EXPLANATORY MEMORANDUM TO THE

OCCUPATIONAL PENSION SCHEMES (WINDING UP ETC.) REGULATIONS 2005

2005 No. 706

1 This 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 Section 270 of the Pensions Act 2004 replaces section 73, *Preferential liabilities on winding up*, introduces new sections 73A, *Operation of scheme during winding up period*, and 73B, *Sections 73 and 73A: supplementary*, and amends section 74, *Discharge of liabilities by insurance, etc.*, of the Pensions Act 1995 and contains powers to make regulations which apply when an occupational pension scheme winds up.

2.2 The new section 73 contains a new priority order which will apply to occupational pension schemes which commence winding up on or after the 6 April 2005 when the Pension Protection Fund (PPF), introduced under the Pensions Act 2004, commences operations; new section 73A provides for the operation of schemes during a winding up period, and there is a new section 73B which is supplementary to new sections 73 and 73A.

2.3 These regulations contain new regulations that are required to ensure that the winding up provisions work broadly in harmony with those concerning the PPF, amend regulations made under the Pensions Act 1995 and ensure that the priority order under the Pensions Act 1995 will continue to apply in respect of schemes which commenced winding up before that date.

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

3.1 These Regulations contain new provisions to ensure that the legislation which applies when a defined benefit occupational pension scheme starts to wind up on or after 6 April 2005 broadly synchronises with the legislation that applies when the PPF commences operations on that date. It is therefore necessary for these Regulations to come into force on 6 April 2005.

3.2 Since the Pensions Act 2004 received royal assent only on 18 November 2004, and given the complexity of these Regulations and their interaction in particular with Regulations relating to the PPF (which have been drafted concurrently), it has been necessary to breach the 21 day rule in relation to these Regulations. The Department is aware of the importance of observing the 21 day rule wherever possible and regrets that it has not been able to do so in this instance.

4. Legislative background

4.1 These Regulations are made as a consequence of provisions in the Pensions Act 2004 and are subject to the negative procedure.

4.2 The Regulations amend the Occupational Pension Schemes (Winding Up) Regulations 1996 and introduce new regulations. They also amend the Transfer Values Regulations 1996, the Contracting Out Regulations 1996, the Minimum Funding Requirement and Actuarial Valuations Regulations 1996, the Disclosure of Information Regulations 1996, the Payments to Employers Regulations 1996, the Assignment, Forfeiture, Bankruptcy, etc. Regulations 1997, the Pensions Sharing (Valuation) Regulations 2000, the Pension Sharing (Implementation and Discharge of Liability Regulations) 2000, the Pension Sharing (Pension Credit Benefit) Regulations 2000 and the Winding Up Notices and Reports Regulations 2002 to ensure that these regulations work in conjunction with the Winding Up Regulations. The opportunity has also been taken to re-draft for the sake of greater clarity some provisions relating to the calculation of cash equivalents both for transfer values and for pension sharing on divorce.

4.3 The new Regulations are necessary to ensure that the winding up provisions work in harmony with the provisions of the Pensions Act 2004 and regulations made under powers in the Act which establish the PPF and its procedures.

5. Extent

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 No ECHR issues arise.

7. Policy Background

7.1 The Government believes that having a statutory priority order in legislation ensures that when a scheme is wound up the assets are divided amongst scheme members as fairly as possible. Section 270 of the Pensions Act 2004 substitutes a new section 73 of the Pensions Act 1995 which provides for a new statutory priority order which applies when a defined benefit occupational pension scheme commences winding up on or after 6 April 2005. The priority order is:

(a) certain pensions or benefits paid by insurance contracts purchased before April 1997 that cannot be surrendered or where the surrender value does not exceed the liability secured by the contract;

(b) any liability for pensions or other benefits to the extent that the amount of the liability does not exceed the corresponding PPF liability, other than a liability within paragraph (a);

(c) remaining voluntary contributions not covered in (b);

(d) any other scheme benefits not covered in (a), (b) and (c).

7.2 Section 270 of the Pensions Act 2004 also introduces a new section 73A which provides for the operation of schemes during a winding up period, and a new section 73B which is supplementary to new sections 73 and 73A. Section 270 also amends section 74 of the Pensions Act 1995 which deals with the discharge of liabilities on wind up.

7.3 The priority order and other measures in the new sections 73, 73A, 73B and amended section 74 will ensure that broadly speaking individual scheme members will be no worse off if their scheme winds up than they would be if the PPF were instead to assume responsibility for the scheme and pay compensation to members.

7.4 The Regulations contain the following provisions:

> Regulation 3 provides that the new section 73 of the Pensions Act 1995 does not apply to certain schemes that are excluded from being eligible schemes for the purposes of Part 2 of the 2004 Act;
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> Regulation 4 provides certain modifications that need to be made to the pension compensation provisions when determining the corresponding PPF liability (category (b) of the priority order) for schemes which are not eligible for the PPF and to which the statutory priority order applies;
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> Regulation 5 provides that where a person's pensionable service ceases when the scheme begins to be wound up they are treated as having opted for a contribution refund under Chapter 5 of Part IV of the Pension Schemes Act 1993;
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> Regulations 6 and 7 prescribe adjustments to entitlements to discretionary awards and survivors' benefits that the scheme's trustees or managers are required to make when a scheme is winding up. If winding up is backdated any adjustments to the award take effect from the earlier date;
>
> Regulation 8 makes provision for where, after winding up begins, someone becomes entitled to benefits in respect of the deceased member;
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> Regulation 9 provides a new regulation concerning the calculation of the value of scheme assets and liabilities;
>
> Regulations 10 and 11 contain new modifications of the 2004 Act concerning the discharge of liabilities;
>
> Regulation 12 ensures that section 124 of the Pensions Act 1995 will apply in future to determine when a scheme begins to be wound up;
>
> Regulation 13 provides that the rules under these Regulations also apply for the purposes of treating as schemes sections of multi-employer schemes, partially government guaranteed schemes and partly foreign schemes;

Regulation 14 makes amendments to the Winding Up Regulations 1996 and other Regulations;

Regulation 15 amends provisions in the Transfer Values Regulations which relate to the valuation of the cash equivalent of a member's benefits and circumstances in which a scheme may reduce that cash equivalent;

Regulations 16 – 18 make amendments to a number of Pension Sharing Regulations which correspond to the amendment in regulation 15.

7.5 No consultation was required on these Regulations as they were made before the end of the period of six months beginning with the coming into force of any enactment on which the Regulations are consequential.

8. Impact

8.1 A Regulatory Impact Assessment has not been produced for these regulations as they have no impact on the costs of business, charities or the voluntary sector.

8.2 The Regulations have no impact on the costs of the public sector.

9. Contact

9.1 Geoff Williams at the Department for Work and Pensions (Tel: 020 7962 8596 or email: geoff.williams@dwp gsi.gov.uk) can answer any queries regarding this instrument.

23 March 2005