EXPLANATORY MEMORANDUM TO

THE OCCUPATIONAL PENSION SCHEMES (FRAUD COMPENSATION PAYMENTS AND MISCELLANEOUS AMENDMENTS) (AMENDMENT) REGULATIONS 2010

2010 No. 483

1. This memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument allows the Board of the Pension Protection Fund (PPF) to make fraud compensation transfer payments from the Fraud Compensation Fund (FCF) to the PPF and sets out how fraud compensation transfer payments are calculated.

2.2 Fraud compensation transfer payments are payments made to the Pension Protection Fund from the Fraud Compensation Fund, whereas fraud compensation payments are made from the FCF to schemes.

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

3.1 None.

4. Legislative Context

4.1 Section 187 of the Pensions Act 2004 enables the Board of the PPF to make fraud compensation transfer payments from the FCF to the PPF.

4.2 These payments can only be made where all reasonable attempts have been made to recover any loss of funds from a scheme which has transferred into the PPF, and where the Board of the PPF believes that the loss has occurred due to fraud or dishonesty.

4.3 This instrument sets out how fraud compensation transfer payments will be calculated.

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

- ***What is being done and why***

7.1 Since 1 September 2005, fraud compensation payments have been a matter for the Board of the Pension Protection Fund. Chapter 4 of the Pensions Act 2004 and the Occupational Pension Schemes (Fraud Compensation Payments and Miscellaneous Amendment) Regulations 2005 (S.I. 2005/2184) provide the framework within which the Board of the PPF is able to make fraud compensation payments.

7.2 Before the Board of the PPF took responsibility for fraud compensation payments, they were administered by the Pensions Compensation Board (PCB) under provisions in the Pensions Act 1995, which came into force in April 1997.

7.3 Fraud compensation payments may be considered where the assets of a scheme have been reduced and the Board of the PPF considers that there are reasonable grounds for believing that the reduction was attributable to dishonesty (including intent to defraud). In these circumstances the Board may authorise fraud compensation payments to be made.

7.4 Fraud compensation payments are made from the Fraud Compensation Fund (FCF), which is managed by the Board of the PPF. The FCF is funded through:

- funds transferred from the PCB;
- money borrowed by the Board of the PPF;
- income and capital gains on the assets of the FCF; and
- contributions levied by the Board of the PPF through a fraud compensation levy on occupational pension schemes (i.e. including defined –contribution schemes).

7.5 An application for fraud compensation payments must be made by:

- the trustees or managers of the scheme;
- the scheme administrator; or
- a member of, or beneficiary under, a scheme.

7.6 Fraud compensation payments are made to scheme trustees or managers to top up a scheme’s assets (i.e. they are not the same as PPF compensation payments which are made direct to members when a scheme transfers into the PPF).

7.7 Fraud compensation payments cannot cover more than the difference between the amount by which a scheme’s funds were reduced due to dishonesty, and any funds recovered by the trustees or managers at a date determined by the Board of the PPF after which it is unlikely that the trustees or managers will recover any more funds (that date is known as the “settlement date”).

7.8 The Board of the PPF may not transfer a scheme into the PPF where there is an application for fraud compensation payments.

7.9 This instrument introduces fraud compensation transfer payments.

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7.10 Fraud compensation transfer payments can be made in circumstances where:

7.10.1 no application by the trustees or managers of an eligible pension scheme has been made for fraud compensation payments prior to the Board of the PPF assuming responsibility for the scheme; or

7.10.2 such an application had been made but was withdrawn before the Board of the PPF determined whether or not fraud compensation payments should be made to the trustees or managers.

7.11 The power to make fraud compensation transfer payments will help manage schemes through an assessment period as it allows the Board of the PPF to transfer schemes into the PPF where it is known that assets had been reduced due to dishonesty but where no application for fraud compensation payments has been made (or one was made and then withdrawn). The Board of the PPF could transfer such schemes into the PPF in the knowledge that if those assets are not recovered then the Board of the PPF could make a fraud compensation transfer payment to compensate the PPF for that loss of assets. The power will also assist the Board of the PPF where it only learns of the loss of assets of a scheme after the scheme has been transferred into the PPF - the Board of the PPF being able to make a fraud compensation transfer payment to the PPF to similar effect.

7.12 The Board of the PPF will not be able to make fraud compensation transfer payments until all reasonable attempts had been made to recover the loss. Any payment could not exceed the difference between the reduction in the value of the scheme in question’s assets and any subsequent recoveries made by the PPF.

7.13 Fraud compensation transfer payments must not exceed the difference between the amount of assets lost through fraud and recoveries made. This instrument sets out a formula for calculation of fraud compensation transfer payments. The formula is based on the one used for the calculation of fraud compensation payments.

- ***Consolidation***

7.14 Informal consolidation of the instrument will be included in due course in the Department’s “The law relating to social security” (the Blue Volumes) which is available at no cost to the public at http://dwp.gov.uk/advisers/docs/lawvols/bluevol

8. Consultation outcome

8.1 Although there is no formal requirement to consult on the Regulations made under subsection 187(8), as the provisions will come into effect within six months of the commencement of section 187, the Pension Protection Fund was informally consulted as the changes will have a direct effect on its operations. PPF has advised that it is content with the Regulations. The Regulations will have no direct impact on the public.

9. Guidance

9.1 There is no requirement for the Department to provide guidance as the provisions are straight forward and would have no impact on the public in general.

10. Impact

10.1 The legislation will not impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 A full impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 This legislation will not impact on small business.

12. Monitoring and review

12.1 The Department for Work and Pensions will continue to work closely with the Board of the Pension Protection Fund to ensure the legislative framework for the PPF remains appropriate. The DWP and PPF meet once a month to review and discuss policy issues.

13. Contact

Any queries regarding these instruments are to be directed to John Isaac at the Department for Work and Pensions Tel: 020 7449 7419 or e-mail: John.isaac@dwp.gsi.gov.uk