EXPLANATORY MEMORANDUM TO

THE PENSIONS ACT 2004 (AMENDMENT) (PENSION PROTECTION FUND COMPENSATION) REGULATIONS 2023

2023 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The Pension Protection Fund pays compensation to members of eligible defined benefit occupational pension schemes, where the sponsoring employer became insolvent on or after 6 April 2005 and the scheme has insufficient assets to secure benefits of at least Pension Protection Fund compensation levels. This instrument ensures that Pension Protection Fund members receive compensation of at least 50 per cent of the value of their accrued pension benefits and removes references to the Pension Protection Fund compensation cap from existing legislation.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales, and Scotland.

5. European Convention on Human Rights

5.1 The Minster for Pensions, Laura Trott MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Pensions Act 2004 (Amendment) (Pension Protection Fund Compensation) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

The Pension Protection Fund

6.1 Pension protection in the event of employer insolvency in the United Kingdom (UK) is principally provided by the Pension Protection Fund. The Pension Protection Fund was established by section 107 of the Pensions Act 2004[1].

[1] https://www.legislation.gov.uk/ukpga/2004/35/contents

6.2 Schedule 7 to the Pensions Act 2004 sets out the manner in which Pension Protection Fund compensation is calculated. The calculation of Pension Protection Fund compensation was challenged in the Court of Justice of the European Union in C-17/17 *Hampshire v Board of the Pension Protection Fund* [2019] ICR 327 ("*the Hampshire Judgment*"[2]). The Court found that former employees should receive at least 50 per cent of the value of their accrued pension benefits in the event of their employer's insolvency.

6.3 Later on, the High Court in *Hughes and others v The Board of the Pension Protection Fund* [2020] EWHC 1598 (Admin) ("*the Hughes Judgment*"[3]) disapplied the cap on Pension Protection Fund compensation that previously applied to members below their scheme's normal pension age on the date of their employer's insolvency on the grounds that it constituted unlawful age discrimination.

6.4 These regulations amend provisions in Schedule 7 to ensure that affected pension scheme members receive at least the minimum level of protection due under *the Hampshire Judgment*. The regulations also remove references to the cap to reflect the High Court judgment and make consequential amendments to the relevant provisions in other Acts of Parliament.

7. Policy background

What is being done and why?

7.1 This legislation is being made because, under the Retained EU Law (Revocation and Reform) Act 2023, after 31 December 2023 principles of EU law will sunset and cease to have effect, including where the position has changed as a result of court cases.

7.2 It is the UK Government's policy to retain the effects of the Hampshire Judgment beyond the sunset date. These regulations ensure that former employees whose pension scheme is assessed by the Pension Protection Fund on or after that date do not lose their entitlements arising from the Judgment.

Explanations

What did any law do before the changes to be made by this instrument?

7.3 The effects of *the Hampshire Judgment* and *the Hughes Judgment* were preserved in domestic legislation by section 4 of the European Union (Withdrawal) Act 2018. This meant that the Pension Protection Fund and the Government were obliged to comply with these judgments.

Why is it being changed?

7.4 Without these regulations, former employees whose pension scheme is assessed by the Pension Protection Fund on or after the sunset date would not have any entitlement to the minimum level of protection described in *the Hampshire Judgment*. The policy intention is to retain the effects of *the Hampshire Judgment* for all eligible former employees.

[2] https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:62017CJ0017
[3] https://www.judiciary.uk/judgments/hughes-v-pension-protection-fund/

What will it now do?

7.5 These regulations amend Schedule 7 to the Pensions Act 2004 to restate the effects of *the Hampshire Judgment*. The amendments clarify how *the Hampshire Judgment* is implemented by providing for a calculation of Pension Protection Fund compensation by reference to a one-off valuation, as approved by the Court of Appeal in *the Hughes Judgment*.

8. European Union Withdrawal, Future Relationship and Retained EU Law Reform

8.1 This instrument does not relate to withdrawal from the European Union.

8.2 This instrument does however relate to the reform of retained EU law under the powers in sections 11 and 13, as well as the power to make consequential provision at section 20(1)(b), of the Retained EU Law (Revocation and Reform) Act 2023.

9. Consolidation

9.1 Informal consolidated text of instruments is available to the public free of charge online at www.legislation.gov.uk.

10. Consultation outcome

10.1 The Department for Work and Pensions met with a cross-section of representatives from the pensions industry on 12 October 2022 to seek views on its proposed response to *the Hampshire Judgment*. There was broad support for retaining the effects of *the Hampshire Judgment* because affected pension schemes had already addressed the initial implementation challenges and were implementing the effects of the Judgment at that time.

11. Guidance

11.1 Guidance has been issued by the Pension Protection Fund alongside this instrument. It sets out the methodology for calculating the minimum level required under *the Hampshire Judgment*. The guidance can be accessed via the following link:

https://www.ppf.co.uk/-/media/PPF%20Website/Files/Hampshire/PPF_Hampshire_test_methodology_post1January2024

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because the Pension Protection Fund and affected occupational pension schemes are already implementing the effects of *the Hampshire Judgment*, and there will be no change to their operations.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Pension Protection Fund is required to implement *the Hampshire Judgment* and will therefore be subject to the requirements in these regulations. In line with the Department for Work and Pensions' overall approach to stewardship of its independent statutory bodies, the Department scrutinises and approves the corporate and business plans and operating budgets of the Pension Protection Fund. The Pension Protection Fund must submit annual reports and accounts, which are scrutinised by the National Audit Office before the Secretary of State lays them before Parliament. The annual reporting includes the Pension Protection Fund's implementation of *the Hampshire Judgment* and by extension these regulations.

14.2 As this instrument is made under the Retained EU Law (Revocation and Reform) Act 2023, no review clause is required.

15. Contact

15.1 Ade Awoyinka at the Department for Work and Pensions email: Ade.Awoyinka@dwp.gov.uk can be contacted with any queries regarding the instrument.

15.2 Fiona Frobisher, Deputy Director for Defined Benefits and Pension Protection Division, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Laura Trott, Minister for Pensions, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.