EXPLANATORY MEMORANDUM TO

THE PARLIAMENTARY PENSIONS (AMENDMENT) REGULATIONS 2006

2006 No. 920

1. This explanatory memorandum has been prepared by the Cabinet Office 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. This instrument amends the Parliamentary Contributory Pension Fund ("PCPF") scheme and its Additional Voluntary Contributions ("AVC") scheme. It makes the two schemes compatible with the tax simplification related requirements of the Finance Act 2004 and incorporates some of the new flexibilities that the Act offers. This instrument also makes a number of other changes including providing pension to some additional Select Committee Chairmen and, for the first time, to some Standing Committee Chairmen.

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

3.1. This SI is being laid for less that the normal 21 days. The regulations were not laid sooner due to the additional time it has taken to address concerns raised during the consultation process by the Trustees and individual scheme members. In particular, these related to the treatment of members over 75, on whom the Finance Act 2004 has significant impact. The Leader of the House of Commons has, where possible, taken steps to address these concerns, taking account of the draft of the Finance Bill 2006 which was published on 16 March 2006.

3.2. These regulations generally come into force on 6 April 2006. However, regulation 6 ("Commutation for Members and office holders reaching 75 before 6 April 2006") comes into force on 5 April 2006, and has effect from 4 March 2006. This is necessary to enable Members that are aged over 75 to take their pension commencement lump sums before 6 April 2006 (A-Day), after which such payments will become unauthorised for the purposes of the Finance Act 2004. Furthermore, it is necessary for the other provisions in these regulations to be in place from 6 April 2006, which is when the new tax regime comes into force.

3.3. However, regulation 13 ("Pension entitlement of salaried Chairmen of Select Committees or Standing Committees") comes into force on 6 April 2006, but has effect from 13 July 2005, which is the date when the House voted for these additional offices to receive a pension.

3.4. The Leader of the House of Commons is able to make retrospective regulations under section 2(4) of the Parliamentary and other Pensions Act 1987. This permits him to make provisions which have effect from a date earlier than the date of the making of regulations containing the provision.

4. Legislative Background

4.1. The Parliamentary and other Pensions Act 1987 ("the Act") provides for the existence of the Parliamentary Contributory Pension Fund and its Additional Voluntary Contribution Scheme. The Act confers powers on the Leader of the House of Commons to make provision for pensions payable from the Fund for Members of the House of Commons, Ministers and other office holders. Such provisions have been made via the Parliamentary Pensions (Consolidation and Amendment) Regulations 1993 and the Parliamentary Pensions (Additional Voluntary Contributions Scheme) Regulation 1993, as amended from time to time.

4.2. The Leader of the House of Commons, in exercise of the powers conferred by section 2(1) and (4) of the Act, is now making further amendments to the PCPF scheme and its AVC regulations, with the consent of the Minister for the Civil Service.

4.3. As required by section 2(7) of the Act, the Leader of the House of Commons has consulted with the Trustees of the Fund and persons appearing to the Leader to represent persons likely to be affected. The Trustees and some individual members had expressed concerns about some elements of the initial proposals. These concerns have been considered by the Leader of the House of Commons, and a number of changes have been made to the regulations accordingly.

5. Extent

5.1. This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1. As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1. The tax treatment of pensions is changing from 6 April 2006 due to changes made under the Finance Act 2004. The new tax regime will apply to the PCPF scheme in the same way it applies to other pension schemes. Cabinet Office has worked with the Government Actuary's Department ("GAD"), HM Treasury and the Trustees of the PCPF scheme to come up with a suitable package of changes.

7.2. The package, which GAD has advised is cost neutral, consists of changes which fall into two broad categories. First, changes which are essential to avoid the scheme making "unauthorised payments" under the new tax regime. Second, changes which provide members with increased flexibility on contributing to the schemes or on the form and level of the benefits they take, whilst ensuring that the risk of increased costs to the Exchequer is contained within reasonable bounds.

7.3. Aside from the more minor technical changes, the main parts of the package are:

- Measures to ensure compliance with the Finance Act 2004, including: removing the regulation that currently abates members' pensions if they stand as a candidate for election (regulation 4); restricting dependents' pensions in certain circumstances where the member was over 75 when they died (regulation 7); amending the PCPF scheme's definition of "incapacity" for the purpose of ill-health pensions (regulation 10); and enabling the PCPF scheme to pay certain tax charges (regulations 14 and 25).

- Changes to the PCPF scheme's added years arrangements. These ensure the arrangement provides a worthwhile facility to those who may only serve for a relatively short period of time and may not have built up significant pension rights elsewhere, whilst reducing the scope for abuse which would exist if those purchases which are currently unlimited were allowed to continue. (regulation 3)

- Allowing members of both the PCPF scheme and its AVC scheme to take the maximum tax-free lump sum permitted under the new tax regime. (regulations 5 and 23)

- Accounting for the fact that under the Finance Act 2004 it will not be possible after 5 April 2006 for members over 75 to take a tax-free lump sum with their pension, to get tax relief on their pension contributions or have a tax-free lump sum paid on their death. The regulations give PCPF scheme members who are already over 75 the choice of either continuing in the scheme but with no lump sum payable, or being awarded their pension immediately before 6 April 2006 (hence being allowed to take their tax-free lump sum immediately), but having their pension fully abated until they retire.

  This provision will be extended to members that reach 75 after 5 April 2006, once the provisions enabling abatement of pension in the draft Finance Bill come into force. The regulations also provide an alternative to the existing death in service benefit for members over 75, and extend their five year pension guarantee by up to a further five years, so that it does not commence until they actually retire. (regulations 5, 6, 8 and 9)

- Imposing a time limit of 12 months for transferring pension rights into the PCPF scheme from personal pension and voluntary contribution schemes. Without a limit, someone seeking to avoid the ceiling on added years' purchases could purchase a single premium pension and then transfer that to the PCPF scheme, thus circumventing the contribution limits. The restriction on transfers-in will not apply to existing members until 6 April 2007, so that they have a reasonable period of notice. (regulation 15 and Schedule 1)

- Facilitating PCPF scheme members to benefit from "enhanced protection", if they apply for it. Enhanced protection is a transitional protection measure offered by the new tax rules so that members can protect pensions already built up before 6 April 2006. (regulation 18)

- Removing the current limits on contributions to, and benefits from, the AVC scheme. (regulation 23)

7.4. The opportunity is also being taken to make some other changes, including updating provisions and correcting omissions. The main amendment of this nature is to reflect the House's resolution of 13 July 2005 to provide pay and pension to some additional Select Committee Chairmen and, for the first time, to some Standing Committee Chairmen. The Chairmen concerned have been making pension contributions since then and the amendment formalises what has been happening in practice.

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. There is no impact on the public sector.

8.2. The package of changes is, overall, expected to be cost neutral to the Exchequer.

9. Contacts

9.1. The following contacts at the Cabinet Office can answer any queries regarding the instrument:

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