EXPLANATORY MEMORANDUM TO

THE FIREFIGHTERS' PENSION SCHEME (AMENDMENT) (ENGLAND) ORDER 2005

2005 No. 2980

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister 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 This Order amends the Firefighters' Pension Scheme that has effect in England ("FPS").

2.2 Many of the amendments are consequential on the Fire and Rescue Services Act 2004, and reflect the fact that, instead of fire brigades whose members' pensions are paid by fire authorities, there are now fire and rescue services whose members' pensions are paid by their employing fire and rescue authorities.

2.3 Amendments which do not fall within that category are described in paragraphs 7.1 to 7.9.

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

3.1 ODPM intends to amend the FPS in other respects in the near future. This Order includes some "paving" amendments for other amendments required in consequence of the Civil Partnership Act 2004. Those other amendments could not be incorporated in this Order because the extent of general consequential amendments, to be made by the Department for Trade and Industry, is not known. Further amendments to the FPS will be required to reflect changes to the financing of pension schemes and to make provision for scheme administration consequential on the Finance Act 2004. Both issues are the subject of on-going discussions.

3.2 Since the FPS has been amended on a number of occasions since 1992, an informal consolidation has been prepared by ODPM for the convenience of pensioners, their advisers and those who administer the Scheme. It indicates by sidelining and underlining the amendments that are the subject of this Order. The document, which runs to over 100 pages, may be accessed at:

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3.3 It is ODPM's intention to consolidate the FPS as soon as practicable once all of the amendments referred to in paragraph 3.1 have come into force.

4. Legislative Background

4.1 The FPS, as originally enacted, was set out in Schedule 2 to the Firemen's Pension Scheme Order 1992 (S. I. 1992/129). Although the enabling power for that Order, section 26 of the Fire Services Act 1947, was repealed (with the rest of that Act) by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c.21), subsections (1) to (5) of section 26 were continued in force, for the purposes of the Scheme, by S.I. 2004/2306 (as to England and Scotland), and by S.I. 2004/2918 (as to Wales).

4.2 The name of the Scheme was changed, as to England and Scotland, to the Firefighters' Pension Scheme, by article 4(1) of the Firefighters' Pension Scheme (England and Scotland) Order 2004 (S.I. 2004/2306). The name of the Scheme was changed, as to Wales, to the Firefighters' Pension (Wales) Scheme, by article 4(1) of the Fire and Rescue Services Act 2004 (Firefighters' Pension Scheme) (Wales) Order 2004 (S.I. 2004/2918).

4.3 The Secretary of State's functions under section 26 of the Fire Services Act 1947, so far as exercisable in relation to Scotland, were devolved to Scottish Ministers by section 63 of the Scotland Act 1998 (c.46) and article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to Scottish Ministers etc) Order 1999 (S.I. 1999/1750). The Secretary of State's functions under section 3(5) of the Fire Services Act 1947, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales Transfer of Functions) Order 1999 (S.I. 1999/672); see the entry for the Fire Services Act 1947 in Schedule 1.

5. Extent

5. This instrument applies in relation to England only.

6. European Convention on Human Rights

6. As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 <u>Replacement of compulsory retirement age with normal pension age</u>
The scheme currently contains provision for a compulsory retirement age for members. A person holding the rank of Assistant Divisional Officer or higher is required to retire at age 60 and a person who holds the rank of Station Officer or lower is required to retire at age 55. The provision is discriminatory and will fall foul of the Employment Equality (Age) Regulations which are expected to come into force in 2006. It is therefore replaced by a normal pension age of 55. This means that firefighters will be able to continue in service beyond age 55 with the agreement of the fire and rescue authority and subject to fitness. Amendments are also made to protect those whose benefits from the FPS are currently based on service to age 60.

