EXPLANATORY MEMORANDUM TO

THE PENSION PROTECTION FUND (PENSION SHARING) REGULATIONS 2006

2006 No. 1690

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 These regulations modify Chapter 1 of Part 4 of the Welfare Reform and Pensions Act 1999 to enable the Board of the Pension Protection Fund to implement outstanding pension sharing orders inherited from an occupational pension scheme for which they assume responsibility.

2.2 In addition these Regulations modify Schedule 7 to the Pensions Act 2004 to provide for the creation of a pension credit member and for that member to receive Pension Protection Fund compensation. The Regulations also modify Schedule 7 to the Pensions Act 2004 to provide for the calculation of compensation to take account of the reduction to a member’s benefit as a result of a pension debit.

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

3.1 None.

4. Legislative Background

4.1 Under the provisions of pension sharing legislation, the court can make a pension sharing order that provides for a percentage of the value of one spouse’s pension to be shared with the other spouse upon divorce or nullity of marriage or, from December 2005, dissolution or nullity of civil partnership. When a pension is shared a debit is made from the member’s pension in accordance with the pension sharing order and a credit, which equates to the amount debited from the scheme member, is created for the former spouse – these are known as a pension debit and a pension credit. The pension scheme trustee is responsible for implementing the pension sharing order and discharging liability for the pension credit for the former spouse by depositing an amount in a pension scheme for the former spouse. In Scotland pension sharing orders show an amount of money rather than a percentage of the value to be shared with the former spouse.

4.2 These regulations modify the Welfare Reform and Pensions Act 1999 (WRAP Act) to enable and require the Board of the Pension Protection

Fund to implement any pension sharing orders inherited when the Pension Protection Fund assumes responsibility for an occupational pension scheme because there was insufficient time for the pension scheme to implement them. The Pension Protection Fund will not assume responsibility for any occupational pension schemes until summer 2006 as schemes must first go through an assessment period of at least 12 months before the Pension Protection Fund can assume responsibility.

4.3 The WRAP Act is modified to provide that the definition of a pension arrangement should include the Pension Protection Fund in these specific circumstances and that references in the pension sharing order to trustees become references to the Board and references to pension or lump sums become references to compensation periodic (regular) payments and compensation lump sums when the Board assume responsibility for the scheme.

4.4 The WRAP Act is modified to provide that the value of compensation should be calculated in a manner as may be approved by the Board of the PPF. The valuation of compensation is used by the Board to create a debit from the member and to create a credit for the former spouse.

4.5 Liability for the pension credit will be discharged by the Board as compensation under Chapter 3 of Part 2 of the Pensions Act 2004 or Chapter 3 of Part III of the Pensions (Northern Ireland) Order 2005 as appropriate and these regulations provide for the compensation calculation to include the adjustments required as a result of the pension debit.

4.6 The regulations provide that the transferee (new credit member) will be treated as if they had been a member of the scheme on the day before the assessment date (i.e. the day before the date that the sponsoring employer had a qualifying insolvency event) to enable compensation to be payable in accordance with the pension compensation provisions under Schedule 7 of the Pensions Act 2004.

4.7 The transferee will become entitled to compensation from the effective date of the pension sharing order, though compensation will be payable from normal benefit age in accordance with paragraph 21 of Schedule 7 of the Pensions Act 2004 and the pension debit will be subject to revaluation.

4.8 Primary Legislations requires that where the PPF assumes responsibility for money purchase benefits it is required to discharge them in full and not to pay compensation in respect of them. These Regulations require that any outstanding pension sharing order is implemented in accordance with the WRAP Act and liability for the pension credit is discharged by the PPF Board before the Board discharges the money purchase benefit in respect of the member.

4.9 These Regulations have the effect of maintaining the existing WRAP process for the implementation of pension sharing orders or provisions whilst adapting them, where necessary, to the different status of the PPF.

5. Extent

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Pension Protection Fund has been created to provide compensation to members when their employer becomes insolvent and the scheme is underfunded to a certain level. When the Board assumes responsibility for a scheme, the property, rights and liabilities transfer to the Board and the trustees or managers are discharged of their responsibilities towards the scheme. The Board is then responsible for providing compensation in accordance with compensation provisions from the Pension Protection Fund.

7.2 An annual levy is also applied to all pension schemes that would benefit from the PPF and is paid into a Pension Protection Fund. Compensation payments are made out of this Fund to members of schemes transferred into it.

7.3 DWP is not required to consult SSAC as this order has no impact on DWP benefits.

7.4 Formal consultation has not been undertaken as the powers used are within 6 months of commencement. However, relevant external pension sharing stakeholders including family lawyers have been consulted informally and approved the policy proposals for pension sharing.

7.5 Regulations are being made in accordance with powers under section 220 of the Pensions Act 2004. The Pensions Act does not provide powers for regulation through a voluntary code of practice.

7.6 This instrument amends the Pensions Act 2004 and Welfare Reform and Pensions Act 1999 but only in specific circumstances where there was insufficient time for the pension scheme to implement a pension sharing order before the PPF assumes responsibility for the scheme.

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.

8.2 There is no impact on the public sector.

9. Contact

Isabella Conley at the Department for Work and Pensions Tel: 020 7712 2183 or e-mail: Isabella.Conley@dwp.gsi.gov.uk can answer any queries regarding the instrument.