EXPLANATORY MEMORANDUM TO

THE FIREFIGHTERS' PENSION SCHEME (AMENDMENT) (ENGLAND) ORDER 2012

2012 No. 953

AND

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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. Purpose of the instrument

2.1. The Firefighters' Pension Scheme (Contributions) (Amendment) (England) Order 2012 (No. XXXX) amends the Firefighters' Pension Scheme 1992 (set out in Schedule 2 to the Firemen's Pension Scheme Order 1992 (No. 129)) to:

- provide for new employee pension contributions rates to apply to members of the Firefighters' Pension Scheme 1992
- introduce progressively tiered contribution rates, so that contribution rates are linked to salary bands and higher earners will pay a higher rate of contribution
- make provision for the process for determining contribution rates to be paid by part time scheme members.

2.2. The Firefighters' Pension Scheme (Contributions) (England) (Amendment) Order 2012 (No. XXXX) amends the New Firefighters' Pension Scheme (England) set out in Schedule 1 to the Firefighters' Pension Scheme (England) Order 2006 (No. 3432) to:

- provide for new employee pension contributions rates to apply to members of the New Firefighters' Pension Scheme 2006
- introduce progressively tiered contribution rates, so that contribution rates are linked to salary bands and higher earners will pay a higher rate of contribution
- make provision for the process for determining contribution rates to be paid by part time and retained firefighter scheme members.

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

3.1 The attention of the Joint Committee on Statutory Instruments is drawn to the coming into effect date of the Orders on 1 April 2012 which, the Department for Communities and Local Government regrets, breaks the 21 day rule.

4. Legislative Context

4.1 The first instrument is made under section 26(1) to (5) of the Fire Services Act 1947. This section enables the Secretary of State by order to bring into operation the Firefighters' Pension Scheme enabling fire authorities to pay pensions, allowances and gratuities to persons employed as members of fire brigades. The section also enables provision to be made for the making of contributions by persons in respect of whose service awards may be made under the Scheme. The section also enables the Scheme to be varied by a subsequent order made by the Secretary of State.

4.2 The Firefighters' Pension Scheme is made under this power. This instrument amends the provision made in that Scheme for the making of contributions and increases the amount to be paid according to the pensionable salary of the member.

4.3 The second instrument is made under sections 34 and 60 of the Fire and Rescue Services Act 2004. Section 34 enables the Secretary of State to make an order bringing into operation a scheme making provision for the payment of pensions, allowances and gratuities in respect of persons who are employed by a fire and rescue authority or who have died while so employed. The section enables provision to be made for the making of contributions by persons in respect of whose service awards may be made. The section also enables the Scheme to be varied by a subsequent order made by the Secretary of State.

4.4 The New Firefighters' Pension Scheme (England) is made under section 34. This instrument amends the provision made in that Scheme for the making of contributions and increases the amount to be paid according to the pensionable salary of the member.

5. Territorial Extent and Application

5.1 These instruments apply 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

The Hutton review of public service pensions

7.1 In June 2010, the Government commissioned Lord Hutton of Furness to chair the Independent Public Service Pensions Commission to review public service pensions and to make recommendations on how they can be made sustainable and affordable in the long-term, and fair to both public sector workers and the taxpayer. As part of the review, the Commission was invited to produce an interim report, to consider the case for delivering savings on public service pensions within the Spending Review period.

7.2 The Commission published its interim report on 7 October 2010. In Chapter 8 of that report, Lord Hutton considered different options for delivering savings, including reducing the level of benefits being paid out and/or increasing the contributions being paid by active scheme members. The Commission reached the conclusion that, "If the Government wishes to make savings in the short-term it will be more effective to increase member contributions rather than alter the benefit structure".

7.3 Lord Hutton's interim report then set out a clear rationale for increasing member contributions to public service pension schemes as follows:

- people are living much longer than previous generations – the average 60 year old is living ten years longer now than they did in the 1970s. More of people's lives are now being spent in retirement – between 40 to 45 per cent of adult life compared with around 30 per cent for pensioners in the 1950s
- as people are living longer in retirement, the cost of providing pensions is increasing; annual expenditure on public service pensions over the last decade has increased by a third to £32bn. Lord Hutton said in his report, "these costs have generally fallen to the taxpayer"
- but taxpayers can't be expected to bear all the cost of increased longevity. There needs to be a fairer balance between what employees pay and what other taxpayers contribute towards a public service pension.

Spending Review

7.4 The Government accepted Lord Hutton's rationale and announced at Spending Review 2010 that public sector workers would be asked to contribute more towards their pensions. In particular, the Spending Review set out plans for savings of £2.8bn per year, equivalent to an average increase of 3.2 percentage points in employee contributions by 2014-15.

Design principles

7.5 In his statement of 19 July 2011, the Chief Secretary to the Treasury set out that, to meet the target of £1.2 billion savings set out in the Spending Review

for 2012-13, schemes would shortly begin consultation on their proposals for member contribution increases from April 2012. These consultations would only relate to delivering savings in the first year (i.e. 40 per cent of the average 3.2 percentage point increase).

7.6 The Government set out that any proposed increases in contribution rates should protect low earners and be progressive, so that high earners pay proportionally higher increases to reflect their more generous pensions. The Government also set out its preferred parameters for scheme design to achieve the required savings, these were:

- there should be no increase in employee contributions for those earning less than £15,000
- there should be no more than a 1.5 percentage point increase in total by 2014-15 for those earning up to £21,000. This amounts to a 0.6 percentage point increase in 2012-13 on a pro-rata basis
- high earners would pay more, but no more than 6 percentage points (before tax relief) by 2014-15. This amounts to a 2.4 percentage point cap in 2012-13 on a pro-rata basis.

