EXPLANATORY MEMORANDUM TO

THE FIREFIGHTERS' COMPENSATION SCHEME (ENGLAND) ORDER 2006

2006 No. 1811

THE FIREFIGHTERS' PENSION SCHEME (AMENDMENT) (ENGLAND) ORDER 2006

2006 No. 1810

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The Firefighters' Compensation Scheme (England) Order provides for a new scheme for compensating firefighters who die or sustain injuries whilst engaged in firefighting duties.

2.2 Most of the provisions of the new scheme are taken from the current Firefighters' Pension Scheme ("FPS"). The FPS is being split because of tax changes that came into force on 6th April 2006. The awards for which the new compensation scheme provides are ones to which firefighters do not make contributions. The FPS will continue to provide for ill-health awards to be made to and in respect of firefighters who have to retire from the fire and rescue service on health grounds.

2.3 The new compensation scheme also contains provisions relating to compensation for death and serious injury on duty that have hitherto been set out in firefighters' conditions of service. Some compensation payments made in accordance with those conditions of service have been questioned by authorities' auditors on the basis that they are not supported by legislation, notwithstanding that they form part of firefighters' contracts of employment. The making of the new compensation scheme provides the opportunity to include express provision for authorities to pay compensation in these circumstances.

2.4 The Firefighters' Pension Scheme (Amendment) (England) Order 2006 amends the FPS as it has effect in England. Many of the amendments are consequential on the splitting of the FPS. There are other amendments of which details are given in paragraphs 7.1 to 7.9.

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

3.1 In view of the difficulties referred to in paragraph 2.3, and undertakings given by Ministers at that time (when the Home Office was responsible for these matters), the compensation order, which is made under the Fire and Rescue Services Act 2004 ("the 2004 Act"), gives retrospective effect to the provisions that enable authorities to make the awards in question. This is done in reliance on sections 34(3) and 60 of the 2004 Act.

3.2 The FPS is set out in Schedule 2 to the Firemen's Pension Scheme Order 1992 (S.I. 1992/129). Subject to exceptions mentioned in paragraphs 7.1 and 7.9, the amendments to the FPS have effect from 1st April 2006. The amending order is made under section 26 of the Fire Services Act 1947. That section was saved from the repeals of that Act by the 2004 Act. Power to give retrospective effect is conferred by section 12 of the Superannuation Act 1972, as applied by section 16(3) of that Act.

3.3 Although discussions with HMRC have continued over many months, it has proved difficult to establish the precise effect on the FPS of the tax changes that were introduced on 6th April 2006 and, accordingly, the amendments to the FPS that are necessary in order to protect the position of current FPS members. Those amendments had to be drafted in tandem with the new compensation scheme, because there are many cross-references, so delay in finalising those amendments has inevitably led to some delay in making the Orders that are the subject of this memorandum

3.4 The opportunity has been taken to correct two errors that arose in amending instruments made in 2005. Rule C5 of the FPS (limitation on award to spouse or civil partner by reference to date of marriage or formation of partnership) was substituted by paragraph 7 of Schedule 1 to the Firefighters' Pension Scheme (Civil Partnership Amendments) (England and Scotland) Order 2005 (S.I. 2005/3228). In paragraph (2) of the substituted rule, the words ", subject in the case of a civil partner, to paragraph (3)," were included in error and are now omitted.

3.5 The second error relates to article 1(3)(c) of the Firefighters' Pension Scheme (Amendment) (England) Order 2005 (S.I. 2005/2980). That provision gave retrospective effect, from 1st March 1992 (the date on which the FPS came into force), to rule C5. It should have given similar retrospective effect to rule C6, which relates to the requisite benefit and temporary pensions awarded to surviving spouses and civil partners. That rule was amended in 2005 to reflect the fact that the surviving spouse of a deceased firefighter may be either a widow or a

widower. Rule C6, as now substituted, is given retrospective effect from 1st March 1992.

3.6 As the Joint Committee will be aware, it was ODPM's intention to consolidate the FPS as soon as practicable. This is also the intention of the successor department, the Department for Communities and Local Government ("DCLG"). The removal to the new compensation scheme of provisions relating to compensation for death and injury will make that task easier.

4. Legislative Background

4.1 This is the first occasion on which the powers conferred by section 34 of the 2004 Act are being exercised.

4.2 Functions under section 34 are exercisable, in relation to Wales, by the National Assembly for Wales, by virtue of section 62 of the 2004 Act.

5. Extent

5. These instruments apply in relation to England only.

6. European Convention on Human Rights

6. As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 Closure of the FPS to new members

The amendment of rule A3 and the substitution of rule G2(1) anticipate the making of a new pension scheme by order under section 34 of the 2004 Act. The rule A3 amendment provides for the FPS to cease to have effect in relation to a person joining the Fire and Rescue Service on or after 6th April 2006, the day from which it is proposed that the new pension scheme should have effect. The paragraph substituted in rule G2 has the effect of requiring persons who take up employment with a fire and rescue authority as firefighters on or after 6th April 2006 to make pension contributions at a lower rate than is required of firefighters whose employment began before that date.

7.2 New arrangements for ill-health retirement

The amendments include the introduction of two-tier ill health benefits, a mandatory recommendation for public sector pension schemes following HM Treasury's "Review of Ill Health Retirement in the Public Sector" in 2000. There is a higher tier award with enhancements for those who are unable to take other regular employment and a lower tier award for those who meet the criteria for ill-health retirement but who are assessed as being capable of regular employment elsewhere.

7.3 The amendments made by paragraphs 6, 50 and 61 of Schedule 1 to the pension scheme amendment order, which relate to ill-health awards, have effect, subject to transitional provisions contained in article 3 of that order, from 1st April 2006. These provisions ensure that if a firefighter was being considered for an ill-health award at 1st April, that consideration will continue under the unamended provisions.

