EXECUTIVE NOTE

THE FIREFIGHTERS' COMPENSATION SCHEME (SCOTLAND) (AMENDMENT) ORDER 2007 S.S.I. 2007/198

The above instrument is made in exercise of the powers conferred by sections 34(1) to (5) and (8) and 60 of the Fire and Rescue Services Act 2004. These powers have been devolved to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849). The instrument is subject to the negative resolution procedure and extends to Scotland only.

With the exception of a minor amendment to rule 1(4)(a) of part 8 of the Firefighters' Compensation Scheme (Scotland) Order 2006 (SSI 2006/338) the instrument introduces consequential changes to the compensation scheme, found in the Firefighters' Compensation Scheme (Scotland) Order 2006 (S.S.I. 2006/338) resulting from the introduction of the new firefighters' pension scheme (abbreviated as NFPS) in the Firefighters' Pension Scheme (Scotland) Order 2007, and has effect from 6 April 2006.

Policy Objectives

The firefighters' compensation scheme is separate from the pension scheme, and provides compensation where a firefighter is killed or injured whilst engaged on duties. However, benefits are linked to those in the Firefighters' Pension Scheme (abbreviated as FPS) provided by the Firefighters Pension Scheme Order 1992, as amended (S.I. 1992/129). Firefighters who are not pension scheme members, either because they have opted out or are not eligible for membership, are eligible for benefits from the compensation scheme. The death and injury awards provide a top up to pensions, gratuities and grants paid from the pension scheme when these are paid. The compensation scheme provisions therefore have to refer to FPS rules. It also shares terminology with theFPS, for example, using pensionable pay, pensionable service, qualifying service etc (actual or, in the case of non-members, notional) as the basis for calculating compensation awards.

The NFPS and the compensation scheme therefore need to co-exist, so that members of both pension schemes are similarly eligible for compensatory benefits. The NFPS, whilst having similarities to the FPS, contains some significant changes. For example, both schemes are 40/60th schemes but the FPS gives double accrual after 20 years' service, meaning that a member may retire and draw a pension after only 30 years' service. The NFPS has no double accrual. The FPS restricts membership to regular firefighters, whereas the NFPS is open to regular, retained and volunteer firefighters. The compensation scheme, therefore, requires amendment to ensure that its provisions apply to theNFPS.

<u>Retained and volunteer firefighters</u>

Prior to 6th April 2006, retained and volunteer firefighters were not eligible for membership of the pension scheme but were eligible for benefits from the compensation scheme in the event of death or injury on duty. Benefits were calculated as if the person were a whole-time

regular firefighter. From 6th April 2006, retained and volunteer firefighters are eligible for membership of the NFPS and will be eligible for benefits from the compensation scheme, but their benefits will be calculated on the same basis as that for part-time regular firefighters, i.e., pro-rated to those of a whole-time regular firefighter. The compensation rules have therefore been amended to provide for this.

Retained and volunteer firefighters who were members of the Fire and Rescue Service prior to 6th April 2006 will have their entitlement to calculation of benefits from the compensation scheme on a whole-time basis protected regardless of whether they join the NFPS.

Awards to spouses and civil partners

The FPS places limits on the pension awards that are payable in circumstances where spouses or civil partners are living apart at the time of death or if the beneficiary re-marries or forms a new civil partnership. These limits are reflected in the compensation scheme. Members of the NFPS are not subject to these limits and rules 4 and 5 of Part 3 of the compensation scheme have therefore been amended to make clear that the limitations will not apply to members of the NFPS or to firefighters who join the fire and rescue service on or after 6th April 2006 and who opt out. The limitations will continue to apply to those retained and volunteer firefighters who have their entitlement to compensation benefits at pre-6th April levels protected and do not join the new pension scheme.

The NFPS provides for a reduction in the survivor pension where the survivor is at least 12 years younger than the deceased. This provision has been introduced into the compensation scheme at rule 6 of Part 3 and will apply to members of the NFPS and firefighters who join the fire and rescue service on or after 6th April 2006.

Awards to children

The compensation scheme carries over the limitations in the FPS where child survivor benefits are not payable once a child has attained the age of 17 unless they are permanently disabled or in full-time education or full-time vocational training. The NFPS provides for child survivor benefits to cease at age 18 (with the same exceptions) in line with new HM Revenue and Customs rules. The opportunity has, therefore, been taken to bring the compensation scheme into line by amending rule 3 of Part 4.

Awards to servicemen/reservists

The pension schemes provide for awards to firefighters who become permanently disabled whilst undertaking reserve or auxiliary duty in the armed forces. The compensation scheme provides for a top up of those awards where there is a qualifying injury (i.e., duty-related). The terminology and references to relevant legislation have been carried over to the compensation scheme from the FPS. The drafting for the NFPS is updated and refers to “reservists” rather than “servicemen” and to the Reserve Forces Act 1980 and 1996. A new Part 7A has, therefore, been added to the compensation scheme to ensure that the provisions apply equally to members of the NFPS who undertake duty as reservists.

Review, withdrawal and forfeiture of awards

The compensation scheme currently refers to a normal benefit age of 60 in connection with the receipt of a deferred pension from the FPS. A member of the NFPS may receive a deferred pension at age 65. An amendment to rule 2 of Part 9 is therefore required to differentiate between the different deferred pension ages.

Payment of awards and financial provisions

The compensation scheme provides for the prevention of duplication of benefits where a firefighter is employed by more than one fire and rescue authority (typically as a regular with one, and a retained with another). Retained firefighters will be eligible for membership of the NFPS. The provisions in Part 10 of the compensation scheme are amended to provide for situations where a firefighter may legitimately be entitled to more than one ill-health retirement pension but only a single injury pension.

Consultation

The amendments outlined in this instrument have been the subject of consultation with the Fire Pensions Committee (FPC). The Committee is chaired by the Department for Communities and Local Government (DCLG) and has representatives from employers (the Local Government Association and the Chief Fire Officers Association), unions (the Fire Brigades Union and Retained Firefighters Union) and staff associations (Association of Principal Fire Officers and the Fire Officers Association) as well as representatives from the Scottish Executive, COSLA, the Welsh Assembly and Northern Ireland.

In addition, a draft of this instrument was issued to the FPC and other Scottish stakeholders for consideration. This instrument mirrors an amendment Order recently introduced in England by the DCLG

Financial Effects

Regulatory Impact Assessments have not been prepared as there is no impact on business, charities or voluntary bodies.

The impact of the consequential amendments to the compensation scheme is that the different firefighter schemes that fire and rescue authorities will be required to operate for different groups of employees, will be up to date, compatible and consistent. There will be no additional costs for fire and rescue authorities arising from the amendments.

Scottish Public Pensions Agency March 2007