
WELSH STATUTORY INSTRUMENTS

2018 No. 577 (W. 104)

**FIRE AND RESCUE SERVICES, WALES
PENSIONS, WALES**

**The Firefighters' Pension Schemes and Compensation
Scheme (Wales) (Amendment) Order 2018**

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| <i>Made</i> | - - - - | <i>9 May 2018</i> |
| <i>Laid before the National Assembly for Wales</i> | - - | <i>10 May 2018</i> |
| <i>Coming into force</i> | - - | <i>1 June 2018</i> |

This Order is made in the exercise of the powers conferred by section 26(1) to (5) of the Fire Services Act 1947⁽¹⁾ and section 12 of the Superannuation Act 1972⁽²⁾ as applied by section 16(3)(3) of that Act, and by sections 34 and 62 of the Fire and Rescue Services Act 2004⁽⁴⁾, now vested in the Welsh Ministers.

Before making this Order, and in accordance with section 34(5) of the Fire and Rescue Services Act 2004, the Welsh Ministers consulted such persons as they considered appropriate.

The Welsh Ministers make the following Order.

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- (1) 1947 c. 41, repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c. 21). Subsections (1) to (5) of section 26 continue to have effect, in relation to Wales, for the purposes of the scheme established under that section as the Firemen's Pension Scheme and set out in the Firemen's Pension Scheme Order 1992 (S.I. 1992/129), by virtue of article 3 of S.I. 2004/2918 (W. 257). The name of the scheme was changed to the Firefighters' Pension (Wales) Scheme by article 4 of that instrument. Section 26 of the Fire Services Act 1947 was amended by section 1 of the Fire Services Act 1951 (c. 27), section 42 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c. 65), section 33 of, and Schedule 3 to, the Theft Act 1968 (c. 60), sections 16 and 29 of, and Schedule 8 to, the Superannuation Act 1972 (c. 11), sections 100 and 101 of, and Schedule 27 to, the Social Security Act 1973 (c. 38), section 1 of, and Schedule 1 to, the Social Security (Consequential Provisions) Act 1975 (c. 18), section 32(2) of the Magistrates' Courts Act 1980 (c. 43), section 1 of the Police and Firemen's Pensions Act 1997 (c. 52), section 256 of, and Schedule 25 to, the Civil Partnership Act 2004 (c. 33), and by S.I. 1976/551. In so far as the Firefighters' Pension Scheme is continued in force, in relation to Wales, by virtue of S.I. 2004/2918 (article 3(1)), section 26(1) to (5) have effect as if for each reference to the "Secretary of State" there were substituted a reference to the "National Assembly for Wales"; see article 2 of S.I. 2006/1672 (W. 160). By virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32) functions under section 26 of the Fire Services Act 1947 are now vested in the Welsh Ministers so far as they are exercisable in relation to Wales.
- (2) 1972 c. 11; section 12 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).
- (3) Section 16 was repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 but continues to have effect, in relation to Wales, by virtue of article 3(2) of S.I. 2004/2918 (W. 257).
- (4) 2004 c. 21. The powers conferred by section 34 of the Fire and Rescue Services Act 2004 are now vested in the Welsh Ministers so far as they are exercisable in relation to Wales. They were previously vested in the National Assembly for Wales by virtue of section 62 of that Act. By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006, they were transferred to the Welsh Ministers.

Title and commencement

1.—(1) The title of this Order is the Firefighters’ Pension Schemes and Compensation Scheme (Wales) (Amendment) Order 2018 and it comes into force on 1 June 2018.

(2) The amendments made by—

- (a) article 2(2), (3), (4)(a) and (5); and
- (b) articles 3(8) and 4;

have effect from 1 April 2015.

(3) The amendments made by article 3(2) to (7) and (9) have effect from 6 April 2006.

(4) The amendments made by article 2(4)(b) have effect from 1 December 2006.

(5) The amendment made by article 5 has effect from 31 December 2016(5).

