EXPLANATORY MEMORANDUM TO THE

OCCUPATIONAL AND PERSONAL PENSION SCHEMES (PENSION LIBERATION) REGULATIONS 2005

2005 No.992

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

2 Description

2.1 The Pensions Act 2004 (the Act) provides for a new Pensions Regulator to replace the Occupational Pensions Regulatory Authority (Opra) in April 2005. The Regulator's statutory objectives and functions, set out in the Act, establish a framework for its regulatory activity. It will inherit Opra's existing powers and will, in addition, have a number of new ones.

2.2 Sections 18 to 21 of the Act provide the Regulator with new powers to tackle the offence of "pension liberation" (see paragraph 7).

2.3 These Regulations make provision :-

in relation to payments made into a pension scheme by means of a restitution order made by a Court under section 19 of the Act or of a repatriation order made by the Pensions Regulator under section 21 of the Act.

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

3.1 None

4 Legislative Background

4.1 The Secretary of State for Work and Pensions is empowered to make regulations under the Pensions Act 2004. In this case the Secretary of State for Work and Pensions is exercising the powers conferred upon him by sections 19(7), 21(4), 314(2) and (5) and 318(1) of the Pensions Act 2004.

4.2 These provisions amend sections 10, 68A, 71, 179, 181(1) (transfers) and sections 99(1) and 101M (statutory discharges) of the Pension Schemes Act 1993. In addition section 101AG(3) (right to cash transfer sum) of the Pensions Act 2004 is amended with effect from the commencement of section 264 of the Act in April 2006.

4.3 Specifically, these Regulations modify certain provisions of the Pension Schemes Act 1993 to apply when: -

- there is an order of the Court to direct trustees or managers to apply money or property towards a pension scheme for the benefit of the liberated member;

- there is an order of the Regulator to direct trustees or managers to apply money towards a pension scheme for the benefit of the liberated member.

4.4 They also modify the provisions which discharge trustees from the duty to provide benefits following a transfer, so that those discharges apply when an order described above is made, as long as the trustees have taken all reasonable steps to ensure that the scheme they are transferring money into is genuine.

4.5 Before the Secretary of State makes any regulations by virtue of the Pensions Act 2004, he may be required to consult such persons as he considers appropriate. There is no formal requirement to consult in this case because the regulations will be made within six months of the sections of the Act coming in to force on which the regulations are consequential (section 185 of the Pension Schemes Act 1993). However, in order to ensure a consistent legislative approach to tackling pension liberation, we have regularly consulted with the Inland Revenue.

5 Extent

5.1 This instrument applies to England, Wales and Scotland. Corresponding provision will be made for Northern Ireland (NI) by a statutory rule consequential on equivalent provisions contained in the Pensions (Northern Ireland) Order 2005 and under powers contained in NI pensions legislation which correspond to those under which this instrument is made.

6 European Convention on Human Rights

6 Not applicable.

7 Policy Background

7.1 The Pensions Act 2004 contains provisions in sections 18 to 21 for the Pensions Regulator to have certain new powers in relation to countering pension liberation.

7.2 Pension liberation occurs when money (or other property representing that money) which represents the accrued rights of a member of pension scheme, is transferred from that scheme under a statutory provision relating to transfers or under the scheme rules and it is not used or it is not going to be used in the way that was anticipated by the ceding trustees at the time of the transfer.

7.3 The Regulator is given two new powers:

(a) The first is to apply to the Court for an order that the liberated monies or property representing those monies are transferred back to a pension scheme (usually the ceding scheme), put into an annuity or insurance policy or given to the member concerned. Where monies are returned to schemes, the Court may by order direct the trustees or managers of the scheme to apply the sum for the purposes of providing benefits for the previously liberated member.

(b) The second is a power for the Regulator itself to make a restraining order followed by a repatriation order. The restraining order can be made over a bank account that contains liberated monies which is operated by the liberator or someone who will act on their instructions. A restraining order is an order that no credit or debit can be made to the account in question, except the payment of interest. An application can be made to the Regulator for the payment of reasonable living or business expenses out of the account, provided that such a payment does not involve any monies liberated form a pension scheme. The repatriation can be used when a restraining order is in effect and the Regulator is satisfied that the restrained account contains money liberated from a pension scheme. The Regulator may direct the bank to return the monies to a pension scheme, place them in an annuity or insurance policy or pay them to the liberated member. Where monies are returned to schemes, the Regulator has power to direct the trustees or managers of the scheme to apply the sum for the purposes of providing benefits for the previously liberated member.

7.4 Subordinate legislation is required so that when the Court or the Regulator direct trustees or managers to accept monies into schemes and apply them in a particular way, the legislative provisions applying to transfers will also apply in such cases.

8 Impact

8.1. A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9 Contact

9.1. The policy official responsible for these Regulations is:

Steve Croft
Tel. 020 7962 8875
E-mail: Steve.Croft@dwp.gsi.gov.uk

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