn rheol B2A(4) (pensiwn parhaus), yn lle “rule B1A(3)(i)” rhodder “rule B1A(3)(a)”;

(c) yn rheol B5A(4B)(a)(5) (yr hawlogaeth i gael dau benswn), yn lle “(A/B) x (B/C) x G” rhodder “(A/E) x (B/C) x G”;

(1) Mae pŵer i roi effaith ôl-weithredol wedi ei roi gan adran 12(1) o Ddeddf Blwydd-daliadau 1972 a chan adran 34(3) o Ddeddf Gwasanaethau Tân ac Achub 2004.

(2) O.S. 1992/129; diwygiwyd gan O.S.au 1997/2309 a 2851, 1998/1010, 2001/3649 a 3691, 2004/1912 a 2918 (Cy. 257), 2006/1672 (Cy. 160), 2007/1074 (Cy. 112), 2009/1226 (Cy. 109), 2010/234, 2013/736 (Cy. 88), 2014/522 (Cy. 63) a 3242 (Cy. 329) a 2015/1016 (Cy. 71).

(3) Mewnosodwyd rheol B1A gan reoliad 4 o O.S. 2015/1016 (Cy. 71), ac Atodlen 3 iddo.

(4) Mewnosodwyd rheol B2A gan reoliad 4 o O.S. 2015/1016 (Cy. 71), ac Atodlen 3 iddo.

(5) Mewnosodwyd rheol B5A gan erthygl 2 o O.S. 2009/1226 (Cy. 109), a'r Atodlen iddo, a mewnosodwyd paragraffau (4A) a (4B) gan erthygl 2 o O.S. 2014/3242 (Cy. 329), a'r Atodlen iddo.

- (d) yn rheol B5D(1A)(1) (budd pensiwn ychwanegol: darpariaethau atodol), yn lle “paragraph (3)(i)” rhodder “paragraph (3)(a)”.

(3) Yn Rhan C (dyfardaliadau yn sgil marwolaeth – priodau), yn rheol C9 (effaith ailbriodi)—

- (a) ym mharagraff (1), yn lle “A person” rhodder “Subject to paragraphs (3) to (6), a person”;
- (b) ym mharagraff (2), yn lle “Where a person” rhodder “Subject to paragraphs (3) to (6), where a person”; ac
- (c) ar ôl paragraff (2) mewnosoder—

“(3) Paragraphs (1) and (2) do not apply in relation to a person (“P”) who is entitled to a pension or gratuity under this Part, where—

- (a) P is either—
 - (i) entitled to a pension under rule C1 (spouse’s ordinary pension), rule C4 (spouse’s accrued pension), rule C5 (limitation on award to spouse or civil partner by reference to date of marriage or formation of partnership), rule C6 (spouse or civil partner’s requisite benefit and temporary pension) or rule C8 (limitation where spouses living apart); or
 - (ii) receiving a gratuity under rule C8(7); and
- (b) the deceased spouse or civil partner of P (“D”) died as a result of an injury—
 - (i) received in the exercise of D’s duties as a firefighter; or
 - (ii) sustained while on a journey necessary to enable D to report for duty or return home after duty.

(4) Where P’s entitlement to a pension or any part of a gratuity under this Part was removed by virtue of paragraph (1) or (2) prior to 1 April 2015 and the conditions in paragraph (3) were satisfied in relation to P, entitlement to the pension or part of gratuity is reinstated with effect from 1 April 2015 and the pension or part of gratuity becomes payable as from that date.

(5) Nothing in paragraph (4) requires the making of any payment where the person to whom the payment would otherwise have been made has died prior to 1 April 2015.

(1) Mewnosodwyd rheol B5D gan erthygl 2 o O.S. 2009/1226 (Cy. 109), a’r Atodlen iddo, a mewnosodwyd paragraff (1A) gan reoliad 4 o O.S. 2015/1016 (Cy. 71), ac Atodlen 3 iddo.

(6) Where a payment is required to be made under paragraph (4) in respect of a person who has died between 1 April 2015 and 1 June 2018, the amount due must be paid to that person's personal representatives."

(4) Yn Rhan G (tâl pensiynadwy a chyfraniadau)—

(a) yn rheol G1 (tâl pensiynadwy a thâl pensiynadwy cyfartalog)—

(i) ym mharagraffau (10) ac (11)(1), yn lle "paragraph 34 of Schedule 2" rhodder "paragraph 33 of Schedule 2";

(ii) ym mharagraff (11), yn lle "paragraph 34(4) of Schedule 2" rhodder "paragraph 33(4) of Schedule 2";

(iii) ym mharagraff (13), yn lle "paragraph 34(3) of Schedule 2" rhodder "paragraph 33(3) of Schedule 2"; a

(b) yn rheol G2 (cyfraniadau pensiwn)—

(i) ym mharagraff (1), yn lle "paragraph (1B)"(2) rhodder "paragraphs (1B) to (1D)";

(ii) ar ôl paragraff (1B) mewnosoder—

"(1C) A firefighter who is—

(a) below the age of 50 and has reckoned 30 years' pensionable service; and

(b) entitled to be credited with additional pension benefit under rule B5B or B5C,

until the firefighter attains the age of 50, pays pensions contributions to the fire and rescue authority only in relation to that additional pension benefit.

