EXPLANATORY MEMORANDUM TO THE

PENSIONS REGULATOR TRIBUNAL (LEGAL ASSISTANCE SCHEME) REGULATIONS 2005

2005 No. 781

PENSIONS REGULATOR TRIBUNAL (LEGAL ASSISTANCE SCHEME – COSTS) REGULATIONS 2005

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1. This Explanatory Memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. These statutory instruments puts into place the practice and procedures to be followed in relation to proceedings before the Pensions Regulator Tribunal. These Regulations are divided into five parts for the Legal Assistance Scheme, dealing with general issues; eligibility, assessment and contributions; assignment of representative; withdrawal of legal assistance and constitution. And in one part for the Legal Assistance Scheme – Costs regulations– general issues.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1. It is intended that the members of the Financial Services and Markets Tribunal established under the Financial Services and Markets Act 2000 will also be appointed as members of the Pensions Regulator Tribunal, and that both tribunals will share the same facilities and premises. The provisions of the Pensions Act 2004 which provide for the establishment and constitution of the Pensions Regulator Tribunal reflect the equivalent provisions under the Financial Services and Markets Act 2000 in respect of the Financial Services and Markets Tribunal. For this reason, these Pensions Regulator Tribunal Regulations 2005 to a large degree reflect the procedure under the Financial Services and Markets Tribunal Regulations 2001 (S.I.2001/3632 and 3633).

3.2. The equivalent power to sections 134, 135 and 428(1) of the Financial Services and Markets Act 2000 is provided by section 107 of the Pensions Act 2004.

4. Legislative Background

4.1. The Pensions Act received royal assent in November 2004. The 2004 Act introduces a new a regulatory body - the Pensions Regulator, to investigate suspected breaches of pensions legislation in respect of occupational pension schemes in the UK. The 2004 Act allows for a right of appeal against the determinations of the Regulator to a new independent tribunal - the Pensions Regulator Tribunal.

4.2. The Lord Chancellor is empowered to make regulations in respect of the conduct of proceedings before the Tribunal in accordance with section 106 of the Pensions Act 2004.

4.3. These Regulations form part of a package of instruments relating to the Tribunal. The Lord Chancellor may make rules in respect of the conduct of proceedings before the tribunal in accordance with section 102 and schedule 4 of the Pensions Act 2004.

5. Extent

5.1. This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1. Not applicable.

7. Policy Background

7.1. The Pensions Regulator, which replaces the Occupational Pensions Regulatory Authority is being set up to protect the benefit of members of occupational pension schemes. The Pensions Regulator is primarily concerned with the running of the scheme as a whole and will investigate suspected breaches of pensions legislation. The Regulator's role will be to look at issues such as how the schemes are run, how pensions contributions are collected, recorded and accounted for and how monies are distributed if a scheme is wound up.

7.2. Any person directly affected by a determination of the Regulator, i.e. the trustee, the board of trustees, the employer or manager of a scheme will have a right to refer the matter to the Pensions Regulator Tribunal within 28 days.

7.3. The Tribunal will consider each case afresh, either on a point of law of fact and it may consider any evidence whether or not it was available at the time of the Regulator's determination. The Tribunal will have a wide-ranging jurisdiction dealing with references on a number of matters arising from the Regulator's decision such as prohibiting a trustee, disqualifying a trustee of imposing a civil penalty.

7.4. The provisions for the Tribunal in the 2004 Act have been closely mirrored on the Financial Services and Markets Act 2000 c.8. These Regulations also closely mirror the Financial Services and Markets Tribunal Regulations 2001 (SI 2001/3632 and 3633). The Tribunal will be run by the Department for Constitutional Affairs and will sit alongside the Financial Services and Markets Tribunal.

8. Impact

8.1. A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies. The impact was considered during the passage of the Pensions Bill through Parliament.

9. Contact

9.1. **David Stobie** at the Department for Constitutional Affairs (telephone: 020 7210 8686; email (david.stobie@dca.gsi.gov.uk) can answer any queries about the instrument.