EXPLANATORY MEMORANDUM TO

THE EUROPEAN PARLIAMENTARY (UNITED KINGDOM REPRESENTATIVES) PENSIONS (AMENDMENT) ORDER 2010

2010 No. 909

1. This explanatory memorandum has been prepared by The Cabinet Office 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 amends the European Parliament (UK Representatives) Pension Scheme ("EP(UKR)PS") to implement cost-saving changes, and ill-health retirement provision changes, to mirror recent amendments to the Parliamentary Pension Scheme. It also makes consequential changes to reflect the adoption of the Statute for Members of the European Parliament - primarily changing the provisions for the appointment of Scheme Managers, and clarifies certain definitions in the regulations.

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

3.1 None

4. Legislative Context

4.1 The European Parliament (Pay and Pensions) Act 1979 ("the Act") confers powers to make provision for pensions payable to UK Members of the European Parliament ("MEPs"). These powers are now vested in the Leader of the House of Commons (see the Transfer of Functions (European Parliamentary Pay and Pensions) Order 2003 (SI 2003/2922)). Such provision has been made via the European Parliamentary (United Kingdom Representatives) Pensions (Consolidation and Amendment) Order 1994 (SI 1994/1662) ("the 1994 Order"), as amended from time to time.

4.2 The Leader of the House of Commons is now making further amendments to the EP(UKR)PS.

4.3 Some of the amendments to the EP(UKR)PS are retrospective. Section 4(3)(g) of the Act authorises the making of provisions that take effect from a date earlier than the date the amending Order is made.

4.4 One consequence of the decision of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament (2005,684/EC, Euratom), was the introduction of a common pension scheme for members of the European Parliament ("the European scheme") which came into force on 14 July 2009. UK MEPs will be covered by the European scheme in respect of their future

service, unless they opted to remain in the EP(UKR)PS. Changes to the number of, and eligibility conditions for, Scheme Managers, together with amendments to the eligibility provisions that allow UK MEPs to continue to participate in the EP(UKR)PS are necessary as a consequence of the introduction of the European scheme.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

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 1994 Order provides for the Leader of the House of Commons to appoint Scheme Managers. The functions of the Managers are broadly similar to those of the Trustees to the Parliamentary Pension Scheme. Their role includes acting on behalf of the interests of all scheme members and managing the administration of the scheme in accordance with the rules, with Secretariat support from Civil Service Pensions Division of the Cabinet Office.

7.2 The 1994 Order currently provides that the Managers (a maximum of seven at any one time) must be participants of the scheme and that a serving Manager vacates his office on ceasing to be a participant. Six of the seven (then) current Managers opted to go into the new European scheme from 14 July 2009 and the remaining one retired, leaving the EP(UKR)PS with no Managers. Only six MEPS opted to remain as participants in the EP(UKR)PS.

7.3 As a consequence, the conditions that a person must meet in order to be eligible as a Manager are being opened up to also include deferred and pensioner members. The instrument also changes the maximum number of Managers to six at any one time.

7.4 A further consequential change from the introduction of the new European scheme is being made, to provide that a UK Representative may only participate in the EP(UKR)PS if he has opted out of the European scheme and has made contributions to the UK scheme prior to 14 July 2009.

7.5 The Government's policy is that the benefit provisions of the EP(UKR)PS should broadly mirror those of the Parliamentary Pension Scheme.

7.6 The Parliamentary Pensions (Amendment) Regulations 2009 (SI 2009/1920) amended the ill-health retirement provisions of the Parliamentary Pension Scheme to introduce two different levels of ill-health pension, depending on the scheme member's level of incapacity, and a requirement for ill-health pensions to be periodically reviewed to see whether continued payment is still appropriate. The 1994

Order is now being amended to broadly mirror these amendments, as summarised in paragraphs 7.7 to 7.9 below.

7.7 Under the new arrangements, a more generous level (an upper tier ill-health pension) will be payable to those scheme members who are considered to be permanently incapable of undertaking any form of employment, based on service that they would have completed if they had served until age 65. A lower level (lower tier ill-health pension) will be payable to those scheme members who are considered to be permanently incapable of undertaking the duties of a UK Representative, but who are capable of undertaking other employment. This lower tier pension will be based on actual, rather than enhanced, service.

7.8 To mirror the Parliamentary Pension Scheme amendments, the changes to the ill-health retirement provisions included in this instrument also tighten up the application process, and make it clearer what tests the Managers should apply in assessing eligibility.

7.9 The changes to the ill-health retirement provisions only apply to a person who is serving as a UK Representative on or after 1 May 2010.

7.10 The Parliamentary Pensions (Amendment) (No 2) Regulations 2009 (SI 2009/3154) amended the Parliamentary Pension Scheme to introduce a further accrual rate option and to implement an agreed cost-saving package of changes. The 1994 Order is now being amended to broadly mirror these amendments, as summarised in paragraphs 7.11 to 7.14 below.

7.11 The current scheme regulations give members the choice of paying a contribution of 6 per cent. of salary to build up benefits at an accrual rate of one-fiftieth of final salary for each year of service, or a contribution of 10 per cent. of salary to build up benefits at an accrual rate of one-fortieth. With effect from the 14 July 2009 (the start of the new European Parliament), members are being given a further option of a one-sixtieth accrual rate in return for a member contribution of 5.9 per cent. of salary.

7.12 The cost-saving package of changes being implemented includes an increase in member contribution rates from 10 to 11.9 per cent. for a pension building up at an accrual rate of one-fortieth of final salary for each year of service, and from 6 to 7.9 per cent. for a pension building up at one-fiftieth.

7.13 Existing members have a one-off option to switch accrual rates (to one-fortieth, one-fiftieth or one-sixtieth) from 14 July 2009.

7.14 The cost-saving changes being implemented also include a change in the application of the scheme's limit on maximum pension. The maximum pension a scheme member can build up is normally two-thirds of final salary and, once that point has been reached, member contributions cease. However, these restrictions do not currently apply to members who joined the scheme before 1 June 1989 in respect of service after the age of 65. This instrument applies the scheme's maximum pension limit to all scheme members, in relation to service accrued after 14 July 2009. This means that those who joined the scheme before 1 June 1989 will no longer be able to

make contributions to build up benefits after age 65 in excess of the two-thirds limit (benefits built up before 14 July 2009 will not be affected).

7.15 The instrument also updates the Managers' address for correspondence and makes amendments to clarify the definitions of different categories of participants, as well as inserting new definitions of contributors to cover the different accrual and contribution rate options.

- ***Consolidation***

7.16 The Senior Salaries Review Body (SSRB) has recently undertaken a fundamental review of the parliamentary pension arrangements. Given that the EP(UKR)PS closely mirrors the Parliamentary Pension Scheme, the Cabinet Office plans to await the outcome of the SSRB review before taking forward any consolidation of the EP(UKR)PS regulations.

8. Consultation outcome

8.1 There is no statutory requirement to consult on changes to the EP(UKR)PS. However, the Secretary to the Managers (in the absence of any current managers) has been kept informed of the proposed changes and has indicated that he is content with them.

9. Guidance

9.1 Any guidance to members of the EP(UKR)PS will be provided by the Secretary to the Managers.

10. Impact

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

10.2 There is no impact on the public sector.

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 management of the EP(UKR)PS and the monitoring of the arrangements is the responsibility of the Scheme Managers and the Secretariat to the Managers.

13. Contact

Valerie Halsey at the Cabinet Office can answer any queries regarding the instrument: (tel. 0207 276 0845 or email: valerie.halsey@cabinet-office.x.gsi.gov.uk)