(1D) Contributions payable under paragraph (1C) are payable—

(a) at the rate of 11% in the period starting on 1 December 2006 and ending on 31 March 2012; and

(b) on and after 1 April 2012 at the rate specified in the Table in paragraph 3 of Part A1 of Schedule 8."; a

(iii) yn lle paragraff (4) rhodder—

"(4) The annual contribution is such percentage of the authority's estimate of the aggregate of the pensionable pay, for the year in respect of which the contribution is made, of

(1) Mewnosodwyd rheol G1(10) i (13) gan O.S. 2015/1016 (Cy. 71).

(2) Mewnosodwyd rheol G2(1B) gan O.S. 2016/1136 (Cy. 274).

those firefighters employed by the authority who are—

- (a) required by paragraph (1) to make pensions contributions in that year; and
 - (b) below the age of 50 and have reckoned 30 years' pensionable service,
- as shall have been notified to them for that year by the Secretary of State."

(5) Yn Rhan 2A(1) (pensiwn gwasanaeth parhaus) o Atodlen 2 (dyfarndaliadau personol) yn lle "40 years", lle y mae'r geiriau'n digwydd am y tro cyntaf, rhodder "30 years".

Diwygio Gorchymyn Cynllun Pensiwn y Diffoddwyr Tân (Cymru) 2007

3.—(1) Mae Atodlen 1 i Orchymyn Cynllun Pensiwn y Diffoddwyr Tân (Cymru) 2007(2) wedi ei diwygio fel a ganlyn.

(2) Yn y Tabl Cynnwys, ym mhenawdau Pennod 1 o Ran 4 a rheolau 1 a 5 o'r Bennod honno, yn lle "phartneriaid enwebedig" rhodder "phartneriaid sy'n cyd-fyw".

(3) Yn Rhan 1 (enwi a dehongli), yn rheol 2(1) (dehongli)—

- (a) yn y diffiniad o "plentyn", ym mharagraff (a)(iii), yn lle "bartner enwebedig" rhodder "bartner sy'n cyd-fyw";
- (b) hepgorer y diffiniad o "partner enwebedig"; ac
- (c) yn y man priodol mewnosoder—
"mae i "partner sy'n cyd-fyw" ("*cohabiting partner*") yr ystyr a roddir gan reol 1(6) o Ran 2;".

(4) Yn Rhan 2 (aelodaeth o'r cynllun, diweddu ac ymddeol), yn rheol 1 (aelodaeth o'r cynllun)—

- (a) ym mharagraff (5)(b), yn lle "bartner enwebedig" rhodder "bartner sy'n cyd-fyw";
- (b) yn lle paragraff (6) rhodder—
"(6) At ddibenion paragraff (5), partner sy'n cyd-fyw i aelod-ddiffoddwr tân, aelod gohiriedig neu aelod-bensiynwr (y cyfeirir ato yn y paragraff hwn fel "yr aelod o'r cynllun") yw person—
(a) sy'n byw gyda'r aelod o'r cynllun fel pe bai'r person hwnnw a'r aelod o'r

(1) Mewnosodwyd Rhan 2A gan reoliad 4 o O.S. 2015/1016 (Cy. 71) ac Atodlen 3 iddo.
(2) O.S. 2007/1072 (Cy. 110); gwnaed diwygiadau perthnasol gan O.S. 2015/1016 (Cy. 71).

cynllun yn briodau neu'n bartneriaid sifil; a

(b) ar y dyddiad y mae'r cwestiwn o statws y partner sy'n cyd-fyw mewn perthynas â'r aelod o'r cynllun i fod i gael ei ystyried—

(i) nad yw'n briod nac yn bartner sifil i unrhyw berson,

(ii) a allai ymrwymo i briodas neu bartneriaeth sifil â'r aelod o'r cynllun o dan gyfraith Cymru a Lloegr,

(iii) sy'n dibynnu'n ariannol ar yr aelod o'r cynllun, neu sydd, gyda'r aelod o'r cynllun, yn dibynnu'n ariannol ar ei gilydd, a

(iv) sydd mewn perthynas hirdymor â'r aelod o'r cynllun.”;

(c) hepgorer paragraff (7)(b);

(d) hepgorer paragraffau (8) a (9).

(5) Yn Rhan 3 (dyfardaliadau personol), yn rheol 11(2)(a) (dyrannu pensiwn), yn lle “bartner enwebedig” rhodder “bartner sy'n cyd-fyw”.

(6) Ym Mhennod 1 o Ran 4 (pensiynau goroeswyr)—

(a) ym mhennawd y Bennod ac ym mhennawd rheol 1, yn lle “phartneriaid enwebedig” rhodder “phartneriaid sy'n cyd-fyw”;

(b) yn rheol 1, yn y geiriau sy'n cau paragraff (1), yn lle “bartner enwebedig” rhodder “bartner sy'n cyd-fyw”;

(c) ym mhennawd rheol 5, yn lle “phartneriaid enwebedig” rhodder “phartneriaid sy'n cyd-fyw”.

