

Circular



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Title:	The Firefighters' Pensions (Remediable Service) (Wales) Regulations 2023
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Issued by:	Cerys Myers Fire Services Branch
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Addressed to:	Please forward to:
Chief Fire Officers	Treasurers Pensions Officers Scheme Administrators

Summary
This circular provides details of the introduction of the Firefighters' Pensions (Remediable Service) (Wales) Regulations 2023 from 1 October 2023. It requires immediate action.

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Introduction

1. The Public Service Pensions and Judicial Offices Act 2022 (“the PSPJOA 2022”) makes provision to address age-based discrimination in public service pension schemes. The PSPJOA 2022 was made following a finding in the case of the Secretary of State for the Home Department & the Welsh Ministers v Sargeant & Others ([2018] EWCA Civ 2844) that transitional protections in reformed firefighters’ pensions schemes were unlawfully discriminatory on the basis of age. In the context of firefighters’ pensions in Wales, those provisions were set out in the Firefighters’ Pension Scheme (Wales) Regulations 2015¹.
2. Responsibility for firefighters’ pension schemes in Wales is devolved to the Welsh Ministers under the Fire and Rescue Services Act 2004 and the Public Service Pensions Act 2013. While the Welsh Ministers have functions in relation to firefighters’ pensions, occupational pensions in general are a reserved matter outside the powers of Senedd Cymru. The Welsh Ministers are thus obliged to implement the policy which is reflected in the Act.
3. To introduce the Remedy, two statutory instruments were required to be made: -
 - The first set of regulations, the Firefighters’ Pension Scheme (Wales) (Amendment) Regulations 2022² – closed the legacy schemes for all members from 1 April 2022. These “prospective” regulations were made and laid in March 2022 and came into force from 1 April 2022. The regulations are available [here](#).
 - The second set of regulations (the retrospective regulations), the Firefighters’ Pensions (Remediable Service) (Wales) Regulations 2023³ - deals with membership of pension schemes during the “remedy period” (i.e., April 2015 to March 2022). These “retrospective” regulations were made and laid in September 2023 and will come into force from 1 October 2023. The regulations are available [here](#).

The Firefighters’ Pensions (Remediable Service) (Wales) Regulations 2023

4. This circular focuses on the details of the second set of regulations, the Firefighters’ Pensions (Remediable Service) (Wales) Regulations 2023, which come into force on 1 October 2023.
5. We consulted on these Regulations from March to June this year. Responses to that consultation were largely positive. While we have made some technical changes to the regulations in light of those responses, the provisions do not differ substantively from those set out in our consultation document.
6. A description of the Regulations is set out in the attached Explanatory Memorandum and the 2023 Regulations but for ease of reference, are as follows: -

Part 1 sets out the introductory provisions, including the date the regulations come into force and the interpretation of the terms used throughout.

¹ SI 2015 no.622 / W.50.

² SI 2022/343 (W. 85).

³ SI 2023 no.961 (W.156).

Part 2 of these Regulations makes provision about when and to whom a remediable service statement is to be provided by the scheme manager, as well as the contents of the remediable service statement.

Part 3 makes provision about the principal decisions that may be made in relation to a member's remediable service—

- (a) Chapter 1 makes provision about when and how an election may be made for service in respect of which a member opted-out of a firefighters' pension scheme to be reinstated and treated as remediable service;
- (b) Chapter 2 makes provision about when and how a decision may be made, or be deemed to have been made, about whether the remediable service of a pensioner or deceased member (an "immediate choice member") is to be treated as service in the member's legacy scheme or in the 2015 scheme;
- (c) Chapter 3 makes provision similar to Chapter 2, but in relation to the remediable service of an active or deferred member.

Part 4 makes provision about cases in which the pension rights secured by virtue of a member's remediable service are at issue in proceedings relating to members who divorce or dissolve a civil partnership —

- (a) Chapter 1 makes provision about sharing the value of such rights under a pension sharing order where they are subject to a pension debit under section 29 of the Welfare Reform and Pensions Act 1999 (c. 30). It provides, in particular, for the calculation or, where appropriate, the re-calculation of the value of a pension debit and a pension credit in relation to the rights;
- (b) Chapter 2 makes provision about the calculation of the value of rights for the purposes of sharing those rights under an arrangement other than a pension sharing order.

