EXPLANATORY MEMORANDUM TO

THE PENSION PROTECTION FUND AND OCCUPATIONAL PENSION SCHEMES (MISCELLANEOUS AMENDMENT) REGULATIONS 2013

2013 No. 1754

1. This explanatory memorandum has been prepared by the Department for Work and Pensions 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

The Regulations are a set of miscellaneous amendments to various Regulations governing occupational pension schemes and the Pension Protection Fund.

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

In its Fourth Report of Session 2013-14 the Committee reported regulation 3(4) of the Pension Protection Fund, Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/627), which inserted new regulation 2C(3) into the Pension Protection Fund (Compensation) Regulations 2005 (S.I. 2005/670), ("PPF Compensation Regulations"), for defective drafting in one respect. Regulation 2 replaces regulation 2C(3) of the PPF Compensation Regulations to rectify the defect identified by the Committee. This instrument is being issued free of charge to all known recipients of S.I. 2013/627.

4. Legislative Context

Bridging Pensions

4.1 Legislation does not currently allow trustees of schemes which provide bridging pensions to modify their scheme by resolution in order to take account of the changes to State Pension Age.

Pension Protection Fund

4.2 The Pensions Act 2011 gave persons eligible to receive pension compensation in respect of an occupational pension scheme for which the Board of the Pension Protection Fund has assumed responsibility the option of postponing the payment of that compensation.

4.3 Regulation 2C of the PPF Compensation Regulations sets out the conditions subject to which a person may elect to postpone. Regulation 2 replaces regulation 2C(3) of the PPF Compensation Regulations, which was inserted by regulation 3(4) of the Pension Protection Fund, Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2013 that came into force on 30 April 2013.

4.4 The condition in paragraph (3) of regulation 2C is that the person must not be receiving or have received any benefit under, or compensation in respect of, that scheme.

5. Territorial Extent and Application

The Regulations apply 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

Bridging Pensions

7.1 Some defined benefit occupational pension schemes pay members who retire before State Pension Age (SPA) a higher pension at the outset, which is then reduced at SPA to take account of the payment of State Pension. The aim is to allow the member to receive a similar overall income in retirement, regardless of when State Pension becomes payable. These arrangements are often referred to as "bridging" pensions.

7.2 The Pensions Act 2011 accelerated the timetable both for equalisation of SPA for men and women at age 65, and extending it beyond age 65. The impact of higher SPA on an individual scheme will depend on the precise terms of its rules. The possibility of a change to SPA may not have been considered when some schemes offering bridging pensions were established, and trustees will now need to consider whether (and if so how) their scheme's rules should be adjusted to take account of this. The rules of some schemes may not allow their terms to be amended easily in these circumstances, or even at all. The trustees would then be unable to modify the scheme even if they consider this necessary in order to take account of later SPA.

7.3 These regulations introduce a power for trustees to modify their scheme by resolution where they consider that it would be reasonable for them to do so in order to take account of the changes to SPA, and the related changes to the Finance Act 2004.

Pension Protection Fund

7.4 The Pension Protection Fund is a statutory fund administered by the Board of the Pension Protection Fund ("Board") that protects members of eligible defined benefit and hybrid occupational pension schemes by paying them pension compensation if:

- their scheme's sponsoring employer experiences a qualifying insolvency event;
- there is no possibility of a scheme rescue; and
- there are insufficient assets in the scheme to pay benefits at Pension Protection Fund compensation levels.

7.5 When the Board assumes responsibility for a scheme it pays eligible persons pension compensation in the form of period payments and/or a lump sum.

7.6 Provisions in the PPF Compensation Regulations set out the conditions that must be satisfied for a person to postpone payment of compensation. One of these conditions is that the person must not have received or be receiving any pension or lump sum under, or compensation in respect of, that scheme. This requirement was not expressed sufficiently clearly in the Pension Protection Fund, Occupational and Personal Pension Schemes

(Miscellaneous Amendments) Regulations 2013 that came into force in April 2013. Therefore, the amendment in this instrument describes this condition more clearly.

8. Consultation outcome

Bridging Pensions

8.1 This measure was included in consultation on the Miscellaneous Amendment Regulations which were introduced in April 2013, but was not included in the finalised package because the amended regulations, taking account of the consultation responses, were not ready in time.

8.2 The following changes to the original proposals have been made in light of the consultation responses:

- The original intention was that the power would not allow trustees to modify the terms of a bridging pension which is already in payment. Some respondents pointed out that this could sometimes be in a member's interest, for example where the scheme rules provide for the pension to be reduced at age 65. The regulations therefore now only limit the power to reduce a pension already in payment where the scheme rules provide for the pension to be reduced upon a member reaching state pension age.

- Some respondents felt that the regulations are unnecessarily restrictive in only allowing the reduction in a bridging pension to be made at state pension age, and advocated allowing trustees the flexibility to allow bridging pensions to be reduced at any point between age 60/65 and SPA. Although we would expect most modifications to result in extending payments up to a member's new SPA, there would appear to be no reason not to allow the reduction to take place between 60/65 and SPA if that is what the trustees want to do in the circumstances of their particular scheme, and this is reflected in the finalised version of the regulations.

- A number of respondents felt that the requirement for consultation by employers would add additional expense, but provide little if any benefit in practise. This requirement has therefore been removed.

- The consultation document stated that the proposed power was intended to be limited, so that trustees will only be able to use it to make changes which they consider to be necessary or desirable to take account of the changes to SPA and to the Finance Act 2004 (for example to allow bridging pensions to be reduced at SPA, instead of age 65); and that it was not intended that the power should allow trustees to make wider or more general changes. The Government has concluded that such a requirement to demonstrate that the use of the power was necessary would be too onerous a test, which could result in trustees being unwilling to make use of it. The limitation on the trustees' use of the power is therefore based instead on a test of reasonableness - restriction would not be practicable.

Pension Protection Fund

8.3 A consultation was carried out between 19 December 2012 and 29 January 2013 on a draft of the Pension Protection Fund, Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2013. No further consultation exercise was conducted on regulation 2 as it corrects a minor drafting defect in the PPF Compensation Regulations and does not change the policy.

9. Guidance

9.1 The Board of the Pension Protection Fund will provide guidance and advice on the operational processes used to implement regulation 2 of these Regulations which will be made available on the Pension Protection Fund website: www.pensionprotectionfund.org.uk

9.2 DWP will have copies of these Regulations and be in a position to explain the policy intention behind them to members of the public.

10. Impact

10.1 This instrument will have no direct impact on business or civil society organisations.

10.2 This instrument will have negligible impact on the public sector.

10.3 An Impact Assessment has not been produced for this instrument. In relation to the amendment in regulation 2 of these Regulations, an assessment of the impact on the introduction of the option for members to postpone payment of their pension compensation was included as part of the impact assessment for the Pensions Act 2011. In relation to the amendment in regulation 3 of these Regulations, an assessment of the impact of these changes was included as part of the impact assessment for the Occupational and Stakeholder Pension Schemes (Miscellaneous Amendments) Regulations 2013: http://www.legislation.gov.uk/ukia/2013/21/pdfs/ukia_20130021_en.pdf

11. Regulating small business

The Regulations apply to small businesses but most businesses which have pension schemes are large or medium sized.

12. Monitoring & review

No formal post implementation review is planned, but the operation of the regulations will be monitored on an ongoing basis by means of representations and feedback from the pensions community, the Pensions Regulator and the Pension Protection Fund.

13. Contact

Ruth Saunders at the Department for Work and Pensions Tel: 020 7449 7394 or email: ruth.saunders@dwp.gsi.gov.uk can answer any queries regarding the instrument.