EXPLANATORY MEMORANDUM TO

THE PENSION PROTECTION FUND (MISCELLANEOUS AMENDMENTS) REGULATIONS 2010

2010 No. 560

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

2.1 This instrument makes various amendments to existing primary and secondary legislation governing the pension compensation paid by the Board of the Pension Protection Fund. It also introduces provisions to require the Board of the Pension Protection Fund to charge interest when the pension protection levy is paid late and allow the Board to waive that interest if appropriate.

2.2 The Board of the Pension Protection Fund is a statutory corporation set up in 2005. It pays pension compensation from the Pension Protection Fund to members of eligible defined benefit and hybrid occupational pension schemes. Compensation may be paid when a scheme's sponsoring employer becomes insolvent and the scheme cannot afford to pay members' benefits at the same level as the pension compensation provided by the Pension Protection Fund.

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

None.

4. Legislative Context

4.1 Existing legislation on the earliest age from which most people can be entitled to pension compensation is amended to align with changes in the Finance Act 2004 to the minimum pension age (it is increased from 50 to 55 from April 2010). Changes have also been made to modify the calculation of pension compensation for active members of schemes that calculate pensions on a career average revalued earnings basis.

4.2 Existing legislation also includes provision for the calculation, collection and recovery of the pension protection levy, one of the ways used by the Board of the Pension Protection Fund to fund the pension compensation it provides. Changes to this legislation will enable the Board of the Pension Protection Fund to charge interest when the pension protection levy is paid late and to waive interest in certain circumstances. Amendments are also made to existing legislation, including primary legislation, to allow decisions about waiving

interest to be challenged through the normal review processes used in relation to the Pension Protection Fund.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

The Minister of State for Pensions and the Ageing Society has made the following statement regarding human rights:

In my view the provisions of the Pension Protection Fund (Miscellaneous Amendments) Regulations 2010 are compatible with the Convention rights.

7. Policy background

- **What is being done and why**

7.1 This instrument makes amendments to existing Regulations on pension compensation in the light of the operational experiences of the Board of the Pension Protection Fund. This instrument also implements provisions introduced by the Pensions Act 2008 to require interest to be charged when the pension protection levy is paid late.

7.2 It changes the age at which a person can apply for early payment of pension compensation from age 50 to age 55. This change reflects changes made by the Finance Act 2004, which changes normal minimum pension age from 50 to 55 from 6 April 2010 unless the individual member of a pension scheme has a protected pension age as provided for under transitional provisions which provide for circumstances in which an individual may have a protected pension age of less than 55 on or after 6 April 2010.

7.3 A protected pension age is the age at which some schemes provide for a scheme member to apply for and receive their pension before the normal minimum pension age if they so wish. For example, if a person has a protected pension age of 52 in respect of their pension in a scheme and that scheme transfers to the Pension Protection Fund, then pension compensation can start to be payable from age 50 at the present time and at age 52 from 6 April 2010.

7.4 This instrument also removes the notice period of six months for an application for early payment of pension compensation and the requirement for an applicant to provide the address of their pension scheme and the name and address of their pension scheme's employer.

7.5 This instrument also modifies the provisions on the calculation of pension compensation. At present the provisions reflect how pensions are calculated in

final salary schemes, which includes not revaluing benefits whilst the members are in active service. The modifications allow pension compensation for members of schemes that determine the whole or part of pension entitlement on a career average revalued earnings basis to be calculated using the admissible rules of the scheme, for the pension entitlement that is determined on a career average revalued earnings basis.

7.6 In career average revalued earnings schemes the amount of pension accrued or earnings for each year of pensionable service is revalued from the end of that year of pensionable service until retirement.

7.7 This instrument requires the Board of the Pension Protection Fund to charge levy-payers interest when the pension protection levy is paid late. The pension protection levy is set and collected by the Board of the Pension Protection Fund, and is one of the ways used to fund pension compensation.

7.8 The Board of the Pension Protection Fund will be required to charge interest at 5 per cent above the Bank of England base rate accruing on a daily basis from the 29th day after the issue of a pension protection levy invoice.

