**EXPLANATORY MEMORANDUM TO**

**THE PENSIONS REGULATOR (MISCELLANEOUS AMENDMENT) REGULATIONS 2009**

**2009 No. 617**

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 purpose of the amendment regulations is to extend the statutory look back period for Financial Support Directions (FSD) from 12 to 24 months; and to make deregulatory amendments to the Pensions Regulator's notifiable events framework.

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

3.1 None.

## 4. Legislative Context

4.1 The proposal to modify the period prescribed within which the Regulator may exercise the power to issue an FSD emerged from the examination last year of the Regulator's anti-avoidance powers. The amendment was trailed in the Government response to a consultation of April 2008 on proposed amendments to the anti-avoidance measures in the Pensions Act 2004. The current legislation allows the Regulator to issue a FSD to an entity within 12 months of that entity ceasing to be associated or connected to the sponsoring employer of an occupational pension scheme, or from the date the employer ceases to be a service company or insufficiently resourced.

4.2 The proposals to modify the notifiable events framework are the result of a review by the Regulator of the framework, based on operational experience since 2005. The review found that there was scope to reduce the number of scheme-related or employer-related events that were notifiable to the Regulator.

## 5 Territorial Extent and Application

5.1 The regulations extend 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

- ***What is being done and why***

7.1 An FSD is one of the two main anti-avoidance powers available to the Pensions Regulator established under the Pensions Act 2004. An FSD may be issued to an employer or someone who is associated with the employer, requiring that the recipient put in place appropriate financial support for an occupational pension scheme. At the moment, in cases where the employer (or an associate) severs its connection with the pension scheme, the Regulator can issue them with an FSD, but must do so within 12 months of the severance. Both the Regulator and employers felt that this was too short a time limit – the Regulator because before it can issue an FSD, it must go through a due process of investigation and correspondence with the parties, which can take more than 12 months; and employers, because they are often likely to need more than 12 months to prepare a response to the suggestion by the Regulator that an FSD is necessary. These regulations address concerns about the time limit by extending it – by increments – to 24 months.

7.2 The Regulator maintains a "notifiable events" regime. The purpose of the regime is to reduce the risk of calls on the Pension Protection Fund or to scheme members by providing the Regulator with an early warning of insolvency or underfunding affecting pension scheme. This gives the Regulator the opportunity to intervene where appropriate. In the light of operating the regime over the past three and a half years, the Regulator has assessed the events against a set of effectiveness criteria; it has also looked at the operational value of the information contained in reports made to the Regulator. Although the Regulator concluded that the regime is broadly sound as it stands, it suggested to the Department that three events, that have proved to be of little or no value to the Regulator or the PPF, can be removed. The Department accepted the Regulator's findings and the need for amendments to the framework. The amendment regulations remove the requirement to notify the following three events:

- Two or more changes in the holders of any key scheme post within the previous 12 months,

- Any change in the employer's credit rating, or the employer ceasing to have a credit rating; and

- Two or more changes in the holders of any key employer posts within the previous 12 months

- ***Consolidation***

7.3 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 is available at no cost to the public on the internet at: http://dwp.gov.uk/advisers/docs/lawvols/bluevol

## 8. Consultation outcome

8.1. The consultation on the draft regulations ran from 15 December 2008 to 6 February 2009. As the possibility of changes to the secondary legislation amended by the draft regulations had already been mentioned in the Government's response to the consultation on the Pensions Regulator's anti-avoidance powers (published in October 2008), a consultation period of 8 weeks was felt to be sufficient. A total of 13 responses were received. The proposal to increase the look back period for FSDs from 12 to 24 months was welcomed by almost all of the respondents as a sensible amendment which would be helpful to the Regulator and the recipients of the FSD. All respondents welcomed the proposals on the notifiable events framework as a helpful simplification that would not contribute risk to schemes or to the PPF**.**

## 9. Guidance

9.1 The Regulator has published clearance guidance which covers FSDs. For notifiable events, the Regulator published a Code of Practice as required by pensions legislation and has issued associated regulatory guidance to employers and trustees.

## 10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible and, in the case of the notifiable events framework, deregulatory and a simplification.

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 applies to small business

11.2 However, few, if any, small businesses operate a defined benefit occupational pension scheme. The effect of the proposed changes on small business should be the same as for all businesses - negligible and, in the case of the notifiable events framework, deregulatory and a simplification.

## 12. Monitoring and review

12.1 As with all areas of pensions policy, the Department will work closely with the Regulator to monitor the framework for the anti-avoidance powers and the notifiable events regime. If, in future, there is a case for further rationalization of the regime, on the basis of operational experience, the Department will bring forward proposals for consultation.

## 13. Contact

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