

**EXPLANATORY MEMORANDUM TO THE  
PENSION PROTECTION FUND (REVIEWABLE ILL HEALTH PENSIONS)  
REGULATIONS 2005**

**2005 No.652**

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 (“PPF”) is established by section 107 of the Pensions Act 2004 (c.35) (“the Act”) to provide compensation for members of eligible occupational pension schemes in the event of the insolvency of the scheme’s sponsoring employer and where the pension scheme is underfunded at a certain level.
  - 2.2 Provision for ill Health reviews are made under Sections 140 [Reviewable Ill Health Pensions] and 141 [Effect of a review] to the Pensions Act and enables the Board to review ill health awards made by the trustees or managers of the scheme up to three years before the assessment date [on which the insolvency event falls] or within a certain period after the assessment date where the award is completed after the assessment date but relates to a period beginning prior to the assessment date.
  - 2.3 These regulations detail the period of time after the assessment date, during which trustees and managers must complete ill health applications, which relate to a period beginning prior to the assessment date and the administrative process that the Board must follow when reviewing an ill health award. These regulations provide detail of the compensation that will be payable to a member if the Board decide not to pay compensation in respect of the ill health award.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Background**
  - 4.1 This is the first use of the power under sections 140 and 141 of the Pensions Act 2004.
  - 4.2 The Pensions Act 2004 established the Pension Protection Fund (PPF). The PPF 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 PPF will provide.

4.3 These regulations are required from 6<sup>th</sup> April 2005 to ensure they will apply to any scheme which may enter an assessment period after this date.

## 5. **Extent**

5.1 This instrument applies to Great Britain.

## 6. **European Convention on Human Rights**

6.1 Not applicable.

## 7. **Policy Background**

7.1 The Pensions Act establishes the Pension Protection Fund (PPF). The PPF will pay compensation to members of eligible 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 of compensation the PPF would provide.

7.2 Members who are under normal pension age and in receipt of an ill health pension immediately before the assessment date qualify for 100% level of compensation and are not subject to the compensation cap (which provides an upper limit to the amount of compensation payable).

7.3 Sections 140 [Reviewable Ill Health Pensions] and 141 [Effect of a Review] provide the Board with the power to review ill health awards made in the three years prior to the assessment date or completed within a certain period after the assessment date. The purpose of this policy is to prevent abuse of the PPF from members who may have obtained an ill health award unscrupulously to gain advantage of the 100% level of compensation and avoid the compensation cap.

7.4 Regulations prescribe that the trustees or managers of the scheme must complete outstanding decisions on ill health applications within six months of the assessment date. Soundings with industry have suggested that six months is a reasonable period of time for an ill health application to be completed.

7.5 These regulations prescribe the process to follow when the Board decide to review an ill health award. The Board must notify the member that they intend to review the ill health award. The Board may issue a notice requiring the member to produce any documents or other information that the Board require within such time as the Board decide. In addition, the Board may request that the member attends a medical examination. These powers enable the Board to request appropriate information on which it can base its decision as to whether section 141(3) of the Act is satisfied and

determine the compensation payable to the member should the Board assume responsibility for the scheme.

- 7.6 These regulations also provide the Board with the power to reimburse expenditure incurred in obtaining documentation or attending a medical, as required by the Board.
- 7.7 These regulations prescribe that failure by the member to provide documentation requested by the Board or attend a medical examination at the request of the Board will result in the Board basing its decision on the information available to it.
- 7.8 When making its decision as to whether the ill health award meets the conditions of section 141(3) of the Act, these regulations prescribe that the Board must take into account; any documentation produced by the trustees or managers of the scheme in response to a request notice under section 191(1) of the Act, any documents provided by the member in response to a request by the Board, the result of any medical examination requested by the Board and any other documents or information produced by the member.
- 7.9 Following the Board's decision, these regulations require that copies of the decision must be sent to the trustees or managers of the scheme and to the member. The decision issued to the trustees or managers of the scheme must not include the reasons for the Board's decision as this could include sensitive personal information and is not relevant to the trustees or managers of the scheme. The decision notice provided to the scheme member will include both reasons for the Board's decision and the fact that the member can appeal against that decision, should they wish.
- 7.10 Where the Board decide that the conditions within section 141(3) are not satisfied, regulations provide that the member should be treated as a deferred member under paragraph 15 of Schedule 7 to the Act (i.e. the member will not be entitled to compensation until they reach their scheme's normal pension age). The member will not be entitled to any separate scheme lump sum or commuted lump sum (i.e. swapping part of the regular pension for a lump sum) if he had previously taken the separate scheme lump sum or commuted lump sum at the time of the award of the pension. If the member had previously commuted part of his pension for a lump sum, then upon reaching normal pension age, the member's pension will be reduced by reference to the proportion of the pension that was commuted for a lump sum, in accordance with the scheme rules, at the time of the original award.
- 7.11 These regulations will define ill health within Schedule 7, paragraph 37(4) as being any reference to ill health including any reference, in whatever terms, under the permitted rules of the scheme, to illness, or a physical or mental deterioration resulting in incapacity for employment or a particular form of employment. This captures the various definitions of ill health used by schemes.
- 7.12 There has been no consultation on these regulations.

7.13 There is no need to refer to SSAC as the Pension Protection Fund is a Non-Departmental Public Body and does not provide Social Security Benefits.

**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 There is no impact on the public sector.

**9. Contact**

9.1 David Shaw at the Department for Work and Pensions tel: 02079622464 or email: david.shaw@dwp.gsi.gov.uk can answer any queries regarding this instrument.