EXPLANATORY MEMORANDUM TO

THE PENSION PROTECTION FUND (MISCELLANEOUS AMENDMENTS) REGULATIONS 2009

2009 No. 451

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. Purpose of the instrument

2.1 These Regulations make miscellaneous amendments to various Statutory Instruments relating to the Pension Protection Fund ("PPF"), a statutory fund set up by the Pensions Act 2004.

2.2 The miscellaneous amendments include changes concerning the rules surrounding eligibility for the PPF; the provision of revaluation and compensation; and minor technical changes. The Statutory Instruments amended are:

- The Pension Protection Fund (Entry Rules) Regulations 2005 ("the Entry Rules Regulations");
- The Pension Protection Fund (Compensation) Regulations 2005 ("the Compensation Regulations");
- The Pension Protection Fund (Valuation) Regulations 2005 ("the Valuation Regulations");
- The Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006 ("the General and Miscellaneous Regulations"); and
- The Pension Protection Fund (Closed Schemes) Regulations 2007 ("the Closed Schemes Regulations").

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

3.1 None.

4. Legislative Context

Regulation 2

4.1 The PPF was established to pay compensation to members of eligible defined benefit occupational pension schemes, when there is a qualifying insolvency event in relation to the employer and where there are insufficient assets in the pension scheme to cover PPF levels of compensation. The PPF can therefore be required to take over responsibility for certain pension schemes. Some pension schemes have to make an application to the PPF in order for them to take over responsibility. Regulations 7 and 7A of the Entry Rules Regulations list the type of schemes that must make such an application. These Regulations expand that list so that more types of pension scheme can be taken over by the PPF. It also corrects a missing cross reference (regulation 2(4)).

Regulation 3

4.2 Where the PPF takes over responsibility for a pension scheme, Schedule 7 to the Pensions Act 2004 sets out how much compensation the PPF should pay to the scheme's members. In some circumstances, the value of the compensation can change (it is 'revalued'). These Regulations introduce modifications to Schedule 7 about the PPF revaluing for schemes that did not revalue before the PPF took over responsibility for them.

Regulations 4 and 6

4.3 Regulations relating to the PPF set out the form and content of audited scheme accounts. These Regulations adopt the recognised auditing concept of a 'true and fair view' rather than a 'true and fair value' in audited scheme accounts.

Regulation 5

4.4 Where the PPF takes over responsibility for a pension scheme, other payments in respect of members can affect the amount of compensation the PPF has to pay. Regulations 3 and 4 of the General and Miscellaneous Regulations set out how death in service lump sum benefits can affect the compensation paid by the PPF. These Regulations make amendments which explain how other death benefits and contribution refunds affect that compensation.

4.5 Section 166 of the Pensions Act 2004 also contains provisions for how much compensation the PPF should pay. These Regulations introduce provisions which allow the PPF to pay compensation for certain pension transfers and contribution refunds.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

Lord McKenzie of Luton, Parliamentary Secretary (Lords), has made the following statement regarding Human Rights:

In my view the provisions of the Pension Protection Fund (Miscellaneous Amendments) Regulations 2009 are compatible with the Convention rights.

7. Policy background

- **What is being done and why**

7.1 The Department for Work and Pensions ("DWP") works closely with the PPF to ensure its legislative framework remains appropriate. These Regulations respond to issues raised about the eligibility of certain types of schemes and the calculation of PPF compensation.. These amendments do not, however, make extensive changes to the existing legislation. A minority of the changes are not the result of a change of policy, such as those changes relating to Regulations 2(4), 4 and 6.

Regulation 2

7.2 Any institution which is an overseas company but is also an European Economic Area ("EEA") credit institution (or a UK branch of one) or EEA insurer is currently unable to apply to the UK courts under section 221 of the Insolvency Act 1986. This means that an EEA credit institution and insurer can only be wound-up under the laws of the country where its head office is located. Because of this, the pension schemes of European Economic Area ("EEA") credit institutions and insurers cannot be taken over by the PPF. Regulation 2(2), (3) and (4) of these Regulations therefore makes provision, by amending the Entry Rules Regulations, so that such schemes may make an application to the Board of the PPF.

7.3 Regulation 2(5) amends the Entry Rules Regulations so that the Board of the PPF is able to pay compensation in respect of pension scheme members who died before the assessment period (the period during which an assessment is carried out to see whether the PPF will take over responsibility for the scheme). The Entry Rules Regulations previously only allowed active members to benefit from these provisions.

7.4 Regulation 2(6) amends the Entry Rules Regulations to replace the phrase "true and fair value", in respect of the form and content of audited scheme accounts, with the phrase "true and fair view". This brings the Regulations in line with the wording usually used by auditors when giving an opinion on audited accounts.

Regulation 3

7.5 The PPF currently provides revaluation of compensation even where this was not provided by the admissible rules of the scheme. This might result in scheme members receiving a (possibly substantially) higher rate of compensation than the rate of pension which they would have received under the rules of the scheme. The scheme will also be required to pay a higher risk-based levy as its valuation would have to take account of the PPF's revaluation. Regulation 3 therefore removes the requirement to revalue PPF compensation in cases where the rules of a scheme that transferred into the Pension Protection Fund did not provide for this.