Firefighters' Pension Schemes

7.7 The two firefighters' pension schemes, like other public service schemes, were asked to deliver savings from increases to employee contribution rates. Like other schemes, the firefighters' pension schemes were asked to deliver savings of 40 per cent of the average 3.2 percentage point increase in 2012-13 (anticipated to be £13.2 million), i.e. 1.28 percentage points.

7.8 In 2011, members of the Firefighters' Pension Scheme 1992 contributed 11 per cent of their pensionable pay to their pensions, compared with 21.3 per cent contributions from employers (excluding the ill-health charge). For members of the New Firefighters' Pension Scheme 2006 the balance is closer, with members contributing 8.5 per cent of pensionable pay, and employers 11 per cent.

7.9 On 9 September, the Department published the consultation paper, *Firefighters' Pension Scheme (1992) and New Firefighters' Pension Scheme (2006): Proposed increases to employee contributions rates, effective from 1 April 2012 - Consultation*. This consultation paper set out proposed new tariffs for the two firefighters' pension schemes in line with the Government's design principles. In particular, the proposals recognised that members of the New Firefighters' Pension Scheme 2006 contributed a greater proportion towards their pension scheme and proposed some protection for these scheme members.

Heads of Agreement

7.10 On 9 February, the Fire Minister, Bob Neill MP, published the Heads of Agreement setting out the proposed reforms to the firefighters 'pension scheme in England from April 2015. The proposed scheme from 2015

provides for pension to be accrued under career average arrangements, a Normal Pension Age of 60, and provides transitional protections for some members.

- Consolidation

7.11 There are no current plans to consolidate the legislation governing either the Firefighters' Pension Scheme 1992, or the New Firefighters' Pension Scheme 2006.

8. Consultation outcome

8.1 On 9 September, the Department published the consultation paper, *Firefighters' Pension Scheme (1992) and New Firefighters' Pension Scheme (2006): Proposed increases to employee contributions rates, effective from 1 April 2012 - Consultation*. The consultation ran for a twelve week period and closed on 2 December.

8.2 On publication, the Department drew the consultation paper to the attention of members of the Firefighters' Pension Committee, which includes Trades Unions, the Local Government Association and other key representative bodies. The Department also issued an 'Immediate Bulletin' setting out the consultation proposals and which is sent to the Chairs of all Fire and Rescue Authorities, the Chief Executive of the County Council, the Clerks to all Fire and Rescue Authorities, the London Commissioner, and the Chief Fire Officers of all Fire and rescue authorities.

8.3 There were 61 responses to the consultation, of which 36 were individual responses, 18 were from fire and rescue authorities, and 7 were from representative bodies (of which 5 were trades unions).

8.4 Broadly, some respondents offered support for elements of the proposals as set out in the consultation, for example, the introduction of tiered contributions. However, many respondents were critical of the proposals, with some arguing that change was not necessary at all. A key concern expressed was the impact of the proposed changes on opt-outs and that higher contribution rates would act as a disincentive for new recruits to join the scheme. Some respondents expressed the view that the Fire Service had already addressed any pension shortfall with the introduction of the New Firefighters Pension Scheme 2006. Others argued that the proposals had not taken into account that firefighters already pay one of the highest contribution rates in public sector pension schemes and it is unfair to make them pay more. Consultation responses from the Local Government Association, the London Fire Brigade and Greater Manchester Fire and Rescue Service recommended back-loading the contribution increases, with 20 per cent of the average 3.2 percentage point increase applying from April 2012.

Government response to the consultation

8.5 Since the statutory consultation on contribution increases closed on 2 December, the Department has considered the responses and evidence received in this consultation and listened to representations made in ongoing discussions with trades unions and employers. Ministers, in the light of the statutory consultation responses, decided that it was appropriate, in this specific case, to proceed with an altered contribution rate increase from April 2012. This approach now seeks to generate an increased yield of 0.64 percentage points from the two firefighters' pension schemes rather than the originally proposed 1.28 percentage points.

8.6 The intention is to bring the regulations into force on 1 April 2012. Consideration was given to bringing the regulations into force later than 1 April 2012, however to do so would either diminish the yield further, or would require higher contribution rates than are necessary to recoup the lost yield from missed months.

8.7 A more detailed analysis of the consultation outcome will be available on the Departmental website. The Government has also committed to review the impact of the contribution increases on opt-out (see section 12 below).

8.8 Given the detailed consideration that has taken place on the proposals and subsequent consultation of other Government Departments, it has taken longer than anticipated to bring forward the final statutory instrument. The Department for Communities and Local Government apologises for the extremely short period during which the instruments were laid before coming into force and regrets breaking the 21 day rule.

9. Guidance

9.1 The Department does not intend to issue any guidance on complying with these statutory instruments.

10. Impact

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

10.2 The impact on the public sector is nil.

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 Government will review the impact of the 2012-13 contribution increases, including on opt-out, before taking final decisions on how future increases will be delivered. Interested parties will have the opportunity to provide evidence and views to the Government.

13. Contact

Mr Andrew Cornelius at the Department for Communities and Local Government Tel: 0303 444 2171 or email: andrew.cornelius@communities.gsi.gov.uk can answer any queries regarding the instrument.