(7) Yn Rhan 7 (personau wrth gefn), yn rheol 3 (dyfardaliadau yn sgil marwolaeth neu anabledd parhaol), yn y geiriau sy'n cau paragraff (3), yn lle “bartner enwebedig” rhodder “bartner sy'n cyd-fyw”.

(8) Yn Rhan 11 (tâl pensiynadwy, cyfraniadau pensiwn a phrynu gwasanaeth ychwanegol)—

(a) yn rheol 1 (tâl pensiynadwy)—

(i) ym mharagraffau (7) ac (8), yn lle “baragraff 33 o Atodlen 2” rhodder “baragraff 32 o Atodlen 2”;

(ii) ym mharagraff (8), yn lle “pharagraff 33(4) o Atodlen 2” rhodder “pharagraff 32(4) o Atodlen 2”; a

(iii) ym mharagraff (9), yn lle “paragraff 33(3) o Atodlen 2” rhodder “paragraff 32(3) o Atodlen 2”;

- (b) yn rheol 2 (tâl pensiynadwy terfynol), ym mharagraff (2A)(b), yn lle “paragraff 33(4) o Atodlen 2” rhodder “paragraff 32(4) o Atodlen 2”.

(9) Yn Rhan 15, hepgorer rheolau 5(3) a 6(3).

Diwygio Gorchymyn Cynllun Digolledu'r Diffoddwyr Tân (Cymru) 2007

4.—(1) Mae Gorchymyn Cynllun Digolledu'r Diffoddwyr Tân (Cymru) 2007(1) wedi ei ddiwygio fel a ganlyn.

(2) Yn erthygl 4 (darpariaeth drosiannol: penderfyniadau a dyfarniadau a wnaed cyn 1 Ebrill 2006)—

- (a) ym mharagraff (1), ar ôl “disablement” mewnosoder “or death”;
- (b) ym mharagraff (2), ar ôl “1 April 2006,” mewnosoder “subject to the amendments made by paragraphs (3) and (4)”;
- (c) ar ôl paragraff (2) mewnosoder—

“(3) Omit rule C9 (effect of a new relationship).

(4) Where entitlement to a pension or any part of a gratuity under this Part was removed by virtue of rule C9 prior to 1 April 2015, entitlement to the pension or part of gratuity is reinstated with effect from 1 April 2015 and the pension or part of gratuity becomes payable as from that date.

(5) Nothing in paragraph (4) requires the making of any payment where the person to whom the payment would otherwise have been made has died prior to 1 April 2015.

(6) Where a payment is required to be made under paragraph (4) in respect of a person who has died between 1 April 2015 and 1 June 2018, the amount due must be paid to that person's personal representatives.”

(3) Yn Atodlen 1, yn Rhan 3 (dyfarniadau yn sgil marwolaeth: priodau a phartneriaid sifil)—

- (a) hepgorer rheol 5 (effaith perthynas newydd);
a
- (b) ar ôl rheol 5, mewnosoder—

“Reinstatement of entitlement to pension and gratuity

5A.—(1) The revocation of rule 5 of this Part by the Firefighters' Pension Schemes and

(1) O.S. 2007/1073 (Cy. 111); diwygiwyd gan O.S.au 2010/234, 2014/3256 (Cy. 331) a 2015/1013 (Cy. 69).

Compensation Scheme (Wales) (Amendment) Order 2018 has the effect of reinstating entitlement to a pension or any part of a gratuity under this Part which was removed by virtue of paragraph (1) or (2) prior to 1 April 2015, with effect from and payable as from that date.

(2) Nothing in paragraph (1) requires the making of any payment where the person to whom the payment would otherwise have been made has died prior to 1 April 2015.

(3) Where a payment is required to be made under paragraph (1) in respect of a person who has died between 1 April 2015 and 1 June 2018, the amount due must be paid to that person's personal representatives."

Diwygio Gorchymyn Cynllun Pensiwn y Dynion Tân (Cymru) (Diwygio a Darpariaethau Trosiannol) 2016

5. Yn y disgrifiad o "A" ym mharagraff (3) o erthygl 3 (darpariaeth drosiannol) o Orchymyn Cynllun Pensiwn y Dynion Tân (Cymru) (Diwygio a Darpariaethau Trosiannol 2016(1), ar ôl "cyfraniad", y tro cyntaf y mae'n ymddangos, mewnosoder "(heb gynnwys unrhyw gyfraniad mewn perthynas â budd pensiwn ychwanegol)".

Alun Davies

Ysgrifennydd y Cabinet dros Lywodraeth Leol a Gwasanaethau Cyhoeddus, un o Weinidogion Cymru
9 Mai 2018

(1) O.S. 2016/1136 (Cy. 274).

