

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

This combined Explanatory Memorandum has been prepared by the Department of Local Government and Communities and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Firefighters' Pension (Wales) Scheme (Amendment) Order 2014 and the Firefighters' Pension Scheme (Wales) (Amendment) Order 2014 and the Firefighters' Compensation Scheme (Wales) (Amendment) Order 2014. I am satisfied the benefits of making the Orders outweigh any costs.

**Leighton Andrews**

**Minister for Public Services  
8 December 2014**

## **Description**

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

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

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

## **Legislative background**

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

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

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

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

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

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

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

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

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

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

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

8. These 2014 Orders make amendments as follows-

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

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

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

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

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

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

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

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

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

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

- *Amendments to the 2007 Pension Scheme*

In general these provisions have effect from 1 April 2014.

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

Part 2 is amended to set out:

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

Part 3 is amended to:

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

Part 4 is amended to:

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

Part 5 is amended to:

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

Part 6 is amended to set out:

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

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

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

Part 10 is amended to:

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

Part 11 is amended to:

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

Part 12 is amended to:

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

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

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

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

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

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

Part 1 is amended to:

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

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

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

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

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

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

Schedule 2 is amended to:

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

Schedule 3 is amended to:

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

Schedule 4 is amended to:

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

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

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

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

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

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

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

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



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

#### *Changes to the maximum commutation payment*

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

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

These amendments will take effect from 1 July 2013.

#### *Changes to the definition of pensionable pay*

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

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

These amendments will take effect from 1 July 2013

#### *Amendments to the medical appeals processes*

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

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

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

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

These amendments will take effect from 1 July 2013.

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

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

This will take effect from 1 July 2013.

#### *Abatement of pensions*

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

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

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

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

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

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

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

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

### **Consultation**

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

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

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

#### **a) Options**

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

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

#### **b) Benefits**

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

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

### **c) Costs**

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

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

#### **a) Options**

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

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

## **b) Benefits**

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

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

## **c) Costs**

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

## RDS Firefighters – Modified Pension Scheme

### Consultation

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

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

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

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

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

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

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

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

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

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

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

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

### **Competition Assessment**

19. Not applicable.

## **Post implementation review**

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