7.4 A new rule B3 and Part III of Schedule 2 to the FPS, are substituted and provide for the payment and calculation of pensions awarded to firefighters whose employment ceases by reason of ill-health. Those who are found to be incapable of undertaking regular employment will be entitled to a higher tier ill-health pension. A higher tier ill-health pension (paragraph 4 of Part III of Schedule 2) will be calculated on the same basis as previous ill-health awards and the same level of enhancements will be given. Regular employment is defined as employment for at least 30 hours a week on average over a period of 12 consecutive months (whether or not any employment is taken up). A lower tier award will be awarded where the scheme member is capable of regular employment. The method of calculating a lower tier pension for a regular firefighter who has less than 5 years' pensionable service (paragraph 3 of that Part) remains unchanged. For others, the amendments provide for the immediate payment of an amount calculated as if he/she had been entitled to immediate payment of a deferred pension under rule B5 of the FPS (the calculation is set out in Part VI of Schedule 2).

7.5 To satisfy HM Revenue and Customs' requirements, a higher tier award is made up of two separate elements; the lower tier award topped up by an enhancement. This enables variations to the award to be made on review.

7.6 <u>Review and cancellation of ill-health pensions</u>
New rules K1 and K1A remove fire and rescue authorities' discretion not to conduct reviews and allow a fire and rescue authority to terminate a higher tier ill-health pension where, on a review of the pensioner's condition, it is established that he/she is capable of undertaking regular employment. The pensioner's lower tier ill-health pension will be unaffected unless, on a review of his/her condition, it is established that he/she is capable of performing the duties of the role from which he/she retired and he/she accepts or declines the authority's offer to take up employment in that role. If the pensioner declines such an offer, he/she becomes entitled to a deferred pension, payable at age 60, and entitlement to a lower tier ill-health pension is terminated.

7.7 <u>New financial arrangements for Firefighters' Pensions</u>
Under new financial arrangements agreed between the Office of the Deputy Prime Minister and fire and rescue authorities, authorities will continue to administer firefighter pensions but these will be paid from a separate local Firefighters' Pension Fund (FPF) maintained by each authority in England. Employees' and employer's contributions are

paid into the FPF. The fund will be topped up by a new central government grant if the contributions are insufficient to meet the cost of pensions in payment. In the event of any surplus this will be recouped by central government. The amendment made by paragraph 59, which inserts a new Part LA, requires each fire and rescue authority to establish and maintain a FPF for the purposes of the Pension Scheme and in connection with rights and liabilities under earlier versions of the Scheme. The amendment comes into force from 1st April 2006.

7.8 Costs of medical appeals

The effect of the amendment to paragraph 8(2A) of Schedule 9 is that a person who withdraws his/her appeal to a board of medical referees within 21 days of the date appointed for the interview or medical examination may be required to pay the fire and rescue authority an amount not exceeding that payable by the authority in respect of the board's fees and allowances. The current provision refers to withdrawal within 10 days of the appointed date. Under the terms of a new contract with the service provider this has been extended to ensure that costs that have been reasonably incurred can be recovered.

7.9 Amendments consequential on the new tax regime for pensions

Other amendments relate to changes in the regulation of pension schemes and tax changes brought about by the Finance Act 2004 (c.12), as amended by the Finance Act 2005 (c.7). Amendments to the FPS are required to ensure that payments made in respect of pensions that come into payment after the 5th April 2006 comply with the new tax regime in order to avoid being deemed as unauthorised payments and incurring additional tax charges. These amendments therefore have effect from 6th April 2006.

7.10 Consultation

All of the amendments have been the subject of extensive consultation with the Firefighters' Pension Committee, on which there are representatives of both the employers and the employees. In addition, regular updates have been given to members of the FPS and information has been posted on the ODPM/DCLG website. The amendments have not been regarded as contentious and have been widely welcomed. Fire and rescue authorities particularly welcome the inclusion in the new compensation scheme of the compensation provisions formerly included in firefighters' conditions of service.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on businesses, charities or voluntary bodies.

8.2 The impact on the public sector is that decisions taken on ill-health retirement will be based on an individual's capability to undertake

regular employment in the future; and consequently enhanced pension benefits will be directed at those with the greatest need. Fire and rescue authorities will be required to review decisions to ensure that the level of benefits remains appropriate to need and awards may be reduced or cancelled if necessary. The two-tier ill-health retirement and the review provisions therefore provide the potential for cost savings. The cost of pensions has been volatile for fire and rescue authorities as a result of significant fluctuations in the number of firefighters retiring in any year. As a result of the new arrangements, fire and rescue authorities will also be able to manage the financing of awards more efficiently with the new central government grant providing a top-up should there be an unexpected increase in pension costs.

8.3 The placing of the compensation provisions into a separate Compensation Scheme will make clear the distinction between pension benefits (based on pension scheme membership and contributions) and compensation for service-related injury. As a result, serving firefighters will have a clearer understanding of benefits for which they are, or may become, eligible. The separation will also enable fire and rescue authorities to account for expenditure more efficiently (as compensation payments come from operating accounts rather than the pension fund).

8.4 The closure of the FPS to new members from 6th April 2006 is an important milestone towards the introduction of the new pension scheme. The Government believes that the new scheme will provide new entrant firefighters with a good pension scheme tailored to the special needs of the service and will be a good deal for the tax payer.

9. Contact

Andy Boorman at the Department for Communities and Local Government Tel: 020 7944 8123 or e-mail: Andy.boorman@odpm.gsi.gov.uk, who can answer any queries regarding the instrument.

Department for Communities and Local Government
30 June 2006