EXPLANATORY MEMORANDUM TO
THE DIVORCE ETC. (PENSION PROTECTION FUND) REGULATIONS 2006

2006 No.1932

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These regulations make modifications to Part II of the Matrimonial Causes Act 1973 ("the 1973 Act") and to the Divorce etc (Pensions) Regulations 2000 following the implementation of the Pensions Act 2004.

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

3.1 None

4. Legislative Background

4.1 This is the first exercise of the powers contained in section 25E(5), (8) and (9) of the Matrimonial Causes Act 1973.

4.2 The Pensions Act 2004 established the Pension Protection Fund. The Fund pays compensation to members of certain pension schemes when a qualifying insolvency event occurs and where there are insufficient assets in the pension scheme to cover the levels of compensation which would be payable by the Pension Protection Fund under the Act. When a qualifying insolvency event occurs in relation to a pension scheme an assessment period is triggered during which the assets and liabilities of the scheme are valued to determine whether the Pension Protection Fund should assume responsibility for the scheme. If it is decided that the Pension Protection Fund should assume responsibility then the Board of the Pension Protection Fund issue a transfer notice.

4.3 These events may be relevant to a person who is making an application for ancillary relief which includes a pension sharing or a pension attachment order, or to a person who already has the benefit of such an order in his favour. Part II of the 1973 Act deals with the court's power to make financial orders on applications for divorce, nullity or judicial separation.

4.4 Once the Pension Protection Fund assumes responsibility for a scheme no new pension orders may be made since the Fund is not itself a pension scheme but is a compensation fund. However the Fund will implement orders that were made before it issues a transfer notice. Certain provisions of Part II of the 1973 Act are therefore modified so that references to a pension scheme can, where necessary, be read as references to the Board of the Pension Protection Fund. Similarly references to the party with pension rights can be read as the party with entitlement to the compensation payable by the Fund.

4.5 Where the court has ordered that a pension scheme member to exercise his right to commute, to any extent and the scheme transfers to the PPF prior to the benefits being commuted, the regulations ensure that the order will have effect as if references to the pension scheme and pension rights are references to the PPF Board and compensation entitlement.

4.6 Currently, no new orders can be made against PPF compensation. However, the regulations ensure that if an order has been made before a transfer notice has been issued it will be possible for the court to consider the variation or appeal of that order notwithstanding the subsequent issue of a transfer notice. Under normal circumstances a pension order could only be made against a pension scheme in respect of pension rights so Part II of the 1973 Act is modified to ensure that the appeal court is not for that reason restricted in dealing with the variation or appeal.

4.7 The Board of the Pension Protection Fund may have to administer pension attachment orders that were made before the transfer notice was issued. The Divorce etc (Pension) Regulations 2000 are modified to ensure that the party with the benefit of the pension attachment order has a duty to notify the Board of changes of circumstances. The modifications also ensure that the Board is not liable in relation to payments made incorrectly either because it has been given incorrect information or because changes of circumstances have not been notified to it. This puts the Board in the same position, in this respect, as a pension scheme would be.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy Background

7.1 The Pension Protection Fund (PPF) is a non-departmental public body, which became operational on 6th April 2005 to provide compensation to occupational pension scheme members where the sponsoring employer becomes insolvent and the defined benefit occupational pension scheme is left underfunded to a certain level. The PPF was established by the Pensions Act 2004 and the policy lead lies with the DWP. These regulations deal with pensions on dissolution of a civil partnership where the PPF has become involved with a pension scheme.

7.2 Currently, orders cannot be made against PPF compensation but the PPF Board will honour any orders made before a scheme transferred to the PPF with the exception of any lumpsum payable on death.

7.3 Pension shares and attachment order benefits will be paid out at the same percentage of compensation as the percentage of pension rights stated on the order.

7.4 Following a ‘qualifying insolvency event’, a scheme enters an “assessment period’. The assessment period must last for a minimum of one year, but can last

much longer. During this period the scheme's assets and liabilities will be valued to see if there are sufficient funds to meet those liabilities to at least the level of PPF compensation. In the majority of the cases, PPF compensation will be at least 90% of the pension benefits the member would be due. If the scheme cannot meet it's liabilities to this level, the PPF Board will assume responsibility for the scheme and pay out compensation in place of pension benefits.

7.5 During the assessment period, although the pension scheme remains in existence, any pension benefits that become due are paid at the level of PPF compensation. Death in Service (DIS) benefit is not payable from PPF compensation because there is no 'service' in respect of the compensation. This means that any DIS benefit that becomes due during the assessment period will not be paid out unless the scheme subsequently withdraws from the assessment period without the PPF taking over responsibility.

7.6 If a scheme withdraws from the PPF it will continue as a closed scheme, be wound up or be rescued. To date, more than 90% of schemes that have entered an assessment period are expected to transfer to the PPF.

7.7 By June 2006, 80 schemes had entered an assessment period. The first schemes to transfer to the PPF are expected to do so on or after 1 August 2006.

8. Impact

8.1 The impact of the regulations will be to assist with the implementation of pension sharing and attachment orders against the PPF.

9. Contact

9.1 Any enquiries about the contents of this memorandum should be addressed to: Diana Roy, Family Justice Division, Department for Constitutional Affairs, email: diana.roy@dca.gsi.gov.uk , telephone 020 7210 0634.