
WELSH STATUTORY INSTRUMENTS

2016 No. 1136 (W. 274)

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

**The Firefighters' Pension (Wales) Scheme
(Amendment and Transitional Provisions) Order 2016**

<i>Made</i>	- - - -	22 November 2016
<i>Laid before the National Assembly for Wales</i>	- -	25 November 2016
<i>Coming into force</i>	- -	31 December 2016

The Welsh Ministers, in exercise of the powers conferred upon the Secretary of State 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 now vested in them⁽⁴⁾, make the following Order.

Title and commencement

1.—(1) The title of this Order is the Firefighters' Pension (Wales) Scheme (Amendment and Transitional Provisions) Order 2016.

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- (1) 1947 c. 41, repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c. 21).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). By article 4 of that instrument the name of the scheme as it has effect in Wales was changed to the Firefighters' Pension (Wales) Scheme. 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 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.
- (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- (3) Section 16 was repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 but continues to have effect, in relation to Wales, by virtue of article 3(2) of the Fire and Rescue Services Act 2004 (Firefighters' Pension Scheme) (Wales) Order 2004 (S.I. 2004/2918 (W. 257)).
- (4) For the purposes of the Firefighters' Pension (Wales) Scheme, 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) the Assembly's 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) This Order comes into force on 31 December 2016 but article 2(2) has effect from 1 December 2006(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 rule G2 (pension contributions)(7)—

(a) in paragraph (1) for “A regular firefighter shall” substitute “Subject to paragraph (1B), a regular firefighter shall”; and

(b) before paragraph (2) insert—

“(1B) Paragraph (1) does not apply to a firefighter below the age of 50 who has reckoned 30 years or more pensionable service.”

(3) In rule LA1(3) (establishment, maintenance and operation of Firefighters’ Pension Fund, etc.)(8)—

(a) at the end of sub-paragraph (d) for “.” substitute “; and”; and

(b) after sub-paragraph (d) insert—

“(e) sums payable under article 3 of the Firefighters’ Pension (Wales) Scheme (Amendment and Transitional Provisions) Order 2016.”

Transitional provision

3.—(1) A fire and rescue authority must pay the required amount as described in paragraph (3) to a firefighter who falls within paragraph (2).

(2) A firefighter falls within this paragraph if in the period beginning on 1 December 2006 and ending on 31 December 2016 the firefighter paid pensions contributions pursuant to rule G2(1) of the Firefighters’ Pension (Wales) Scheme which as a consequence of article 2(2) of this Order did not fall to be payable.

(3) The required amount is a lump sum equal to

$$(A + B) \times C$$

, where—

A is the total value of each contribution paid net of any tax that would have been payable by the firefighter had the contribution not been paid;

B is the interest on A calculated in accordance with paragraph (4); and

C is 100/60.

(4) Interest must be—

(a) calculated separately in relation to each contribution paid; and

(b) applied on a compound basis at the past interest rate on a day to day basis for the period specified in paragraph (5).

(5) Power to give retrospective effect is conferred by section 12(1) of the Superannuation Act 1972 (c. 11).

(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) Paragraphs (1) and (1A) were substituted for paragraph (1) by article 2 of, and Schedule 1 to, S.I. 2007/1074 (W. 112); paragraph (1) was amended, and paragraph (1A) revoked, by article 3 of S.I. 2012/974 (W. 128). There are other amendments to rule G2 which are not relevant to this instrument.

(8) Part LA was inserted by S.I. 2007/1074 (W. 112).

(5) The period specified for the purposes of paragraph (4)(b) begins on the first day of the month in which each contribution was paid and ends on the last day of the month before the month in which the payment of the required amount is made.

(6) Where a payment is required to be made under paragraph (1) in respect of a firefighter who died before 31 December 2016 or who dies on or after that date but before the payment is made, the fire and rescue authority must pay the sum due to the firefighter's personal representatives.

(7) For the purposes of this article—

“Bank of England base rate” (“*cyfradd sylfaenol Banc Lloegr*”) means—

- (a) the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets; or
- (b) where an order under section 19 (reserve powers) of the Bank of England Act 1998⁽⁹⁾ is in force, any equivalent rate determined by the Treasury under that section;

“fire and rescue authority” (“*awdurdod tân ac achub*”) has the same meaning as in the Fire and Rescue Services Act 2004⁽¹⁰⁾; and

“past interest rate” (“*cyfradd log flaenorol*”) is a rate equivalent to the Bank of England base rate applicable on each day of the period specified in paragraph (5).

22 November 20126

Carl Sargeant
Cabinet Secretary for Communities and
Children, one of the Welsh Ministers

⁽⁹⁾ 1998 c. 11.

⁽¹⁰⁾ 2004 c. 21.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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 Scheme").

Article 2(2) removes the obligation on firefighters to pay contributions for the period after they have reckoned the maximum permissible pension entitlement until they reach age 50, the minimum age to draw benefits. The change takes effect from 1 December 2006. Section 12 of the Superannuation Act 1972 permits provisions to have retrospective effect.

Articles 2(3) and 3 make provision for the repayment of any such contributions paid between 1 December 2006 and the date this Order comes into force. The formula set out in article 3 takes account of both interest and an uplift reflecting the tax charge that will be payable under the Finance Act 2004. Under article 2(3), payments will be made from the relevant Firefighters' Pension Fund which each fire and rescue authority is required to establish and maintain for the purposes of the Scheme.

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.