EXPLANATORY MEMORANDUM TO THE OCCUPATIONAL PENSION SCHEMES (FRAUD COMPENSATION PAYMENTS AND MISCELLANEOUS AMENDMENTS) REGULATIONS 2005

2005 No. 2184

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 Board of the Pension Protection Fund ("the Board") is established by section 107 of the Pensions Act 2004 (c.35) ("the Act").

2.2 Chapter 4 of Part 2 of the Act provides for the Board to pay fraud compensation to qualifying occupational pension schemes.

2.3 This instrument sets out the detail for how fraud compensation applications must be made and how payments are to be managed. The regulations set out which occupational schemes cannot apply for fraud compensation and who may make an application under section 182 of the Act. They set out what information must be provided in an application made under section 182 or a notice issued under section 183. The regulations also set out arrangements for the calculation and payment of fraud compensation under section 185 and interim payments under section 186.

2.4 Special provision is made in the instrument for schemes with more than one sponsoring employer and schemes with uncommon characteristics, to ensure that their requirements are also catered for.

2.5 The regulations additionally introduce a number of provisions that tailor the reviewable matters and information exchange sections in the Pensions Act to the requirements of fraud compensation.

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

3.1 None.

4. **Legislative Background**

4.1 The Board is an executive non-departmental public body (NDPB) which, subject to specified conditions, will pay compensation to members of eligible occupational pension schemes where the sponsoring employer is insolvent and the scheme has insufficient assets to pay benefits at a level at least equal to the amount the Pension Protection Fund would provide.

4.2 From 1st September 2005, the Board will also pay fraud compensation to the trustees and managers of qualifying occupational pension schemes where the scheme's assets have been reduced by an offence involving dishonesty and the employer is insolvent or unlikely to continue as a going concern. This will replace the current fraud compensation scheme which is administered by the Pensions Compensation Board (PCB). The PCB will be dissolved from 1st September 2005 under section 302 of the Act and the compensation scheme it administered will cease to have effect after that date, although the Board will assume responsibility for handling any outstanding matters.

4.3 These regulations give detailed effect to the fraud compensation provisions in Chapter 4 of Part 2 of the Act.

5. Extent

5.1 This instrument applies to Great Britain.

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 Pensions Compensation Board has played an important role in compensating qualifying occupational schemes affected by fraud, since its inception in April 1997. Compensation is payable where it has been established that the sponsoring employer is insolvent and the value of the scheme assets has been reduced as a result of dishonesty. Claims for compensation can be made by the trustees of a scheme, persons concerned with the administration, or a member of the scheme themselves. Payments are made to the trustees or managers of the scheme in lieu of the assets reduced by the fraud.

7.2 Although the PCB has considered less than 30 applications in eight years due to the rarity of identified fraud in occupational schemes, the facility for trustees and managers of fraud affected schemes to apply for compensation remains an important safety net. Given the interdependencies that may exist between the Pension Protection Fund's (PPF) entry rules and fraud compensation where an occupational scheme has applied for both and the opportunities for streamlining administration, it was felt appropriate to bring both forms of compensation under the one organisation.

7.3 Therefore, from 1st September 2005 the PPF Board will replace the PCB as provider of fraud compensation to the trustees of qualifying occupational schemes where the employer is insolvent. All the rights, property and liabilities of the PCB will transfer to the PPF Board when it is dissolved.

7.4 A new fraud compensation fund will be created under section 188 of the Act. The Fund will be ring-fenced so that any future fraud compensation levy receipts must be credited to that fund and not used for any other purpose – for example, paying PPF compensation. A further set of regulations early next year will provide for calculation and collection of a fraud compensation levy. Those regulations are planned to coincide with further PPF levy instruments that are currently in development and due to come into effect from 1st April 2006.

7.5 In order to ensure a smooth transition from the PCB to the PPF Board, the fraud compensation provisions in Chapter 4 of Part 2 of the Act mirror wherever possible those in sections 78 to 86 of the Pensions Act 1995, which established and govern the PCB and set out conditions for the operation of the PCB compensation scheme. Likewise, this instrument in large part reflects the PCB regulations, for example requirements relating to applications for fraud compensation and of the offences that qualify as fraud.

7.6 Any differences in drafting between this instrument and the PCB regulations reflect wider changes in pension legislation and interdependencies with the PPF.

7.7 Although these regulations are being made within six months of the relevant provisions of the Act coming into force, there has been a limited public consultation on these regulations, which have been circulated among industry representatives and others with an interest.

7.8 Of the 15 organisations that were consulted, 5 responded, with constructive comments, these being minor drafting points in the main. A few substantive changes were suggested, for example paying interest to schemes where fraud payments were delayed and reimbursing an under funded scheme which incurred costly professional fees in order to validate their fraud application. The Department accepted and incorporated most of the drafting comments but were unable to accept the more substantive suggestions because the primary legislation does not permit them.

7.9 The Regulations have not been submitted to the Social Security Advisory Committee because the PPF Board does not provide social security benefits.

8. Impact

8.1 A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

9. Contact

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