EXPLANATORY MEMORANDUM TO THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES (GENERAL LEVY) REGULATIONS 2005

2005 No. 626

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 Pensions Act 2004 provides for a new Pensions Regulator to replace the Occupational Pensions Regulatory Authority (Opra) in April 2005.

2.2 These Regulations revoke and replace the Occupational and Pension Schemes (Levy) Regulations 1997 ("the 1997 Regulations").

2.3 These Regulations make provision for:

- The imposition and payment of a levy ("the general levy") for the purpose of meeting the cost of the Pensions Ombudsman (PO), the Pensions Regulator (including its establishment under the Pensions Act 2004), grants made by the Regulator to advisory bodies, and the scheme established under section 106 of the Pensions Act 2004 for legal assistance in connection with proceedings before the Pensions Regulator Tribunal.
- How the amount of the levy is to be determined, the times at which it is to be paid, and the circumstances it which it may be waived.
- The application of the regulations in the case of multi-employer schemes.
- The avoidance of duplication of payments where a levy is payable under corresponding provisions which have effect in Northern Ireland.
- Transitional provisions to allow the Regulator to collect any levy that remains unpaid under the 1997 regulations.
- The imposition of financial penalties in respect of any failure to pay the levy.

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

3.1 None.

4 Legislative Background

4.1 The Secretary of State for Work and Pensions is empowered to make regulations under the Pensions Act 2004. In this case the Secretary of State for Work and Pensions is exercising the powers conferred upon him by sections 168(1) and (4), 175, 181(1) and 182(2) and (3) of the Pension Schemes Act 1993 . The regulations are consequential on sections 59 and 239(3) of and paragraph 26 of Schedule 1 and paragraph 28 of Schedule 12 to the Pensions Act 2004. Apart from section 59 which relates to the register of schemes, these provisions amend section 175 of the Pension Schemes Act 1993 under which a general levy may be imposed on schemes.

4.2 These Regulations specifically revoke and replace the Occupational and Pension Schemes (Levy) Regulations 1997 ("the 1997 Regulations"). They also provide for the imposition and payment of a levy ("the general levy") including how the amount of the levy is to be determined, the times at which it is to be paid, the circumstances it which it may be waived and the imposition of financial penalties in respect of any failure to pay the levy.

4.3 Before the Secretary of State makes any regulations by virtue of the Pensions Act 2004, he may be required to consult such persons as he considers appropriate. There is no formal requirement to consult in this case because the regulations will be made within six months of the sections of the Act coming into force on which the regulations are consequential (section 185 of the Pension Schemes Act 1993). However, to reflect our commitment to openness, a short, informal, consultation exercise has taken place with the Pensions Regulator Advisory Panel – a list of its membership is attached at Annex A. Attached at Annex B is a summary of the comments received and DWPs response.

5 Extent

5.1 This instrument applies to England, Wales and Scotland. Corresponding provision will be made for Northern Ireland (NI) by a statutory rule consequential on equivalent provisions contained in the Pensions (Northern Ireland) Order 2005 and under powers contained in NI pensions legislation which correspond to those under which this instrument is made.

6 European Convention on Human Rights

6 Not applicable.

7 Policy Background

7.1 The Pension Regulator's powers and functions will be wider than those of its predecessor Opra, and therefore its running costs will be significantly higher. The Regulator will move work based pension regulation away from a reactive rigid, 'one size fits all' style of regulation to a more flexible style of proportionate proactive regulation. Where the breaches of pension law are less serious, the Regulator will encourage schemes to improve, solve problems and comply with pensions law without having to result to formal sanction. For example, where the breach suggests that the trustees are insufficiently aware of their responsibilities, or the administrator does not have the procedures and systems necessary to enable compliance wit the legal requirements and no effective action is being taken to remedy the problems.

7.2 This risk based system will be based upon sophisticated data gathering and analysis which will underpin both the Pensions Regulator and the Pension Protection Fund (PPF).