Explanatory Memorandum to The Firefighters' Pension Schemes and Compensation Scheme (Wales) (Amendment) Order 2018

This Explanatory Memorandum has been prepared by the Department for Education and Public Services and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of **The Firefighters' Pension Schemes and Compensation Scheme (Wales) (Amendment) Order 2018**.

Alun Davies

Cabinet Secretary for Local Government and Public Services

10 May 2018

1. Description

The Firefighters' Pension Schemes and Compensation Scheme (Wales) (Amendment) Order 2018 ("the Order") amends the following:-

- The Firemen's Pension Scheme Order 1992 ("the 1992 Order"), which governs the Firefighters' Pension (Wales) Scheme 1992 ("the 1992 Scheme");
- The Firefighters' Compensation Scheme (Wales) Order 2007 ("the Compensation Order"), which governs the Firefighters' Compensation Scheme (Wales) ("the Compensation Scheme");
- The Firefighters' Pension Scheme (Wales) Order 2007 ("the 2007 Order"), which governs the Firefighters' Pension Scheme 2007 ("the 2007 Scheme"); and
- The Firefighters' Pension (Wales) Scheme (Amendment and Transitional Provisions) Order 2016

The 1992 Scheme and the Compensation Scheme currently provide that any surviving partner loses her or his entitlement to survivor's benefits on remarriage or formation of a new civil partnership. The Order amends these provisions to allow the surviving spouse or civil partner of a firefighter who dies or has died from an injury received in the exercise of duty, or travelling to or from duty to retain her or his entitlement to a survivor's benefit if s/he remarries or forms a civil partnership on or after 1 April 2015. In addition, benefits withdrawn prior to 1 April 2015 due to operation of the schemes are to be reinstated with effect from that date.

Following the Supreme Court ruling in the case of Brewster¹, the Order amends the 2007 Order to remove the requirement that a surviving cohabiting partner be nominated as a condition for eligibility for a survivor's pension.

The Order also amends minor errors and ambiguities within the 1992 Scheme, the 2007 Order and the Firefighters' Pension (Wales) Scheme (Amendment and Transitional Provisions) Order 2016..

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

The provisions in the Order are retrospective as detailed in article 1(2) – (5).

¹ [2017] UKSC 8. Ms Brewster was in a cohabiting relationship with Mr McMullan, a member of the Northern Ireland local government pension scheme. Following his death, she was refused a survivor's pension on the basis that he had allegedly not completed the requisite nomination form in her favour, despite her relationship with him otherwise complying with the scheme rules. The Court held that the requirement to complete a nomination form was an unreasonable and unlawful infringement of Ms Brewster's human rights, and declared that the requirement in the Regulations that she and Mr McMullan should have made a nomination be disapplied, and that she was entitled to receive a survivor's pension under the scheme.

3 Legislative background

In addition to the 1992 Scheme, there are two further principal pension schemes for firefighters. These are: the 2007 Scheme governed by the 2007 Order and the 2015 Scheme governed by the Firefighters' Pension Scheme (Wales) Regulations 2015. The 2007 Scheme was closed to new firefighters on 31 March 2015, and the 1992 Scheme had already closed to new firefighters in April 2006. There is no need for the survivor benefit provisions to be reformed in the 2007 or 2015 Schemes, because under the applicable provisions, survivor benefits are not terminated on remarriage or on the formation of a new civil partnership. Survivors of firefighters who are not members of an occupational pension scheme can nevertheless be eligible for compensation under the Compensation Order.

The powers of the Welsh Ministers in relation to the Firefighters Pension (Wales) Scheme 1992 are contained in section 26 of the Fire Services Act 1947 and the power to give retrospective effect is conferred by sections 12 and 16 of the Superannuation Act 1972. In respect of the Compensation Scheme and the 2007 Pension Scheme, the powers of the Welsh Ministers are contained in sections 34 and 62 of the Fire and Rescue Services Act 2004 and the power to give retrospective effect is conferred by section 34(3) of that Act.

This instrument is subject to the negative resolution procedure.

4. Purpose & intended effect of the legislation

Article 2 of the Order amends the 1992 Order to allow surviving spouses and civil partners of a firefighter who died from an injury received in the exercise of duty, or travelling to or from duty, to retain their entitlement to a survivor's benefit under Part C of the 1992 Scheme, should they remarry or enter into a new civil partnership on or after 1 April 2015. The Order also provides that a pension or gratuity which had been withdrawn under the 1992 Scheme prior to 1 April 2015 should be reinstated with effect from that date. In addition, Article 4(3) of the instrument revokes rule 5 of Part 3 of the Compensation Scheme to allow, with effect from 1 April 2015, a person entitled to a pension or gratuity under that scheme to retain it following marriage, remarriage or formation of a civil partnership. Benefits withdrawn prior to 1 April 2015 due to operation of the scheme are to be reinstated with effect from that date.

The Compensation Scheme superseded corresponding provisions of the Firefighters' Pension Scheme 1992. Article 4(2) of the Order amends the transitional arrangements in Article 4 of the 2007 Compensation Scheme Order so that equivalent provisions will apply to special and augmented awards under rules C2 and C3 of the 1992 Scheme that relate to determinations or decisions made before 1 April 2006 relevant to whether death has been occasioned by a qualifying injury.

