

**EXPLANATORY MEMORANDUM TO THE
OCCUPATIONAL PENSION SCHEMES (MISCELLANEOUS AMENDMENTS)
REGULATIONS 2005**

2005 No.2113

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

- 2.1 These regulations make amendments to existing regulations for the Pension Protection Fund (PPF) and the Pensions Regulator (TPR). The amendments include minor technical changes and changes to ensure the policy intent of the original regulations is delivered.

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

- 3.1 These regulations contain amendments to the PPF (Multi-employer Schemes) (Modification) Regulations 2005 (the Multi-employer Regulations). Further changes need to be introduced that cannot be made until the amendments to the Multi-employer Regulations in this statutory instrument (SI) are in force. The changes are needed urgently to allow pension schemes to gain access to the PPF without an extended delay. To allow these changes to be made as quickly as possible we have breached the 21 day rule in respect of the coming into force of some of the amendments to the Multi-employer Regulations contained in this SI. The potential for such a delay was only recognised after the legislation began to be applied to pension schemes following the go-live of the PPF on 6th April 2005 (therefore amending legislation could not have been brought forward any sooner).

4. Legislative Background

- 4.1 The PPF and TPR went live on 6th April 2005 since then we have, with the PPF and TPR, been closely monitoring the effectiveness of our regulations and listening to the views of scheme professionals. These amendments result from this process and will ensure the policy intent is delivered. The amendments:
- amend the definitions of “employer” contained within PPF regulations to ensure that this definition works effectively.
 - amend the existing Multi-employer Regulations to give better effect to policy in relation to multi-employer schemes. In particular, the amendments introduce provisions so that when an employer in relation to a specific type of multi-employer scheme ceases to be an employer (at a time when all the schemes other employers are insolvent or unable to continue

as a going concern), the trustees can apply to the PPF and trigger the start of an assessment period (the start of the PPF's formal involvement with a scheme).

- provide for pension scheme members to appeal a decision by the Board of the PPF not to pay the highest level of compensation in respect of their ill health pension (this is a discretionary power given to the Board of the PPF to counter the risk that ill health pensions would be awarded purely to maximise payments from the PPF).
- ensure that PPF compensation can be payable to surviving civil partners from 5th December 2005 (to coincide with the introduction of civil partnerships).
- amend existing PPF compensation rules to provide that where a scheme member has nominated a beneficiary this nomination takes precedence over any competing claims (e.g. from a surviving estranged spouse). However, where a member has not nominated a beneficiary the claim of a surviving spouse will take precedence.
- reduce the upper age limit for surviving dependants from age 25 to age 23 in accordance with the changes required by the Finance Act 2004 from 6th April 2006.
- provide the Determinations Panel of TPR with additional powers relating to the minimum funding requirement (the statutory funding requirement for pension schemes). These powers are required pending the introduction of the new scheme funding requirements in September (which will replace the minimum funding requirement).
- amend the TPR Notifiable Events Regulations (that list the events that must be reported to TPR) ensuring that references to "decisions" by Trustees include actions that are required (e.g. under the scheme rules or by a court order) where it could be argued that no active "decision" is taken.

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 Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2005 are compatible with the Convention rights.

7. Policy background

7.1 The Pensions Act 2004 (the Act) established the PPF to pay compensation to members of eligible pension 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. The Act also established the Pensions Regulator (TPR). TPR replaces the Occupational Pensions Regulatory Authority (Opra) as the regulator of work based pension schemes. TPR aims to protect the benefits of members of work-based pension schemes; promote the good administration of work-based pension schemes;

and reduce the risk of situations arising which may lead to claims for compensation from the PPF.

- 7.2 The PPF and TPR went live on 6th April 2005 and since then we have, with the PPF and TPR, been closely monitoring the effectiveness of our regulations and listening to the views of scheme professionals. Most of these amendments result from this process and will ensure the policy intent is delivered. Other amendments contained with this set are consequential on other legislation notably the Finance Act 2004 and the introduction of civil partnerships.
- 7.3 Consultation has not taken place for these regulations due to the need to put them in place as soon as possible and because they are made within six months of the coming into force of the primary provisions. However many of the amendments are in response to comments which have been received by industry professionals. They have also been developed in conjunction with the Insolvency Service, the PPF and TPR.
- 7.4 There is no need to refer to the Social Security Advisory Committee as the PPF and TPR are Non-Departmental Public Bodies and do not provide Social Security Benefits.

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

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