7.3 For the past three years the total costs of Opra, the Pensions Ombudsman (PO) and Occupational Pensions Advisory Service (OPAS) have outweighed the levy receipts, but a surplus from earlier years offset most of this shortfall. As a consequence rates have not risen in five years since 2000/1. To pay for the running costs of the Regulator, OPAS and the PO, as well as recovering start-up costs for the Regulator, it is necessary for these levy rates to double. However, it is our intention to freeze these rates for the following two years. The draft regulations reflect a doubling of the rates for each band size.

8 Impact

8.1. An assessment of the impact on business, charities or the voluntary sector of the provisions in these regulations is included in the Regulatory Impact Assessment that accompanied the Pensions Act 2004. A relevant extract is attached at Annex C.

9 Contact

9.1. The policy official responsible for these Regulations is:
Berni Mundy
Tel. 020 7962 8422
E-mail: Berni.Mundy@dwp.gsi.gov.uk

11 March 2005

Annex A

TPR Advisory Panel

Name	Organisation	Role
Brian Holden	OPDU	Trustee perspective
Paul Greenwood	WM Mercer	Actuarial perspective (covers FIA angle)
Adrian Boulding	Legal & General	Provider perspective (ABI)
Ron Amy	Aon Consulting	General
Claire Whyley	National Consumer Council	Consumer perspective
Clare Boyle	FSA	
Peter Dickinson (or nominee) **Jeff Highfield**	Smith & Williamson Gissings & Co	PRAG
David Yeandle	Engineers Employers Federation	
Ed Humpherson	NAO	
Les Warner	Inland Revenue	
Laurie Edmans	ABI	
Ken MacIntyre	NAPF	
Tim Cox	APL	
Brian Marks	OPA was COPAS	
Michelle Lewis	TUC	
Fay Goddard	AIFA	IFA perspective
Des Hamilton	OPAS	
Penni Coppen	KPMG	
Robert Birmingham	SPC (President)	
Sue Howlett (or nominee)	PMI (secretary)	
Nicholas Hillman	ABI	

Annex B

CONSULTATION ON: THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES (GENERAL LEVY) REGULATIONS 2005

Start date: 31st December 2004

End date: 2nd February 2005

Number	Responder Name	Comments	Accepted (Yes / No)	Policy View
1.	Bridget Moss FSA	There seems to be a lack of transparency about the extent to which costs are funded by fees raised, on one hand, and from accumulated reserves on the other.	N	Continued from previous regime.
2.	Bridget Moss FSA	Does there need to be provision for what happens if the schemes pay late e.g. the scheme has to pay interest, or there is some other penalty?	N	No power in the primary to charge interest
3.	Bridget Moss FSA	Would it be helpful to have a provision to cater for situations where the data needed to calculate fees has not been provided?	N	Data always there – e.g. on registration. Regulator can use that data as the onus is on the trustee to provide up to date figures. Adjustments can be made in following year.
4.	Bridget Moss FSA	It does not appear to be clear when firms will be billed for fees if they become registered during the year, and when those fees will fall due to be	N	Charged from date of registration and billed the following April - Reg 3(5) and 4(4).

Number	Responder Name	Comments	Accepted (Yes / No)	Policy View
		paid?		
5.	Bridget Moss FSA	Related to the last point – is the cross-reference in regulation 4.–(4) (1) to ‘paragraph (4)’ intended to be a reference to paragraph 3.-(3)(4)?	N	Reference in reg 4(1) is to para (4) of the same reg – i.e. 4(4).
6.	Lynn Stewart Zurich Financial Services	Regulations 6 and 7: concerned about the doubling in the amount of the levy. This knocks onto the running costs of the scheme and will mean that the increase will be reflected in an increase in charges on the member's money purchase fund.	N	Minister aware and agreed to rate.
7.	Lynn Stewart Zurich Financial Services	Regulation 3: unhappy that levies will now be required from new schemes. Currently schemes do not have to pay a levy in the year that they become registrable and the year after. The reason this was introduced was to make the collection of levies a simpler process.	N	Part years introduced to keep in line with PPF levies.
8.	Lynn Stewart Zurich Financial Services	Although the levy can be collected in arrears, that won't ease the situation for schemes that are set up late in a financial year e.g. for a scheme set up on 1 March 2007, the levy would be due on 1 April 2007.	N	But it will only be paying for one month plus the usually annual levy.
9.	Lynn Stewart Zurich Financial Services	It will bring up inconsistencies and make matters more complex than at present.	N	Policy decided it was better practice to have PPF and general levies as consistent as possible.
10.	Lynn Stewart Zurich Financial	Regulation 5: calculation of the levy for newly established schemes - what if the schemes had	Y	This was the argument between established and registrable. Regulations amended

