

EXPLANATORY MEMORANDUM TO

THE FIREFIGHTERS' PENSION SCHEME (ENGLAND) (AMENDMENT)
ORDER 2008
2008 Nos. 213

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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. **Description**

- 2.1 The Firefighters' Pension Scheme (England) (Amendment) Order 2008 amends the New Firefighters' Pension Scheme (England) ("the NFPS"). The NFPS is set out in Schedule 1 to the Firefighters' Pension Scheme (England) Order 2006 ("the NFPS Order"). The Order which is the subject of this memorandum corrects errors in the NFPS Order and introduces some new material into the NFPS. The amendments are described in more detail below under the heading "Policy Background".

- 2.2 The Firefighters' Pension Scheme (Amendment) (England) Order 2008 amends the Firefighters' Pension Scheme 1992 as it has effect in England ("the 1992 FPS"). The 1992 FPS is set out in Schedule 2 to the Firefighters' Pension Scheme Order 1992. It is now a closed scheme: those entering the fire and rescue service on or after 6th April 2006 may become members of the NFPS. The amendments provide for additional pension benefit for long service and in respect of continual professional development, and entitle a regular firefighter (a firefighter who is neither a retained nor a volunteer firefighter) with at least 30 years' service at the age of 55 to two pensions in certain circumstances. The amendments are described in more detail below under the heading "Policy Background".

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

Amendments to the NFPS

- 3.1 The Order that amends the NFPS corrects the errors noted in the Joint Committee's Ninth Report for 2006/07; the relevant amendments are made by paragraphs 1(c) and 2(a)(i) of the Schedule to the Order.
- 3.2 The Order also corrects other errors, including errors of omission, which have been identified subsequently. The amendments specified in paragraphs 1(b), 2(f), 4(e)(i), 5(a), 9(a), and 11(b)(iii) and (d) of the Schedule correct cross-references and typographical errors. With the exception of the amendments made by paragraphs 3(b), 4(f) and 11(a)(i) and (b)(i) and (iv) of the Schedule, the amendments have effect from 6th April 2006 (the date from which the NFPS has effect). Section 34 of the Fire and Rescue Services Act 2004 ("the 2004 Act"), confers power to give retrospective effect.
- 3.3 The amendments made by paragraphs 3(b), 4(f) and 11(a)(i) and (b)(i) and (iv) of the Schedule reflect policy changes since the introduction of the Scheme. Those made by paragraph 3(b), paragraph 4(f), so far as it relates to new rule 7A of Part 3 of the Scheme (additional pension benefit: long service) and so much of new rule 7C as relates to new rule 7A, and paragraph 11(b)(iv) have effect from 1st October 2006 (article 1(4)). Those made by paragraph 4(f), so far as it relates to new rule 7B of Part 3 of the Scheme (additional pension benefit: continual professional development) and so much of new rule 7C as relates to new rule 7B, and paragraph 11(a)(i) and (b)(i), have effect from 1st July 2007.
- 3.4 The Department has produced an informal composite version of the NFPS, incorporating the amendments made by the Order that is the subject of this memorandum. That version is available on the Department's website: www.communities.gov.uk/firepensions

Amendments to the 1992 FPS

- 3.7 The amendments to the 1992 FPS which are made by the Firefighters' Pension Scheme (Amendment) (England) Order 2008 are broadly comparable to those made to the NFPS mentioned in paragraph 3.3 above. The amendment that inserts new rule B5A has effect from 1st April 2007. The other amendments have effect from 1st July 2007. Power to give retrospective effect is conferred by section 12 of the Superannuation Act 1972, as applied by section 16(3) of that Act.
- 3.8 The Department intends to consolidate the FPS as soon as practicable. In the meantime, the Department has produced an informal composite version of the FPS, incorporating the amendments made by the Order

that is the subject of this memorandum. That version is available on the Department's website: www.communities.gov.uk/firepensions

4. Legislative Background

- 4.1 The NFPS is set out in Schedule 1 to the Firefighters' Pension Scheme (England) Order 2006 ("the NFPS Order"). The amendments to the NFPS Order are made under section 34 of the Fire and Rescue Services Act 2004 ("the 2004 Act"), which also confers power to give retrospective effect.
- 4.2 The 1992 FPS is set out in Schedule 2 to the Firemen's Pension Scheme Order 1992 (S.I. 1992/129). The Scheme was re-named the Firefighters' Pension Scheme by S.I. 2004/2306. The 1992 FPS is now a closed scheme; those entering the fire and rescue service on or after 6th April 2006 may become members of the NFPS. The Order amending the 1992 FPS is made under section 26 of the Fire Services Act 1947. That section was saved from the repeals of that Act by the 2004 Act. Power to give retrospective effect is conferred by section 12 of the Superannuation Act 1972, as applied by section 16(3) of that Act.

