EXPLANATORY MEMORANDUM TO

THE OCCUPATIONAL PENSION SCHEMES (EMPLOYER DEBT ETC.) (AMENDMENT) REGULATIONS 2005

2005 No.2224

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 Section 75 of the Pensions Act 1995 provides that a debt is due from a sponsoring employer to a scheme to which that section applies, if they become insolvent or their scheme starts to wind up, when their pension scheme is underfunded.

2.2 The existing Regulations under section 75 allow for a debt to be due from an employer if they withdraw from a multi-employer scheme. This debt is currently based on the minimum funding requirement (MFR) and these amending Regulations change the basis of the debt to the full buy-out amount; however, they also allow the withdrawing employer to continue to pay the MFR debt and use an arrangement to cover the remaining debt.

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

3.1 None

4. Legislative Background

4.1 The Regulations amend existing Regulations which set the level of debt due from a sponsoring employer to its pension scheme, should the scheme wind up, the employer become insolvent or the employer withdraw from the scheme if it is a multi-employer scheme. The existing Regulations are the Occupational Pension Schemes (Employer Debt) Regulations 2005 (SI 2005/678).

4.2 These Regulations are being introduced to protect the Pension Protection Fund (PPF). They are part of measures that aim to ensure that the PPF will not be forced to take responsibility for additional liabilities that should be the responsibility of sponsoring employers. They should also protect employers remaining in multi-employer schemes.

4.3 The debt on an employer withdrawing from a multi-employer scheme is currently calculated on the MFR basis. These amending Regulations change the basis on which the debt is calculated to the full buy-out basis. However, they also allow the withdrawing employer to pay the MFR debt and set up an arrangement to cover the remaining debt.

4.4 Where such arrangements are used the Pensions Regulator must approve them. Withdrawing employers are also able to transfer members to other appropriate pension plans.

5. Extent

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

7.1 Section 75 of the Pensions Act 1995 states that any deficiency in a salary-related occupational pension scheme becomes a debt on the employer should the scheme wind up or its sponsoring employer become insolvent. This is designed to provide protection to scheme members should these events occur.

7.2 The current Regulations under this section provide that a debt can arise on an employer if they withdraw from a multi-employer scheme. They also set out the basis for valuing schemes' assets and liabilities and, therefore, the amount of any debt on the employer.

7.3 These Regulations amend the current Regulations. Where a debt arises on an employer who withdraws from a multi-employer scheme these Regulations change the basis of the calculation of the debt from MFR to full buy-out. "Full buy-out" is the level of funding a scheme needs for it to be able to buy annuities for all its members; and this level of funding should provide members with the pension income they expect.

7.4 If a scheme winds up or all its remaining sponsoring employers become insolvent the liability for any debt is on the employers participating in the scheme at that time. Increasing the amount that the withdrawing employer is required to pay will reduce the amount that the remaining employers will have to pay in the future; and means that the withdrawing employer takes more responsibility for their members' liabilities.

7.5 The Regulations allow the withdrawing employer to continue to pay a debt based on the MFR if they put in place an arrangement which covers the rest of the debt. This arrangement has to be approved by the Pensions Regulator. The Regulations provide that if the withdrawing employer transfers its members to an appropriate pension plan they do not have to pay a debt for these members.

7.6 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 section 272 of the Pensions Act 2004, on which the Regulations are consequential. As the Regulations aim to provide protection for the PPF, which is already operating, they are required as soon as practicable.

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.

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

9. Contact

Gabrielle Park at the Department for Work and Pensions Tel.: 020 7712 2122 or email: Gabrielle.Park@dwp.gsi.gov.uk can answer any queries regarding the instrument.