EXPLANATORY MEMORANDUM TO THE

OCCUPATIONAL PENSION SCHEMES (MODIFICATION OF PENSION PROTECTION PROVISIONS) REGULATIONS 2005

2005 No. 705

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Board of the Pension Protection Fund ("PPF") is established by section 107 of the Pensions Act 2004 (c.35) ("the Act") to provide compensation for members of eligible occupational pension schemes in the event of the insolvency of the scheme's sponsoring employer and where the pension scheme is underfunded at a certain level.

2.2 These regulations make modifications to the Act to ensure that a valuation of a scheme for the PPF Board takes into account any changes to the assets and the protected liabilities as a result of the trustees discharging their liability to provide a pension or benefit during an assessment period. The regulations further ensure that the Board takes into account these changes when paying compensation.

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

3.1 These regulations are made under powers in the Act contained in section 167(1)(a) and (b) and are subject to the affirmative procedure.

3.2 The use of the affirmative procedure is required by section 316(2)(b) of the Act.

3.3 Section 167(1) comes into force early for the purpose of making regulations, and for all other purposes on 6th April 2005.

3.4 These regulations will only apply in the circumstances described in section 167(1)(a) and (b). Although the amendment of section 143 of the Act in regulation 2 refers to the pre-approval period, rather than the assessment period, the pre-approval period will always be contained within an assessment period. The pre-approval period is defined in section 143(11)(b) of the Act as beginning at the same time as the assessment period and ending either

- with the Board's approval of a valuation under clause 144; or

- with the Board ceasing to be involved with a scheme (see section 149 of the Act),

whichever is the sooner.

In the first case the assessment period will run on until the valuation becomes binding and the Board either ceases to be involved with a scheme or issues a transfer notice. The assessment period cannot end before the pre-approval period because of the Board ceasing to be involved with the scheme because the Board ceasing to be involved with a scheme ends both periods simultaneously. The assessment period cannot end before the pre-approval period because of the Board issuing a transfer notice because the Board cannot issue a transfer notice under section 160 until the valuation under section 143 has become binding and it can only become binding after its approval by the Board (see section 145(1)).

4. Legislative Background

4.1 This is the first use of the power under the Pensions Act 2004.

4.2 These regulations are required from April 2005 to ensure they will apply to any scheme which may enter an assessment period after this date.

5. Extent

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 In the view of Malcolm Wicks MP, the Minister of State for Pensions, the provisions of the Regulations are compatible with the Convention rights.

7. Policy Background

7.1 The Pensions Act establishes the Pension Protection Fund (PPF). The PPF will pay compensation to members of eligible schemes where the sponsoring employer is insolvent and the scheme has insufficient assets to pay benefits at a level at least equal to the amount of compensation the PPF would provide.

7.2 When an eligible scheme's sponsoring employer has a qualifying insolvency event a PPF assessment period begins (as defined in s.132 of the Act). During an assessment period the scheme trustees and managers are prohibited under s.135 of the Act from discharging any of their liabilities to provide pensions or other benefits (for example, a transfer of a member's rights to a different scheme). However, in certain circumstances, 135(4) and 135(9) allow these discharges of liabilities to occur. These regulations make modifications to the Act to ensure that the PPF Board, when obtaining a valuation of a scheme or paying compensation, can take into account any changes to the assets or liabilities as a result of any discharges that have occurred under 135(4) or 135(9) during an assessment period. For example, the regulations prevent the Board having to pay compensation to a member who, following a transfer to a new scheme, will receive a pension for the same rights from the new scheme.

8. Impact

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

9. Contact

9.1 David Shaw at the Department for Work and Pensions Tel: 020 7962 2464 or email: david.shaw@dwp.gsi.gov.uk can answer any queries regarding this instrument.

9 February 2005