Number	Responder Name	Comments	Accepted (Yes / No)	Policy View
	Services	only one member for a few years and then went up to two members? The regulations as drafted currently won't require any levy to be paid for a couple of years e.g. scheme established in 2001, 2nd member joins on 10th April 2007. The reference day for 2007-08 is 31 March 2006 when there was only one member. Reference day for 2008-09 is 31 March 2007 when there was only one member. So the first levy won't be due until levy year 2009-2010. Is that correct?		accordingly.
11.	Lynn Stewart Zurich Financial Services	How will the levy collection process operate for newly registrable schemes and existing schemes? We hope that the Pensions Regulator will send an invoice for the levy due based on the information about the number of members that was previously supplied (as is the current process).	Y	The onus is on the trustee to update the regulator, TPR will use existing data unless the trustee sends up dated information.
12.	Bill Birmingham LCP	The draft General Levy Regs are made under (presumably the amended) s. 175 of SSPA 1973 and provide that the levy is, in the words of the Explanatory Note, " for the purpose of meeting the cost of the Pensions Ombudsman, the Regulatory Authority....grants made by the Regulatory Authority to advisory bodies [i.e. Opas], and the scheme established under section 106 of that Act for legal assistance in connection with proceedings before the Pensions Regulator	N	The legal assistance scheme eligibility is based on where the individual lives – not where the scheme is based. A Scottish scheme with Scottish employees and a Scottish employer may still have English trustee who would be entitled to legal assistance from the LCD. The reverse – e.g. English scheme with Scottish trustee would be entitled to legal assistance from the Scots equivalent. Also estimated costs of the

Number	Responder Name	Comments	Accepted (Yes / No)	Policy View
		Tribunal." However, s. 106 does not extend to Scotland (see s. 323(3)). This means that the levy meets the cost of legal assistance in England and Wales, but not Scotland. The consequential DCA Regs on legal assistance apply, therefore, only to England and Wales. I note that under the General Levy Regs the same levy rate is applicable in Scotland as in England and Wales. It seems inequitable for schemes established in Scotland, or with Scottish members, to be required to subsidise legal assistance in England and Wales when those Scottish members will not gain any benefit from it. Is it the intention to adjust the levy for schemes with Scottish members?		assistance scheme are less than 0.0038% of the levy and therefore dealt with on a de minimus argument.
13.	Robert Mortimer SPC	The sub - paragraph numbering is awry.	Y	Amended as appropriate
14.	Robert Mortimer SPC	In the second paragraph of regulation 5, " levy year should read " financial year ".	Y	Amended as appropriate
15.	Des Hamilton Pension Advisory Service	I would point out a change to the way we are to be funded which would require the draft regulations to be amended. From April 2005, our funding will come direct from the DWP and TPR will not be involved. The draft regs have our funding coming from TPR.	N	Power still extant may not be used – in primary.
16.	Des Hamilton Pension Advisory	Given the need to amend the regs we would suggest that it is appropriate that we are now	N	Power still extant may not be used – in primary

Number	Responder Name	Comments	Accepted (Yes / No)	Policy View
	Service	named in the regs rather than as "any person or body of persons providing advice or assistance, or carrying out other prescribed functions, in connection with occupational or personal pensions."		
17.	Des Hamilton Pension Advisory Service	There may have been good reason for doing it this way in the Pensions Scheme Act 1993 but things have moved on a long way since then. We are now a firmly established part of the pensions scene, our role has become well defined and we are very well accepted by the parties who pay the levy. We have recently undergone a thorough review carried out by Ian Williams on behalf of DWP, the outcome of which was to endorse our role and confirm the intention that we continue to receive funding from the levy but via the DWP.	N	Power still extant may not be used – in primary
18.	Des Hamilton Pension Advisory Service	We would want the regulations to refer to us as the Pensions Advisory Service rather than OPAS	N	Not referred to at all.
19.	Ken MacIntyre NAPF	Note that the doubling of the levy comes at a particularly difficult time when DB schemes are under severe pressure. Hope that it will be possible for the levy rates to be held at those levels for longer than the two years proposed.	Noted	
20.	Ken MacIntyre NAPF	Issue of very small pensions - mainly those EPBs which have been retained as a consequence of social security legislation dating back 40 years.	Y	Acknowledged but EPB are derived from pensionable service and such members counted for levy purposes.

