EXPLANATORY MEMORANDUM TO

THE PENSION PROTECTION FUND (PARTIALLY GUARANTEED SCHEMES) (MODIFICATION) REGULATIONS 2005

2005 No.277

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 The Board of the Pension Protection Fund (PPF) is a body corporate established by section 107 of the Pensions Act 2004 (c. 35) ("the Act") to provide compensation for members of eligible occupational pension schemes in the event of the insolvency of the scheme's sponsoring employer, or following an application by the trustees or managers of the scheme, where the pension scheme is underfunded at a certain level.

2.2 These regulations detail the way in which the Act is to be modified to apply to eligible schemes with a partial crown guarantee. This modification power is in section 307(3) of the Act. Partially guaranteed schemes are schemes in respect of which a relevant public authority (such as a Government Department or Minister of State) has given a guarantee that the liabilities relating to part of the scheme will be met in full.

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

3.1 None

4. Legislative Background

4.1 These Regulations are made under the power in section 307(3). This is the first use of this power.

4.2 Some of these Regulations will come into force on 8th March. This is because some of the modifications in relation to partially guaranteed schemes need to be in force prior to some of the other PPF regulations (those which will form the Compensation and Entry Rules Statutory Instrument) being made, if those regulations are to apply to partially guaranteed schemes.

4.3 The remainder of these regulations are required from 6th April 2005 to ensure they will apply to any partially guaranteed scheme which may enter an assessment period after this date.

5. Extent

5.1 This instrument applies to England, Wales and Scotland under section 323(1).

6. European Convention on Human Rights

6.1 In the view of Malcolm Wicks MP, the Minister of State for Pensions, the provisions of the Regulations are compatible with the Convention rights.

7. Policy Background

7.1 The Pensions Act establishes the PPF, which will pay compensation to members of eligible schemes where the sponsoring employer is insolvent, or where the trustees or managers make an application to the Board, and the scheme has insufficient assets to pay benefits at a level at least equal to the amount of compensation the PPF would provide.

These Regulations modify the Act so that the protection offered by the PPF will apply only to the unsecured part of partially guaranteed schemes ("unsecured part" meaning the part without a crown guarantee).

7.2 Pension schemes with a crown guarantee will not be eligible for the PPF and are consequently exempt from payment of the PPF levies. This is because where a "relevant public authority" as defined in section 307(4) of the Act has given a guarantee in order that the assets of the scheme are sufficient to meet its liabilities, the scheme is considered to pose no risk to the PPF.

7.3 Partially guaranteed pension schemes result where, for example, a privatisation has occurred. Upon privatisation of the employer the government, or a "relevant public authority", gives a guarantee to the pension scheme in relation to rights accrued up to the point of the privatisation.

7.4 In line with the policy to exempt schemes with a crown guarantee from the provisions of the PPF it is intended that the provisions of the PPF should not extend to the secured part of such schemes (i.e. the part to which the crown guarantee applies) and in particular that the PPF should not assume responsibility for and pay compensation to members of the secured part. These regulations give effect to that intent.

7.5 The modifications operate so that the Board considers the assets and liabilities of the unsecured part of a partially guaranteed scheme and can only assume responsibility for that part.

7.6 Also, a second valuation is added to the process in relation to partially guaranteed schemes. This is necessary, prior to the Board assuming

responsibility for the unsecured part of the scheme, to account for any changes to the assets and liabilities of the scheme as a whole during the assessment period.

7.7 Some sections of the Act do not require modification as the provisions will need to apply to the whole scheme. The assessment period (under section 132 of the Act) will apply to the whole scheme. At the start of the assessment period it will not be possible to accurately separate the assets and liabilities relating to each part of the scheme (unless the scheme has itself become segregated). For this reason the assessment period must apply to the whole scheme in order that a notional separation of the assets and liabilities between the secured and unsecured parts of the scheme can occur.

7.8 Similarly section 134 (Directions) will apply to the whole scheme during the assessment period. While the Board of the PPF will only ever assume responsibility for the unsecured part of a partially guaranteed scheme, decisions taken by scheme trustees concerning the matters under section 134 (for example, asset investment, incurring of expenditure and the instigation or conduct of legal proceedings) in relation to the whole scheme will invariably affect the unsecured part of the scheme, for which the Board may at a later date assume responsibility.

7.9 No formal consultation was undertaken in the drafting of these Regulations. Section 317 of the Act provides that the Secretary of State must consult such persons as he considers appropriate before making regulations by virtue of the provisions of that Act (other than Part 8). This duty does not apply where regulations are made before the end of the period of six months beginning with the coming into force of the provisions of that Act by virtue of which the regulations are made.

8. Impact

8.1 A Regulatory Impact Assessment has not been produced 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

9.1 Sarah Ormerod at the Department for Work and Pensions, tel: 020 7712 2757 or email: Sarah.Ormerod@dwp.gsi.gov.uk can answer any queries regarding this instrument.