

**EXPLANATORY MEMORANDUM TO THE
FIREMEN'S PENSION SCHEME (AMENDMENT) ORDER 2004 No. 1912**

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

2. Description

This Order amends the Firemen's Pension Scheme.

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

None

4. Legislative Background

The Order is made under section 26 of the Fire Services Act 1947 and section 12 of the Superannuation Act 1972, as applied by section 16(3) of that Act. Section 26 provides for the establishment of the Firemen's Pension Scheme. The Scheme is currently set out in the Firemen's Pension Scheme Order 1992¹. That Order has been amended on five previous occasions². Section 12 provides that Orders made under section 26 may have retrospective effect.

5. Extent

This instrument applies to England and Wales.

6. European Convention on Human Rights

This instrument is subject to negative procedure and does not amend primary legislation. Therefore, no statement as to compatibility has been made.

7. Policy background

7.1 Changes to the Firemen's Pension Scheme (the "FPS") are needed to meet commitments made in the White Paper "Our Fire and Rescue Service" (Cm 5808) in relation to ill-health retirement. These changes are as follows:

- To broaden the definition of "firefighter" to allow a firefighter, who is no longer fit enough to engage in operational duties, to remain in the FPS rather than be retired with an ill-health pension. Such firefighters could be deployed on a range of other duties, including community safety. The current definition is one of the causes of the high level of ill-health retirements amongst firefighters.
- To place an obligation on Fire and Rescue Authorities to use independent medical assessment before approving ill-health retirements.

¹ S.I. 1992/129.

² See S.I. 1997/2309, 1997/2851, 1998/1010, 2001/3649 and 2001/3691.

7.2 In addition, amendments are needed to provide proper pension arrangements for part-time regular firefighters. Currently, the FPS does not allow for part-time regular working. This has restricted the employment of part-time staff with regular duties. The employment of part-time staff gives Fire and Rescue Authorities flexibility in resourcing, but lack of access to full pension benefits is seen as a disincentive to potential recruits. It has also inhibited the transfer of whole-time staff to part-time working.

7.3 Amendments are also required to meet statutory maternity, adoption and paternity requirements, set out in employment legislation.

7.4 All amendments have been the subject of consultation in accordance with section 26(6) of the Fire Services Act 1947. In addition, regular updates have been given to scheme members and information has been posted on the ODPM website. The amendments are welcomed by the employers as they provide clarification on issues such as maternity, paternity and adoption leave; provide a clearer definition of permanent disablement and elevate the status of independent qualified medical advice in making decisions on ill-health retirement and appeals. They also detail how part-time regular service and pay should be treated for pension purposes.

7.5 The White Paper set out the Government's commitment to:

- introduce a new pension scheme for firefighters more suited to the service of the future and reflecting changes in the relevant tax and regulatory framework for pensions generally;
- address the high cost of the current pension scheme;
- provide a pension scheme for retained firefighters, recognising the variety of personal circumstances involved and who, except for ill-health and injury benefits are excluded from the FPS.

7.6 The new pension scheme is expected to be introduced in 2006.

8. Impact

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

8.2 The impact on the public sector is that it will increase the flexibility available to fire and rescue authorities to employ regular firefighters on part-time duties, and allow them to retain in service staff who, whilst not fit for operational duties, are capable of doing other appropriate work. There are potential savings in costs as the amendments will help fire and rescue services improve their management of ill-health retirements and will enable also the retention of trained and experienced staff who wish to work part-time rather than whole-time.

9. Contact

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