EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made as a consequence of provisions in the Pensions Act 2004 (c. 35) ("the 2004 Act") and amend the Occupational Pension Schemes (Employer Debt) Regulations 2005 (S.I. 2005/678) ("the 2005 Regulations") where debts arise under section 75 of the Pensions Act 1995 (c. 26) ("the 1995 Act") in respect of occupational pension schemes. They also make minor amendments of the Pensions Regulator (Financial Support Directions etc.) Regulations 2005 (S.I. 2005/2188), the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996 (S.I. 1996/1536) and the Pension Protection Fund (Entry Rules) Regulations 2005 (S.I. 2005/590).

Under regulation 1 these Regulations come into force on 2nd September 2005, but the amendments made by regulations 2(1), (2)(c), (3) and (5) and 4(2) do not apply where the debt arose before that date.

Regulation 2 amends the 2005 Regulations.

Regulation 2(2) amends regulation 5 of the 2005 Regulations so that where a debt has arisen under section 75 of the 1995 Act on the leaving of an employer and an approved withdrawal arrangement (see below) has applied, valuations for events happening later are to ignore the debts that arose when the employer left.

Regulation 2(3) substitutes new regulations 7 to 7B into the 2005 Regulations.

Under the new regulation 7 where a debt arises under section 75 of the 1995 Act because of an employer ceasing to employ people in employments covered by an occupational pension scheme where there was more than one such employer, and an arrangement (an "approved withdrawal arrangement") is approved by the Pensions Regulator under which parties to the arrangement ("the guarantors") are bound to make payments to the scheme if certain events occur, the debt becomes partly payable by the leaving employer, and partly by the guarantors at a later time ("the guarantee time"). (The amended provisions of the 2005 Regulations refer to "the Authority" but in accordance with section 124(1) of the 1995 Act that means the Pensions Regulator.)

New regulation 7A provides for the part payable by the leaving employer to be calculated on the same basis as is used for minimum funding valuations under section 56 of the 1995 Act, except that a deduction is made where liabilities attributable to employment with the employer have been transferred out before the withdrawal arrangement was approved.

New regulation 7B provides that the basis on which the part payable by the guarantors is calculated depends on the terms of the approved withdrawal arrangement. It may be the amount that would be payable if the leaving employer had ceased at the guarantee time to employ people in employments covered by the scheme. Alternatively, it may be the amount that would be payable if there were no approved withdrawal arrangement, but with a deduction both for the amount payable by the leaving employer and for any transfers out of the scheme of liabilities attributable to employment with the leaving employer.

Regulation 2(4) amends regulation 9 of the 2005 Regulations so that a leaving employer who has paid the debt due from him under new regulation 7A no longer counts as an employer for the purposes of section 75 of the 1995 Act and the 2005 Regulations, regardless of whether the amount payable by the guarantors has been paid.

Regulation 2(5) inserts two new Schedules into the 2005 Regulations which are set out in the Schedule to these Regulations. The first, Schedule 1A, sets out the requirements for the approval of withdrawal arrangements and imposes a requirement for the guarantors to notify the Pensions Regulator if certain events occur that are relevant to their solvency. The second, Schedule 1B, sets out the form that the scheme actuary's certificate must take for the valuation of scheme assets and liabilities based on section 56 of the 1995 Act that is needed to determine the amount of the debt payable by the leaving employer under new regulation 7A.

Regulation 3 makes provision about the exercise of functions of the Pensions Regulator under the 2005 Regulations, as amended by regulation 2 of these Regulations.

Regulation 4 makes minor amendments of the 2005 Regulations. In particular, the Salvation Army pension scheme is omitted from the list of schemes to which section 75 of the 1995 Act does not apply, and the function of determining the proportion of any levy deficit or criminal deficit in the pension fund of a multi-employer money purchase scheme that is to be due from any of the employers is transferred from the scheme's actuary to the scheme's trustees or managers.

Regulation 5 amends the Pensions Regulator (Financial Support Directions etc.) Regulations 2005 (S.I. 2005/2188) so that, for the purposes of those Regulations and provisions of the 2004 Act relating to contribution notices, financial support directions and transactions at an undervalue, a former employer does not count as an employer if an approved withdrawal arrangement has applied and the part of the debt payable by the former employer under new regulation 7A of the 2005 Regulations has been paid.

Regulation 6 makes an amendment of the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996 (S.I. 1996/1536) that is consequential on the amendments of section 75 of the 1995 Act made by section 271 of the 2004 Act.

Regulation 7 corrects a minor error in the Pension Protection Fund (Entry Rules) Regulations 2005 (S.I. 2005/590).

As these Regulations are made before the expiry of the period of six months beginning with the coming into force of the provisions of the 2004 Act on which they are consequential, the requirement for the Secretary of State to consult such persons as he considers appropriate does not apply.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.