Part 5 makes provision about lump sum voluntary contributions paid by a member during the period of their remediable service, and periodical contributions paid by a member under an arrangement which commenced during the period of their remediable service, to secure further pension rights, and retrospective arrangements to secure such further pension rights in respect of a member's remediable service —

- (a) regulation 30 makes provision under which compensation is to be paid in relation to voluntary contributions used to secure rights to 2015 scheme added pension during the period of their remediable service;
- (b) regulation 31 makes provision under which compensation is to be paid in relation to voluntary contributions used to secure rights to legacy scheme added years during the period of their remediable service where the benefits to be paid in relation to a member's remediable service are 2015 scheme benefits;
- (c) regulation 32 makes provision under which a member who has remediable service in the 2015 scheme may elect to enter into a retrospective arrangement to secure added years in the member's legacy scheme in respect of that remediable service.

Part 6 makes provision about transfers in and out of a firefighters' pension scheme of pension rights during the period of a member's remediable service—

- (a) Chapter 1 makes provision about, among other things, the provision of a remediable service statement to a person who has transferred out rights in respect of remediable service and in respect of whom a remediable service statement is not otherwise required to be provided;
- (b) Chapter 2 makes provision about transfers in and out of a firefighters' pension scheme on a cash equivalent basis, including provision about the calculation (and, where appropriate, the recalculation) of the value of a cash equivalent transfer

value, and the making and accepting of payments in relation to the transfer value of rights secured by virtue of remediable service;

- (c) Chapter 3 makes provision similar to Chapter 2, but in relation to transfers in and out of a firefighters' pension scheme on a club basis;
- (d) Chapter 4 makes provision for—
 - (i) transfers into the 2015 scheme in respect of rights secured by virtue of remediable service to be treated as being transferred into the member's legacy scheme where the benefits which become payable in respect of the member's remediable service are legacy scheme benefits;
 - (ii) the conferring or variation of rights in a member's legacy scheme to reflect a change in the value of those rights by virtue of PSPJOA 2022 and these Regulations;
 - (iii) financial corrections of any pension benefits paid in respect of the transferred-in rights of an immediate choice member.

Part 7 makes provision about ill-health retirement—

- (a) regulation 53 makes provision about the cases in which a member who met the requirements for an ill-health retirement award in one firefighters' pension scheme is to be deemed as meeting the requirements in their alternative firefighters' pension scheme;
- (b) regulation 54 makes provision under which a member who has received an ill-health retirement award under the Firemen's Pension Scheme Order 1992 is to be assessed for eligibility for a higher tier award in the 2015 scheme.

Part 8 makes provision in relation to cases in which a person has already obtained a remedy in relation to their remediable service. Such persons are treated for the purposes of PSPJOA 2022 and these Regulations as if they were an immediate choice member who has elected to receive legacy scheme benefits in relation to their remediable service.

Part 9 makes provision about any amounts ("relevant amounts") owed to or by a person as a result of PSPJOA 2022 or these Regulations—

- (a) Chapter 2 makes provision for the calculation of interest on relevant amounts, for the increase of benefits instead of the payment of a relevant amount, for the making of an application where a person wishes to claim compensation, and for the netting off of relevant amounts owed to and by a person;
 - (b) Chapter 3 makes provision about the reduction and waiver of relevant amounts, in particular a requirement for the scheme manager to reduce some relevant amounts by tax relief amounts, the requirement for the scheme manager to waive amounts owed by relevant survivors and relevant separated persons, the discretion of the scheme manager to reduce or waive relevant amounts owed by a person to a scheme in certain circumstances, and the option to defer payment of certain relevant amounts owed to a member until an election is made in relation to the member's remediable service;
 - (c) Chapter 4 makes provision about when and how relevant amounts must be paid.
7. Scheme Managers and administrators are required to implement the changes from 1 October 2023.