

Circular



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| Title: | The Firefighters' Pension Schemes and Compensation Scheme (Wales) (Amendment) Regulations 2021. |
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| Issued by: | Natalie Spiller Fire Services Branch |
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| Addressed to: | Please forward to: |
| Chief Fire Officers | FRA Chairs Treasurers Pensions Officers |

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| Summary |
| This Circular outlines the implications of The Firefighters' Pension Schemes and Compensation Scheme (Wales) (Amendment) Regulations 2021 on Firefighter Pension Schemes in Wales. The Regulations will come into force on the 23 February 2021. |

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Introduction

1. On 23 February 2021, The Firefighters' Pension Schemes and Compensation Scheme (Wales) (Amendment) Regulations 2021 ("the Regulations") will come into force in Wales. A link to the Regulations can be found below:

[The Firefighters' Pension Schemes and Compensation Scheme \(Wales\) \(Amendment\) Regulations 2021](#)

2. The Regulations amend the following firefighters' pension schemes:-
 - The Firefighters' Pension (Wales) Scheme ("the 1992 Scheme").
 - The New Firefighters' Pension Scheme (Wales) ("the 2007 Scheme").
 - The Firefighters' Compensation Scheme (Wales) 2007 ("the 2007 Compensation Scheme").
 - The Firefighters' Pension Scheme (Wales) 2015 ("the 2015 Scheme")

Equalising survivor benefits for civil partners / same sex spouses

3. The 1992 Scheme and the 2007 Compensation Scheme currently provide surviving civil partners and same sex spouses with entitlement to a survivors' pension based on pensionable service from 6 April 1988. Following the Supreme Court judgment in the case of Walker v Innospec¹, the Regulations amend these provisions to remove the 1988 limitation date, which will bring the benefits payable to surviving civil partners and same sex spouses in line with those payable to survivors of opposite sex marriages and comply with the judgment. The amendments are backdated to 5 December 2005, the date that civil partnerships were introduced.
4. If there are any survivors' pensions in payment to civil partners or same-sex spouses of a deceased scheme member whose service began before 6 April 1988, they will need to be recalculated so that they are based on the full length of the scheme member's service. That recalculation should apply to both past and future pension payments, and the accrued deficit in pension payments should be paid to the survivor as soon as possible.

Removing limitations on survivors' benefits payable to children

5. The Supreme Court held in the case of McLaughlin² that denying benefits payable to (or on behalf of) children based on their parents' marital status was unlawful. Accordingly, the Regulations amend the 2007 Compensation Scheme to remove the provisions that prevent children of unmarried scheme members from receiving survivors' benefits. The amendment also eliminates the same restriction as regards stepchildren and adopted children, who now become entitled to survivors' benefits on the same terms as biological children of the scheme member. This regulation is backdated to the date from which the original provision had effect (1 April 2006).

¹ [2017] UKSC 47 ([Walker v Innospec Limited and others](#))

² [2018] UKSC 48 ([Siobhan McLaughlin for Judicial Review \(Northern Ireland\)](#))

6. It is probably very rare for children to receive survivors' benefits under the Compensation Scheme, firstly because qualifying deaths are themselves rare, and secondly because children can only receive benefits if the scheme member had no spouse or civil partner. Nonetheless, FRAs should re-examine any past cases in which survivors' benefits may have been payable to children who now become entitled to them, to the extent that it is practical to do so.

Split Pensions

7. The Regulations also amend the 1992 Scheme and the 2007 Scheme to clarify that where a firefighter has an entitlement to two pensions, the amount of the first pension is up-rated annually (as if subject to the Pension (Increase) Act 1971) from the date that the firefighter ceased to earn the higher rate of pay until retirement.

Pension sharing on divorce

8. Amendments have been made to update the out of date statutory reference and ensure that pension credit members (those who have rights under the 1992 Scheme or 2007 Scheme which are attributable, directly or indirectly, to a pension credit under a pension order following divorce or nullity of marriage) continue to commute their benefit as permitted by overarching legislation. On divorce from a pension scheme member, current provisions of the 1992 Scheme and 2007 Scheme do not take account of changes to the related legislation on pension sharing.

Commutation Factors

9. Amendments have been made to the 2007 Scheme to include special commutation factors (that is, the rates at which pension can be exchanged for a lump sum) up to age 75, instead of age 65.

Club transfer value payments

10. The 2015 Scheme has been updated to clarify that protected members of the 1992 Scheme transferring to Wales from England, Scotland or Northern Ireland continue to be entitled to remain as members of that Scheme.
11. Full details on the amendments can be found within the attached Explanatory Memorandum.

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