

**EXPLANATORY MEMORANDUM TO THE
PENSIONS REGULATOR (FREEZING ORDERS AND CONSEQUENTIAL
AMENDMENTS) REGULATIONS 2005**

2005 No.686

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 The Pensions Act 2004 provides for a new Pensions Regulator to replace the Occupational Pensions Regulatory Authority (Opra) in April 2005. The Regulator's statutory objectives and functions, set out in the Act, establish a framework for its regulatory activity. It will inherit Opra's existing powers and will, in addition, have a number of new ones.
- 2.2. The ability to freeze an occupational pension scheme that is not a money-purchase pension scheme is one of these new powers (in a money purchase scheme the amount of pension the member receives will be wholly dependent on the contributions made and the investment growth achieved; it is not related to the member's earnings before retirement). The provisions were generally welcomed by both Houses when considering the Act during its passage.
- 2.3 These Regulations:
 - (i) Prescribe the qualifications necessary for a person to be brought within the meaning of the "actuary" as set out in section 23(10) of the Pensions Act 2004.
 - (ii) Modify the Pension Schemes Act 1993 and amend regulations made under the 1993 Act, to take account of the fact that it may be impossible to abide by time limits, and extends the time limits where appropriate if a freezing order containing a relevant direction is or has been in effect.
 - (iii) Prescribe the period within which trustees or managers must give notice to the Regulator and to the member of failure to pay a contribution, where they were required to do so by the Regulator.

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

- 3.1 None

4. Legislative Background

- 4.1 The Secretary of State for Work and Pensions is empowered to make regulations under the Pensions Act 2004. In this case the Secretary of State is exercising the powers conferred upon him by sections 93A(3), 99(4), 181(1) and 182(2) and (3) of the Pension Schemes Act 1993 and sections 23(10)(b)(i), 24(7)(a), 30(7)(c), 315(5) and 318(1) of the Pensions Act 2004. The ability to freeze an occupational pension scheme is a new power for the new Regulator.
- 4.2 These Regulations specifically:
- (i) Prescribe the qualifications necessary for a person to be brought within the meaning of the “actuary” as set out in section 23(10) of the Pensions Act 2004.
 - (ii) Modify the Pension Schemes Act 1993 and amend regulations made under the 1993 Act, to take account of the fact that it may be impossible to abide by time limits, and extends the time limits where appropriate if a freezing order containing a relevant direction is or has been in effect.
 - (iii) Prescribe the period within which trustees or managers must give notice to the Regulator and to the member of failure to pay a contribution, where they were required to do so by the Regulator.
- 4.3 Before the Secretary of State makes any regulations by virtue of the Pensions Act 2004, he may be required to consult such persons as he considers appropriate. There is no formal requirement to consult in this case because the regulations will be made within six months of the enabling powers of the Act coming in to force (section 317(2) of the Act and section 185(1) of the 1993 Pension Schemes Act). However, to reflect our commitment to openness, we have held a short, informal, consultation exercise with The Pensions Regulator Advisory Panel – a list of its membership is attached at Annex A. The findings of the consultation exercise are at Annex B

5. Extent

- 5.1 This instrument applies to England, Wales and Scotland only. Corresponding provision will be made for Northern Ireland by Regulations made under an Order in Council corresponding to the 2004 Act, as provided for in paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 and, under those sections of the Pension Schemes (Northern Ireland) Act 1993 which correspond to those under which this instrument is made.

6. European Convention on Human Rights

- 6.1 Not Applicable.

7. Policy Background

- 7.1 Currently, if Opra believes that it is necessary to wind-up a scheme to protect existing members' benefits it can direct the scheme to wind-up the scheme. A decision to make a wind-up order can sometimes be required in a matter of days and, occasionally, within hours after receiving intelligence or a report about a scheme, if the generality of members' benefits is to be protected. Failure to make a quick decision can often be detrimental to non-pensioner members. It is not possible to carry out a full investigation or gather all the relevant evidence in such a short space of time.
- 7.2. In some cases, winding up the scheme is going to be an extreme course of action. Freezing a scheme provides a less drastic option. This new power will give the Regulator the power to 'freeze' a scheme for up to six months. This pause will allow the Regulator to carry out full and proper investigations into the scheme circumstances to ascertain whether, in fact, wind-up is in the best interests of the generality of the members. It may prove that less drastic measures are appropriate, such as increasing members' contributions or reducing the benefit accrual rate. This power will help to reduce the number of schemes the Regulator has to wind-up.
- 7.3. The pause also gives trustees and the sponsoring employer time to negotiate the future of the scheme without further deterioration of members' benefits.
- 7.4. During a freezing period, the Regulator will issue a freezing order ensuring that a scheme will not be able to wind-up unless the Regulator itself makes a winding-up order. And no further benefits will accrue in respect of members, hence protecting the existing level of benefits.
- 7.5. In addition, and where the Regulator deems it to be appropriate in the particular case, a freezing order may also determine that:
- No transfers are allowed in or out of the scheme;
 - No contribution refunds can be made out of the scheme;
 - No more contributions can be paid in;
 - No steps can be taken to discharge any liability in respect of a member;
 - No members can be admitted to the scheme;
 - Benefits are reduced to no less than the level payable as if the scheme had commenced winding-up, and/or
 - The trustees or managers are compelled to obtain an actuarial valuation which will include an assessment of the assets and liabilities of the scheme.
- 7.6. This 'menu' of optional requirements will allow the Regulator to impose only those freezing requirements it deems necessary for the particular circumstances of the scheme. This will help to deliver a proportionate, flexible and tailored approach to regulation, and to avoid unnecessary burdens on pension schemes.

- 7.7 At the end of a freezing period, if the Regulator does not order that the scheme must be wound up, a scheme may emerge as an on-going or a closed scheme or it can commence winding-up.
- 7.8 Where the Regulator directs that no transfer payments can be made out of the scheme the Regulations modify section 99 of the Pension Schemes Act 1993 to give the trustees additional time to pay the transfer value if there is such a freezing order in place.
- 7.9 Where the Regulator directs that no statements shall be issued to deferred members detailing the transfer amount (which starts the transfer process) the Regulations amend the existing transfer value regulations to allow additional time.
- 7.10 The Regulations set out the time limits in which the trustees must notify the Regulator and members where a contribution has not been paid by the employer as directed by the Regulator.

8. Impact

- 8.1 An assessment of the impact on business, charities or the voluntary sector of the provisions in these regulations is included in the Regulatory Impact Assessment that accompanied the Pensions Act 2004. An extract, relating to The Pensions Regulator, is attached at Annex C.

9. Contact

- 9.1 The policy official responsible for these Regulations is:

Berni Mundy
Tel. 020 7962 8422
E-mail: Berni.Mundy@dwp.gsi.gov.uk