EXPLANATORY MEMORANDUM TO

THE FIREFIGHTERS' PENSION SCHEME (ENGLAND) ORDER 2006

2006 No. 3432

AND

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

2006 No. 3434

AND

THE FIREFIGHTERS' PENSION SCHEME (AMENDMENT) (No.2) (ENGLAND) ORDER 2006

2006 No. 3433

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' Pension Scheme (England) Order 2006 provides (in Schedule 1) a new pension scheme for firefighters employed in the fire and rescue service in England. The new scheme has effect from 6th April 2006.

2.2 The Firefighters' Compensation Scheme (England) (Amendment) Order amends the scheme introduced in 2006 for compensating firefighters who die or sustain injuries whilst engaged in the exercise of their duties as firefighters. The amendments are largely consequential on the introduction of the new pension scheme, and have effect from 6th April 2006.

2.3 The Firefighters' Pension Scheme (Amendment) (No.2) (England) Order 2006 amends the current Firefighters' Pension Scheme (introduced in 1992) as it has effect in England. The amendments are largely consequential on the introduction of the new pension scheme, and have effect from 6th April 2006.

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

3.1 The new pension scheme and the amendments to the compensation scheme and the 1992 pension scheme all have effect from 6th April 2006. In the case of the first two schemes, this is done in reliance on sections 34(3) and 60 of the Fire and Rescue Services Act 2004. In the case of the amendments to the 1992 pension scheme, which are made under the Fire Services Act 1947 and the Superannuation Act 1972, this is done in reliance on section 12 of the 1972 Act, as applied by section 16(3) of that Act.

3.2 The opportunity has been taken to correct an error in the compensation scheme. Paragraph 8(a)(ii) of the Schedule to the Firefighters' Compensation Scheme (England) (Amendment) Order substitutes "rule" for "paragraph" in rule 1(4)(a) of Part 8 of the Scheme. The error is unlikely to have caused any difficulty in practice, but the Department regret the need for the correction.

3.3 Rule LA1 was inserted into the 1992 pension scheme by S.I. 2006/1810, Schedule 1, para 59. It has subsequently been drawn to the attention of the Department for Communities and Local Government ("DCLG") that sub-paragraph (e) should not have been included in paragraph (3) of that rule. Paragraph 8 of the Schedule to the Firefighters' Pension Scheme (Amendment) (No.2) (England) Order 2006 provides for the omission of that sub-paragraph.

3.4 It remains DCLG's intention to consolidate the 1992 pension scheme as soon as practicable. In the meantime, a further informal consolidated version has been prepared. An informal consolidated version of the compensation scheme has also been prepared. Both versions may be accessed on DCLG's website: www.dclg.gov.uk/firepensions.

4. Legislative Background

4.1 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.

4.2 The making of the new pension scheme was anticipated in amendments made to the 1992 pension scheme by S.I. 2006/1810. The amendment to rule A3 made by that Order provided for the 1992 scheme 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 the new pension scheme is to 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. The lower rate is that specified in rule 3(1) of Part 11 of the new pension scheme.

4.3 Other transitional arrangements are specified in article 3 of, and Schedule 2 to, the new pension scheme Order.

4.4 The compensation scheme was introduced by S.I. 2006/1811. With the exception of the amendment mentioned in paragraph 3.2, the amendments are consequential on the introduction of the new pension scheme.

4.5 With the exception of the amendment mentioned in paragraph 3.3, the amendments to the 1992 pension scheme are also consequential on the introduction of the new pension scheme.

5. Extent

5.1 These instruments apply in relation to England only.

6. European Convention on Human Rights

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

7. Policy background

New Pension Scheme

7.1 The Firefighters' Pension Scheme (England) Order 2006 provides a new scheme for firefighters who join the Fire and Rescue Service on or after 6th April 2006. As a result of the amendments made by S.I. 2006/1810 to rule A3 and the substitution of rule G2(1) of the 1992 pension scheme, the 1992 scheme was closed to those who joined the Service on or after 6th April 2006. New recruits joining since that date have been advised that they will be members of the new scheme, unless they choose to opt out.

7.2 It has been agreed with the devolved administrations that the new scheme should be a UK scheme and the necessary legislation is expected to be enacted in Northern Ireland, Scotland and Wales.

