EXPLANATORY MEMORANDUM TO

THE FIREFIGHTERS' PENSION SCHEME (ENGLAND) (AMENDMENT) (NO. 2) ORDER 2012

2012 No. 2988

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.

2. Purpose of the instrument

2.1 This instrument makes amendments, some of which are technical, to the statutory New Firefighters' Pension Scheme 2006 ("the 2006 Scheme") in order for fire and rescue authorities to be able to comply with their duties as set out in the Pensions Act 2008 ("the 2008 Act"). Those duties require employers to:

- enrol certain workers automatically into a pension scheme (if they are not already in one), with opt-out rights
- periodically re-enrol workers who have opted out, and
- allow certain workers to join (or re-join) a scheme as a consequence of automatic enrolment or re-enrolment.

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

3.1 None.

4. Legislative Context

4.1 The 2006 Scheme is established by an order made under sections 34 and 60 of the Fire and Rescue Services Act 2004 ("the 2004 Act").

4.2 This order amends the 2006 Scheme, which is set out in Schedule 1 to the Firefighters' Pension Scheme (England) Order 2006 (SI 2006/3432). The amendments made by this instrument will allow fire and rescue authorities to comply with the requirements of the 2008 Act and the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 ("the 2010 Regulations") in relation to the 2006 Scheme.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

7.1 The 2008 Act requires every employer to automatically enrol their eligible workers into a qualifying pension scheme, if they are not already in one, and to contribute to that pension. Automatic enrolment requirements are being introduced on a rolling basis from October 2012, with larger employers (and, in turn, their staff) being subject to the new requirements first. Each employer has a date, known as the "staging date", on which they are due to automatically enrol eligible workers into a qualifying pension scheme. The staging date is determined by an employer's Pay as You Earn (PAYE) scheme details.

7.2 An informal consultation with fire and rescue authorities indicates that the earliest staging date for an authority will be 1 January 2013.

7.3 There are two firefighters pension schemes: the Firefighters' Pension Scheme (England) ("the 1992 Scheme") and the 2006 Scheme. Both schemes are qualifying schemes for the purposes of the 2008 Act, so existing members will be able to remain in those Schemes and will not be required to be enrolled into a new pension scheme on an employer's "staging date". The 1992 Scheme is closed to new members and re-joiners and therefore does not need to provide for automatic enrolment or re-enrolment. However any former member of the 1992 Scheme, and any new firefighters, are able to join the 2006 Scheme.

7.4 The 2006 Scheme already entitles new firefighters, on taking up employment with a fire and rescue authority, to be admitted into the Scheme. The 2006 Scheme, although largely unaffected by the changes required by the 2008 Act, requires some amendments to ensure full compliance with the 2008 Act and 2010 Regulations, so that a fire and rescue authority is able, in particular, to:

- enrol eligible workers, including former members of the 1992 and 2006 Schemes, into the 2006 Scheme on the authority's staging date (and on the authority's re-enrolment dates) and in the future as and when workers become eligible. This requires the removal of existing provisions that currently prevent former members rejoining the 2006 Scheme in certain circumstances. Fire and rescue authorities are currently prevented from re-enrolling firefighters into the 2006 Scheme if a firefighter has been in the Scheme more than once or can reckon 40 or more years of pensionable service. In addition, fire and rescue authorities are currently given an option not to allow firefighters to rejoin the 2006 Scheme unless the firefighter has undergone a medical examination, and satisfied the authority that they are in good health. These provisions are being removed

so that there are no restrictions on a fire and rescue authority being able to re-enrol a firefighter into the 2006 Scheme.

- comply with all other requirements regarding automatic enrolment and re-enrolment, including the need to ensure all eligible workers are able to be members of the 2006 Scheme and are entitled to a refund of contributions if they opt out within a certain time scale. Paragraph 3(b) of the Order ensures that the refund will be limited to those contributions that have been made since being automatically enrolled or re-enrolled, or joining, on that occasion and not in relation to any earlier period where contributions have been paid.

