EXPLANATORY MEMORANDUM TO

THE FUNDED PUBLIC SERVICE PENSION SCHEMES (REDUCTION OF CASH EQUIVALENTS) REGULATIONS 2015

2015 No. 892

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1 These Regulations will come into force on 16 April 2015. They require the reduction of cash equivalents where a member makes an application under section 95 of the Pension Schemes Act 1993 ("the 1993 Act") to transfer from a funded public service defined benefits scheme which has been designated to a scheme in which they will acquire a right or entitlement to flexible benefits. Such schemes can be designated under sections 97A and 97B of the 1993 Act if the relevant person considers that (a) there is an increased likelihood of payments out of public funds, or increased payments out of public funds, having to be made into the scheme so that it can meet its liabilities and (b) the increased likelihood is connected with the exercise or expected future exercise of rights to take a cash equivalent. (The relevant person will often be the Minister or Scottish Minister by whom, or with whose approval, the scheme was established: sections 97A(10) and 97B(10) of the 1993 Act.) The Regulations also set out how the amount of the reduction is to be determined. The reduction must not however be made if the scheme ceases to be designated before the date on which the trustees or managers do what is needed to carry out what the member requires.

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

3.1 None.

4. Legislative Context

4.1 Sections 97A and 97B of the 1993 Act enable the designation of funded public service defined benefits scheme where there is a need to protect against the risk of payments from public funds. Section 97C of the 1993 Act enables the Treasury to make these Regulations, with sections 182(2) and (3) and 183(1) of the same Act.

4.2 Sections 97A, 97B and 97C were inserted into the 1993 Act by the Pension Schemes Act 2015 ("the 2015 Act") in the context of wider pensions reforms. Savers now have greater choice about how and when

they access their defined contribution pensions pots and the new flexibilities may encourage transfers from public service defined benefits schemes to schemes in which the new flexibilities are available. The 2015 Act also amended section 95 of the 1993 Act to restrict transfers out of unfunded public service defined benefits schemes.

4.3 Reductions to cash equivalents can already be made under the Occupational Pension Schemes (Transfer Values) Regulations 1996 SI 1996/1847. However the provisions in those Regulations which enable reductions to be made where an insufficiency report has been obtained from an actuary do not apply to public service pension schemes. (See paragraph 2 of Schedule 1A of those Regulations.)

5. Territorial Extent and Application

5.1 These Regulations apply to England, Wales and Scotland.

6. European Convention on Human Rights

6.1 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 introduction of the new pensions' flexibilities may lead to an increase in transfer traffic out of defined benefit schemes, as some members seek to make use of the flexibilities. This in turn leads to increased upfront costs for the schemes which could lead to costs for taxpayers in the case of unfunded public service schemes. The 2015 Act amended the 1993 Act to protect taxpayers. Section 95(2A) of the 1993 Act restricts transfers from the unfunded, defined benefit, public service pension schemes given the cost risk this creates for the Exchequer. However, for transfers out of funded schemes, where there is a fund of assets to meet the cost of increased transfers, it is not necessary to restrict transfers in the same way as for unfunded schemes. It will therefore continue to be possible to transfer out of funded, defined benefit, public service pension schemes to schemes in which the member may acquire a right or entitlement to flexible benefits. Given the fund of assets available to meet the upfront costs in such schemes, the risk to the taxpayer is indirect. Such a risk would only manifest where transfers, either singly or in combination with other factors, lead to payments from public funds to support the scheme to meet its liabilities. Sections 97A and 97B of the 1993 Act provide a power which enables the relevant person (usually the Minister or Scottish Minister with responsibility for the scheme) to designate a funded public service defined benefit scheme where the relevant person considers that

the level of transfers out of the scheme poses a risk to public funds, either singly or in combination with other factors.

7.2 These regulations require cash equivalents to be reduced when a member is transferring from a designated scheme to another scheme to acquire a right or entitlement to flexible benefits. The trustees or managers of a designated scheme must ensure that they have an up to date transfer report from an actuary which states the percentage by which the market value of the scheme's assets are insufficient to cover its liabilities were all the members of the scheme to transfer out. Cash equivalents must be reduced by the percentage stated in the transfer report, unless the relevant person specifies a lower percentage by which cash equivalents must be reduced. The relevant person may do this only in the light of actuarial advice and must have regard in particular to the need to try to remove or significantly reduce the risk to public funds.

8. Consultation outcome

8.1 This instrument is not subject to consultation because in this case the Treasury considered consultation to be inexpedient because of urgency. (See section 185(5A) and 185(5C) of the 1993 Act.) The Treasury do not expect the power to designate schemes to be used imminently however the new power to designate together with these Regulations are intended to protect the public purse in the event that that proves necessary. It is therefore important that these Regulations come into force as soon as possible after the new pension flexibilities become available on 6 April 2015.

9. Guidance

9.1 No specific guidance has been produced to accompany this instrument.

10. Impact

10.1 This instrument imposes no costs on business, charities or voluntary bodies.

10.2 An Impact Assessment has not been produced for this instrument.

11. Regulating small business

11.1 This instrument does not apply to small business.

12. Monitoring and review

12.1 The Treasury will continue to work with Departments affected to review the impact of the introduction of the new pension flexibilities and the appropriateness of these Regulations should a situation arise in which they are used to reduce cash equivalents. There is no requirement to review these on a fixed basis.

13. Contact

13.1 Catherine Stewart at the Treasury (telephone 0207 270 1219 or email Catherine.stewart@hmtreasury.gsi.gov.uk) can answer any queries regarding the Order.