7.3 Members of the 1992 pension scheme may elect to become members of the new pension scheme and will have the option of transferring the pension accrued in the existing scheme into the new scheme at an advantageous rate.

Eligibility for membership

7.4 The new scheme provides a pension scheme for regular, retained and volunteer firefighters. This extends membership from that of the 1992 scheme, which is for regular firefighters only. Eligibility for

membership will be limited to employees of a fire and rescue authority who, on joining the service, are employed in resolving operational incidents, or leading and supporting others in the resolution of operational incidents, i.e. firefighters, crew managers and watch managers.

Retirement age

7.5 The 1992 scheme has a normal pension age of 55, but from age 50, members with 25 or more years' service can retire with payment of their accrued pension. The new pension scheme has a normal retirement age of 60. A firefighter member may retire at 55, but subject to an actuarial reduction in the pension paid. A member of the new scheme would be able to accrue more than 40 years' pensionable service by the normal retirement age of 60 should he stay in service up to or beyond age 60. A member could not, however, transfer pension credit from another scheme or buy additional pensionable service in the new scheme so that service exceeded 40 years by normal retirement age.

7.6 In the 1992 scheme, pension accrues at 1/60th for each of the first twenty years of service and 2/60th for each of the final ten years; and pensionable service is restricted to 40/60ths by the normal pension age of 55. This meant that those joining at age 18 would, by age 50, have accrued 32 years but would be able to count only 30 years (i.e. 40/60ths) towards the pension.

Qualifying period

7.7 Members of the new scheme will qualify for pension after 3 months' service unlike the 1992 scheme which requires membership of the scheme for 2 years before qualifying for a pension.

Pension benefits

7.8 Part 3 sets out the pension benefits payable to the firefighter member. It includes ordinary and ill health retirement. Part 3 also includes provision for the awarding of deferred pensions payable at age 65 in the event of someone leaving the service early and the option for someone to claim the early payment of pension on an actuarially reduced basis from age 55. There is also provision for the fire and rescue authority to permit a firefighter member to retire early from age 55 on an unreduced pension, having regard to the economical, effective and efficient management of their functions, but in that case the authority, rather than the pension fund, would have to meet the cost of that early payment.

7.9 To protect a firefighter member`s pension rights should he change roles and suffer a reduction in pay, a split pension would be awarded so that service before and after the reduction may be used to calculate separate pensions using the pensionable pay for the first period before the reduction and for the later period the pensionable pay at the end of service. When the member retires he may have two pensions or

aggregate the service before and after the split and take one pension based on pensionable pay at the end of service, if it would be more advantageous.

7.10 Those retiring would be able to commute up to a quarter of their pension for a lump sum payment and a member would also be able to allocate a portion of pension for someone dependent on him to be paid in the event of the member's death.

7.11 Where someone has less than 3 months' service a refund of pension contributions would be made.

7.12 Part 10 sets out what service will enable a firefighter member to qualify for a pension and the amount of service that can reckon towards a pension. Provision is made for a firefighter member to buy back unpaid periods of service that would otherwise not reckon for pension purposes. The member would be responsible for his own and the employer's costs in these circumstances, unless the employer agreed to pay the employer's costs.

7.13 Part 11 sets out the amount of the pension contributions that would be needed. The contribution rate is 8.5% of pensionable pay (compared with 11% in the 1992 scheme). It also prescribes what would constitute pensionable pay and makes provision to enable firefighter members to purchase additional service.

Ill-health retirement

7.14 Rule 2 of Part 3 sets out that ill-health retirement will be in two tiers. Those who are unable to continue to work in the role of firefighter will receive an immediate pension based on the amount of pensionable service accrued in the scheme. Those who are unable to undertake any kind of regular employment (defined as being able to work on average at least 30 hours per week over a 12 month period) will also receive a higher tier ill health pension. These provisions are similar to those in the 1992 scheme.

Survivor benefits

7.15 Part 4 sets out the pension benefits payable to adult survivors and eligible children in the event of the death of a member of the scheme. The new scheme extends benefits to nominated partners, including those from same sex couples who choose not to enter into a civil partnership. Survivor pensions will be reduced where the survivor is 12 or more years younger than the firefighter member by 2.5% for each year above the 12 years up to a maximum of 50%.