7.2 Prevention of duplication of pension payments

Firefighters can be employed as retained firefighters as well as regular firefighters. The retained employment may be with the same Fire and Rescue Authority (FRA) or with a second FRA. Retained firefighters are not eligible for membership of the FPS but they are entitled to benefits where they receive an injury in the execution of duty. A retained firefighter who retires as a consequence of a duty related injury is treated as a regular firefighter for the purpose of calculating an injury pension award. Double payment may occur in that an injury award (consisting of a gratuity, injury pension and an ill-health pension) can be paid in respect of the retained employment and an ill-health pension in respect of the regular employment. The amendments introduced by paragraph 79 of the Schedule to the Order provide for a single award to be payable in these circumstances and to prevent two ill-health pensions being paid.

7.3 Medical qualifications of Independent Qualified Medical Practitioners

Amendment is required to reflect a change in the meaning of "a competent authority" as a consequence of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003 (S.I. 2003/1250, amended by S.I. 2004/1947).

7.4 Early payment of deferred pension

The Scheme was amended in 2004 to allow for a member to remain a member if employed on relevant non-operational duties. Amendment is required to remove an anomaly in the scheme rules that allows members found unfit for firefighting, but able to carry out other duties appropriate to the role, to resign prior to redeployment with a deferred pension and immediately request early payment of their deferred pensions on the grounds that they are permanently unfit for firefighting.

7.5 Changes to grading structure in the Fire and Rescue Service

The Fire Service Appointments and Promotion Regulations 2004 (SI 2004 No. 481) introduced a new grading structure for the Fire and Rescue Service. An effect of the Regulations is that a structure based on "rank" has been replaced by one based on "role". As a result, references in the pension scheme to "rank" will need, in most cases, to be replaced with "role".

7.6 Pensionable pay and salary sacrifice

Salary sacrifice schemes are permitted by HM Revenue and Customs and allow an employer to offer an employee certain benefits, eg childcare, in return for giving up part of their salary. For the employee there are savings of National Insurance contributions and income tax. As a consequence of the establishment of such schemes amendment is needed to define pensionable pay of a regular firefighter as the amount determined in relation to the performance of the duties of the role rather than the pay received, as at present. ODPM has advised FRAs on this previously. The amendment will ensure that authorities which have introduced salary sacrifice schemes can collect pension contributions on the amount of pay before reduction for the sacrifice in order to preserve full pensionable benefits.

7.7 Correction of drafting error

Opportunity has been taken to substitute "annual pensionable pay" for "average pensionable pay" in the calculation of pensionable service reckonable on transfer to the FPS which was inadvertently inserted by the Firemen's Pension Scheme (Amendment) Order 2004.

7.8 Equal treatment of widows and widowers

The FPS currently provides different treatment for widows and widowers in respect of survivor benefits. Although the meanings of certain expressions were amended in 1984 so that "widow" included "widower" and "wife" included "husband", no amendment was made to the death benefit provisions presumably because there were then few female firefighters. Amendment is now required to equalise treatment of widows and widowers in advance of the pending amendments to accommodate the Civil Partnership Act 2004.

7.9 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' side and the employees' side. The Order has been agreed in draft with the Committee. In addition, regular updates have been given to members of the FPS and information has been posted on the ODPM website. The amendments have not been regarded as contentious and have been widely welcomed.

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 it will give firefighters the option to stay in work beyond age 55 and will enable FRAs to retain skilled and experienced staff. Clarifying rules concerning injury benefits for firefighters who are employed as both regular and retained will ensure that there is no duplication of payments and allow FRAs to assess more accurately the cost implications of this method of resourcing. Both will provide some savings for FRAs. For example, there are potential savings in the costs of recruitment and training of staff to replace those firefighters who previously would have been required to retire at age 55, but at best these will be marginal. In addition, making provision to ensure that pension benefits are not adversely affected by salary sacrifice schemes such as those for childcare vouchers or computer equipment, may increase take up.

8.3 There are also potential savings by removing the anomaly whereby members who would otherwise be able to continue in employment with the fire and rescue service in a role other than firefighting, choose to leave before age 50 and then immediately claim early payment of a deferred pension.

9. Contact

Andy Boorman at the Office of the Deputy Prime Minister Tel: 020 7944 8123 or e-mail: Andy.boorman@odpm.gsi.gov.uk can answer any queries regarding the instrument.

21 October 2005