EXPLANATORY MEMORANDUM TO THE

OCCUPATIONAL PENSION SCHEMES (ADMINISTRATION AND AUDITED ACCOUNTS) (AMENDMENT) REGULATIONS 2005

2005 No. 2426

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 amend the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996 and the Occupational Pension Schemes (Scheme Administration) Regulations 1996. They amend the provisions relating to regulation of the activities and supervision of occupational pension schemes.

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

3.1 None.

4. Legislative Background

4.1 The regulations make the necessary consequential amendments to the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996 and the Occupational Pension Schemes (Scheme Administration) Regulations 1996 to:

- Implement provisions in a European Directive on the activities and supervision of institutions for occupational retirement provision by 22 September 2005, and
- Comply with requirements in the Pensions Act 2004 and the Finance Act 2004 which come into force on 6 April 2006.

A limited number of amendments have also been made in order to update the provisions in these two sets of regulations.

5. Extent

5.1 This instrument applies to England, Wales and Scotland.

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 The key policy changes made by these regulations are:

- to limit the exemption for ‘Funded Unapproved Retirement Benefit Schemes’ (FURBS) to those with fewer than 100 members. The change is necessary in order to comply with the IORP Directive. FURBS are used mainly by high earners for earnings above the Revenue earnings cap (£105,600). Currently, all FURBS are exempt from most Pensions Act requirements, including the production of audited accounts. However, from 22 September the IORP Directive (Article 5) only permits exemptions for schemes with fewer than 100 members and schemes with a Government guarantee.

- changing the end of year reporting requirements on “earmarked schemes”. This is also in response to the IORP Directive. Earmarked schemes are ones in which all of the benefits are provided by insurance polices or annuity contracts which are ‘earmarked’ to individual scheme members. Currently they are exempt from the requirement to produce audited accounts, because accounts are meaningless in the context of such schemes. Under IORP the existing exemptions could only be continued for schemes with fewer than 100 members. Instead, and after discussion with members of the pensions industry, we have introduced new end of year accounting requirements for all earmarked schemes. These are in keeping with the requirements of the IoRP Directive (Article 10) and impose only limited additional requirements on earmarked schemes.

- to introduce a ‘materiality’ test into the auditor’s report on the payment of contributions. Auditors will no longer have to qualify their reports if there are small discrepancies which have no material effect on the scheme. This is in line with usual auditing practice and is in response to a request from the Institute of Chartered Accountants of England and Wales (ICAEW).

- to remove a number of exemptions for specific schemes, or scheme types, which fall outside the new definition of an ‘occupational pension scheme’ as defined in section 239 of the Pensions Act 2004 (for example the ‘Salvation Army’ arrangement). These schemes will now fall outside the scope of Pensions Act requirements and so specific exemptions are no longer necessary.

- amending the definition of “small” schemes (schemes which have fewer than 12 members and all the members are trustees) to take account of tax changes that will come into effect in April 2006.

- changing the provisions on the reporting of the late payment of contributions to the Pensions Regulator, as a consequence of changes made in section 269 of the Pensions Act 2004.

7.2 Consultation with over 50 bodies, including members of the financial services industry, consumer representative groups and trade union representatives, was undertaken on the draft regulations. 14 responses were received, mainly from financial services industry representative bodies and from individual insurance companies.

7.3 The responses focused on three main areas.

* the proposed approach to “ear marked” schemes; these are schemes in which all the benefits are provided by insurance policies or annuity contracts which are “earmarked” to individual pension scheme members.

* the proposed new definition of “small” schemes; these are schemes which have fewer than 12 members and all the members are trustees.

* the effect of the proposed changes on pensioneer trustees; these are individuals or companies with pensions experience approved by HM Revenue and Customs to act as a trustee for certain pension schemes .

7.4 The Regulations have been amended in the light of these comments.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has only a negligible impact on business, charities or voluntary bodies.

8.2 There is no impact on the public sector.

9. Contact

Barry White at the Department for Work and Pensions, Tel: 020-7962-8563 or e-mail: Barry.White@dwp.gsi.gov.uk can answer any queries regarding the instrument.