

EXPLANATORY MEMORANDUM TO
THE FIREFIGHTERS' PENSION SCHEME (AMENDMENT) (NO. 3)
(ENGLAND) ORDER 2013

2013 No. 2125

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. **Purpose of the instrument**

2.1 This instrument provides a right for certain persons to elect that the amendments to the Firemen's Pension Scheme Order 1992 (S.I. 1992/192 – “the 1992 Order”) made by the Firefighter's Pension Scheme (Amendment) (No. 2) (England) Order 2013 (S.I. 2013/1392 – “the 2013 Order”), if detrimental, should not apply to them. It also corrects some minor errors made in the 2013 Order.

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

3.1 The 2013 Order was reported by the Committee in its 8th Report published on 23rd July 2013. This instrument responds to that Report. The procedure for free issue has been applied, as this instrument corrects errors in the 2013 Order.

4. **Legislative Context**

4.1 This instrument is made under section 26(1) to (5) of the Fire Services Act 1947 and under section 12 of the Superannuation Act 1972 as applied by section 16(3) of that Act. Section 26 enables the Secretary of State by order to bring into operation the Firefighters' Pension Scheme enabling fire authorities to pay pensions, allowances and gratuities to persons employed as members of fire brigades. The section also enables the Scheme to be varied by a subsequent order made by the Secretary of State. The Firefighters' Pension Scheme 1992 contained in the 1992 Order was made under that power. The Fire Services Act 1947 has been repealed with savings to enable amendments to be made to a scheme established under section 26.

4.2 Subsection (1) of section 12 of the Superannuation Act 1972 confers a power to make retrospective provision. Subsection (2) enables provision to be made in respect of pensions which are in payment or may become payable to persons who have ceased to serve in pensionable employment (whether or not they have subsequently recommenced any such service) or who have died.

This is subject to subsection (4) which requires that a person who is placed in a worse position by an amendment which is made in exercise of the power in subsection (2) should be given an opportunity to elect that the amending provisions should not apply to them. Subsection (4A) limits the effect of such an election in the case of someone still in service, or who subsequently returns to service.

5. Territorial Extent and Application

5.1 This instrument applies to England

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

7.1 The 2013 Order made amendments to the 1992 Order as part of an ongoing programme of modernisation of the firefighter pension schemes. The policy background to the 2013 Order including details of the consultation undertaken is contained in the explanatory memorandum to that Order which can be found at

http://www.legislation.gov.uk/ukxi/2013/1392/pdfs/ukxiem_20131392_en.pdf.

7.2 Article 2 of this instrument makes amendments to the 1992 Order to correct minor errors in the 2013 Order. Article 3 applies in respect of pensions in payment, and pensions which may become payable in respect of persons who have ceased to be in service or have died before 1st July 2013 (the date on which the 2013 Order took effect). The effect of the article is to give a person a right to elect that any amendments in the 2013 Order which place them in a worse position shall not apply to them. Any such election must be made within 12 months of the coming into force of this Order.

- Consolidation

7.2 The Department does not intend to consolidate the 1992 Order.

8. Consultation outcome

8.1 No separate consultation was carried out on this instrument.

9. Guidance

9.1 The Department does not intend to issue any guidance on complying with this instrument but will notify all fire and rescue authorities by letter.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 There is no impact on the public sector as a whole.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department will monitor any impact of these instruments as part of their ongoing management of the 1992 Scheme. To help inform this process, the Department will engage with fire and rescue authorities who manage the schemes to ensure that if any problems arise they are brought to the attention of the Department.

13. Contact

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Tel: 030344 42181 or email: anthony.mooney@communities.gsi.gov.uk can answer any queries regarding the instrument.