EXPLANATORY MEMORANDUM TO THE

OCCUPATIONAL PENSION SCHEMES (WINDING UP) (MODIFICATION FOR MULTI-EMPLOYER SCHEMES AND MISCELLANEOUS AMENDMENTS) REGULATIONS 2005

2005 No. 2159

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 These regulations modify the legislation that applies when an occupational pension scheme winds up. They also make technical amendments to the Occupational Pension Schemes (Winding Up etc) Regulations (the Winding Up Regulations) and the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (the MFR Regulations). These amendments ensure the original policy intent is delivered.

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

3.1 None

4. Legislative Background

4.1 These regulations:

- modify the legislation that relates to the operation of a pension scheme when it is winding up. As the legislation stands the scheme's trustees are required to reduce pensions or other benefits in payment to reflect the liabilities which will be satisfied under the priority order ("the winding up level"). There are some circumstances where winding up may be commenced but within a few months a Pensions Protection Fund (PPF) assessment period is expected to start (this is the start of the PPF's formal involvement with a scheme). During a PPF assessment period pension scheme benefits would be paid in line with PPF compensation rates ("the PPF level"). The PPF level will often be much higher than the winding up level. This effectively means that trustees are required to reduce benefits to the winding up level and then re-adjust to the PPF levels within a few months. We consider that this has little or no benefit and will be distressing and confusing for scheme members as well as costly for the scheme itself. In view of this, these regulations bring forward a modification so that in certain circumstances the trustees need only reduce benefits to the PPF level.
- revoke a regulation within the Winding Up Regulations to give effect clearly to the policy intention that there be only one priority order that applies to all defined benefit pension schemes which commence winding up on or after the date on which those regulations came into force.

- amend the MFR Regulations so that assets which are linked to a scheme's specific money purchase (defined contribution) liabilities are excluded from the valuations that schemes are required to conduct. This is to ensure consistency with the treatment of liabilities (only defined benefit liabilities are valued, money purchase liabilities are explicitly excluded).

5. Extent

5.1 This instrument applies to Great Britain.

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

7.1 The Pensions Act 2004 (the Act) established the PPF to pay compensation to members of eligible pension schemes where the sponsoring employer is insolvent and the scheme has insufficient assets to pay benefits at a level at least equal to the amount of compensation the PPF would provide. The PPF went live on 6th April 2005.

7.2 The statutory priority order overrides scheme rules to ensure that, where a defined benefit pension scheme is wound up and there are insufficient assets to meet all liabilities, they are shared as fairly as possible amongst scheme members. A new statutory priority order was introduced for schemes which began winding up on or after 6 April 2005 when the Pension Protection Fund (PPF) commenced operations.

7.3 The minimum funding requirement (MFR) applies to most private sector defined benefit occupational pension schemes, and imposes a requirement that the value of the assets of the scheme is not less than the amount of the scheme's liabilities, as assessed on the basis of the MFR test. The trustees of schemes subject to the MFR must obtain actuarial valuations at least every three years, and if the valuation reveals an MFR funding shortfall, that shortfall must be corrected within set timescales.

7.4 Consultation has not taken place for these regulations due to the need to put them in place as soon as possible and because they are made within six months of the coming into force of the primary provisions.

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.

8.2 There is no impact on the public sector.

9. Contact

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