EXPLANATORY MEMORANDUM TO

THE PENSION PROTECTION FUND, OCCUPATIONAL AND PERSONAL PENSION SCHEMES (MISCELLANEOUS AMENDMENTS) REGULATIONS 2013

2013 No. 627

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 The Pension Protection Fund, Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2013 ("the Regulations") amend existing regulations on the Pension Protection Fund, Employer Debt and the Pensions Ombudsman.

2.2 The Regulations provide the detail that will enable members, who meet the criteria, to postpone taking their pension compensation and allow those members who are not currently able to, to take their pension compensation early.

2.3 The Regulations allow members aged 60 and over who have undischarged money purchase benefits worth up to £2,000 after their scheme transfers to the Pension Protection Fund, to take their benefits as a lump sum in certain circumstances. The Regulations also change the time within which an application for a review of a determination or a valuation decision made by the Board of the Pension Protection Fund ("the Board"), under sections 143(2)(a) or 144(2)(a) of the Pensions Act 2004, must be made, from 2 months to 28 days.

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

None.

4. Legislative Context

4.1 The Pension Protection Fund, Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2013 amend existing legislation on the Pension Protection Fund, Employer Debt and the Pensions Ombudsman. As well as a number of technical and drafting changes, the Regulations make the following changes to the legislation governing the Pension Protection Fund:

- change the time limit from 2 months to 28 days in which a person can make an application to review a decision by the Board in

respect of a determination under section 143(2)(a) or the approval of a valuation under section 144(2)(a) of the Pensions Act 2004;

- give all pension credit members the option of taking their pension compensation early;
- allow members not in receipt of their pension compensation or the relevant pension to postpone taking their compensation;
- clarify that surviving dependants are able eligible to receive compensation if they are attending a course until they reach 23 years old;
- clarify the reference to the market rate in calculating the value of protected liabilities;
- clarify how assets are to be valued when debts are owed to a scheme;
- allow the Board, in certain circumstances, to discharge its liabilities for money purchase benefits to members aged 60 and over where those benefits are worth £2,000 or less; and
- make consequential changes to existing secondary legislation to reflect the introduction of funding determinations without valuations and requests for reconsideration without a protected benefits quotation.

4.2 The Regulations also clarify the Pension Ombudsman's jurisdiction.

4.3 Provisions in the Pensions Act 2011 which amend the Pensions Act 2004 are being commenced in a separate commencement order.

5. Territorial Extent and Application

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

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

Pension Protection Fund

7.1 The Pension Protection Fund is a statutory fund 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.

7.2 When the Pension Protection Fund assumes responsibility for a scheme it pays eligible members pension compensation.

7.3 The Pension Protection Fund provides two levels of compensation:
- for individuals who have reached their scheme's normal pension age or, irrespective of age, are either already in receipt of a survivor's pension or a pension on the grounds of ill health, the Pension Protection Fund will pay a 100 per cent level of compensation, subject to Pension Protection Fund rules; and
- for the majority of people below their scheme's normal pension age, the Pension Protection Fund will pay a 90 per cent level of compensation subject to the compensation cap and Pension Protection Fund rules.

Time limit to apply for a review decision

7.4 The amendment changes the time within which an eligible person can make an application for an internal review of a decision made by the Board in respect of a determination or valuation, from 2 months to 28 days.

7.5 This change aligns the time for requesting such a review with the time applicable for most other reviewable matters concerning the Board. It will also reduce (by one month) the time to transfer a scheme into the Pension Protection Fund, thereby helping to reduce scheme costs.

Taking pension compensation early

7.6 At present, all Pension Protection Fund members with the exception of some pension credit members (these are beneficiaries of pension sharing orders), can take their pension compensation early, subject to meeting certain criteria. Pension sharing orders are used to share pension rights on divorce, annulment or dissolution.

7.7 The Regulations amend the Pension Protection Fund (Compensation) Regulations 2005 ("the Compensation Regulations") to allow these members to access their pension compensation early, giving them more flexibility over when to take their compensation and the same option as other members.

Taking pension compensation late

7.8 The Pensions Act 2011 amended the Pensions Act 2004 and Pensions Act 2008 to give members of the Pension Protection Fund the option of postponing the payment of their pension compensation past their normal pension age or normal benefit age, subject to prescribed circumstances and conditions.

7.9 The Regulations amend the Compensation Regulations and the Pension Protection Fund (Pension Compensation Sharing and Attachment on Divorce etc) Regulations 2011 to set out the circumstances and the conditions which need to be met for members to be able to postpone payment.

7.10 Among the conditions are that the member is not in receipt of the relevant pension or regular compensation, nor have they received a compensation lump sum. Also, the member has to postpone both the regular compensation and the compensation lump sum. This measure will give members more flexibility over when to take their compensation to suit their individual needs.

Surviving dependants

7.11 The Regulations allow other evidence, apart from a birth certificate, to be produced to confirm that a child is the natural child of the deceased member, as a birth certificate is not always available. It also clarifies that an unborn child of a deceased member who is being carried by the mother on the date of the member's death is a surviving dependant, provided evidence is produced to show that the child is the child of the member and would have been a dependant of the member had the child been born before the member's death.

