EXPLANATORY MEMORANDUM TO

THE PENSION PROTECTION FUND (CLOSED SCHEMES) REGULATIONS 2007

2007 No. 865

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 make provision in respect of certain defined benefit pension schemes that have gone through an assessment period for the Pension Protection Fund (PPF), which are required to wind up, but despite having sufficient assets to meet their protected liabilities, are unable to obtain the annuities or insurance policies to satisfy those liabilities. The regulations prescribe the manner in which applications and notifications are made to and by the PPF, the information to be contained within such applications and notifications, and make provision in relation to valuation of scheme assets and liabilities for the purposes of the closed scheme provisions.

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

3.1 None.

4. Legislative Background

4.1 Sections 153 to 159 of the Pension Act 2004 deal with pension schemes which, following an insolvency event, have been through the assessment period, found to have sufficient assets to meet their protected liabilities, but are unable to purchase the necessary annuities, usually because the size of the schemes make it difficult to get the necessary quotation.

4.2 Those sections specify that regulations will set out how such schemes apply for authority to continue winding up outside the Pension Protection Fund (the PPF), how a notification of the outcome of that application will be given, the manner in which valuations will be carried out for such purposes, and the manner in which schemes will notify the PPF if, following authority to continue as a closed scheme, the status of the scheme changes and the scheme assets no longer exceed the protected liabilities of the scheme.

5. Territorial Extent and Application

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

The Pension Protection Fund

7.1 The PPF has been set up under provisions in the Pensions Act 2004 to provide a statutory level of compensation to members of eligible defined benefit and hybrid occupational pension schemes when an employer becomes insolvent, there is no possibility of a scheme rescue and there are insufficient assets in the scheme to pay benefits at PPF compensation levels.

7.2 It is funded by means of levies charged to all eligible schemes (i.e. schemes which can claim PPF compensation) and any assets remaining in schemes which transfer to the PPF at the end of an assessment period.

7.3 Where an employer has an insolvency event the scheme enters an assessment period. During this period a valuation is undertaken to determine the amount of assets in the scheme against members' protected liabilities. Benefits payable by the trustees or managers during the assessment period are restricted to PPF compensation levels.

7.4 At the end of the assessment period if the valuation shows that the scheme assets are insufficient to pay protected liabilities the scheme enters the PPF. The property, rights and liabilities transfer to the Board of the PPF ("the Board") and the trustees or managers are discharged of their responsibilities towards the scheme and the scheme is treated as if it were wound up. The Board is then responsible for providing compensation out of the PPF in accordance with compensation provisions.

7.5 At the end of the assessment period if the valuation shows that assets are sufficient to pay at least protected liabilities, the PPF has no further involvement with the scheme and the scheme is required to wind up outside of the PPF.

7.6 However, where a scheme has sufficient assets, but is unable to settle its liabilities by purchasing annuities or insurance policies because, for example, the size of the scheme makes this impracticable, the trustees or managers of the scheme are required to apply to the PPF for authority to continue to operate the scheme as a closed scheme.

7.7 During the assessment period there are restrictions placed on the operation of pension schemes to ensure the assessment can take place, and to protect the PPF.

Issues

7.8 Section 153 of the Pensions Act 2004 provides that regulations will prescribe the form of, and the information to be contained in, an application to the PPF for authority to continue operating as a closed scheme. Section 153 also provides that regulations shall prescribe the manner in which the PPF shall issue a determination notice, and the information that shall be provided within that notice.

7.9 Under powers conferred by section 153(4) of the Pensions Act 2004, regulation 2 sets out the information which must be included in an application, and the evidence that must be provided that a full buy-out quotation was sought but was refused.

7.10 Regulation 2 also sets out the information to be contained within the determination notice issued by the Board.

7.11 Section 156 allows regulations to prescribe how valuations of scheme assets and liabilities are to be undertaken, and these provisions are set out in regulations 3 to 5 and Parts 1 and 2 of the Schedule.

7.12 These regulations have been drafted so as to apply the same definition of “relevant accounts” as used in the Pension Protection Fund (Valuation) Regulations 2005 (SI 2005/672). This definition is being amended by the Pension Protection Fund (Miscellaneous Amendments) Regulations 2007 (SI 2007/782) which requires the transitional provision in regulation 7 of these regulations to ensure consistency, both before and after the relevant amendment.

7.13 Section 157 also allows regulations to prescribe the form in which applications are made, and notices are given, in relation to closed schemes where their assets fall below the level needed to meet the scheme’s protected liabilities. These are provided for by regulation 6.

7.14 These provisions have been drafted to provide rules which are, where this is appropriate, consistent with other provisions relating to applications, notifications and valuations.

Consultation

7.15 These Regulations are made within six months of the coming into force of the relevant provisions of the Pensions Act 2004. There is therefore no requirement for the Secretary of State to consult such parties he considers it appropriate to consult. Nonetheless a consultation was undertaken and a list of those consulted is provided at Annex A to this memorandum. Four responses were received, all of which were supportive of the proposed provisions. A full response to the consultation is published on the DWP website - http://www.dwp.gov.uk/consultations/2006/

Guidance

7.16 Information on how the law affects schemes in an assessment period, and the significance of closed scheme status, is currently provided to trustees and managers of pension schemes in a variety of formats, including information from the PPF and the Pensions Regulator. In addition, the regulations require trustees and managers of schemes to be provided with relevant information about how they and the scheme may be affected by the legislation. The Government will work with those bodies to ensure that updated information is available as soon as practicable.

Consolidation

7.17 This Statutory Instrument does not amend any other instruments.

8. Impact

8.1 A Regulatory Impact Assessment has not been published for this instrument as it has only a negligible impact on business, charities and voluntary bodies.

8.2 The impact on the public sector is nil.

9. Contact

Any enquiries about the contents of this memorandum should be addressed to: Mr J Barker, Department for Work and Pensions, Pension Protection and Stewardship Division, telephone: 020 7712 2754 or email: julian.barker@dwp.gsi.gov.uk

Annex A

List of those consulted

Association of British Insurers
Association of Consulting Actuaries
Association of Pension Lawyers
Association of Pensioner Trustees
Auditing Practices Board
Better Regulation Executive
British Chamber of Commerce
Confederation of British Industry
Consumers Association
Council on Tribunals
Engineering Employers Federation
Federation of Small Businesses
Financial Services Authority
HM Treasury (MOCOP)
HM Revenue and Customs
Industry Wide Pension Schemes Group
Institute of Chartered Accountants in England and Wales
Institute of Chartered Accountants in Scotland
Institute of Directors
Investment Managers' Association
NAPF
National Consumers Council
Office of Fair Trading
Pensions Ombudsman
Pension Protection Fund Ombudsman
Policy and Legal Division DHSS Northern Ireland
Small Business Service
The Association of Corporate Trustees
The Faculty and Institute of Actuaries
The Law Society of England and Wales
The Law Society of Scotland
The Pensions Management Institute
The Pensions Protection Fund
The Pensions Regulator
The Scottish Executive
The Society of Pension Consultants
The Welsh Assembly
TPAS (the Pensions Advisory Service)
Trades Union Congress