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WELSH STATUTORY INSTRUMENTS

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**2023 No. 961**

**The Firefighters' Pensions (Remediable Service) (Wales) Regulations 2023**

**PART 7**

Provision about special cases

**CHAPTER 1**

Ill-health retirement

**Application and interpretation of Part 7**

**52.** In this Chapter—

“1992 IHR member” (“*aelod YSA 1992*”) means a member entitled to an ill-health award under rule B3 of Schedule 2 to the 1992 Order;

“2007 IHR member” (“*aelod YSA 2007*”) means a member entitled to an ill-health pension under rule 2 of Part 3 of paragraph 1 of Schedule 1 to the 2007 Order;

“2015 IHR member” (“*aelod YSA 2015*”) means a member entitled to an ill-health pension under regulation 74 of the 2015 Regulations;

“alternative scheme” (“*cynllun amgen*”) means, in relation to—

- (a) a 1992 IHR member or a 2007 IHR member, the 2015 scheme;
- (b) a 2015 IHR member, the member’s legacy scheme;

“higher tier award” (“*dyfarniad haen uchaf*”) means, in relation to—

- (a) the 1992 scheme, an award determined in accordance with paragraph B3(5)(b) of the 1992 Order;
- (b) the 2007 scheme, an award determined in accordance with rule 2(3) of Part 3 of paragraph 1 of Schedule 1 to the 2007 Order;
- (c) the 2015 scheme, an ill-health pension payable under regulation 74(2) of the 2015 Regulations;

“ill-health benefits” (“*buddion afiechyd*”) means benefits payable by virtue of an entitlement of a 1992 IHR member, a 2007 IHR member or a 2015 IHR member mentioned in this regulation;

“IQMP” (“*YMCA*”) has the meaning given in regulation 3 of the 2015 Regulations;

“lower tier award” (“*dyfarniad haen isaf*”) means, in relation to—

- (a) the 1992 scheme, an award determined in accordance with paragraph B3(5)(a) of the 1992 Order;
- (b) the 2007 scheme, an award determined in accordance with rule 2(2) of Part 3 of paragraph 1 of Schedule 1 to the 2007 Order;

- (c) the 2015 scheme, an ill-health pension payable under regulation 74(1) and (1A) of the 2015 Regulations.

“remediable ill-health benefits” (*“buddion afiechyd rhwymediol”*) means ill-health benefits payable in relation to M’s remediable service as a firefighter.

**M’s entitlement to ill-health benefits to be treated as equivalent in M’s alternative scheme**

**53.**—(1) This regulation applies in relation to an immediate choice member (“M”) who, during the period beginning on 1 April 2015 and ending on 31 March 2022, was—

- (a) a 2007 IHR member; or  
 (b) a 2015 IHR member.

(2) For the purposes of the PSPJOA 2022 and these Regulations, M is to be treated as meeting the requirements for an equivalent ill-health award in M’s alternative scheme.

(3) In paragraph (2), “equivalent ill-health award in M’s alternative scheme” means, where M is entitled to—

- (a) a lower tier award under the 2007 scheme, a lower tier award under the 2015 scheme;  
 (b) a higher tier award under the 2007 scheme, a higher tier award under the 2015 scheme;  
 (c) a lower tier award under the 2015 scheme, and—  
     (i) M’s legacy scheme is the 1992 scheme, a lower tier award under that scheme;  
     (ii) M’s legacy scheme is the 2007 scheme, a lower tier award under that scheme;  
 (d) a higher tier award under the 2015 scheme, and—  
     (i) M’s legacy scheme is the 1992 scheme, a higher tier award under that scheme;  
     (ii) M’s legacy scheme is the 2007 scheme, a higher tier award under that scheme.

(4) No question relating to M’s entitlement to ill-health benefits that has been decided following a referral to an IQMP is to be re-opened by virtue of any provision of the PSPJOA 2022 or of these Regulations.

**Entitlement to ill-health benefits where a remedy member’s legacy scheme is the 1992 scheme**

**54.**—(1) Paragraph (2) applies where—

- (a) a remedy member (“M”) is a 1992 IHR member, and  
 (b) M’s entitlement to an ill-health award has not been assessed under regulation 74(1)(a) or (2)(a) of the 2015 Regulations.

(2) The scheme manager must obtain the opinion of an IQMP on the following questions—

- (a) whether M would, at the time of the original decision, have met the criteria to be entitled to a lower tier award under the 2015 scheme, and  
 (b) whether M would, at the time of the original decision, have met the criteria to be entitled to a higher tier award under the 2015 scheme.

