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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the Firefighters' Pension Scheme (set out in Schedule 2 to the Firemen's Pension Scheme Order 1992) as it has effect in Scotland ("the Pension Scheme"). The majority of the amendments have effect from 6th April 2006. The exceptions to this are the amendments made by paragraphs 6, 46 and 55 of Schedule 1 which have effect from 1st July 2006, the amendment at paragraph 18 of Schedule 1 which has effect from 1st March 1992 and the amendment at paragraph 5 of Schedule 1 which has effect from 4th December 2005. The power to give retrospective effect is conferred by section 12 of the Superannuation Act 1972, as applied by section 16(3) of that Act.

The amendment of rule A3 and the substitution of rule G2(1) anticipate the making of a new pension scheme by order under section 34 of the Fire and Rescue Services Act 2004. Section 34(1) to (5) has been executively devolved to Scottish Ministers by S.I.2005/849. The rule A3 amendments provide for the Pension Scheme to cease to have effect on the day on which the new scheme is brought into operation as respects—

persons who take up employment with a fire and rescue authority as regular firefighters on or after 6th April 2006,

persons who, having made an election under rule G3(1) not to pay pension contributions, cancel that election on or after 6th April 2006, and

the spouses, civil partners and dependants of those two classes of person.

It is envisaged that the new scheme will require those classes of person to become members of it.

The paragraph substituted in rule G2 has the effect of requiring persons who take up employment with a fire and rescue authority as firefighters on or after 6th April 2006 to make pension contributions at a lower rate than is required of firefighters whose employment began before that date.

Some amendments specified in Schedule 1 to this Order remove from the Pension Scheme provisions relating to non-contributory compensation for death and injury. These provisions are re-enacted in the Firefighters' Compensation Scheme, which is set out in the Schedule to the Firefighters' Compensation Scheme Order 2006 (S.I. 2006/xxx). Schedule 2 to this Order lists the provisions of the Pension Scheme that cease to have effect, as to Scotland, having been superseded by corresponding provisions of the Firefighters' Compensation Scheme.

Except as detailed below, other amendments specified in Schedule 1 to this Order are consequential on the removal of those provisions or relate to changes in the regulation of pension schemes brought about by the Finance Act 2004 (c. 12), as amended by the Finance Act 2005 (c. 7).

Rule B3 and Part III of Schedule 2 to the Pension Scheme, which provide for the payment and calculation of pensions awarded to regular firefighters whose employment ceases by reason of ill health, are substituted. Firefighters who are found by an independent qualified medical practitioner to be capable of undertaking employment outside the fire and rescue service for an average of at least 30 hours per week over a notional period of 12 months (whether or not they in fact take up any employment) will be entitled to a lower tier ill-health pension. Those who are found to be incapable of undertaking such employment will be entitled to a higher tier ill-health pension. There is no change in the method of calculating the newly-styled "higher tier" ill-health pension (paragraph 4 of Part III of Schedule 2). Nor is there any change in the method of calculating the newly-styled "lower tier" ill-health pension for those regular firefighters who have less than 5 years' pensionable service (paragraph 3 of that Part). The method of calculating other "lower tier" ill health pensions (paragraph

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2 of that Part) has the effect that a pensioner who has 5 or more years' pensionable service will be entitled to immediate payment of an amount calculated as if he had been entitled to immediate payment of a deferred pension under rule B5 of the Pension Scheme (the calculation is set out in Part VI of Schedule 2).

Rule K1 is replaced by new rules K1 and K1A which allow a fire and rescue authority to replace a higher tier ill-health pension with a lower tier ill-health pension where, on a review of the pensioner's condition, it is established that he is capable of undertaking employment for 30 hours a week on average over a 12 month period. The pensioner's lower tier ill-health pension will be unaffected unless, on a review of his condition, it is established that he is capable of performing the duties of the role from which he retired and he accepts or declines the authority's offer to take up employment in that role. If the pensioner declines such an offer, he becomes entitled to a deferred pension and his entitlement to a lower tier ill-health pension is terminated.

The effect of the amendment to paragraph 8(2A) of Schedule 9 is that a person who withdraws his appeal to a board of medical referees within 21 days of the date appointed for the interview or medical examination may be required to pay the fire and rescue authority an amount not exceeding that payable by the authority in respect of the board's fees and allowances. The current provision refers to withdrawal within 10 days of the appointed date.

The opportunity has been taken to correct two errors that arose in amending instruments made in 2005. Rule C5 of the Pension Scheme (limitation on award to spouse or civil partner by reference to date of marriage or formation of partnership) was substituted by paragraph 7 of Schedule 1 to the Firefighters' Pension Scheme (Civil Partnership Amendments) (England and Scotland) Order 2005 (S.I. [2005/3228](#)). In paragraph (2) of the substituted rule, the words “, subject in the case of a civil partner, to paragraph (3),” were included in error and are now omitted.

The second error relates to article 1(3)(b) of the Firefighters' Pension Scheme (Amendment) (Scotland) Order 2005 ([S.S.I. 2005/566](#)). That provision gave retrospective effect, from 1st March 1992 (the date on which the Pension Scheme came into force), to rule C5 of the Pension Scheme. It should have given similar retrospective effect to rule C6 of the Pension Scheme, which relates to the requisite benefit and temporary pensions awarded to surviving spouses and civil partners. That rule was amended in 2005 to reflect the fact that the surviving spouse of a deceased firefighter may be either a widow or a widower. Rule C6, as now substituted, is given retrospective effect from 1st March 1992.

A full regulatory impact assessment has not been produced for this Order, as it has no impact on the costs of business, charities or voluntary bodies.