

**EXPLANATORY MEMORANDUM TO
THE PENSION PROTECTION FUND (MISCELLANEOUS AMENDMENTS)
REGULATIONS 2007**

2007 No. 782

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 These regulations set out a number of technical and procedural requirements for the interaction between occupational pension schemes and the Pension Protection Fund (PPF).
 - 2.2 These regulations make amendments to The Pension Protection Fund (Entry Rules) Regulations 2005 (“the Entry Rules Regulations”); the Pension Protection Fund (Compensation) Regulations 2005 (“the Compensation Regulations”); the Pension Protection Fund (Valuation) Regulations 2005 (“the Valuation Regulations”); and the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006 (“the General and Miscellaneous Regulations”). Our aim is to bring them into effect by 6 April 2007.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative background**
 - 4.1 Section 107 of the Pensions Act 2004 (“the Act”) establishes the Board of the Pension Protection Fund (“the Board”). The Board is a statutory public corporation, at arms’ length from Government, which pays compensation to members of eligible pension schemes when the employer is insolvent and the pension scheme is underfunded. Section 126 of the Act makes provision about which occupational pension schemes are eligible schemes.
 - 4.2 The Entry Rules Regulations, regulation 2 of which is amended by regulation 2 of the Miscellaneous Regulations, sets out those schemes which are not “eligible schemes” for the purposes for part 2 of the Act and which are not able to receive compensation from the Board pursuant to the pension compensation provision in that Part of the Act.
 - 4.3 The Compensation Regulations, regulation 19 of which is amended by regulation 3 of the Miscellaneous Regulations, provides that a person may opt to commute a portion of his periodic compensation for a lump sum in certain circumstances.

- 4.4 The Valuation Regulations, regulations 1, 2, 3 and 6 of which are amended by regulation 4 of the Miscellaneous Regulations, provide for the valuation of the assets and liabilities of eligible schemes in accordance with sections 143 and 179 of the Act. The regulations: provide that eligible schemes must provide an initial section 179 actuarial valuation of the scheme's assets and liabilities by a prescribed date and that in the case of section 179 valuations, the trustees or managers of eligible schemes must provide actuarial valuations to the Board, or the Pensions Regulator, at least every three years after the initial actuarial valuation (regulation 2); provides for assets that shall be excluded from the actuarial valuations (regulation 3); and provides for the valuation of protected liabilities of the eligible scheme (regulation 6);. Regulation 1 of the Valuation Regulations provides for commencement, citation and interpretation.
- 4.5 The General and Miscellaneous Regulations, regulations 6 and 16 of which are amended by regulation 5 of the Miscellaneous Regulations, sets out the exceptions from the general rule, contained in section 163(4)(a) of the Act, that the Board must recover overpayments of amounts paid by the trustees or managers of the relevant scheme made during the assessment period (regulation 6); and provides for the recovery of overpayments of PPF compensation (regulation 16).

5. Territorial Extent and Application

- 5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

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

7. Policy Background

Regulation 2 – amendments to the Entry Rules Regulations

- 7.1 Occupational pension schemes with fewer than 12 members, where all the members are either trustees or directors of the trustee company, are exempt from a number of provisions of pensions' legislation, including from the PPF. The changes (provided for by Paragraph (2)) remove the requirement for all decisions to be made by the unanimous agreement of the trustees or directors of the company (where that company has to make decisions in its capacity as trustee) who are members of the scheme. Paragraph (2) provides that only decisions which fall to be made by the trustees or company in its capacity as sole trustees must be made by unanimous agreement of the trustees, or directors of that company, who are members of the scheme.
- 7.2 Paragraph (3) amends paragraph 5(b) of the Schedule to regulation 25 of the Entry Rules Regulations (S.I. 2005/590) by removing the

incorrect reference to “regulation 12 of the Occupational Pensions Schemes (Investment) Regulations 2005 (S.I. 2005/3378) (restrictions on employer-related investment)” and inserting the correct reference of “regulation 13 of the Occupational Pensions Schemes (Investment) Regulations 2005 (S.I. 2005/3378) (Investments to which restrictions do not apply)”.

Regulation 3 – amendments to the Compensation Regulations

- 7.3 Paragraph (2) of this regulation amends regulation 19(3) of the Compensation Regulations by removing the incorrect reference to “paragraph” 20(2)(b) and inserting the correct reference to “regulation” 20(2)(b).

Regulation 4 – amendments to the Valuation Regulations

- 7.4 Paragraph (2) of this regulation substitutes a new definition of “relevant accounts” into the Valuation Regulations to ensure consistency with other pensions legislation. This paragraph also adds a new definition of “pre-6th April 1997 contract of insurance” to the Valuation Regulations (see paragraph 7.6).
- 7.5 Paragraph (3) of the Miscellaneous Regulations is amended by regulation 4 in order for the PPF to calculate the pension protection levy on a consistent basis for all schemes at the earliest possible opportunity. Paragraph (3) amends the prescribed date by which an eligible scheme, which becomes a registrable scheme prior to the commencement date (6 April 2005), submits its initial actuarial valuation in accordance with section 179 of the Act to within 15 months of the relevant time of the valuation or by no later than 31 March 2008, whichever is the earlier. It also amends the prescribed date by which the trustees or managers of an eligible scheme provide any subsequent actuarial valuation to the Board, or the Pension Regulator, to within 15 months of the relevant time of that valuation. The increase in the length of time, from 12 to 15 months, for these schemes in providing information to the PPF provides consistency with scheme funding legislation.
- 7.6 In response to comments from industry concerning issues with poor scheme administration, paragraphs (4) and (5) of the Miscellaneous Regulations provides for the amount representing the value of a relevant contract of insurance (as defined in paragraph (2) of these regulations) to be excluded from the actuarial valuation of the assets and protected liabilities of an eligible scheme if, in the opinion of the appropriate person, there is insufficient information about that contract of insurance with which to conduct a valuation and that relevant contract of insurance was taken out before 6 April 1997.