Articles 2(2), 2(4), 2(5) and 3 of the Order also make unrelated amendments to the 1992 and 2007 Orders. These include an amendment by article 2(4)(b) to clarify that under Part G of the 1992 Scheme a firefighter below the age of 50 who has reckoned 30 years' pensionable service is treated as an employee of the fire and rescue authority for the purposes of annual employer contributions and that where such a firefighter has arrangements for additional pension benefits the firefighter must pay contributions in relation to these until attaining the age of 50, when the requirements in rule G2(1) of the 1992 Scheme will apply. Related to this, article 5 amends the transitional provision made by the Firefighters' Pension Scheme (Amendment and Transitional Provisions)(Wales) Order 2016 to ensure that, following the implementation of that Order, firefighters continue to pay contributions in relation to additional pension benefit as appropriate, and that fire and rescue authorities pay the appropriate level of employer contributions. Amendments made by article 2(4)(b) of this Order have effect from 1 December 2006 and those introduced by Article 5 take effect from 31 December 2016.

In addition, following the Supreme Court ruling in the case of Brewster, article 3 of the Order removes the requirement in the 2007 Scheme that a surviving cohabiting partner must have been nominated by the scheme member as a condition of eligibility for a survivor's pension. Under the amending provisions a person who can show that s/he was in a qualifying relationship with a deceased scheme member at the time of death will be eligible to receive such benefits, regardless of any prior nomination, in the same way as spouses and civil partners are. This provision will have retrospective effect from 6 April 2006 when the 2007 Scheme came into effect .

Article 3 also makes a number of unrelated amendments to the 2007 Scheme in order to correct errors in cross references.

5. Consultation

Section 34 of the Fire and Rescue Services Act 2004 requires the Welsh Ministers to consult either those who are likely to be affected by them, or the representatives of those persons, before making any amendments. The Welsh Government conducted a 12 week consultation from the 27 September to 21 December 2017 inviting stakeholder views on amendments to the various firefighter pension schemes and the 2007 Firefighters' Compensation scheme.

The Welsh Government received three consultation responses from North Wales Fire and Rescue Authority, South Wales Fire and Rescue Authority and Mid and West Wales Fire and Rescue Authority.

In respect of proposed amendments to allow surviving spouses and civil partners of qualifying firefighters to retain their benefits should they remarry or enter into a new civil partnership, the Welsh Government provided four potential options for how to make the changes retrospective, as follows :-

Option 1 - introduce a provision that would reverse the existing provision completely with no qualifying date. This would mean all those who had had their benefits withdrawn would have them restored and backdated to the point of withdrawal.

Option 2 - introduce a provision permitting survivors who remarry or enter into a civil partnership on or after a specified date in the past (1 April 2015) to retain their entitlement to survivors' benefits, and in addition reinstate lost benefits to all survivors who had remarried or entered into a civil partnership before that date, with those benefits being reinstated as from 1 April 2015.

Option 3 - allow survivors who remarry or enter into a civil partnership on or after a specified date in the past (1 April 2015) to retain their entitlement. Those who had remarried or entered into a new civil partnership before that date would receive nothing.

Option 4 - allow survivors who remarry or enter into a civil partnership on or after a specified date in the future (say 1 July 2018) to retain their entitlement to pension benefits. Those who have already remarried or entered into a new civil partnership would receive nothing.

All three FRAs agreed that Option 2 would provide the most balanced approach between fairness and cost effectiveness. This was also the Welsh Government's preferred option. One FRA, however, raised concerns that re-instating benefits only from a set date (in this case 1 April 2015) would not provide consistency with the recent Supreme Court rulings in the cases of Walker² and Brewster, both of which had in effect provided for full backdating.

Option 1 in the original consultation document had provided for full retrospection of survivor benefits to the point of withdrawal, provided the cost burdens on the Fire and Rescue Authorities were limited or manageable. The Welsh Government has subsequently reviewed the cost implications of complete retrospection and has concluded that adopting this approach at a time when budgets for front line services are under significant pressure would not be feasible. The Welsh Government has therefore continued with the proposals to adopt Option 2 as set out in the consultation document.

It is important to note that the judgments in the cases of Brewster and Walker held that the affected pension schemes had discriminated unlawfully on the grounds of marital status and sexual orientation, respectively. As such, the scheme rules were held by the Court to be, and always to have been, unlawful. There have been no claims of unlawful discrimination nor judgments holding that the scheme rules are unlawful as regards survivors who remarry or form new civil

²² [2017] UKSC 47. Mr Walker is gay, and had sought confirmation that his husband (who had previously been his civil partner) would receive a survivor's pension in the event of his death. The administrator of his pension scheme declined on the grounds that Mr Walker's pensionable service ended before the Civil Partnerships Act 2004 came into force, and before Mr Walker entered into such a partnership. The Court held that this decision amounted to unlawful discrimination on grounds of sexual orientation, and ordered that Mr Walker's husband would be eligible for a survivor's pension based on all the years of Mr Walker's service.

partnerships. The Welsh Government has introduced amendments to the 2007 Order purely to remove what we believe is harsh treatment of survivors of firefighters who have died whilst on duty.

