EXPLANATORY MEMORANDUM TO

THE SUPERANNUATION ACT 2010 (REPEAL OF LIMITS ON COMPENSATION) ORDER 2010

2010 No. 2996

1.

1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before the House of Commons by Command of Her Majesty.

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

This Order repeals the upper limits on the value of compensation payments that may be paid to civil servants who are made redundant from their employment, whether on a voluntary or compulsory basis.

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

3.1 The Order comes into force the day after it is laid, contrary to the convention that statutory instruments made under the negative procedure should be laid before Parliament at least 21 days before they come into force.

3.2 The reasons for departing from this convention have been clearly trailed in both Houses during the passage of the Superannuation Act 2010 (the "2010 Act").

3.3 It is necessary for this Order to come into force as soon as possible. The Government's intention is to introduce a revised Civil Service Compensation Scheme (the "CSCS") that offers more generous provision than is allowed by the limits in the 2010 Act. Therefore, the limits must first be repealed in order for the revised CSCS to come into operation. Delays in introducing the revised CSCS will cause uncertainty about redundancy and exit arrangements for both civil servants and their employers.

4. Legislative Context

4.1 Section 3 of the 2010 Act limits the amount of compensation payable on loss of office or employment under schemes made under section 1 of the Superannuation Act 1972 (the "1972 Act"). Section 3 will automatically expire 12 months after the 2010 Act receives Royal Assent, unless that period is extended by an order made under section 4(5)(b) of that Act. There is also an order-making power in section

4(5)(c) of the 2010 Act to revive section 3, following its expiry or repeal, for a three year period following Royal Assent.

4.2 This Order, made under section 4(5)(a) of the 2010 Act, repeals section 3. However, the Order contains a saving provision in article 2(2), made using the power conferred by section 4(8)(b) of the 2010 Act. Article 2(2) provides that the limits in section 3 will continue to apply to any provision of a scheme made under section 1 of the 1972 Act before section 3 of the 2010 Act came into force.

4.3 The Government's intentions regarding section 3 of the 2010 Act have been explained during the Bill's passage through Parliament. At Second Reading in the House of Commons, the Minister for the Cabinet Office, the Rt Hon Francis Maude MP, stated:

"...we are seeking to negotiate a new scheme, which would effectively make the terms in the Bill redundant. ... I stress again that we have no desire to see this legislation continue any longer than is absolutely necessary. The inclusion of a sunset provision prevents the legislation from continuing ever onwards. ...there is also the option to bring forward the termination date. As I have already said, my intention is absolutely to resolve the issue by discussion and negotiation rather than by legislation, and I look forward to making the order that will repeal section 1 [as it then was] of the Act."
(7 July 2010, *Hansard* cols 217-218)

4.4 The specific intention to repeal the provision as soon as possible after commencement of the primary legislation, in order to bring into effect a new CSCS with terms more generous than the limits in the Bill, was reiterated in specific terms at Report stage in the House of Lords by the Government spokesman, Lord Wallace of Saltaire, who said:

"I assure your Lordships, once again, that the Government intend to repeal clause 3 when the new scheme is ready, in order to enable that scheme ... to be laid before Parliament and to take effect. It is not our intention to leave the caps in force for any length of time, since we want to make progress in delivering a reformed compensation scheme for the Civil Service."
(1 December 2010, *Hansard* col 1502)

4.5 The saving provision in article 2(2) of this Order was highlighted by the Minister for the Cabinet Office to the House of Commons during their consideration of the amendments made to the Bill in the Lords:

"We intend the Order to include a saving provision so that the caps could be applied if, and only if, the old unreformed scheme had to be reintroduced. The saving provision would allow that to happen automatically, without the need to use the revival power ... I should make clear that this saving provision would apply only if there were an attempt to revert to the old scheme."

(14 December 2010, *Hansard* col 851)

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom, as the 1972 and 2010 Acts do.

6. European Convention on Human Rights

The Minister for the Cabinet Office has made the following statement regarding Human Rights:

"In my view the provisions of the Superannuation Act 2010 (Repeal of Limits on Compensation) Order are compatible with the Convention rights."