- Consolidation

7.5 This is the third set of amendments to the Firefighters' Pension Scheme (England) Order 2006 (S.I. 2006/3432) which came into force on 6 April 2006. There are no current plans for the Department to consolidate the legislation governing the 2006 Scheme.

8. Consultation outcome

8.1 On 10 October 2012, the Department published the consultation paper, *Amendments to the New Firefighters' Pension Scheme 2006 - Consultation*. The Department has previously engaged with members of the Firefighters' Pension Committee and the Human Resource and Finance Directors Group on the amendments required to the 2006 Scheme to comply with automatic enrolment. Given a) previous communications b) the fact that the amendments are relatively minor, and are required to comply with the 2008 Act, c) The Department for Work and Pensions has already carried out extensive consultation; the Department decided that the consultation period should run for four weeks. The consultation closed on 7 November.

8.2 A total of 13 responses were received, of which 12, out of a possible 46, were from fire and rescue authorities in England and 1 from a representative body.

8.3 The majority of respondents offered broad support for all, or some, elements of the proposals. Some respondents expressed concern over the removal of the 2006 Scheme rule which currently gives fire and rescue authorities an option not to allow firefighters to rejoin the Scheme if the authority is not satisfied they are in good health. Concern was expressed over the cost implications associated with the predicted likelihood of increased future ill health retirements. In addition, half of the respondents wished for the written opt out notice to replicate the requirements of the written notice as specified in the 2010 Regulations.

8.4 Some other queries on the 2006 Scheme rules were raised by a respondent which were outside of the scope of the consultation, and the Department has responded individually on these points.

Department response to the consultation

8.5 Since the statutory consultation closed on 7 November, the Department has considered the responses and has concluded that it is appropriate to proceed with the changes that were proposed during the consultation period. The Department has carefully considered the responses relating to the removal of the medical provision. If this provision remains, then fire and rescue authorities would be required to make separate arrangements to identify a qualifying pension scheme for those firefighters, who could not rejoin the Scheme, because the authority was not satisfied that they were in good health. It would be for public bodies to test the market to identify the most appropriate scheme for their needs and it is the Department's view that the cost of this would be disproportionate. The Department therefore remains of the view that the removal of the medical provision is the most proportionate approach in order for the 2006 Scheme to fully facilitate compliance with the 2008 Act and 2010 Regulations. However, the impact of the removal of this provision will be kept under review.

8.6 In terms of the written notice, the Department has decided that there is not a compelling argument to require the written notice to mirror those in the 2010 Regulations and the form of written notice set out in the 2006 Scheme should be non-prescriptive. In order to mirror the 2010 Regulations, the 2006 Scheme would need amending following any changes to the 2010 Regulations which would be unnecessary.

8.7 The intention is to bring the instrument into force on 31 December 2012.

8.8 A Departmental Response to the consultation will be available on the publication pages of the GOV.UK website (https://www.gov.uk/government/publications)

9. Guidance

9.1 The Department does not intend to issue any guidance on the amendments contained within this statutory instrument. However, the Department has been liaising with fire and rescue authorities to determine if there will be any benefit to authorities in the Department issuing scheme specific information, to supplement the guidance already issued by the Pensions Regulator.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 There is no negative impact of this instrument on the public sector. The positive impact is marginal, but the changes will make it easier for fire and rescue authorities to comply with the requirements of the Pensions Act 2008 places on them.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department will monitor any impact of this instrument as part of their ongoing management of the 2006 Scheme. To help inform this process the Department will engage with fire and rescue authorities who manage the 2006 Scheme, to ensure that if any problems arise they are brought to the attention of the Department.

13. Contact

13.1 Sharon Mayers at the Department for Communities and Local Government Tel: 0303 444 3565 or email: sharon.mayers@communities.gsi.gov.uk can answer any queries regarding the instrument.