No particular issues were raised as part of the consultation about the other proposed amendments

The consultation document explained that there would be no consultation following the Supreme Court ruling in the case of Brewster given that the Welsh Government are merely reflecting the judgment of the Supreme Court.

6. Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment has been considered, but has not been conducted in this instance as the Order will not introduce any additional costs to charities, or the private or third sector. The impact on Fire and Rescue Authorities (FRAs) is expected to be minimal. There are very few known historic cases covered by this Order, and the costs of reinstating pensions in those cases are likely to be very modest indeed. Those costs will be met from the pension fund (or, in the case of payments under the Compensation Scheme, from FRA core funding) in the normal way.

7. Equality Impact Assessment

An Equality Impact Assessment and Welsh Language Impact Assessment have been completed and can be accessed by request to fire@wales.gsi.gov.uk

8. Competition Assessment

Not Applicable

9. Post Implementation Review.

The Welsh Government will work with Fire and Rescue Authorities and employee representative bodies to ensure the impact of these regulatory amendments are fully understood.

SL(5)216 – Gorchymyn Cynllun Digolledu a Chynllun Pensiwn y Diffoddwyr Tân (Cymru) (Diwygio) 2018

Cefndir a Diben

Mae'r Gorchymyn hwn yn diwygio:

- Cynllun Pensiwn y Dynion Tân (Cymru) (sydd wedi'i nodi yn Atodlen 2 i Orchymyn Cynllun Pensiwn y Dynion Tân 1992 - SI 1992/129 fel y'i diwygiwyd, fel y mae'n cael effaith yng Nghymru) ("Cynllun 1992");
- Gorchymyn Cynllun Pensiwn Newydd y Diffoddwyr Tân (Cymru) (sydd wedi'i nodi yn Atodlen 1 i Gynllun Pensiwn y Diffoddwyr Tân (Cymru) 2007 – SI 2007/1072, fel y'i diwygiwyd) ("Gorchymyn 2007");
- Cynllun Digolledu y Diffoddwyr Tân (Cymru) (sydd wedi'i nodi yn Atodlen 1 i Orchymyn Cynllun Digolledu y Diffoddwyr Tân (Cymru) 2007 – SI 2007/1073, fel y'i diwygiwyd) ("Cynllun Digolledu 2007"); a
- Gorchymyn Cynllun Pensiwn y Diffoddwyr Tân (Cymru) (Diwygio a Darpariaethau Trosiannol) 2016 – SI 2016/1136.

Mae Cynllun 1992 a Chynllun Digolledu 2007 ar hyn o bryd yn darparu bod unrhyw bartner sy'n goroesi yn colli ei hawl i fuddion goroeswyr drwy ailbriodi neu ffurfio partneriaeth sifil newydd. Mae'r Gorchymyn hwn yn diwygio'r darpariaethau penodol hyn i ganiatáu i briod neu bartner sifil sy'n goroesi diffoddwr tân sy'n marw neu sydd wedi marw o anaf a dderbyniwyd wrth arfer dyletswydd, neu wrth deithio i ddyletswydd neu'n ôl, gadw ei hawl i fuddion goroeswyr os bydd yn ailbriodi neu'n ffurfio partneriaeth sifil ar 1 Ebrill 2015 neu wedi hynny. Yn ogystal, caiff buddion a dynnwyd yn ôl cyn 1 Ebrill 2015 o ganlyniad i weithrediad y cynlluniau eu hadfer o'r dyddiad hwnnw.

Yn ogystal, mae'r Gorchymyn yn diwygio Gorchymyn 2007 i ddileu'r gofyniad i enwebu partner a oedd yn cyd-fyw sy'n goroesi fel amod i fod yn gymwys ar gyfer pensiwn goroeswr, a hynny yn dilyn dyfarniad y Goruchaf Lys yn achos Brewster¹.

Mae'r Gorchymyn hefyd yn gwneud rhai gwelliannau technegol ynghylch Cynllun 1992, Gorchymyn 2007 a Gorchymyn Pensiwn y Diffoddwyr Tân (Cymru) (Diwygio a Darpariaethau Trosiannol) 2016.

Y weithdrefn

Negyddol

¹ [2017] UKSC 8. Yn achos cais gan Denise Brewster am Adolygiad Barnwrol (Gogledd Iwerddon)



Materion technegol: craffu

Ni nodwyd unrhyw bwyntiau i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn.