7.16 Part 4 also sets out that where there is no adult survivor but there is an eligible child (or children) any pension that would have been paid to the adult survivor will be paid to the eligible child (or children).

7.17 Part 5 sets out that a death grant will be paid and that this will be 3 times the pensionable pay at the date of death (compared with 2 times the pensionable pay in the 1992 scheme) and includes provision to protect the position of those who may have varied their working pattern, for example where a scheme member may have recently switched to part-time working, so that without the protection the death grant would be reduced. Also included is a guarantee that, if a pensioner member dies within 5 years of retiring, a post-retirement death grant will be payable and will be the difference between the amount paid before death and the amount that would have been paid in that five year period..

Determination of questions and appeals

7.18 Part 8 sets out how questions and appeals would be handled. These are broadly in line with the 1992 scheme except that there is a provision allowing for reconsideration by the independent qualified medical practitioner before an appeal to a board of medical referees on a medical issue. Non-medical issues are to be determined by means of the authority's internal disputes resolution procedures.

7.19 Part 9 sets out the arrangements for the review, withdrawal and forfeiture of awards and follows the equivalent provisions of the 1992 scheme.

Other main provisions

7.20 Part 12 provides for the transfer of pensions into and out of the Scheme.

7.21 Part 13 sets out the arrangements for management of the pension fund by a fire and rescue authority and the payments required by employers.

7.22 Part 15 sets out how guaranteed minimum pensions will be dealt with for both the firefighter member and any adult survivor. There is also a requirement for members to receive an annual benefit statement.

Amendment of the Firefighters' Compensation Scheme

7.23 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 1992 pension scheme: 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. For example, the death and injury awards provide a top up to pensions, gratuities and grants paid from the pension scheme. The compensation scheme provisions therefore have to refer to pension scheme rules. It also shares terminology with the pension scheme, 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.

7.24 The new pension scheme and the compensation scheme therefore need to co-exist, so that members of both pension schemes are similarly eligible for compensatory benefits. The new pension scheme, whilst having similarities to the 1992 scheme, contains some significant changes. For example, both schemes are 40/60th schemes but the 1992 scheme gives double accrual after 20 years' service, meaning that a member may retire and draw a pension after only 30 years' service. The new pension scheme has no double accrual. The 1992 scheme restricts membership to regular firefighters, whereas the new scheme is open to regular, retained and volunteer firefighters. The compensation scheme, therefore, requires amendment to ensure that its provisions apply to the new scheme.

Retained and volunteer firefighters

7.25 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 new pension scheme 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.

7.26 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 new pension scheme.

Awards to spouses and civil partners

7.27 The 1992 scheme 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 new pension scheme 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 new pension scheme 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.

7.28 The new pension scheme 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 new scheme and firefighters who join the Fire and Rescue Service on or after 6th April 2006.

Awards to children

7.29 The compensation scheme carries over the limitations in the 1992 pension scheme 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 new scheme provides for child survivor benefits to cease at age 18 (with the same exceptions) in line with new HMRC 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

7.30 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 1992 pension scheme. The drafting for the new pension scheme 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 new pension scheme who undertake duty as reservists.

Review, withdrawal and forfeiture of awards

7.31 The compensation scheme currently refers to a normal benefit age of 60 in connection with the receipt of a deferred pension from the 1992 pension scheme. A member of the new pension scheme would 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

7.32 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 new pension scheme. The provisions in Part 10 of the compensation scheme require amendment 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.

Amendment of the 1992 pension scheme

7.33 As a consequence of the making of the new pension scheme Order, some amendments are necessary to the 1992 scheme to ensure that, where appropriate, there is parity between provisions in the two pension schemes. Other amendments are required to ensure that

terminology is common between the pension schemes and the compensation scheme.

Short service awards

7.34 Under the Pension Schemes Act 1993, where a transfer payment in respect of rights under a personal pension scheme has been made to the scheme the scheme member is eligible for a pension, rather than a short service gratuity, regardless of length of service. This is currently not explicit in the rules of the 1992 scheme but is included in the drafting of the new scheme. Amendment is therefore required to rules B2 (short service award) and B5 (deferred pension) for parity between the schemes.