(3) Paragraph (4) applies where—

- (a) a remedy member’s (“M’s”) legacy scheme is the 1992 scheme,  
 (b) M’s entitlement to an ill-health award was assessed under regulation 74(1)(a) or (2)(a) of the 2015 Regulations,  
 (c) it was determined in accordance with that regulation that—  
     (i) M was entitled to neither a lower tier award nor a higher tier award, or

- (ii) M was entitled to a lower tier award but was not entitled to a higher tier award,
  - (d) M resigned or was dismissed from their employment within 3 months of the determination, and
  - (e) M is a deferred or pensioner member of the 2015 scheme.
- (4) The scheme manager must obtain the opinion of an IQMP on the following questions—
- (a) where it was determined that M was entitled to neither a lower tier award nor a higher tier award—
    - (i) whether M would, at the time of the original decision, have met the criteria to be entitled to a lower tier award under the 1992 scheme, and
    - (ii) whether M would, at the time of the original decision, have met the criteria to be entitled to a higher tier award under the 1992 scheme;
  - (b) where it was determined that M was entitled to a lower tier award but not to a higher tier award, whether M would, at the time of the original decision, have met the criteria to be entitled to a higher tier award under the 1992 scheme.
- (5) An IQMP who is to provide an opinion on a question in accordance with this regulation must—
- (a) examine or interview M as the IQMP thinks it is necessary to provide an opinion on the question, and
  - (b) give the scheme manager and M a written opinion containing a decision on the question.
- (6) For the purpose of providing an opinion in accordance with this regulation and subject to paragraph (5)(a), the IQMP may only have regard to information that was available or could have been produced at the time of the original decision.
- (7) The scheme manager must determine whether M is entitled to an ill-health award, and the provisions of Part 12 of the 2015 Regulations apply to—
- (a) a determination under this paragraph as if it were a determination under regulation 161 of those Regulations, and
  - (b) an opinion of the IQMP obtained under this regulation as if it were an opinion of the IQMP obtained in accordance with that Part.
- (8) Where it is determined that M is entitled to an ill-health award M is to be treated for the purposes of the PSPJOA 2022 and of these Regulations as being entitled to that ill-health award from the time of the original decision.
- (9) In this regulation, “original decision” means—
- (a) for the purposes of paragraphs (1) and (2), the decision under Part H of Schedule 2 to the 1992 Order by virtue of which M became entitled to an ill-health award under the 1992 scheme;
  - (b) for the purposes of paragraphs (3) and (4), the decision under Chapter 4 of Part 5 of the 2015 Regulations by virtue of which it was determined that M was not entitled to a lower tier award or, as the case may be, a higher tier award under the 2015 scheme.

#### **Assessment and reassessment of certain transitional ill-health cases**

- 55.—**(1) This regulation applies where—
- (a) a remedy member (“M”) was, immediately before 1 April 2022, not a full protection member of the 1992 scheme or a full protection member of the 2007 scheme,
  - (b) an assessment (“the transitional assessment”) of M’s entitlement to an ill-health award under the 2015 scheme began before 1 April 2022, and

- (c) a determination had not been made by the scheme manager in relation to the transitional assessment by the end of 31 March 2022.
- (2) Where the transitional assessment has not been determined before 1 October 2023, the scheme manager must secure that—
- (a) the transitional assessment is undertaken on the basis that M’s normal pension age is 55, and
- (b) any steps taken in relation to the transitional assessment, the outcome of which might have been different had they been taken on the basis that M’s normal pension age is 55, are retaken.
- (3) Paragraph (4) applies where—
- (a) the transitional assessment has been determined before 1 October 2023, and
- (b) it was determined that—
- (i) M was entitled to neither a lower tier award nor a higher tier award in the 2015 scheme, or
- (ii) M was entitled to a lower tier award in the 2015 scheme, but not a higher tier award in that scheme.
- (4) Where this paragraph applies, the scheme manager must secure that—
- (a) M is assessed for entitlement to a relevant award under the 2015 scheme on the basis that M’s normal pension age is 55, and
- (b) M is treated as if the transitional assessment had not been undertaken so far as it relates to the relevant award.
- (5) In this regulation—
- “full protection member of the 1992 scheme” (*“aelod diogelwch llawn o gynllun 1992”*) means a full protection member of the 1992 scheme within the meaning of paragraph 9 of Schedule 2 to the 2015 Regulations;
- “full protection member of the 2007 scheme” (*“aelod diogelwch llawn o gynllun 2007”*) means a full protection member of the NFPS within the meaning of paragraph 9 of Schedule 2 to the 2015 Regulations;
- “relevant award” (*“dyfarniad perthnasol”*) means—
- (a) where paragraph (3)(b)(i) applies, a lower tier award and a higher tier award;
- (b) where paragraph 3(b)(ii) applies, a higher tier award.

## CHAPTER 2

### Miscellaneous special cases

#### **Payment of annual allowance tax charges and provision of information**

**56.** Where a remedy member is unable to give an effective notice to the scheme administrator under section 237B(3) of the Finance Act 2004<sup>(1)</sup> in relation to an in-scope tax year (within the meaning of direction 7(7) of the PSP Directions 2022) because the time limit in section 237BA(2) has passed, direction 7(2) to (6) of the PSP Directions 2022 applies in relation to the remedy member.

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(1) 2004 c. 12. Section 237B was inserted by paragraph 15 of Schedule 17 to the Finance Act 2011 (c. 11).

(2) Section 237BA was inserted by section 9(3) of the Finance Act 2022 (c. 3).