Craffu ar y rhinweddau

Nodir pwynt i gyflwyno adroddiad arno o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

Mae'r holl ddarpariaethau yn y Gorchymyn yn ôl-weithredol. Rhoddir y pŵer i roi effaith ôl-weithredol mewn perthynas â Chynllun 1992 gan adran 12 o Ddeddf Pensiwn 1972 fel y'i cymhwysir gan adran 16(3) o'r Ddeddf honno, ac mewn perthynas â Chynllun Digolledu 2007 a Chynllun Pensiwn Newydd y Diffoddwyr Tân (Cymru) gan adran 34 (3) o Ddeddf Gwasanaethau Tân ac Achub 2004.

Y goblygiadau yn sgil gadael yr Undeb Ewropeaidd

Ni nodwyd unrhyw bwyntiau i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

Ymateb y Llywodraeth

Nid oes angen ymateb y Llywodraeth.

Cynghorwyr Cyfreithiol

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

15 Mai 2018



Mr Charles Walker MP
Chair
Procedure Committee
House of Commons

11 May 2018

Dear Mr Walker

European Union (Withdrawal) Bill

We have been giving consideration to the amendments agreed at the House of Lords report stage in relation to the European Union (Withdrawal) Bill ("the Bill") and the sifting mechanism that is to apply to regulations made under its provisions. We have identified a discrepancy between the timing offered to Westminster committees and the timing offered to the National Assembly for Wales committees. I have enclosed a letter which I have today sent to the Secretary of State for Wales on this matter.

I am aware that your Committee is on the next phase of its inquiry on the scrutiny of secondary legislation under the Bill, and is now considering the operation in the House of Commons of the scrutiny mechanism provided for in the Bill. I would like to draw your attention to our report on the **Scrutiny of regulations made under the European Union (Wales) Bill** and, specifically, to paragraphs 54 to 58. In these paragraphs we comment on the ability for UK Ministers, acting alone, to use their broad powers to make regulations in devolved areas. With regards to these regulations, we believe the sift committee at the National Assembly (this is likely to be the Constitutional and Legislative Affairs Committee) should be given some role in the scrutiny of regulations made by UK Ministers in devolved areas that are laid before the UK Parliament only.



It would be helpful to know whether your report is likely to consider formal mechanisms by which we would be notified of UK Ministers using their consequential powers under clause 22 of the Bill in devolved areas.

The Intergovernmental Agreement agreed between the Welsh Government and the UK Government deals with consent for regulations made by UK Ministers under "clauses 7, 8 and 9" (as they then were). However, there is no reference to clause 22. We are concerned that clause 22 consequential regulations could impact on devolved matters without our knowledge.

I am copying this letter to Lord Trefgarne, Chairman of the House of Lords Secondary Legislation Scrutiny Committee.

Yours sincerely,



Mick Antoniw

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Rt Hon Alun Cairns MP
Secretary of State for Wales

11 May 2018

Dear Secretary of State

European Union (Withdrawal) Bill

We have been giving consideration to the amendments agreed at the House of Lords report stage in relation to the European Union (Withdrawal) Bill ("the Bill") and the sifting mechanism that is to apply to regulations made under its provisions.

As drafted, the Bill gives Westminster committees 10 sitting days to carry out a sift. "Sitting day" is defined as meaning, in respect of either House, a day on which that House sits.

We understand that the House of Commons usually sits Monday to Thursday, with some Fridays being sitting days (we believe 11 May, 15 June, 6 July, 26 October, and 23 November are agreed sitting Friday dates). Where the House of Commons sits Monday to Thursday, the 10 day sitting period could actually last 19 calendar days. For example, if regulations were laid on Thursday 29 November, the clock would not start running until the following Monday and would stop running at the end of Tuesday 18 December. We understand that the House of Lords arrangements follow a similar pattern, and it's agreed sitting Friday dates are 11 May, 29 June, 20 July and 7 September.

The National Assembly for Wales does not use the term "sitting days". We note that, as a result, paragraph 4 of Schedule 7 does not refer to the Assembly sift being carried out within a certain number of sitting days. Instead, the Assembly has been given a fixed "14 days" (i.e. 14 calendar days excluding any time the Assembly is dissolved or in recess for more than four days). This is the maximum period available to the Assembly to sift and is considerably shorter than the time that could be available to Westminster committees.



Naturally, we are concerned at the lack of consistency between the timing offered to Westminster committees and the timing offered to committees of the National Assembly for Wales. Given the considerable task we all have of scrutinising the UK's exit from the EU, every day is important.

I would therefore be grateful if you could explain why this discrepancy exists, and what scope there is to amend the Bill to ensure there is parity of treatment for scrutiny committees across all institutions. One option to consider would be to amend the Bill to provide the National Assembly's sifting committee with the ability to discharge its responsibility within 14 calendar days or the equivalent amount of days afforded to the House of Commons and House of Lords, whichever is the greater.

At this point in time, it is uncertain the extent to which this disparity may cause problems, particularly because of uncertainties surrounding the scrutiny of joint and composite instruments.

A further issue relating to the sifting process regards the acceptance by the House of Lords on 8 May 2018 of amendment 70 (tabled in the name of Lord Lisvane and now paragraph 3 of Schedule 7), which ensures that the sifting committees' decisions are binding on Ministers save where a House of Parliament resolves otherwise. Please could you let us know whether it is the UK Government's intention to mirror these provisions for the sifting committee in the National Assembly. You may recall that the National Assembly unanimously endorsed a recommendation in similar terms on 7 March 2018.