7.9 The Board of the Pension Protection Fund will be able to waive all or part of the interest if the Board is satisfied that one of the following circumstances applies:

7.9.1 any of the circumstances in which the pension protection levy can be waived are met;

7.9.2 charging interest would not be conducive to the prudent management of the Board of the Pension Protection Fund's financial affairs;

7.9.3 it is reasonable not to charge interest in full or in part.

7.10 This instrument also sets out matters that may be used in considering whether it is reasonable not to charge interest. For example, the matters include the dates on which any payments of the pension protection levy were made in previous years, and failures of the person on behalf of whom the levy is payable to reply to correspondence.

7.11 Finally, this instrument makes changes to existing primary and secondary legislation for people who want to challenge the Board of the Pension Protection Fund's decisions on waivers. The normal procedures which apply to challenging decisions relating to the Pension Protection Fund are reviews, reconsiderations and the Pension Protection Fund Ombudsman. These changes allow those procedures to apply for waiver decisions.

- **Consolidation**

7.12 Consolidation of the regulations included within this instrument will be included in due course in the Department's "The law relating to Social Security" (the Blue Volumes), which are available at no cost to the public on the internet at http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/

8. Consultation outcome

8.1 The Department for Work and Pensions undertook a 12-week consultation on a draft of this instrument between 26 October 2009 and 15 January 2010. The consultation document was sent to 65 interested stakeholders, such as business groups and the pensions industry, and made available on the Department's website: http://www.dwp.gov.uk/consultations/2009/

8.2 The Department for Work and Pensions received twelve responses to the consultation. Respondents were generally in favour of the provisions the instrument introduces.

8.3 One respondent felt that asking someone to supply the address of their pension scheme when applying for early payment of pension compensation was confusing. The Board of the Pension Protection Fund has confirmed that it does not need scheme addresses and this requirement has been removed from the Regulations.

8.4 The Board of the Pension Protection Fund also gave further thought to the provision that reduced the notice period for applications for early payment of pension compensation. As a result this instrument now removes the notice period entirely.

8.5 One respondent commented that provision needed to be made for schemes where part of the benefits are on a final salary basis and part of the benefits are on a career average revalued earnings basis. This instrument now makes the provisions in those circumstances clearer.

8.6 One respondent felt the provision relating to waiver of interest on late payment of the pension protection levy was vague. The Board of the Pension Protection Fund felt that to ensure the effective implementation of the regime it required more flexibility in the waiver provisions. As a result of the consultation response, this instrument has been changed to set out further circumstances in which the Board of the Pension Protection Fund can waive interest. The new circumstance is where the Board of the Pension Protection Fund is satisfied that it is reasonable to waive the whole or only part of the interest. Also as a result of the consultation response the instrument has been changed to allow the normal procedures for challenging decisions relating to the Pension Protection Fund

which are reviews, reconsiderations and the Pension Protection Fund Ombudsman to apply to waiver decisions.

8.7 Four respondents asked what would happen if the levy invoice was appealed and how the outcome of such an appeal would influence the interest charges. This instrument now allows the Board of the Pension Protection Fund to consider waiving interest in the light of any appeal.

8.8 The Department for Work and Pensions has published a full consultation response on the its website: http://www.dwp.gov.uk/consultations/2009/

9. Guidance

The Department for Work and Pensions will be in a position to provide advice on the policy behind this instrument. The Board of the Pension Protection Fund will be in a position to provide advice on the operational processes used to implement the changes this instrument introduces. The Board of the Pension Protection Fund has indicated that it intends to provide further information about its approach to charging interest as part of the 2010/11 invoicing process. Information will also be made available on the Pension Protection Fund website: http://www.pensionprotectionfund.org.uk

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 A full impact assessment has not been prepared for this instrument. However, an assessment of the impact of charging interest on late payment of the pension protection levy was included as part of the impact assessment for the Pensions Bill 2008. The relevant extract from that impact assessment is attached to this memorandum. The figures remain up to date.

