EXPLANATORY MEMORANDUM TO THE

SCOTTISH ADMINISTRATION (OFFICES) ORDER 2005

2005 NO. 1467

1. This explanatory memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty. It contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The order specifies the offices of Her Majesty's Chief Inspector of Fire and Rescue Authorities, Her Majesty's Inspector of Fire and Rescue Authorities and Assistant Inspector of Fire and Rescue Authorities as offices in the Scottish Administration which are not ministerial offices for the purposes of the Scotland Act 1998.

2.2 The specification of the above mentioned offices reflect the provisions in the Fire (Scotland) Act 2005 ("the 2005 Act"), which provide for the appointment of persons to these offices. The order also revokes as offices in the Scottish Administration which are not ministerial offices, Her Majesty's Inspector of Fire Services for Scotland and Assistant Inspector of Fire Services for Scotland.

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

3.1 The order is made in exercise of the power conferred by section 126(8)(b) of the Scotland Act 1998. By virtue of that Act, the order is subject to negative resolution procedure in both Houses of the UK Parliament and in the Scottish Parliament.

3.2 Section 126(8)(b) of the Scotland Act 1998 enables Her Majesty by Order in Council to specify offices in the Scottish Administration which are not ministerial offices, in addition to those specified in section 126(8)(a).

3.3 The Scottish Administration (Offices) Order 1999 (S.I. 1999/1127) specifies the offices of Her Majesty's Inspector and Assistant Inspector of Fire Services for Scotland as such offices in the Schedule to that Order. As a result of the Fire (Scotland) Act 2005 ("the 2005 Act"), these references require to be revoked, as these offices are being replaced by their statutory successors, mentioned in paragraph 2.1 above.

4. Legislative Background

Section 43(1)(a) of the 2005 Act provides for the appointment of Her Majesty's Chief Inspector of Fire and Rescue Authorities; section 43(1)(b) provides for the appointment of Her Majesty's Inspectors and section 43(2) provides for the appointment of Assistant Inspectors. This order reflects the creation of these new offices.

5. Extent

This order extends to the UK.

6. European Convention on Human Rights

The Parliamentary Under Secretary of State for Scotland has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

> "In my view the provisions of the Scottish Administration (Offices) Order 2005 are compatible with the Convention rights".

7. Policy background

7.1 The Fire (Scotland) Bill was passed by the Scottish Parliament on 23 February 2005 and received Royal Assent on 1 April 2005. The 2005 Act replaces the Fire Services Act 1947 ("the 1947 Act") for Scotland and makes provision for the reform of fire services, including enhancement of the role of the fire and rescue authorities. It also reforms fire safety law in Scotland.

7.2 Similar changes are underway in respect of England and Wales: the Fire and Rescue Services Act 2004 replaced the 1947 Act and provides for the modernisation of the fire service; the Regulatory Reform (Fire Safety) Order 2005 introduces a new fire safety regime based on ongoing risk assessment and is currently progressing through the UK Parliament.

7.3 The 2005 Act will be commenced in stages. Some minor provisions of a technical nature and provisions enabling subordinate legislation to be made have already been commenced. Section 43 will be commenced in July subject to the making of the s126 order and a related order to be made on reserved matters under section 104 of the Scotland Act 1998 in respect of Parts 1 and 2 of the 2005 Act (which define fire and rescue authorities and sets out their functions and powers).

8. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities, voluntary bodies.

9. Contact

Glenn Preston at the Scotland Office (Glenn.Preston@scotland.gsi.gov.uk) can answer any queries regarding the instrument.

Scotland Office, Department for Constitutional Affairs
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