Amendment of the Firemen’s Pension Scheme Order 1992

2.—(1) Schedule 2 to the Firemen’s Pension Scheme Order 1992(6) (in which is set out the Firefighters’ Pension (Wales) Scheme) is amended as follows.

(2) In Part B (personal awards)—

(a) in rule B1A(3)(7) (continuous service pension)—

- (i) in sub-paragraph (a), for “paragraph (1)(a)” substitute “paragraph (1)(b)”; and
- (ii) for sub-paragraph (b) substitute—
 - “(b) paragraph (1) of this rule applies as if the age ascertained under sub-paragraph (a) were substituted for “normal pension age”.”;

(b) in rule B2A(8) (continued pension), for “rule B1A(3)(i)” substitute “rule B1A(3)(a)”;

(c) in rule B5A(4B)(a)(9) (entitlement to two pensions), for “ $(A/B) \times (B/C) \times G$,” substitute “ $(A/E) \times (B/C) \times G$.”;

(d) in rule B5D(1A)(10) (additional pension benefit: supplementary provisions), for “paragraph (3)(i)” substitute “paragraph (3)(a)”.

(3) In Part C (awards on death – spouses), in rule C9 (effect of remarriage)—

- (a) in paragraph (1), for “A person” substitute “Subject to paragraphs (3) to (6), a person”;
- (b) in paragraph (2), for “Where a person” substitute “Subject to paragraphs (3) to (6), where a person”; and
- (c) after paragraph (2) insert—

“(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—

(5) Power to give retrospective effect is conferred by section 12(1) of the Superannuation Act 1972 and by section 34(3) of the Fire and Rescue Services Act 2004.

(6) S.I. 1992/129; amended by S.I.s 1997/2309 and 2851, 1998/1010, 2001/3649 and 3691, 2004/1912 and 2918 (W. 257), 2006/1672 (W. 160), 2007/1074 (W. 112), 2009/1226 (W. 109), 2010/234, 2013/736 (W. 88), 2014/522 (W. 63) and 3242 (W. 329) and 2015/1016 (W. 71).

(7) Rule B1A was inserted by regulation 4 of and Schedule 3 to S.I. 2015/1016 (W. 71).

(8) Rule B2A was inserted by regulation 4 of, and Schedule 3 to, S.I. 2015/1016 (W. 71).

(9) Rule B5A was inserted by article 2 of, and the Schedule to, S.I. 2009/1226 (W. 109) and paragraphs (4A) and (4B) inserted by article 2 of, and the Schedule to, S.I. 2014/3242 (W. 329).

(10) Rule B5D was inserted by article 2 of, and the Schedule to, S.I. 2009/1226 (W. 109) and paragraph (1A) inserted by regulation 4 of, and Schedule 3 to, S.I. 2015/1016 (W. 71).

- (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.
- (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) In Part G (pensionable pay and contributions)—
 - (a) in rule G1 (pensionable pay and average pensionable pay)—
 - (i) in paragraphs (10) and (11)(**11**), for "paragraph 34 of Schedule 2" substitute "paragraph 33 of Schedule 2";
 - (ii) in paragraph (11), for "paragraph 34(4) of Schedule 2" substitute "paragraph 33(4) of Schedule 2";
 - (iii) in paragraph (13), for "paragraph 34(3) of Schedule 2" substitute "paragraph 33(3) of Schedule 2"; and
 - (b) in rule G2 (pension contributions)—
 - (i) in paragraph (1), for "paragraph (1B)"(**12**) substitute "paragraphs (1B) to (1D)";
 - (ii) after paragraph (1B) insert—

"(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.";

(11) Rule G1(10) to (13) was inserted by [S.I. 2015/1016 \(W. 71\)](#).

(12) Rule G2(1B) was inserted by [S.I. 2016/1136 \(W. 274\)](#).

(iii) for paragraph (4) substitute—

“(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 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) In Part 2A(13) (continuous service pension) of Schedule 2 (personal awards), for “40 years”, where the words occur for the first time, substitute “30 years”.