11. Regulating small business

11.1 The legislation applies to small business but the impact is neglible.

11.2 The Department for Work and Pensions consulted, amongst others, representatives of the small business community, such as the British Chambers of Commerce, the Confederation of British Industry and the Federation of Small Businesses.

12. Monitoring & review

The Department for Work and Pensions and the Board of the Pension Protection Fund work together to review the effectiveness of legislation on the Pension Protection Fund, the changes this instrument introduces are as a result of that ongoing review.

13. Contact

John Isaac at the Department for Work and Pensions Tel: 020 7449 7419 or email: Caxton.ppf-responses@dwp.gsi.gov.uk can answer any queries regarding the instrument.

Extract from the Pension Bill 2007 Impact assessment published 24 April 2008 (pages 123 to 127)

Interest on late payment of the Pension Protection Fund Levy

6.24 The Pension Protection Fund is responsible for collecting the Pension Protection Levy – £675 million for 2007/08 – which is invested in order to fund compensation to members of eligible defined benefit occupational pension schemes whose employers have gone insolvent.

6.25 A significant amount of the Pension Protection Levy is paid late by schemes. While some payments of the 2006/07 levy were paid late because of a dispute or review of the levy invoice, over £100 million was still paid late where there was no dispute or review of the Levy invoice.

6.26 At present, there is no power in the Pensions Act 2004 for the Board of the Pension Protection Fund to deter delayed payment of the Pension Protection Levy. The Bill therefore makes provision to charge a prescribed rate of interest on late payment of the Pension Protection Levy and for the waiver of interest charges in certain circumstances.

6.27 Any interest payments received would be available for investment as part of the Pension Protection Fund, and compensate for the investment income foregone by the Fund. However, we would expect the fact that interest would be charged on late payments would reduce the incidence of late payment, as schemes would aim to pay Levy bills more promptly to avoid paying interest.

6.28 The rate of interest will be included within regulations on which we would consult with the pensions industry and other interested parties. If the Pension Protection Fund were to have charged interest on late payments where there was no dispute or review (referred to in paragraph 6.20) and at a rate of interest of, say, the current Bank of England base rate of 5.75 per cent, interest charges would have amounted to around £600,000.

6.29 For similar reasons, the Bill will make provision to enable interest to be charged on late payment of the Fraud Compensation Levy, the Pension Protection Fund Administration Levy, the Pension Protection Fund Ombudsman Levy and the General Levy.

6.30 We recognise that there will be circumstances where there are legitimate reasons for late payment of levies and regulations may provide for the waiving of interest charges in prescribed circumstances.

[144] 2007/08 Pension Protection Levy Estimate Consultation Document, published December 2006.

[145] Data on late payment of the Pension Protection Levy was provided to DWP during September 2007.

Costs and benefits

Public sector

6.31 It is anticipated that the Pension Protection Fund will collect interest relating to late payment of the Pension Protection Levy and the Fraud Compensation Levy. The set-up costs of implementing the administration of interest charging for these levies has yet to be determined but are estimated to be in the region of around £15,000 and would be recovered from pension schemes through the Pension Protection Fund administration levy, of which £15,000 would form a very small proportion, i.e. less than 0.1 per cent based on current rates.

6.32 We anticipate that the Regulator will collect interest relating to late payment of the Pension Protection Fund administration Levy, the Pension Protection Fund Ombudsman Levy, and the General Levy. The set-up costs of implementing the administration of interest charging for these levies has yet to be determined but are estimated to be between £10,000 and £20,000. The set-up costs will be recovered through the General Levy which funds the administrative costs of the Regulator, of which this amount would form a very small proportion, and less than 1 per cent based on current rates.

Employers

6.33 Pension schemes that are eligible for Pension Protection Fund compensation will only be subject to interest charges in the event of late payment of levies. They may also incur an administrative cost of paying interest in relation to the late payment of levies, but this would be negligible in terms of the total running costs of a pension scheme.

Race and disability impacts

6.34 There will be no negative impacts of this proposal on any ethnic group or for disabled people.

Competition impact

6.35 It is anticipated that there will be no impact on competition between businesses.

Full document on DWP website http://www.dwp.gov.uk/docs/impact-assessment-240408.pdf)