EXPLANATORY MEMORANDUM TO THE

FIRE AND RESCUE SERVICES (ENGLAND) ORDER 2004

2004 No. 2305

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister ("the ODPM") and is laid before Parliament by Command of Her Majesty.

2. Description

The Order uses the power in section 19(1) of the Fire and Rescue Services Act 2004 to make provision for fire and rescue authorities to charge up to full cost recovery for specified services. It also uses the power in section 21(6) of the Act to give effect to the existing Fire and Rescue National Framework.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Background

4.1 The Fire and Rescue Services Act 2004 received Royal Assent on 22nd July 2004 and most of its provisions will be commenced by order on 1st October 2004.

4.2 Section 19 of the 2004 Act provides that the Secretary of State may, by order, authorise fire and rescue authorities to charge a person of a specified description for any action of a specified description taken by the authority. This Order specifies the actions for which a fire and rescue authority may make a charge and specifies the persons who may be subject to the charge (article 2 and Schedule 1).

4.3 Section 21 of the Fire and Rescue Services Act 2004 requires the Secretary of State to prepare a Fire and Rescue National Framework setting out the priorities and objectives for fire and rescue authorities and providing guidance. Fire and rescue authorities must have regard to the Framework in carrying out their functions. Section 21(6) provides that the Framework or any significant revision to it only has effect when given effect by the Secretary of State by order. This order gives effect to the current Fire and Rescue National Framework for England.

5. Extent

5.1 This instrument applies to England.

5.2 The powers of the Secretary of State under sections 19 and 21 are, in relation to Wales, vested in the National Assembly for Wales (see section 62 of the 2004 Act).

6. European Convention on Human Rights

Not applicable.

7. Policy background

7.1 Since 1947, fire and rescue authorities have had a power under section 3(1)(e) of the Fire Services Act 1947 to charge for the provision services other than fire-fighting services provided under section 1 of the Act). In 2003, section 3 was amended by the Marine Safety Act 2003, to allow fire authorities to recover the costs of fire-fighting at sea. The aim of this Order is to preserve the existing power of authorities to recover costs for the provision of such services.

7.2 In Autumn 2003 the ODPM canvassed fire and rescue authorities on the scope of their chargeable services. A public consultation document issued in February 2004 listed these services and requested information about any categories of service or person to be charged that had been omitted.

7.3 104 consultation documents were sent out to various organisations and it was available on the ODPM website at: http://www.odpm.gov.uk/fire. The consultation ended on 7th May 2004.

7.4 31 responses (out of a total of 47) were received dealing with the question of categories of service and of those responses, 61% were satisfied that the categories listed were correct. There were, however, some concerns that a small number of areas had been omitted from the categories, or that some categories should be excluded from charging. As a result, new categories were added covering lifting of incapacitated persons and requests for assistance in fighting fires at or under the sea outside the jurisdiction of any fire and rescue authority.

7.5 It is not proposed to lay down a scale of charges nor the circumstances in which an authority should charge or not for a particular service. It would still fall to each authority to decide whether they wish to charge for a particular service or not and the circumstances in which they impose the charge.

7.6 Article 3 of the Fire and Rescue Services Act (Commencement) (England and Scotland) Order 2004 S.I. 2004/2304(C.100) provides for certain savings which affect this Order. Article 3(1)

provides that where an authority, before 1st October 2004, provides or contracts to provide a service in exercise of its powers under section 3 of the 1947 Act, any charges which are referrable to it are to be treated as payable under the 1947 Act. The purpose of article 3(1) is make provision for existing contracts.

7.7 Sir George Bain's Independent Review of the Fire Service suggested that the Government produce a National Framework to provide clear central guidance for fire and rescue authorities, particularly in the context of reform. The Government's White Paper *Our Fire and Rescue Service* (June 2003) committed to doing this in a Fire and Rescue National Framework.

7.8 The National Framework sets out the Government's objectives for the Fire and Rescue Service and what fire and rescue authorities should do to achieve these objectives. The Framework also sets out the support the Government will provide. It provides strategic direction from central government while ensuring that authorities continue to make local decisions.

7.9 A draft of the National Framework was issued for consultation in December 2003. Following consideration of the comments received as part of the consultation process, the 2004/05 National Framework was published in July 2004.

7.10 During the passage of the Bill, the Government agreed to amend what is now section 21 to provide a degree of Parliamentary scrutiny (see Hansard 12th July 2004 HLs Col. 1102). This is achieved by section 21(6) which requires an order to be made by the Secretary of State to give statutory effect to the Framework or any significant revisions to it.

8. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it has no additional impact on business, charities or voluntary bodies or the public sector.

9. Contacts

Phillip Smith at the Office of the Deputy Prime Minister Tel: 020 7944 0055 or e-mail: phillip.smith@odpm.gsi.gov.uk can answer any queries regarding the Order in relation to charging.

Miles Beale at the Office of the Deputy Prime Minister Tel: 020 7944 5663 or email: miles.beale@odpm.gsi.gov.uk can answer any queries regarding the Order in relation to the Fire and Rescue National Framework.