Ill-health awards

7.35 Both pension schemes contain provision for two-tier ill health awards. All scheme members who are ill-health retired receive a lower tier award. Those who are permanently disabled from undertaking any further regular employment also qualify for a higher-tier award. The 1992 scheme currently restricts regular employment to employment outside the fire and rescue service whereas the test should be disablement from any regular employment, as provided for in the new scheme. Amendment is therefore required to rule B3 for parity.

Commutation

7.36 Scheme members are able to commute a portion of pension for a lump sum. Commutation from an ill-health pension is limited to a portion of the lower-tier element to prevent over-payment in circumstances where a higher-tier pension is reduced on review. The opportunity has been taken to amend rule B7 in line with the new scheme.

Limits on lump sum payments

7.37 The FPS provides for the commutation of small pensions for lump sum payments. The Finance Act 2004 (Schedule 29 – lump sum rule) limits commutation of such pensions for a surviving spouse, civil partner or child to pensions of a value that does not exceed the limit prescribed in the rule. The 1992 provisions were drafted in a way that could allow pensions of a greater value to be commuted with the consequence that HM Revenue and Customs might regard the payments as unauthorised. This could result in a tax charge on the beneficiary and the scheme administrator. Amendment to rules E5 and E6 is therefore necessary.

Definition of “retained” and “volunteer” firefighter

7.38 Although retained and volunteer firefighters are not eligible for membership of the 1992 scheme, the scheme includes a definition because of the link with the provisions of the compensation scheme. Under that scheme, retained and volunteer firefighters are eligible for benefits if they are killed or injured on duty and where this occurs their benefits are calculated as if they had been a whole-time regular firefighter. Retained and volunteer firefighters are eligible for membership of the new scheme and the definition has been updated for

that scheme. The definitions in the 1992 scheme and the compensation scheme have therefore been amended for consistency.

7.39 The amendment to the 1992 scheme also ensures that there is equal treatment for regular, retained and volunteer firefighters with regard to the question of permanent disablement as qualification for ill-health and injury benefits. A regular firefighter is permanently disabled if he is unable to perform the duties of the role (i.e. engaging in fire-fighting or other duties appropriate to his role, whether instead of, or in addition to, engaging in fire-fighting). This test will now also apply to retained and volunteer members.

Consultation

7.40 The provisions of the new scheme were the subject of a public consultation exercise in October 2004 and, following Ministers' consideration of the responses and publication of the outcome, to discussion with the Firefighters' Pension Committee. The Committee is chaired by the Department for Communities and Local Government and has representatives from the 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, the Welsh Assembly and Northern Ireland.

7.41 The amendments to the compensation scheme and the 1992 pension scheme have also been the subject of extensive consultation with the Committee. In addition, regular updates on the development of the new scheme and the amendments to the compensation scheme and the 1992 pension scheme have been given to firefighter members of the Fire and Rescue Service and information has been posted on the DCLG website.

8. Impact

8.1 Regulatory Impact Assessments have not been prepared for these instruments as they have no impact on charities or voluntary bodies. The new pension scheme is likely to have a negligible impact on businesses; some personal pension plan businesses may be affected as regards payment of transfer values into the new pension scheme.

8.2 The impact on the public sector of the new scheme is that it will result in cost savings for firefighters who join the new scheme and for the council tax payer as well as providing some improved benefits for firefighters and their beneficiaries. Members of the scheme will pay a contribution rate of 8.5% compared to 11% for the 1992 scheme. The employers` contribution rate will decrease to 14.2% down from 26.5% for the existing scheme. The savings are found in the main by the change in the normal pension/retirement age (that is from 55 under the 1992 scheme to 60 in the new scheme) and the removal of double

accrual of pensionable service after the first 20 years which is a feature of the 1992 scheme. Under the new scheme, pension will accrue at 1/60th per year for the whole of service. The government believes that the new scheme provides firefighters with a good pension scheme tailored to the special needs of the Fire and Rescue Service and is a good deal for the taxpayer.

8.3 The impact of the consequential amendments to the 1992 pension scheme and 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. The revised definition of "retained and volunteer firefighter" may lead to a reduction in the number of retirements on medical grounds among this group of employees and, as a consequence, yield some savings.

9. Contact

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

Department for Communities and Local Government
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