7. Policy background

- What is being done and why

7.1 The Coalition Programme for Government set out a commitment to reform the CSCS to bring it into line with practice in the private sector – following an attempt by the previous administration, with all-party support, to negotiate a reformed CSCS with the civil service trade unions.

7.2 The previous Government's negotiations led to a new scheme which, after lengthy negotiations, was agreed by five of the six civil service unions in February 2010. Ministers then took the view that, notwithstanding the failure to achieve agreement with one of the unions (the Public & Commercial Services Union: "the PCS"), the CSCS should be reformed. The PCS sought a judicial review and obtained an order to quash the February scheme on the basis that, under the 1972 Act, the February scheme required consent of all six of the trade civil service trade unions.

7.3 The Superannuation Bill was, therefore, introduced to Parliament to enable reform of the CSCS. The limits introduced by section 3 of the 2010 Act were initially intended as a basis for discussion with civil servants and their trade unions, as an interim solution if a new agreement could not be reached, and ultimately as a contingency position if it proved that the revised CSCS could not be implemented in practice. However, the proposals that were announced following the conclusion of negotiations with the civil service unions in October 2010 have more generous terms than the limits in the 2010 Act. The Government therefore expressed the intention, during the Parliamentary stages following this announcement, to repeal the limits in section 3 in order to be able to implement the revised CSCS.

7.4 The Order contains a saving provision, which means section 3 will continue to apply to the CSCS as in force prior to the commencement of section 3, but not to the revised CSCS which will shortly be laid before Parliament. However, if for

some reason the revised CSCS cannot be implemented as anticipated (e.g. it is quashed by the courts), and the current CSCS once again becomes the operative scheme, the effect of the saving provision is that the limits in section 3 would apply to that CSCS, as revived, without the need to make an order under section 4(5)(c) of the 2010 Act. In circumstances where there may be protracted litigation in relation to the revised CSCS, these limits would help to minimise the consequent uncertainty for civil servants and their employers. This would assist in managing the reductions in staff numbers that the Government judges to be necessary as part of the restoration of public finances,

8. Consultation outcome

8.1 As explained on numerous occasions during the passage of the 2010 Act through Parliament, frequent discussions took place between Cabinet Office officials and the Council of Civil Service Unions (the "CCSU") from July to September 2010. Although the CCSU did not accept the proposals put to them, five of the six unions then approached the Government directly and asked to continue discussions on the terms. These discussions resulted in an agreement being reached on terms that could then form the basis for a revised CSCS, on which views were also sought from the CCSU.

8.2 Consultation has not been carried out specifically on the repeal of the limits in the 2010 Act, although this was debated at each stage during its Parliamentary passage. It was made clear to the trade unions as well as to Parliament that if a revised CSCS could be agreed the limits in the legislation would be repealed; all the unions welcome the repeal of the limits, whether or not they support the terms of the revised CSCS.

9. Guidance

Guidance is not being provided to civil servants and their employers specifically on the repeal of section 3 of the 2010 Act since it does not require any action on their part. However, in addition to the rules of the revised CSCS which the Government intends to lay before Parliament following the making of this Order, guidance on the revised CSCS will be provided.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impacts on the public sector of this Order relate primarily to the costs to civil service employers (or other employers who operate the same compensation terms on a 'by analogy' basis) of compensation payments to those employees who are made redundant or who choose to leave their employment on voluntary terms under the CSCS. Specifically, the repeal of section 3 of the 2010 Act under this

Order means that the Government is in a position to introduce a revised CSCS with more generous terms than are provided for in the 2010 Act.

10.3 A further Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

12.1 The main outcome sought from this Order is the ability for the Government to introduce a revised CSCS and for this to be implemented effectively in the longer term.

12.2 The need for statutory limits on compensation will be kept under review. Under section 4 of the 2010 Act the Minister for the Civil Service may, by order subject to the affirmative procedure in the House of Commons, extend the expiry date of the limits, or revive those limits within three years of the 2010 Act receiving Royal Assent.

13. Contact

Mike Watkins at the Cabinet Office (Tel: 020 7276 1636 or email: mike.watkins@cabinet-office.x.gsi.gov.uk) can answer any queries regarding the instrument.