EXPLANATORY MEMORANDUM TO

THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES (MISCELLANEOUS AMENDMENTS) REGULATIONS 2011

2011 No. 672

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

These Regulations contain amendments to various sets of Regulations relating to occupational and personal pensions. They make a number of minor, technical and consequential changes to current Regulations to:

- make an outstanding consequential amendment to replace a reference to the Occupational Pensions Advisory Service with the Pensions Advisory Service;
- place in regulations the actuary's certificate previously in Guidance Note GN16 prepared by the Board for Actuarial Standards (BAS) which is being withdrawn;
- clarify that, to be exempt from the requirement to appoint an auditor, a scheme must be both made under an enactment and guaranteed by a public authority;
- remove the requirement for certain employers to notify other employers in a multiemployer occupational pension scheme of certain changes when the other employers do not need to consult on the changes; and
- increase the maximum amount per member of the fraud compensation levy.

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

None.

4. Legislative Context

4.1 Current legislation requires that members are advised that the Occupational Pensions Advisory Service Limited is available to assist members and beneficiaries of the pension scheme in connection with difficulties which they have failed to resolve with the trustees or administrators of the scheme. The Occupational Pensions Advisory Service was re-named in 2004 to the Pensions Advisory Service.

4.2 When a bulk transfer of members' pension rights without the members' consent is made from one occupational pension scheme to another, the actuary is required to certify that the members' rights in the receiving scheme are "broadly, no less favourable" than the rights being transferred. This certification is carried out in accordance with GN16.

4.3 A scheme which is set up under legislation and guaranteed by a public authority may be exempt from the requirement to appoint an auditor. The current legislation does not have "and" between these two conditions which suggests an ambiguity as to whether both must be met for a scheme to be exempt. The amendment inserts "and" between the two conditions in the existing Regulations to ensure that it is clear that both must be met. This ensures compliance with Article 5 of Directive 2003/41/EC of the European Parliament: "Member States may choose not to apply Articles 9 to 17 to institutions where occupational retirement provision is made under statute, pursuant to legislation, and is guaranteed by a public authority." Article 10 relates to the requirement for annual accounts and annual reports and the need to be approved by authorised persons.

4.4 Larger employers are required to consult for 60 days with affected members when certain significant changes (known as "listed changes") are proposed to work-based pension arrangements. Currently, when one of the employers in a multi-employer pension scheme proposes making a "listed change" that employer has to notify the other employers in the scheme.

4.5 For the purposes of meeting expenditure payable out of the Fraud Compensation Fund legislation provides that trustees or managers of occupational pension schemes are liable to pay a fraud compensation levy in respect of each financial year.

5. Territorial Extent and Application

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

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

The purpose of each of the provisions contained in the Regulations is outlined below:

7.1 A consequential amendment to change a reference to the Occupational Pensions Advisory Service to the Pensions Advisory Service which replaced it in 2004.

7.2 As a consequence of the replacement of guidance note GN16 by the BAS with principles-based guidance, the actuarial certificate (previously in that guidance note) is inserted into regulations. A requirement, that the bulk transfer without the members' consent must be made within three months of the date the actuary signs the certificate, is introduced. This replaces the requirement in GN16 for the actuary to set a period of up to three months for which the certificate is valid. A time limit is needed because the timing of the transfer will not be known when the certificate is signed and the actuarial assumptions might otherwise change before the transfer takes place.

7.3 To confirm that, to be exempt from the requirement to appoint an auditor, a scheme must be made under an enactment **and** guaranteed by a public authority, "and" is inserted into the existing regulation.

7.4 An exemption for an employer from the requirement to notify the other employers in a multi-employer scheme where that employer proposes making a "listed change" and the only affected members work for that employer. The proposing employer does not need to inform the other employers in the multi-employer scheme and they will not need to consult about the change. This removes a small and unnecessary burden.

7.5 The Fraud Compensation Fund is a statutory fund established to provide compensation to occupational pension schemes, with insolvent employers, that suffer a loss that can be attributable to an offence involving dishonesty. The Fund became operational on 1 September 2005 and replaced the former Pensions Compensation Board. The Fraud Compensation Fund is run by the Board of the Pension Protection Fund and funded from the fraud compensation levy. This levy is paid by all eligible occupational pension schemes and used to cover all payments made from the Fraud Compensation Fund. Schemes only have to pay if the Board of the Pension Protection Fund decides to raise a fraud compensation levy for a financial year. The rate to be paid for each scheme member is set by the Board of the Pension Protection Fund and must not exceed a maximum amount.