5. Extent

5. These instruments apply in relation to England only.

6. European Convention on Human Rights

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

7. Policy background

Amendments to the NFPS

- 7.1. The amendment made by paragraph 4(f) of the Schedule, in so far as it inserts new rule 7A and the related part of new rule 7C into Part 3 of the NFPS, relates to the discontinuance, with effect from 1st July 2007, of long service increments payable to firefighters who have at least 15 years' continuous service. The amount of the increment, which was pensionable, was frozen, with effect from 7th November 2003, at the annual rate of £990 and reduced, with effect from 1st October 2006, to an annual rate of £495 but with transitional payments. The amendment provides that firefighter members who were entitled to long service increments and related transitional payments up to and including 30th June 2007 and retire or become entitled to a deferred pension after 30th September 2006 and before 1st October 2007 will have the reduction disregarded for pension purposes. The amendment made by paragraph 11(b)(iv) provides for their pensions to be calculated as if final pensionable pay includes

£990. Those who retire after 30th September 2007 will be eligible for an amount of additional pension benefit based on receipt of the long service increment at a rate of £990 and service up to 30th June 2007. The right to a pension based on final pensionable pay including long service increment pay, where this would be more beneficial to the firefighter member, is protected.

- 7.2 The amendment made by paragraph 3(b) of the Schedule and, in so far as it inserts new rule 7B and the related part of new rule 7C into Part 3 of the Scheme, the amendment made by paragraph 4(f), are consequential on the introduction by the National Joint Council for Local Authority Fire and Rescue Services, with effect from 1st July 2007, of a new scheme of payments in respect of continual professional development to replace the discontinued long service increment. Under the scheme the payments are subject to annual review and therefore temporary in nature. For that reason, they would not ordinarily be regarded as pensionable for the purposes of the NFPS. However, the amendment made by paragraph 11(a)(i) of the Schedule has the effect of making the payments part of pensionable pay and honours the agreement made by the National Joint Council that any scheme to replace the long service increment should be pensionable. This attracts, among other provisions, those of rule 3 of Part 11 of the NFPS, which require the making of pension contributions in respect of pensionable pay. But the amendment made by paragraph 11(b)(i) provides for payments in respect of continual professional development to be disregarded for the purposes of determining the amount of final pensionable pay (on which the amount of the ordinary pension is based) thereby preventing duplication.
- 7.3 The amendment to rule 2(5) in Part 2 of the NFPS, made by paragraph 3(b) of the Schedule, ensures that a person cannot make an election to discontinue pension contributions only in respect of additional pension benefit under rule 7B.
- 7.4 Some of the correcting amendments have resulted in the insertion of new rules or paragraphs. In particular—
- paragraph 4(a) of the Schedule inserts a new paragraph (4) in rule 2 of Part 3 (award on ill-health retirement) to provide for the calculation of ill-health awards payable in the case of a firefighter member who is entitled to two pensions by virtue of rule 7 of that Part;
 - paragraph 4(h)(i) of the Schedule inserts new paragraphs (8A) to (8C) in rule 9 of Part 3 (commutation: general) to provide for account to be taken of any earlier commutation. This is to ensure that any subsequent pension and lump sum is reduced accordingly where an ill-health pension or a deferred pension that has been paid early is terminated under Part 9;
 - paragraph 7(c) of the Schedule inserts new rule 6 in Part 6 (pension sharing on divorce) which allows for the payment of a

lump sum death grant where a pension credit member dies before any benefits under the NFPS become payable. The grant is to be paid to the deceased member's personal representatives.

Amendments to the 1992 FPS

- 7.5 The amendments that introduce new rules B5B, B5C and B5D and amend rules G1 and G3 are similar to those made to the NFPS. Those amendments provide for additional pension benefit in respect of the long service increment and in respect of continual professional development.
- 7.6 The amendment that introduces new rule B5A reflects rule 7 in Part 3 of the NFPS. It entitles a regular firefighter to two pensions if–
- (a) he suffers a reduction in the amount of his pensionable pay on taking up a different role or becoming entitled to a different rate of pay in his existing role; and
 - (b) the effect of the reduction would be to reduce the amount of his pension.

New rule B5A sets out the way in which the two pensions are to be calculated, contains some limitations and allows a firefighter who is entitled to two pensions to elect to have them paid as a single award.

Consultation

- 7.7 All of the amendments have been the subject of extensive consultation with the Firefighters' Pension Committee, on which there are representatives of both the employers and the employees. In addition, regular updates have been given to members of the NFPS and the 1992 FPS through Circulars and all relevant information has been posted on the Department's website.
- 7.8 The amendments are not contentious and the new provisions that protect the pensionability of the long service increment and give pension benefits based on continual professional development have been widely welcomed.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on businesses, charities or voluntary bodies.
- 8.2 There is no significant impact on the public sector. The National Joint Council has set the level of continual professional development allowance at a rate that utilises the full cost savings from the discontinuance of the long service increment. There should, therefore, be no additional costs for fire and rescue authorities in respect of the associated pension benefits. There could, however, be some additional costs associated with the preserving of pensionable benefits accrued up to 30th June 2007 for those who achieved 15 years' service before that date. However, these are likely to be minimal. The pension scheme is

subject to periodical re-valuation and any significant increase in pension costs would result in a review of member contribution rates.

9. Contact

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Tel: 020 7944 8123 or e-mail: Andy.boorman@odpm.gsi.gov.uk, who can answer any queries regarding the instrument.

Department for Communities and Local Government