EXPLANATORY MEMORANDUM TO

THE FIREFIGHTERS' PENSION SCHEME (ENGLAND) (AMENDMENT) REGULATIONS 2017

2017 No. 888

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 In 2015, the Department for Communities and Local Government ("DCLG") completed a major reform of the firefighters' pensions framework, introducing the Firefighters' Pension Scheme 2015 ("the 2015 Scheme"). The Home Office have since assumed policy responsibility for firefighters' pensions. A number of minor amendments are now required to ensure that certain limited aspects of the new scheme work as originally intended, particularly as regards certain scheme members who retire on ill-health grounds.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Regulations are retrospective back to 1 April 2015, the date that the 2015 Scheme came into force. Regulation 10(5) is an exception to this. In order to achieve more efficient administration, this regulation comes into force on 6 October 2017.

3.2 As these regulations correct errors in S.I 2014/2848, the free issue procedure has been applied.

Other matters of interest to the House of Commons

3.3 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The 2015 Scheme came into force on 1 April 2015 by means of the Firefighters' Pension Scheme (England) Regulations 2014 ("the 2014 Regulations", S.I. 2014 No. 2848). The current instrument ("the instrument") introduces a number of necessary minor amendments. The instrument is made under the powers provided in the Public Service Pensions Act 2013 ("the Act").

4.2 There are two further principal pension schemes for firefighters. These are governed by the Firemens' Pension Scheme Order 1992 (S.I. 1992 No. 129), ("the 1992 Scheme") and the Firefighters' Pension Scheme (England) Order 2006 (S.I. 2006 No. 3432) ("the 2006 Scheme", also known as "the NFPS"). The 2006 Scheme was closed to new firefighters on 31 March 2015, whilst the 1992 Scheme had already closed to

new firefighters on 5 April 2006. Firefighters with membership of those schemes are subject to the transitional arrangements set out in Schedule 2 of the 2014 Regulations and the Firefighters' Pension Scheme (England) (Transitional and Consequential Provisions) Regulations 2015 ("the transitional provisions"), (S.I. 2015 No. 589).

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England only.

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 new 2015 Scheme provides a fair retirement income to firefighters, calculated by reference to the member's career average earnings, a normal pension age of 60, and a deferred pension age equal to the state pension age. Following the establishment of the Scheme, fire and rescue authorities informed DCLG that it was necessary to make a number of minor amendments in limited areas, particularly in relation to ill-health aspects.

7.2 Regulation 5(4) of the instrument amends Regulation 71A of the 2015 Scheme, which provides for a member's entitlement to commute part of a pension into a lump sum. In particular, Regulation 5(4)(b) amends Regulation 71A to clarify the calculation of commutation of any part of any lower tier ill-health pension that may be awarded as an equivalent amount to the 1992 Scheme. The 2014 Regulations set out certain provisions relating to the commutation of a lump sum for members transitioning from the 2006 Scheme to the 2015 Scheme. This amendment makes comparable provision for members transitioning from the 1992 Scheme.

7.3 Regulation 10(5) of the instrument relates to paragraphs 37 and 38 of Schedule 2 to the 2014 Regulations, which include provisions that deal with the position of members who are being considered for ill-health retirement by an independent qualified medical practitioner at the time of their transition date, and who subsequently continue as active members of the 2015 Scheme. These members join the 2015 Scheme at the time specified under such provisions. It was still necessary, however, to deal with the position of members being considered for ill-health retirement by an independent qualified medical practitioner at the time of their transition date and who are subsequently granted an ill-health award and consequently retire. Under the amendments to paragraphs 37 and 38, such members remain in their existing scheme, avoiding the necessity for a minimal period of membership of the 2015 Scheme.

7.4 A number of other minor, but necessary corrections, are being made to the provisions of the 2015 Scheme.

(a) Regulation 3 deals with a minor error in the table of contents.

(b) Regulation 4 gives the correct abbreviation for the Welfare Reform and Pensions Act 1999.

(c) Regulation 5(2) and (3) correct minor drafting errors in respectively, Regulations 59(2) and 71 of the 2014 Regulations.

(d) Regulation 6 deals with survivor benefits, making it clear that three months' service is sufficient to achieve qualification and stipulating, where applicable, that bereavement pension is for the benefit of eligible children.

(e) Regulation 9 makes a minor correction to the wording dealing with medical appeals.

Consolidation

7.5 The Home Office does not intend to consolidate the new legislation.

8. Consultation outcome

8.1 Section 21 of the Public Service Pensions Act 2013 requires the Secretary of State responsible for making the regulations to consult either those who are likely to be affected by them, or the representatives of those persons, before making any regulations. The regulations were subject to one statutory consultation beginning on 18 March 2016 and concluding on 13 May 2016, which received ten responses.

8.2 As a result of the consultation, there were three expressions of general support and none of general opposition, which would appear to be a reflection of the highly specialised nature of the proposals.

8.3 Two of the detailed points which were made resulted in changes to the draft regulations. Both of these relate to Schedule 2 of the 2014 Regulations :
(a) In regulation 10(2) reference is now made to sub-paragraphs 3 and 4 in order to correctly reflect an amendment made in the transitional provisions.
(b) In regulation 10(5) there is a minor alteration to the heading of rule 2 of part 3.

8.4 A copy of the consultation and the Government's response is available on the Government's website:

https://www.gov.uk/government/consultations/firefighters-pension-schemes-amendments

9. Guidance

9.1 There are a number of detailed resources available to prospective scheme members and employers, including pension calculators, frequently asked questions and guidance to calculate certain other pension benefits. The Home Office will continue to work with employers and the Local Government Association to provide detailed information and supportive resources to prospective scheme members on the application of the regulations as a whole. The Home Office also encourages employers to implement a communications programme with prospective members.

9.2 The Firefighters' Pensions Scheme Advisory Board (made up of employer and employee representatives), which advises the Home Secretary, is also undertaking communications work to ensure employers and employees are abreast of firefighters' pensions matters. The Home Office are engaging with that Board on the laying of these regulations as appropriate.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is minimal, as to a great extent, fire and rescue authorities would have been expecting the provisions to be included when the 2015 Scheme was established.

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

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 These regulations will be monitored by the Home Office in the context of its stewardship responsibilities for the firefighters' pension schemes as a whole.

13. Contact

13.1 Philip Perry at the Home Office, telephone 020-7035-3447 or e-mail philip.perry@homeoffice.gsi.gov.uk, can answer any queries regarding the instrument.