Please could you also explain how the former Devolution Guidance Note 9 has been amended as compared to the new Devolution Guidance Note: Parliamentary and Assembly Primary Legislation Affecting Wales and the reasons for the changes. We have noted a number of instances where provision is not as it was previously; for example please would you explain what exceptions you expect will apply to the SICM rule, as noted in paragraph 109 of the new Devolution Guidance Note.

Finally I would be grateful to know when the UK Government intends to reflect both the UK exiting the EU and the Intergovernmental Agreement on the EU (Withdrawal) Bill and the Establishment of Common Frameworks within the Devolution Guidance Notes and whether they will then be subject to full public consultation in line with recommendation 4 of our report *UK governance post-Brexit*.

I am copying this letter to Chloe Smith MP, Minister for the Constitution, Elin Jones AM, the Presiding Officer of the National Assembly for Wales, the Rt Hon Carwyn Jones AM, First Minister, and Julie James AM, Leader of the House and Chief Whip.



I would be grateful for a response in respect of the sifting process by Friday 18 May 2018 and in respect of the Devolution Guidance Notes as soon as possible thereafter.

Yours sincerely,

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Rt Hon Alun Cairns MP
Secretary of State for Wales

11 May 2018

Dear Secretary of State

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We understand that the House of Commons usually sits Monday to Thursday, with some Fridays being sitting days (we believe 11 May, 15 June, 6 July, 26 October, and 23 November are agreed sitting Friday dates). Where the House of Commons sits Monday to Thursday, the 10 day sitting period could actually last 19 calendar days. For example, if regulations were laid on Thursday 29 November, the clock would not start running until the following Monday and would stop running at the end of Tuesday 18 December. We understand that the House of Lords arrangements follow a similar pattern, and it's agreed sitting Friday dates are 11 May, 29 June, 20 July and 7 September.

The National Assembly for Wales does not use the term "sitting days". We note that, as a result, paragraph 4 of Schedule 7 does not refer to the Assembly sift being carried out within a certain number of sitting days. Instead, the Assembly has been given a fixed "14 days" (i.e. 14 calendar days excluding any time the Assembly is dissolved or in recess for more than four days). This is the maximum period available to the Assembly to sift and is considerably shorter than the time that could be available to Westminster committees.



Naturally, we are concerned at the lack of consistency between the timing offered to Westminster committees and the timing offered to committees of the National Assembly for Wales. Given the considerable task we all have of scrutinising the UK's exit from the EU, every day is important.

I would therefore be grateful if you could explain why this discrepancy exists, and what scope there is to amend the Bill to ensure there is parity of treatment for scrutiny committees across all institutions. One option to consider would be to amend the Bill to provide the National Assembly's sifting committee with the ability to discharge its responsibility within 14 calendar days or the equivalent amount of days afforded to the House of Commons and House of Lords, whichever is the greater.

At this point in time, it is uncertain the extent to which this disparity may cause problems, particularly because of uncertainties surrounding the scrutiny of joint and composite instruments.

A further issue relating to the sifting process regards the acceptance by the House of Lords on 8 May 2018 of amendment 70 (tabled in the name of Lord Lisvane and now paragraph 3 of Schedule 7), which ensures that the sifting committees' decisions are binding on Ministers save where a House of Parliament resolves otherwise. Please could you let us know whether it is the UK Government's intention to mirror these provisions for the sifting committee in the National Assembly. You may recall that the National Assembly unanimously endorsed a recommendation in similar terms on 7 March 2018.

Please could you also explain how the former Devolution Guidance Note 9 has been amended as compared to the new Devolution Guidance Note: Parliamentary and Assembly Primary Legislation Affecting Wales and the reasons for the changes. We have noted a number of instances where provision is not as it was previously; for example please would you explain what exceptions you expect will apply to the SICM rule, as noted in paragraph 109 of the new Devolution Guidance Note.

Finally I would be grateful to know when the UK Government intends to reflect both the UK exiting the EU and the Intergovernmental Agreement on the EU (Withdrawal) Bill and the Establishment of Common Frameworks within the Devolution Guidance Notes and whether they will then be subject to full public consultation in line with recommendation 4 of our report *UK governance post-Brexit*.

I am copying this letter to Chloe Smith MP, Minister for the Constitution, Elin Jones AM, the Presiding Officer of the National Assembly for Wales, the Rt Hon Carwyn Jones AM, First Minister, and Julie James AM, Leader of the House and Chief Whip.



I would be grateful for a response in respect of the sifting process by Friday 18 May 2018 and in respect of the Devolution Guidance Notes as soon as possible thereafter.

Yours sincerely,

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Mae cyfyngiadau ar y ddogfen hon

Eitem 7

Yn rhinwedd paragraff(au) vi o Reol Sefydlog 17.42

Mae cyfyngiadau ar y ddogfen hon

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