

EXPLANATORY MEMORANDUM TO
THE PENSION PROTECTION FUND (ENTRY RULES) (AMENDMENT)
REGULATIONS 2009

2009 No. 1552

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. **Purpose of the instrument**

2.1 The instrument makes provision for the Board of the Pension Protection Fund to make directions that would enable it to stop trustees, on a scheme by scheme basis, from making rule changes during an assessment period. The assessment period is the period (lasting a minimum of one year) during which the Board of the Pension Protection Fund looks to determine whether a scheme is eligible for entry. During this period the scheme continues to be administered by its trustees, subject to various restrictions and controls.

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

3.1 None.

4. **Legislative Context**

4.1 The Board of the Pension Protection Fund has powers to make directions in respect of schemes in an assessment period. Under section 134 of the Pensions Act 2004 the Board of the Pension Protection Fund may issue directions with a view to ensuring a scheme's protected liabilities do not exceed its assets, or if they do, that the excess is kept to a minimum. The Board of the Pension Protection Fund may give the scheme's trustees, managers, administrators and/or employers directions regarding the exercise during an assessment period of powers in respect of:—

- (a) the investment of the scheme's assets,
- (b) the incurring of expenditure,
- (c) the instigation or conduct of legal proceedings.

4.2 These Regulations add another item to that list. The extra item is the powers to change the pension scheme's rules. The Board of the Pension Protection Fund may therefore impose requirements (by giving directions) about how the powers to change the pension scheme's rules can be exercised.

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

7.1 The Pension Protection Fund is a statutory corporation established under the Act. The main function of the Pension Protection Fund is to provide compensation to members of eligible defined benefit schemes, when there is a qualifying insolvency event in relation to the employer and there are insufficient assets in the pension scheme to cover the Pension Protection Fund level of compensation. For the majority of people below their scheme's normal pension age the Pension Protection Fund will pay a 90% level of compensation.

7.2 If a qualifying insolvency event occurs on or after 6 April 2005 in relation to an employer of a defined benefit occupational pension scheme which is eligible for protection by the Pension Protection Fund, the scheme will enter an assessment period. During the assessment period the scheme continues to be administered by its trustees and the Pension Protection Fund assesses whether or not the scheme will transfer into the Pension Protection Fund.

7.3 During an assessment period the Pension Protection Fund undertakes a review of any changes that have been made to the pension scheme's rules, and any discretionary increases in the rate of any pension in payment or postponed pension, which took effect in the three years immediately before the start of the assessment period, or which were made in that period but took effect from an earlier time. If this review establishes that the aggregate effect of recent rule changes and/or recent discretionary increases results in an overall increase in the scheme's liabilities, all those rules and increases are disregarded. This leaves only those rules and increases which are permitted and these are known as the admissible rules (as provided for by the 'admissible rules provisions' which are found in paragraph 35 of Schedule 7 to the Pensions Act 2004). The admissible rules are used in the calculation of the scheme's protected liabilities (that is, those liabilities of the scheme that will be covered by the Pension Protection Fund if it takes over the scheme).

7.4 These Regulations complement the admissible rules provisions by allowing the Board of the Pension Protection Fund to give directions that would enable it to stop trustees, on a scheme by scheme basis, from making rule changes during an assessment period which would have the effect of increasing the scheme's protected liabilities. The power to give directions relating to the exercise of powers to amend scheme rules is prescribed as a matter for the purposes of section 134(2) of the Pensions Act 2004 and can only be used to ensure the scheme's protected liabilities do not exceed its assets.

- **Consolidation**

7.5 This Statutory Instrument amends one instrument. Consolidation is not appropriate in respect of these regulations because they make minor changes only to the other instrument. The Government will, however, keep under review whether there is a case for the consolidation of Instruments relating to the Pension Protection Fund.

7.6 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 are available at no cost to the public on the internet at <http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/>

8. Consultation outcome

8.1 There is no formal requirement to consult on these Regulations as the provisions will come into effect within six months of the commencement of section 134(2)(d) of the Pensions Act 2004.

9. Guidance

9.1 The Department for Work and Pensions will be in a position to provide advice on the policy behind the regulations and the Board of the Pension Protection Fund will provide advice on the processes followed during an assessment period.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 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 The legislation does not apply to small business.

12. Monitoring & 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 Pensions Protection Fund remains appropriate.

13. Contact

Mary Collins at the Department for Work and Pensions Tel: 020 79628872 or email: mary.collins@dwp.gsi.gov.uk can answer any queries regarding the instrument.