EXPLANATORY MEMORANDUM TO

THE SUPERANNUATION (SPECIFICATION OF EMPLOYMENTS AND OFFICES) REGULATIONS 2013

2013 No. 1564

1. This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument prescribes certain employments and offices for the purposes of section 1 of the Superannuation Act 1972 ("the 1972 Act"), under which the Principal Civil Service Pension Scheme ("PCSPS") is made. It also sets out what information must be included in the list by which the Minister for the Civil Service specifies those employments and offices which are able to participate in the PCSPS by virtue of section 1(4A) of the 1972 Act.

2.2 The regulations will allow members with historic periods of service who were treated as if they were participating in the PCSPS for a period during which they were not entitled to active membership to be specified in the list of employments and offices which are able to participate in the scheme, with retrospective effect.

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

3.1 None.

4. Legislative Context

4.1 Amendments made to the 1972 Act by Schedule 9 to the Public Service Pensions Act 2013 ("the 2013 Act") enable schemes under section 1 of the 1972 Act (superannuation schemes as respects civil servants etc) to apply to additional categories of offices and employments, which must be specified in a list produced for the purposes of the new provisions. This will enable the proposed changes to the Fair Deal policy (currently contained in the HM Treasury Guidance Notes) to be implemented in relation to the Principal Civil Service Pension Scheme. The amendments to the 1972 Act came into force on the day on which the 2013 Act was passed.

4.2 These regulations provide for two additional categories of employments and offices that can be specified in a list for the purposes of the new provisions of the 1972 Act. They also specify the information that must be included in the list.

4.3 Amendments will be made to the PCSPS, so as to set out the rules which will govern the participation of employers and offices in the PCSPS who are admitted to the scheme in consequence of the amendments to the 1972 Act and the new Fair Deal policy.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 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***

7.1 Under the existing Fair Deal policy staff who are compulsory transferred to an independent employer have an entitlement to a broadly comparable pension with the new employer, and advantageous bulk transfer terms.

7.2 The Government consulted on changes to this policy (Consultation on the Fair Deal policy: treatment of pensions on compulsory transfer of staff from the public sector, HM Treasury) in March 2011. In November 2012 the Government published its response to this consultation and consulted further on one aspect of the policy (Consultation on the Fair Deal policy: response to the consultation, HM Treasury). In its response it confirmed its policy that Fair Deal would in future be delivered by offering access to the public service schemes for all transferring staff.

7.3 Amendments were made to the 1972 Act by the 2013 Act to broaden the categories of those who could have access to the PCSPS so as to enable the proposed new Fair Deal policy to be applied for the civil service. These regulations specify additional categories of persons who will be able to have access to the PCSPS under these provisions, to deal with historical anomalies (in particular those arising as a result of the Judgment of the House of Lords in *North Wales Training and Enterprise Council Ltd (t/a Celtec) v Astley and others* ([2006] UKHL 29) in which the House of Lords held that the employment contracts of the claimants had transferred to the Training and Enterprise Councils for a period during which it was thought they were still in employment in the civil service) and exceptional cases where access to the PCSPS for persons transferred out is determined by the Minister to be appropriate. They also specify the information that must be included in the published list of employments and offices that are granted access under the new Fair Deal policy.

- ***Consolidation***

7.4 This instrument is made under a new power and does not amend any previous instrument so there is no scope for consolidation.

8. Consultation outcome

8.1 Employee and employer representatives were consulted about these regulations and were content with the regulations with no substantive responses received.

9. Guidance

9.1 Guidance for offices, employees and employers affected by the changes to Fair Deal policy will be published and distributed in due course.

10. Impact

10.1 No impact on the costs of business, charities or voluntary bodies is foreseen. The costs of new Fair Deal policy will be reflected in the costs of the contract. Compared to the current broadly comparable pension requirements of Fair Deal, access to public service pension schemes will provide independent employers with a less expensive method of meeting their Fair Deal requirements.

10.2 The impact on the public sector is that contracted-out work can be secured at a lower contractual price as the cost of meeting Fair Deal pension obligations will be reduced. Public sector employees who are compulsory transferred will be able to have continuous service for pension accrual without having to take a bulk transfer of their pension to a new employer.

10.3 An impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The regulation does not apply to small business, although small businesses may find it easier to bid for contracts as meeting Fair Deal pension obligations through access to a public service pension scheme will be easier than making broadly comparable pension arrangements.

12. Monitoring & review

12.1 HM Treasury will be monitoring the implementation across all public service pension schemes of the new Fair Deal arrangements to provide access to public service pension schemes.

13. Contact

Kevin Hughes at the Cabinet Office Tel: 020 7271 2844 or email: Kevin.Hughes@cabinet-office.gsi.gov.uk can answer any queries regarding the instrument.