EXPLANATORY MEMORANDUM TO THE OCCUPATIONAL PENSION SCHEMES (LEVIES) (AMENDMENT) REGULATIONS 2010

2010 No. 1930

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. Purpose of the instrument

This instrument implements, in part, the European Commission's decision dated 11 February 2009 regarding State aid case N° C 55/2007, that the exemption from the payment of a levy to the Pension Protection Fund (PPF) corresponding to the pension liabilities covered by a Crown guarantee constitutes incompatible State aid in respect of the BT Pension Scheme.

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

None

4. Legislative Context

These Regulations are being made as a consequence of the European Commission's decision dated 11 February 2009. They remove an exemption from the payment of the PPF administration levy where it gives rise to incompatible State aid and also ensure that where that levy becomes payable part way through a financial year it is paid in full for that year. State aid is aid that is incompatible with the internal market within the meaning of Article 107 of the Treaty on the Functioning of the European Union (the Lisbon Treaty). Article 107 is the re-numbered Article 87 of the Treaty on European Union and Establishing the European Community dealing with assistance from a public body, or publicly-funded body, given to commercial undertakings on a discretionary basis, with the potential to distort competition and affect trade between member states of the European Union.

5. Territorial Extent and Application

This instrument applies to Great Britain. Corresponding provisions will be made in Northern Ireland.

6. European Convention on Human Rights

The Minister of State for Pensions, Steve Webb, has made the following statement:

In my view the provisions of The Occupational Pension Schemes (Levies) (Amendment) Regulations 2010 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 Most defined-benefit occupational pension schemes are eligible for the PPF which pays compensation to members of those schemes where the employer becomes insolvent leaving the scheme underfunded. Certain levies are payable by such schemes which in part pay for the compensation the PPF pays to scheme members and the administration of the PPF. A limited number of schemes have the benefit of a Crown guarantee which means that, where a scheme has an insolvent employer and becomes underfunded, the Government will meet the liabilities of the scheme or the employer in respect of the whole or part of the scheme. Where such a guarantee has been given, that scheme will only pay levies in respect of the liabilities which the guarantee does not cover and compensation will only be paid by the PPF in respect of that part.

7.2 Schemes which have a Crown guarantee given in relation to a particular part of the scheme, certain members or certain benefits, are eligible schemes and are known as "partially guaranteed schemes" and only pay an administration levy in respect of the guaranteed part. Schemes which, by contrast, have the benefit of a full Crown guarantee – meaning there is no part, members or benefits which do not have the benefit of the guarantee – are not eligible schemes and no levy is payable at all in respect of such schemes.

7.3 The European Commission's decision ruled that the exemption of the BT Pension Scheme from payment of a levy to the PPF, arising from the Crown guarantee, constituted an incompatible State aid and must cease. The Commission decided that aid given through the non-payment of a levy could not be justified under EU rules because it relieved the company from charges that its competitors have to pay.

7.4 These Regulations are necessary in order to comply with the Commission's decision as it relates to the administration levy. The decision was implemented in all other respects by The Pension Protection Fund and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2010 (S.I. 2010/196), laid before Parliament on 8 February.

7.5 The Regulations ensure that where a partially guaranteed pension scheme is treated as two separate eligible schemes where it would otherwise give rise to (incompatible) State aid, both the part of the scheme with the guarantee and the part without the guarantee must pay the full PPPF administration levy.

7.6 These Regulations also ensure that where a scheme becomes an eligible scheme part way through a financial year and it would otherwise not pay a levy and that would amount to incompatible State aid, it must pay the levy for the whole financial year and not just for the part during which it was eligible.

Consolidation

7.7 Consolidation is not appropriate in respect of these Regulations because they make two minor change only to one other instrument. The Government will, however, keep under review whether there is a case for consolidating Instruments relating to the PPF.

8. Consultation outcome

8.1 The consultation on the draft Regulations and The Pension Protection Fund and Occupational Pension Schemes (Miscellaneous Amendments) Regulation 2010, which followed the negative procedure and were laid on 8 February, ran from 12 October to 4 December 2009: eight weeks. A shortened consultation period was chosen because:

- the Regulations are technical and have very limited application; and
- discussions were held with the legal representatives of the BT Pension Scheme and BT plc following the decision of the European Commission in February 2009 and the issues to be covered in the Regulations had already been discussed in detail with the relevant parties - in particular two meetings to discuss the content of the draft Regulations took place in October and November which ensured the Department was aware of the main issues the Regulations raised during the consultation period and it had sufficient time to consider whether the Regulations needed to be amended to reflect those issues.

8.2 A total of four responses were received, all of which focused on the detail of the proposals. The comments related to the implementation of the Commission's decision and matters covered by the Pension Protection Fund and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2010 which were laid before Parliament on 8 February. None of the responses commented on the PPF administration levy to which these Regulations relate.

8.3 A full analysis of the consultation outcome has been published and is on the DWP website: http://www.dwp.gov.uk/consultations/2010. The Report details the reactions to the individual proposals and the Government's response.

9. Guidance

The Regulations have very limited application; it is therefore inappropriate to issue specific guidance. The Department and the PPF, who will have copies of the instrument, are in a position to explain the provisions to schemes and pension specialists.

10. Impact

10.1 The Regulations are being made in response to the European Commission's decision to ensure that commercial undertakings do not have an unfair competitive advantage. They have only a negligible impact across business, charities or voluntary bodies.

10.2 The impact on the public sector is negligible.

10.3 A full impact assessment has not been prepared for this instrument.

11. Regulating Small Business

The legislation does not apply to small businesses unless they are commercial undertakings with a defined benefit scheme and a Crown guarantee, and a reduction in the PPF administration levy gives rise to an incompatible State aid, in which case the impact is negligible.

12. Monitoring and review

The effect of these changes will be monitored by the Department for Work and Pensions from information that will be provided by the Board of the PPF. The trustee of the BT Pension Scheme is seeking a court declaration on the scope of the Crown guarantee and there is a range of possible outcomes. The Department may decide it is necessary to review the Regulations following the outcome of those proceedings.

13. Contact

Ian Garland at the Department for Work and Pensions - Tel: 020 7449 7412 or email: Ian.Garland@dwp.gsi.gov.uk - can answer any queries regarding the instrument.