

**EXPLANATORY MEMORANDUM TO
THE FIREFIGHTERS' PENSION SCHEME (CIVIL PARTNERSHIP
AMENDMENTS) (ENGLAND AND SCOTLAND) ORDER 2005**

2005 No. 3228

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 This Order amends the Firefighters' Pension Scheme ("FPS") as it has effect in England and Scotland. Although the operation of the FPS is similar, as regards England and Scotland, it has latterly been amended differently.
- 2.2 The amendments made by this Order that are relevant to England are set out in Schedules 1 and 2 to the Order. Those relevant to Scotland are set out in Schedules 1 and 3.
- 2.3 All of the amendments are consequential on the Civil Partnership Act 2004 and ensure that civil partners will be entitled to similar benefits under the FPS as are currently enjoyed by spouses.

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

- 3.1 The amendments that are the subject of this Order are to come into force on 5 December 2005, since that is the date on which the main substantive provisions of the Civil Partnership Act 2004 ("CPA 2004") are expected to come into force.
- 3.2 The Joint Committee will observe that the 21 day rule has not been observed on this occasion. The timetable for the Order which is the subject of this memorandum ("the cp Order") could not be adjusted because it was dependent on the timetable for another Order (S.I. 2005/2980) containing a number of "paving" amendments. The making of that Order was delayed due to unforeseen complications with amendments unrelated to the paving amendments.
- 3.3 Whilst officials in ODPM were aware that the main substantive provisions of the CPA 2004 were to be brought into force on 5 December, they were unaware, until late October 2005, that it would be possible, in exceptional circumstances, to register a civil partnership before 21 December.

- 3.4 The breach of the 21 day rule is regretted. As the Joint Committee will observe, the cp Order was made as soon as possible after the coming into force of the other Order. Consideration was given to bringing the cp Order into force on a date that would have allowed 21 days between laying and commencement, but the view was taken that the balance of advantage lay in bringing the amendments into force to coincide with the earliest date on which certain civil partnerships (for which special provision is made in the CPA 2004) can be recognised. Officials in ODPM are satisfied that no-one is likely to be disadvantaged by the breach. Indeed, it is possible that some persons might have been disadvantaged if the cp Order had not been brought into force on 5 December. The cp Order is purely consequential on the CPA 2004, which has been widely reported.
- 3.5 As mentioned above, the First Secretary of State has recently made S.I. 2005/2980, which amends the FPS as it has effect in England. Over the next few months, other amendments are to be made in relation to the FPS. These other amendments are required in consequence of other changes to the financing of the FPS and to the tax regime for pensions generally which are the subject of on-going discussions, and do not affect the subject matter of this Order.
- 3.6 It is the Government's intention to consolidate the FPS, as it has effect in England, as soon as practicable once all of the amendments referred to in paragraph 3.4 have come into force. Since the Scheme that has effect in England has been amended on a number of occasions since 1992, an informal consolidation has been prepared by ODPM for the convenience of pensioners, their advisers and those who administer the Scheme. It indicates by sidelining and underlining the amendments that are the subject of this Order. The document, which runs to over 100 pages, may be accessed at:

<http://www.odpm.gov.uk/firepensions>

4. Legislative Background

- 4.1 The FPS, as originally enacted, was set out in Schedule 2 to the Firemen's Pension Scheme Order 1992 (S. I. 1992/129). Although the enabling power for that Order, section 26 of the Fire Services Act 1947, was repealed (with the rest of that Act) by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c.21), subsections (1) to (5) of section 26 were continued in force, for the purposes of the Scheme.
- 4.2 The name of the FPS was changed to the Firefighters' Pension Scheme, by article 4(1) of the Firefighters' Pension Scheme (England and Scotland) Order 2004 (S.I. 2004/2306).
- 4.3 The Secretary of State's functions under section 26 of the Fire Services Act 1947, so far as exercisable in relation to Scotland, were devolved to Scottish Ministers by section 63 of the Scotland Act 1998 (c.46) and article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to Scottish Ministers etc) Order 1999 (S.I. 1999/1750). Although the operation of the FPS is similar, as regards England and Scotland, the 1992 Order has latterly been

amended differently. The relevant Scottish amending instruments are S.S.I. 2001/310 and 2004/385.

- 4.4 Although powers under section 26(1) to (5) of the Fire Services Act 1947 (repealed, with savings, by the Fire and Rescue Services Act 2004) are devolved, the view was taken that the cp Order should be made under the CPA 2004, as to both England and Scotland, because it is not clear that the devolved 1947 Act powers would have enabled Scottish Ministers to legislate for civil partnerships (being a post-1998 legislative development).

5. Extent

5. This instrument applies to England and Scotland only.

6. European Convention on Human Rights

6. As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The amendments made by this Order give effect to the principles established by the CPA 2004.
- 7.2 Survivor benefits under the FPS will be extended to civil partners on the same basis as spouses, except that benefits for civil partners will be calculated on service after 5 April 1988 as required by the CPA 2004.

8. Impact

- 8.1 This Order has no impact on the costs of business, charities or voluntary bodies.
- 8.2 No Regulatory Impact Assessment has been produced in connection with this Order, but a Regulatory Impact Assessment was published alongside the Civil Partnership Act 2004 and outlines the cost implications for public service pension schemes. The final Regulatory Impact Assessment for the Civil Partnership Act 2004 can be viewed at

<http://www.dti.gov.uk/access/ria/index.htm#equality>

- 8.3 There will be costs to the Government from extending survivor benefits to include civil partners. Depending on the take-up rate of civil partnerships, the total annual cost to all public service pension schemes for providing survivor benefits to civil partners could amount to between £7m and £14m per year. There will also be a one-off capital addition to outstanding liabilities of between £60m (low take up) and £125m (high take up) to provide survivor benefits on the basis of service from 1988 up to the introduction of civil partnership.

9. Contact

9. Andy Boorman at the Office of the Deputy Prime Minister, Tel: 020 7944 8123 or e-mail: Andy.Boorman@odpm.gsi.gov.uk can answer any queries regarding the instrument in so far as it applies to England. James Preston at the Scottish Public Pensions Agency (an agency of the Scottish Executive), Tel: 01896 893223 or e-mail James.Preston@scotland.gsi.gov.uk can answer any queries regarding the instrument in so far as it applies to Scotland.

November 2005