EXPLANATORY MEMORANDUM TO THE

PENSIONS REGULATOR (CONTRIBUTION NOTICES AND RESTORATION ORDERS) REGULATIONS 2005

2005 No.931

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. Description

2.1 The Pensions Act 2004 provides for a new Pensions Regulator to replace the Occupational Pensions Regulatory Authority (Opra) in April 2005. The Regulator's statutory objectives and functions, set out in the Act, establish a framework for its regulatory activity. It will inherit Opra's existing powers and will, in addition, have a number of new ones.

2.2 These Regulations prescribe which schemes will not be subject to the moral hazard powers and also extend the persons on which the Regulator can serve a restoration order where there has been a transaction at an undervalue.

2.3 A person who is prescribed for the purposes of section 52(7)(a) (Restoration orders where transactions at an undervalue) is any person whom the trustees or managers of the scheme have authorised to enter into transactions involving the assets of that scheme.

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

3.1 These Regulations will breach the 21-day rule. In order that the Regulator is able effectively to protect pension scheme members and the Pension Protection Fund (PPF), it is vital that these Regulations are in force from 6 April, when the Regulator and the PPF come into effect. The powers under which these regulations are made were settled very late during the passage through Parliament of the Pensions Act 2004. There are three "moral hazard" powers in the Act (contribution notices, financial support directions (FSDs) and restoration orders). It was originally proposed to make regulations in relation to all three of those powers, but the regulations needed to bring FSDs into effect have proved particularly complex. The decision was reluctantly taken that further work would be necessary before regulations could be made in relation to FSDs. These Regulations deal only with the other two moral hazard powers. It is essential that the Regulator have these powers by 6th April in order to protect both scheme members and the PPF and it will be

necessary therefore to breach the 21 day rule. The Department is aware of the importance of observing the 21 day rule wherever possible and regrets that it has not been able to do so in this instance.

4. Legislative background

4.1 The Secretary of State for Work and Pensions is empowered to make Regulations under the Pensions Act 2004. In this case the Secretary of State for Work and Pensions is exercising the powers conferred upon him by sections 38(1)(b), 52(1)(b) and 7(a), 315(2) and (5) and 318(1) of the Pensions Act 2004.

4.2 Before the Secretary of State makes any Regulations by virtue of the Pensions Act 2004, he may be required to consult such persons as he considers appropriate. There is no formal requirement to consult in this case because the Regulations will be made within six months of the enabling powers of the Act coming into force (section 317(2) of the Act). There has been informal consultation on the policy but not detail of these Regulations.

5 Extent

5.1 This instrument applies to England, Wales and Scotland. Corresponding provision will be made in Northern Ireland by Regulations made under an Order in Council corresponding to the 2004 Act, as provided for in paragraph 1(1) of the Schedule to the Northern Ireland Act 2000, and under those sections of the Pension Scheme (Northern Ireland) Act 1993 which correspond to these under which this instrument is made.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy background

7.1 Section 38 of the Pensions Act 2004 enables the Regulator to issue a contribution notice where certain acts or deliberate failures to act have occurred. A contribution notice is a regulatory tool which will enable the Pensions Regulator to require a person (which can include a company) who has been involved in a deliberate act or failure to act to avoid pension liabilities to put money into a pension scheme up to a specified amount.

7.2 Section 52 enables the Regulator to make a restoration order in cases where an employer has been subject to a "relevant event" (as defined in section 52(4)), for example insolvency. A restoration order can be made if the assets of the scheme have been reduced because of a transaction involving, for example, an asset being given away or sold for an amount significantly less than its genuine value. The restoration order will put the position back to what it would have been had the transaction not occurred.

7.2 These Regulations enable these provisions to be put into place.

8. Impact

8.1 A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business, charities or the voluntary sector.

8.2 There is no impact on the public sector.

9. Contact

9.1 The policy official responsible for these Regulations is

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30 March 2005