Regulations 4 and 6

7.6 As with Regulation 2(6), and for the same reasons, Regulations 4 and 6 amends, respectively, the Valuation Regulations and the Closed Schemes Regulations, to replace the phrase "true and fair value" with the phrase "true and fair view".

Regulation 5

7.7 Regulation 5(2), (3) and (4) makes the same change, and for the same reason, as Regulation 2(5)(b).

7.8 Regulation 5(5) inserts provisions into the General and Miscellaneous Regulations which require the Board of the PPF to pay 90 per cent of certain transfer payments and contribution refunds to members of a pension scheme that has entered the PPF. The transfer payments and contribution refunds are those which the member became entitled to before the assessment date (the date on which the assessment begins to decide whether the PPF will take over responsibility for the scheme), but which had not been paid by the date the pension scheme entered the PPF. There is no duty to consult on these changes as they have been made within six months of the coming into force of the power in section 166(6) of the Pensions Act 2004 (which is the power under which these changes were made).

- **Consolidation**

7.9 This Statutory Instrument amends a number of other instruments (and primary legislation). Informal consolidation of this instrument will be included in due course in the Department's "the law relating to Social Security" (the Blue Volumes) which are available at no cost to the public on the internet at:
http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/
The Government will keep under review whether there is a case for the formal consolidation of Instruments relating to the PPF.

8. Consultation outcome

8.1 Between 19 December 2007 and 12 February 2008, DWP undertook an eight-week consultation exercise on these Regulations ("the draft Regulations"). An eight rather than twelve-week consultation was conducted as it was considered this was an appropriate period within which to seek views on the draft Regulations. The draft Regulations were sent to interested stakeholders, such as business groups and the pensions industry, and made available on DWP's website. DWP officials were also active in discussing the proposals with stakeholders, both during and after the close of the consultation period.

8.2 DWP received fourteen responses to the consultation. Respondents' comments were focussed on the draft Regulations about EEA Credit Institutions and EEA Insurers (Regulation 2) and the provisions on revaluation by the PPF (Regulation 3).

8.3 Respondents welcomed the Regulations about EEA Credit Institutions and EEA Insurers. They did, however, comment that the scope of Regulation 2(2) to (4) should be extended so that credit institutions and insurers outside the EEA could make an application to the Board of the PPF in the same way as trustees of other institutions that cannot experience an insolvency event as defined in section 121 of the Pensions Act 2004. Other respondents commented that there should be "an explicit link between a scheme being subject to PPF levies, and being able to access the PPF." The Government has decided not to extend the Regulations further, but intends to conduct a consultation on the Entry Rules Regulations, where we will seek views on whether the Entry Rules Regulations continue to work as intended.

8.4 Respondents welcomed the draft Regulations about the provision of revaluation by the PPF. The majority of respondents did, however, comment that the provisions were unclear about the circumstances in which the PPF would not provide revaluation.

8.5 The Government has therefore clarified the circumstances in which the PPF will not provide revaluation. Regulation 3 introduces provisions which modify Schedule 7 to the Pensions Act 2004, so that the PPF will not provide revaluation for scheme members, where immediately before the assessment date, the admissible rules of the scheme do not provide for any revaluation of the benefits payable to or in respect of any member. The PPF will therefore continue to provide revaluation in all other cases that are currently allowed by Schedule 7.

9. Guidance

9.1 DWP will have copies of the Regulations and be in a position to explain the provisions to members of the public.

9.2 DWP and the PPF will make sure eligible schemes are aware of the modifications to Schedule 7 to the Pensions Act 2004 and that section 179 valuations should be carried out, where necessary, in accordance with these modifications.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 A full impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The Regulations apply to defined benefit occupational pension schemes which are eligible for PPF protection. Some of these schemes will, however, have sponsoring employers which are small businesses. An eligible scheme, whose sponsoring employer is a small business, and for that matter, other sized businesses, might be impacted (positively) by Regulation 3 if the admissible rules of the scheme do not provide revaluation. Regulation 3 removes the requirement for the PPF to revalue compensation in cases where the rules of a scheme that transferred into the PPF did not provide for this. The removal of this requirement means that schemes that do not provide revaluation do not have to take account of PPF revaluation when submitting a valuation to the PPF. This will have a corresponding and positive effect on the scheme's pension protection levy invoice. In respect of the other Regulations, there is no specific impact on small businesses. The impact is the same as for large businesses, which is negligible, and the minimum necessary to achieve the intent of the Regulations.

11.3 DWP consulted, amongst others, representatives of the small business community, such as the British Chambers of Commerce, the Confederation of British Industry, and the Federation of Small Businesses.

12. Monitoring & review

12.1 DWP will continue to work closely with the Board of the PPF to ensure the legislative framework for the PPF remains appropriate.

13. Contact

Mary Collins at the Department for Work and Pensions, Tel: 020 7962 8872 or email: Mary. Collins @dwp.gsi.gov.uk can answer any queries regarding the instrument.