Regulation 5 – amendments to the General and Miscellaneous Regulations

- 7.7 This regulation makes minor amendments to regulations 6 and 16 of the General and Miscellaneous Regulations, which require the Board to determine whether recovery of an overpayment of scheme benefits would cause hardship. The amendments made by this regulation provide that the Board may seek additional information and, having regard to the information before it, must make its determination as soon as is reasonably practicable.

Regulation 6 – Transitional provision

- 7.8 Regulation 6 concerns transitional arrangements for a scheme with an assessment date before 1st April 2007. The transitional arrangement will ensure that these schemes will not have to incur further costs unnecessarily to enable the assessment period to be completed.

Regulation 7 – Revocation

- 7.9 This regulation makes revocations that are consequential on amendments made by regulations 2(3) and 5 of the Miscellaneous Regulations.

Consultation

- 7.10 In accordance with section 317(1) of the Act, the Secretary of State has consulted such persons as he considers appropriate. DWP is not required to consult Social Security Advisory Committee, as these Regulations have no impact on DWP benefits.
- 7.11 The consultation period started on 13 September 2006 and closed on 5 December 2006. The consultation was conducted in accordance with the Cabinet Office Code of Practice on Consultation. 15 responses to the consultation were received. Comments were mostly focussed on regulation 4 of the Miscellaneous Regulations – the Amendment of the Pension Protection Fund (Valuation) Regulations 2005 (“the Valuation Regulations”).
- 7.12 Respondents pointed out that the previous definition of “relevant accounts” in regulation 4 of the draft Miscellaneous Regulations captured more than was strictly needed and would lead to onerous duties being carried out when calculating the assets and liabilities of a scheme. The definition of “relevant accounts” has therefore been amended to provide a definition which will not lead to onerous duties.
- 7.13 Some respondents commented that the 31 March 2008 deadline for submitting a scheme’s first section 179 valuation to the Board of the PPF will lead to out-of-cycle evaluations. The Board of the PPF approached DWP to make provision for a deadline of 31 March 2008 so that the pension protection levy could be calculated on a consistent basis for all schemes at the earliest possible opportunity. The rationale

for setting the deadline of 31 March 2008 was that no scheme would have to perform an out-of-cycle valuation, and the PPF believe that this will be achieved. All eligible schemes are required to perform an actuarial valuation of the scheme at least every 3 years (and it would be most efficient to perform the s179 valuation when this regular valuation falls due). The earliest permissible date for a section 179 valuation is 1 November 2004. Within the time window of 1 November 2004 to 31 March 2008, all schemes will hit their regular triennial valuation date, with at least 15 months to submit the results with the PPF.

7.14 Respondents also noted that there was a requirement in the draft regulations for schemes newly registrable after the commencement date of the regulations, to submit their first section 179 valuation within 15 months of becoming registrable and that this was at odds with current legislation (which requires newly registrable schemes to submit their first section 179 valuation within a year of the date in relation to which the assets and liabilities are calculated). Regulation 4(3) of the Miscellaneous Regulations has therefore been amended to provide that such schemes shall submit their first section 179 valuation within 15 months after the date on which their assets and liabilities are calculated.

7.15 A full response to the consultation is published on the DWP website - <http://www.dwp.gov.uk/consultations/2006/>

Guidance

7.16 The Valuation guidance pages on the PPF website will be updated to ensure consistency with these regulations.

Consolidation

7.17 This Statutory Instrument amends a number of other instruments. The Government will keep under review whether there is a case for the consolidation of Instruments relating to the Pension Protection Fund.

8. Impact

8.1 These Regulations have only a negligible impact on the cost of business, charities or the voluntary sector. Publication of a full Regulatory Impact Assessment is not necessary for such legislation.

8.2 There is no impact on the public sector.

9. Contact

Nick Skates at the Department for Work and Pensions, tel: 020 7962 8872 or e-mail: Nick.Skates@dwp.gsi.gov.uk can answer any queries regarding the instrument.

Annex A

List of those consulted

Association of British Insurers
Association of Consulting Actuaries
Association of Pension Lawyers
Association of Pensioner Trustees
Auditing Practices Board
Better Regulation Executive
British Chamber of Commerce
Confederation of British Industry
Consumers Association
Council on Tribunals
Engineering Employers Federation
Federation of Small Businesses
Financial Ombudsman Service
Financial Services Authority
HM Treasury (MOCOP)
HM Revenue and Customs
Industry Wide Pension Schemes Group
Institute of Chartered Accountants in England and Wales
Institute of Chartered Accountants in Scotland
Institute of Directors
Investment Managers' Association
NAPF (National Association of Pension Funds)
National Consumers Council
Occupational Pension Schemes Joint Working Group
Office of Fair Trading
Pensions Ombudsman
Pension Protection Fund Ombudsman
Policy and Legal Division DSD Northern Ireland
Small Business Service
The Association of Corporate Trustees
The Faculty and Institute of Actuaries
The Insolvency Service
The Law Society of England and Wales
The Law Society of Scotland
The Pension Protection Fund
The Pensions Management Institute
The Pensions Regulator
The Scottish Executive
The Society of Pension Consultants
The Welsh Assembly
TPAS (the Pensions Advisory Service)
Trades Union Congress