EXPLANATORY MEMORANDUM TO THE

PENSION PROTECTION FUND (INSOLVENT PARTNERSHIPS) (AMENDMENT OF INSOLVENCY EVENTS) ORDER 2005

2005 No. 2893

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 amends section 121(4)(e) of the Pensions Act 2004 (which defines insolvency events) by updating the current reference to when an administration order is made in relation to a partnership. Section 121(4)(e) will now refer to when a partnership enters administration.

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

3.1 None.

4. Legislative Background

4.1 This order amends insolvency events that trigger entry into the Pension Protection Fund as defined in the Pensions Act to take account of recent Department of Trade and Industry amendments to insolvency procedures for partnerships.

4.2 The Pension Protection Fund has been set up to provide compensation for members of defined benefit pension schemes where there is a qualifying insolvency event, a valuation shows that the pension scheme has assets below the Pension Protection Fund level of benefits and a scheme rescue is not possible.

4.3 The first stage of the process in considering eligibility to the Pension Protection Fund is that a qualifying insolvency event has occurred in relation to the employer. The provisions in section 121 therefore define insolvency events which must be notified to the Pension Protection Fund by the insolvency practitioner.

4.4 These events draw on the provisions in the Insolvency Act 1986 as variously amended and seek to capture the ways in which insolvency applies to individuals, companies and partnerships.

4.5 Insolvency provisions for partnerships are contained in the Insolvent Partnerships (Amendment) Order 2005(S.I. 2005/1516) ("Insolvency Order"). The Order was made on 7th June 2005 and came into effect on the 1st July 2005 and permits two entry routes into administration. A partnership can now go into administration either:

- on the appointment of an administrator by an administration order made by the court (as at present), or
- on the appointment of an administrator by the partners (an out of court route).

4.6 The Pension Protection Fund (Insolvent Partnerships)(Amendment of Insolvency Events) Order now ensures that where the employer in relation to a pension scheme is a partnership which enters into administration, the scheme will qualify for entry into the Pension Protection Fund. At present the provision in the Act only permits entry into the Pension Protection Fund in relation to a partnership where an administration order is made.

4.7 The power in section 121(7) of the Pensions Act 2004 which allows amendment to partnership requirements as a consequence of amendments to the Insolvency Act provisions came into effect on 30 June 2005. No consultation has taken place on the provisions in this order as it is made within six months of that enactment.

4.8 This instrument is the first use of this power to amend the legislation as a consequence of Insolvency Act changes.

4.9 DWP are not required to consult SSAC as this order has no impact on DWP benefits.

5. Extent

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

Stephen Timms, Minister of State for Pensions Reform has made the following statement regarding Human Rights:

In my view the provisions of the Pension Protection Fund (Insolvent Partnerships) (Amendment of Insolvency Events) Order 2005 are compatible with the Convention rights.

7. Policy background

7.1 To ensure that employees who had contributed to an occupational pension scheme did not lose their pension when an employer (whether an individual, a company or a partnership) became insolvent, the Government proposed that a Pension Protection Fund be set up to protect such employees and to provide them with compensation (Pension Protection Fund compensation), provided certain other conditions are met.

7.2 An annual levy likened to an insurance provision is applied to all qualifying pension schemes 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 Where an insolvency event occurs the scheme enters an assessment period during which time the trustees or managers are required to provide payment to members at least at Pension Protection Fund compensation levels.

7.4 At the end of the assessment period if a valuation shows that the scheme has assets below the level required to provide pensions at least equal to Pension Protection Fund compensation and a scheme rescue is not possible the Board of the Pension Protection Fund assumes responsibility for the scheme.

7.5 The property, rights and liabilities transfer to the Board and the trustees or managers are discharged of their responsibilities towards the scheme.

7.6 The Board is then responsible for providing compensation in accordance with compensation provisions from the Pension Protection Fund.

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: 0207 712 2183 or e-mail: Isabella.Conley@dwp.gsi.gov.uk can answer any queries regarding the instrument.