EXPLANATORY MEMORANDUM TO

THE PENSIONS ACT 2004 (PPF PAYMENTS AND FAS PAYMENTS) (CONSEQUENTIAL PROVISIONS) ORDER 2006

2006 No. 343

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 This order will insert regulation-making powers into various pieces of primary legislation to enable income-related and contributory benefits to take into account the receipt of Pension Protection Fund (PPF) payments by individuals when calculating the amount of benefit due in any particular case. In addition the order provides for Financial Assistance Scheme (FAS) payments to be taken into account when calculating contribution-based Jobseeker's Allowance. The relevant powers are contained within section 319(2)(a) of the Pensions Act 2004.

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

3.1 None

4. Legislative Background

4.1 A number of income-related and contributory benefits currently take account of income from an occupational pension. These are:

- Incapacity Benefit;
- Dependency Increases in respect of Incapacity Benefit, Maternity Allowance, State Pensions, Carer's Allowance and Severe Disablement Allowance;
- Jobseeker's Allowance (the contribution-based element and the income-based element);
- Income Support;
- Housing Benefit (aged over 60 and aged under 60);
- Council Tax Benefit (aged over 60 and aged under 60);
- State Pension Credit; and

- Child Support.

4.2 However, if an individual's pension scheme enters the PPF and their occupational pension income or capital is replaced by PPF compensation then these benefits will not be able to take account of that income. Similarly, these benefits will not be able to take account of any payments received from the FAS. Where relevant and necessary we want to introduce changes to legislation to ensure that where a member receives payments from either the PPF or FAS then their benefits are affected in the same way as they would have been by income from an occupational pension.

4.3 In a number of instances, the primary legislation relevant to particular benefits contains sufficient powers to enable secondary legislation to be made to achieve this. However, for the purposes of PPF payments, new powers need to be introduced to the legislation governing Incapacity Benefit; Dependency Increases (Incapacity Benefit, Maternity Allowance, State Pensions, Carer's Allowance and Severe Disablement Allowance); the contribution-based element of Jobseeker's Allowance and State Pension Credit. This order therefore inserts a definition of PPF payments and a regulation-making power into the appropriate Acts to enable further regulations to be brought forward that will ensure that in the calculation of these benefits PPF payments are treated in the same way as income from an occupational pension. Due to the structure of payments from the FAS (crucially that most payments won't be made until the recipient reaches 65) the same range of benefits do not need to be affected. This order only amends the primary legislation for contribution-based Jobseeker's Allowance, adding a definition of FAS payments and including FAS payments in the list of payments in respect of which prescribed deductions are to be made within the contribution element of Jobseeker's Allowance. State Pension Credit has been amended separately.

5. Extent

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

The Minister of State for Pensions Reform has made the following statement regarding Human Rights:

In my view the provisions of the Pensions Act 2004 (PPF Payments and FAS Payments) (Consequential Provisions) Order 2006 are compatible with the Convention rights.

7. Policy background

7.1 The Pensions Act 2004 "the Act" received Royal Assent on 18 November 2004. The provisions established the PPF, a statutory fund run by the Board of the PPF (the Board), which became operational on 6 April 2005. The PPF aims to provide compensation for members of defined benefits and the defined benefit elements of hybrid pension schemes should the employer become insolvent and the pension scheme is underfunded to a certain level.

7.2 When an employer has an insolvency event an assessment period is triggered during which time the scheme's assets and liabilities are valued to determine whether the PPF should assume responsibility for the scheme. The assessment period must last at least 12 months. This means that the earliest the PPF can assume responsibility for a scheme and begin paying compensation is 12 months from 6 April 2005, being 6 April 2006.

7.3 The FAS offers help to some people who have lost out on their defined benefit occupational pension scheme because their scheme was underfunded when it started to wind up and their employer has been unable to make up the shortfall because it is insolvent or no longer exists. FAS is aimed at pension schemes that began to wind up between 1st January 1997 and 5th April 2005 where the employer experienced an insolvency event before 1st March 2006. Schemes that begin winding up after this period may be eligible for help from the PPF. In most cases, FAS payments will not begin until the recipient's 65th birthday. Early access to FAS payments on the grounds of ill health can be granted to eligible customers under 65 if they are terminally ill and unlikely to live for longer than 6 months. In addition, a surviving spouse or civil partner of a FAS recipient can 'inherit' 50 per cent of their FAS award (regardless of age).

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

Julie Lapraik at the Department for Work and Pensions Tel: 0207 962 8472 or e-mail: Julie.Lapraik@dwp.gsi.gov.uk can answer any queries regarding the instrument.