Amendment of the Firefighters’ Pension Scheme (Wales) Order 2007

3.—(1) Schedule 1 to the Firefighters’ Pension Scheme (Wales) Order 2007(14) is amended as follows.

(2) In the Table of Contents, in the headings to Chapter 1 of Part 4 and rules 1 and 5 of that Chapter, for “nominated partners” substitute “cohabiting partners”.

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

- (a) in the definition of “child”, in paragraph (a)(iii), for “nominated partner” substitute “cohabiting partner”;
- (b) omit the definition of “nominated partner”; and
- (c) in the appropriate place insert—

““cohabiting partner” (“*partner sy’n cyd-fyw*”) has the meaning given by rule 1(6) of Part 2;”.

(4) In Part 2 (scheme membership, cessation and retirement), in rule 1 (scheme membership)—

- (a) in paragraph (5)(b), for “nominated partner” substitute “cohabiting partner”;
- (b) for paragraph (6) substitute—

“(6) For the purposes of paragraph (5), the cohabiting partner of a firefighter member, deferred member or pensioner member (referred to in this paragraph as “the scheme member”) is a person who—

- (a) is living with the scheme member as if that person and the scheme member were spouses or civil partners; and
- (b) at the date on which the question of the cohabiting partner’s status in relation to the scheme member falls to be considered—
 - (i) is not the spouse or civil partner of any person,
 - (ii) could enter into a marriage or a civil partnership with the scheme member under the law of England and Wales,
 - (iii) is financially dependent on the scheme member, or is, with the scheme member, in a state of mutual financial dependency, and
 - (iv) is in a long-term relationship with the scheme member.”;

- (c) omit paragraph (7)(b);
- (d) omit paragraphs (8) and (9).

(13) Part 2A was inserted by regulation 4 of and Schedule 3 to S.I. 2015/1016 (W. 71).

(14) S.I. 2007/1072 (W. 110); relevant amendments were made by S.I. 2015/1016 (W. 71).

(5) In Part 3 (personal awards), in rule 11(2)(a) (allocation of pension), for “nominated partner” substitute “cohabiting partner”.

(6) In Chapter 1 of Part 4 (survivors’ pensions)—

(a) in the Chapter heading and in the heading to rule 1, for “nominated partners” substitute “cohabiting partners”;

(b) in rule 1, in the closing words of paragraph (1), for “nominated partner” substitute “cohabiting partner”;

(c) in the heading to rule 5, for “nominated partner” substitute “cohabiting partners”.

(7) In Part 7 (reservists), in rule 3 (awards on death or permanent disablement), in the closing words of paragraph (3), for “nominated partner” substitute “cohabiting partner”.

(8) In Part 11 (pensionable pay, pension contributions and purchase of additional service)—

(a) in rule 1 (pensionable pay)—

(i) in paragraphs (7) and (8), for “paragraph 33 of Schedule 2” substitute “paragraph 32 of Schedule 2”;

(ii) in paragraph (8), for “paragraph 33(4) of Schedule 2” substitute “paragraph 32(4) of Schedule 2”; and

(iii) in paragraph (9), for “paragraph 33(3) of Schedule 2” substitute “paragraph 32(3) of Schedule 2”;

(b) in rule 2 (final pensionable pay), in paragraph (2A)(b), for “paragraph 33(4) of Schedule 2” substitute “paragraph 32(4) of Schedule 2”.

(9) In Part 15, omit rules 5(3) and 6(3).

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

4.—(1) The Firefighters’ Compensation Scheme (Wales) Order 2007(15) is amended as follows.