7.6 The maximum amount that can be raised in respect of each scheme member in any one financial year is 23p and was set in 1997 in advance of the former Pensions Compensation Board opening for business. This change will increase the maximum amount of the fraud compensation levy that can be raised in any one financial year to 75p per scheme member. The increase in the maximum amount is necessary to ensure that the Board of the Pension Protection Fund can continue to manage the Fraud Compensation Fund effectively.

7.7 The Board of the Pension Protection Fund has decided to raise a fraud compensation levy, at the rate of 23p per scheme member for this financial year 2010/11 and the levy has been charged twice before in 1997 and 2005. Future decisions about whether to raise a levy in any one financial year will be taken by the Board of the Pension Protection Fund and based on the demand placed on the Fund Compensation Fund, and the nature of this fund makes this difficult to predict.

- ***Consolidation***

7.8 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://www.dwp.gov.uk/publications/specialist-guides/law-volumes/

8. Consultation outcome

8.1 A draft of these Regulations was put out to consultation for a period of 12 weeks which ran from 18 October 2010 to 10 January 2011. The consultation document was sent to 54 organisations with a specific interest in private pensions and published on the Department's website. Thirteen formal responses were received by the Department.

8.2 Two respondents suggested that the Pensions Advisory Service should be the Pensions Advisory Service Limited. This is not necessary.

8.3 Eleven respondents commented on the 3 month time limit for transfers – seven thought the limit adequate, four thought there should be flexibility for actuaries to set a shorter period. Eight respondents said the actuary's certificate was more restrictive than that in GN16. Two suggested that the certificate should also be in two further regulations. As a result of these comments, minor drafting changes were made to the proposed regulation and amendments to two further regulations made.

8.4 Eight respondents provided 67 detailed, technical comments on the draft amendments which were made as a result of the withdrawal of guidance note GN28. These amendments have been withdrawn in order to allow these comments to be given full consideration and they will be introduced, following redrafting as appropriate, later this year.

8.5 Three respondents acknowledged that the increase in the fraud compensation levy was primarily a matter for Government to decide and would not have a dramatic commercial or practical impact on schemes. However there was concern that the scale of the increase had not been fully explained and that if the levy was collected more frequently this would present scope for an increased burden to be placed on pension schemes. The increase to 75p per scheme member is the maximum amount that could be collected in any financial year and it is for the Board of the Pension Protection Fund to decide if a levy is to be raised and the actual amount per scheme member.

8.6 The Government's consultation on these Regulations and response is available at: http://www.dwp.gov.uk/consultations/2010/ .

9. Guidance

No additional guidance is necessary for most of the consequential amendments. However, the Department does publish guidance on the requirements to consult affected members when "listed changes" are proposed to work-based pension arrangements at http://www.dwp.gov.uk/publications/dwp/2005/occ_pen_schemes/occ_personal_pens_schemes_regs06.pdf

10. Impact

10.1 There will be a negligible impact on business and civil society organisations.

10.2 There will be a negligible impact on the public sector.

10.3 A full impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The amendment to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 will apply only to employers with at least 50 employees. All other amendments in these Regulations will apply to small businesses.

11.2 As the Regulations make minor and technical changes to existing statutory requirements, the impact of these Regulations on small businesses is negligible.

12. Monitoring & review

12.1 The effectiveness of the changes, particularly those relating to actuarial guidance, will be informally monitored through existing stakeholder engagement arrangements. The Department seeks and receives regular feedback on private pension issues through groups such as the Joint Working Group on occupational pensions and the Deregulatory Review Advisory Group; it sends an observer to the BAS meetings; and has regular discussions with the Pensions Regulator.

12.2 The Department and the Board of the Pension Protection Fund work together to review the effectiveness of legislation on the Fraud Compensation Fund; the changes this instrument introduces are as a result of that ongoing review.

13. Contact

Michelle Boreland at the Department for Work & Pensions, Tel: 020 7449 7372 or email: michelle.boreland@dwp.gsi.gov.uk, can answer any queries regarding this instrument.