Period of payment

7.12 A correction is made in the Regulations so that payments can be made to a surviving dependant who is attending a qualifying course until he/she leaves the course or attains the age of 23, whichever is the earlier. This amends the previous provision which said whichever is the later, which is not the intention, as the purpose of the payment is to provide financial help whilst the dependant is undertaking further education after the age of 18 until they attain 23.

Commutation of more than 25 per cent

7.13 The Regulations amend the trivial commutation lump sum limit from £15,000 to £18,000. The revised amount mirrors that under the Finance Act 2004 which is applicable to schemes outside the Pension Protection Fund. This means that members of schemes which have transferred to the Pension Protection Fund will have the same

entitlement as members of schemes outside the Pension Protection Fund.

7.14 Several conditions have to be met for a payment to be a trivial commutation lump sum, including that the member's entitlement to pension compensation and their pension rights together do not exceed a set monetary value. If a member meets the conditions they are entitled to choose to take a lump sum.

Reference to market rate

7.15 The Regulations amend the reference to the market rate in calculating the value of protected liabilities, to make it clear that the cost of the annuity should be at the best value rate that is available in the market as estimated by the Board given the timing, as this more accurately reflects the practicalities of pricing in the annuity market.

7.16 It also clarifies provisions on how the assets of a scheme are to be valued for Pension Protection Fund entry purposes, as well as making provision for the valuation of schemes that reapply for Pension Protection Fund entry.

Discharging small money purchase sums

7.17 The Regulations allow the Board to discharge its liabilities in respect of money purchase benefits worth £2,000 or less to members aged 60 and over, in certain circumstances, by paying these as a lump sum. This lump sum will extinguish these members' money purchase entitlements and will have the same tax efficient status as trivial commutation and winding-up lump sums. This should relieve, to some extent, the problems members and the Pension Protection Fund have with discharging such benefits, and mean that members get more from these small pots.

Pensions Ombudsman

7.18 The Regulations update legislative references in regulation 4(2) of the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 to take account of changes made by the Pensions Act 2004.

8. Consultation outcome

8.1 A six week consultation was conducted on a draft of the Regulations, from 19 December 2012 to 29 January 2013. The draft Regulations were sent to relevant organisations (listed within the Government's response to the consultation – see below) and made available on the DWP website.

8.2 Ten responses were received to the consultation (the names of those who responded are listed within the Government's response). Several respondents welcomed the Regulations and made positive comments. A Government response to the consultation is available on the DWP website at http://www.dwp.gov.uk/consultations/2012/. The Government has made some changes to the draft Regulations based on the consultation responses. The main points made by respondents and the Government's response are as follows.

8.3 Three respondents said that the provisions on when and who members should notify if they wish to postpone taking their compensation was conflicted and did not work properly. We have amended this provision so that there is only one requirement, which is for the member to notify the Board of their wish to postpone compensation. There is no time restriction as long as a request is made before the compensation is in payment.

8.4 Two respondents said that they thought the information a member needs to provide when they apply for postponement (e.g. name, address) should only apply when they are applying to the Board to postpone pension compensation, and not when they are applying to their scheme to postpone their pension. This is because schemes have their own requirements for members to postpone the payment of their pensions. We agree and have adjusted the Regulations to clarify this.

8.5 Two respondents questioned the age restriction on the provision for members to discharge low value money purchase lump sums. They felt that the usefulness of this measure would be restricted by the age limit of 60 and above. Another respondent questioned the limit of £2,000 and asked whether higher value money purchase benefits could be discharged. The age and monetary limit is consistent with that applicable to other small lump sum payments under tax legislation. In terms of age, the policy is to treat members of the same age alike. It would be inconsistent and unfair to remove both restrictions only for members who have accrued rights to low value money purchase benefits in schemes that have transferred to the Pension Protection Fund.

8.6 Four respondents commented on the change in the time limit for applications for an internal review of a determination or valuation made by the Board from 2 months to 28 days. Whilst they generally acknowledged the rationale for this change, they queried whether the reduced period gave scheme members sufficient time to make an application.

8.7 The Board advised that their operational experience shows that such reviews are requested by 0.01% of members in less than 1% of schemes who undergo assessment and are subject to a valuation or determination, and that members meet the current 28 day deadline for requesting a review applicable to a range of other Pension Protection

Fund decisions. Given this, it seems disproportionate to continue to provide a 2 month period within which a 'valuation' review can be requested, when the effect is to prolong the assessment process for a further month for the 99% of schemes where no such review is requested.

9. Guidance

9.1 The Board of the Pension Protection Fund will provide guidance and advice on the operational processes used to implement the changes this instrument introduces. This will be made available on the Pension Protection Fund website: http://www.pensionprotectionfund.org.uk

9.2 The DWP will have copies of the 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 the private or voluntary sector.

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

10.3 A full impact assessment has not been prepared for this instrument. However, an assessment of the impact of introducing the option for members to postpone payment of their pension compensation was included as part of the impact assessment for the Pensions Act 2011.

11. Regulating small businesses

This legislation does not apply to small business.

12. Monitoring & review

The Department for Work and Pensions will continue to work closely with the Board of the Pension Protection Fund to ensure the legislative framework for the Pension Protection Fund remains appropriate.

13. Contact

Any queries regarding this instrument are to be directed to Alison Humberstone at the Department for Work and Pensions, Tel: 020 7449 5132 or e-mail: Alison.Humberstone1@dwp.gsi.gov.uk.