(2) In article 4 (transitional provision: decisions and determinations made before 1 April 2006)—

(a) in paragraph (1), after “disablement” insert “or death”;

(b) in paragraph (2), after “1 April 2006,” insert “subject to the amendments made by paragraphs (3) and (4)”;

(c) after paragraph (2) insert—

“(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) In Schedule 1, in Part 3 (awards on death: spouses and civil partners)—

(a) omit rule 5 (effect of new relationship); and

(b) after rule 5, insert—

“Reinstatement of entitlement to pension and gratuity

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

Amendment of the Firefighters’ Pension (Wales) Scheme (Amendment and Transitional Provisions) Order 2016

5. In the description of “A” in paragraph (3) of article 3 (transitional provision) of the Firefighters’ Pension (Wales) Scheme (Amendment and Transitional Provisions) Order 2016⁽¹⁶⁾, after “contribution”, the first time that it appears, insert “(not including any contribution in relation to an additional pension benefit)”.

9 May 2018

Alun Davies
Cabinet Secretary for Local Government and
Public Services, one of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Firefighters' Pension (Wales) Scheme (set out in Schedule 2 to the Firemen's Pension Scheme Order 1992) as it has effect in Wales ("the 1992 Scheme"); the New Firefighters' Pension Scheme (Wales) (set out in Schedule 1 to the Firefighters' Pension Scheme (Wales) Order 2007); the Firefighters' Compensation Scheme (Wales) (set out in Schedule 1 to the Firefighters' Compensation Scheme (Wales) Order 2007) ("the 2007 Compensation Scheme") and the Firefighters' Pension (Wales) Scheme (Amendment and Transitional Provisions) Order 2016.

Article 2 amends the 1992 Scheme, in particular, to provide that the surviving spouse or civil partner of a firefighter who died from an injury received in the exercise of duty, or travelling to or from duty, is to retain his or her entitlement to a pension or gratuity under Part C of the 1992 Scheme if he or she marries, remarries, forms a civil partnership or subsequent civil partnership on or after 1 April 2015. It further provides that a pension or gratuity which had been withdrawn for these reasons prior to 1 April 2015 is reinstated with effect from that date. Article 2 also makes a number of unrelated amendments to the 1992 Scheme, including 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 the firefighter attains the age of 50. When the firefighter attains 50 the requirements in rule G2(1) of the 1992 Scheme will apply to the firefighter. Related to this, article 5 amends the transitional provision made by the Firefighters' Pension (Wales) Scheme (Amendment and Transitional Provisions) Order 2016 to make it clear that payments made by a fire and rescue authority under that provision do not include any sum in respect of a firefighter's contribution in relation to additional pension benefit.

Article 3 amends the New Firefighters' Pension Scheme (Wales) to remove the requirement that a surviving cohabiting partner must have been nominated by the scheme member as a condition of eligibility for a survivor's pension. Article 3 also makes a number of unrelated amendments to that Scheme in order to correct errors in cross- references.

Article 4(3) revokes rule 5 of Part 3 of the 2007 Compensation Scheme so as 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 forming a civil partnership or subsequent civil partnership. Pensions or gratuities which had been withdrawn prior to 1 April 2015 for these reasons are reinstated with effect from that date.

The 2007 Compensation Scheme superseded corresponding provisions of the 1992 Scheme. Article 4(2) amends the transitional arrangements in article 4 of the Firefighters' Compensation Scheme (Wales) Order 2007 so that equivalent provision will apply to special and augmented awards under rule C2 or 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 (by virtue of article 4(1) of that Order the 1992 Scheme in the form in which existed immediately before 1 April 2006 continues to have effect in these circumstances).

The amendments made by article 3(2) to (7) and (9) of this Order have effect from 6 April 2006, the amendments made by article 2(4)(b) have effect from 1 December 2006, the amendment made by article 5 has effect from 31 December 2016; the other amendments have effect from 1 April 2015. The power to give this Order retrospective effect is conferred, in respect of the 1992 Scheme, by section 12 of the Superannuation Act 1972 as applied by section 16(3) of that Act and, in respect of

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the 2007 Compensation Scheme and the New Firefighters' Pension Scheme (Wales), by section 34(3) of the Fire and Rescue Services Act 2004.

The Welsh Ministers' Regulatory Impact Assessment Code for Subordinate Legislation has been considered in relation to this Order. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with this Order.