Number	Responder Name	Comments	Accepted (Yes / No)	Policy View
		Some of our larger fund members still have tens of thousands of these pensions on their books. The increased levy brings to greater prominence the disproportionate cost of having to retain these liabilities, adding further expense to the existing cost of maintaining records for them.		
21.	Ken MacIntyre NAPF	We would ask that some consideration be given either to “carving out” EPBs from the general levy or to giving schemes the opportunity to make a one off cash payment which discharges the whole of the EPB liability. The latter we have already raised with your Inland Revenue colleagues via the JWG.	N	One off payment considered early in process – dismissed.
22.	Norman Dowie Standard Life	Regulation 6(3) - It has been recognised for many years now that, under the existing definitions of pension schemes under section 1 of the Pension Schemes Act 1993, a FSAVC is a personal pension scheme and not an occupational pension scheme. The wording of regulation 6(3) states that a FSAVC is an occupational pension scheme (though it does so in a way that it pays the personal pension scheme levy). Although the outcome is correct, we do not believe that it is necessary and it does create doubt over the status of a FSAVC for other regulations (such as the disclosure of information regulations).	Y	Retained reference to remove any avoidance of doubt. It falls away once IR regime changes. Disclosure and other regulations being amended with effect from 6 April 06 so no overlap.
23.	Sarah Crompton	Increase in the levy unexpectedly high. Due to	N	Minister agreed to increase – recognise

Number	Responder Name	Comments	Accepted (Yes / No)	Policy View
	Skandia Life	all the changes required to pension administration for the Pensions Act and Finance Act 2004 providers and employers are facing large increases in running expenses for the foreseeable future. The further increase in the levies paid by occupational pension scheme trustees, who are often the employer, may therefore make the running of such schemes for their employees unattractive. This increase in the general levy will in many cases be absorbed by the providers for most insured schemes, however. this will undoubtedly in the future be passed on to the clients by way of charging. This will not encourage private saving.		disadvantages.
24.	Sarah Crompton Skandia Life	Whilst the commitment has been made not to increase this levy for a two year period there is no indication as to what will happen to it after this time and this uncertainty again may lead to the schemes being less attractive for employers to run. The regulations should set out a basis for the increase for example in line with the increase in the Retail Prices Index.	N	No wish to fetter discretion in future.
25.	Sarah Crompton Skandia Life	Alternatively within the two year period the Regulator could adopt a risk based approach to the general levy in the same way as the PPF levy. Well run schemes will not require as much support or involvement from the Regulator and	N	General levy is a very small amount – does not justify such complexity.

Number	Responder Name	Comments	Accepted (Yes / No)	Policy View
		they should therefore be charged a lower amount. This may seem complex and costly to administer, but would it not be possible to set up 2 or 3 support/involvement levels that all schemes could fit into and their levy would be set in relation to this?		
26.	Nicholas Hillman (ABI)	Concern about the level of the General Levy for 2005/06. The 100 per cent rise in the Levy is a substantial increase. It is surprising that the rise needs to be so great given the Pensions Regulator's ambition of focusing on the greatest risks and reducing the number of reports.	N	Minister agreed to increase
27.	Nicholas Hillman (ABI)	Surprising that the new Levy rate has been announced for the next three years before the on-going work on areas of potential overlap between the Pensions Regulator and the Financial Services Authority has been completed.	N	Costs taken into account of future years. Opra carrying a deficit currently and this will not be cleared until year 6 at the earliest. TPR and FSA will work together to ensure neither under or over regulation.
28.	Nicholas Hillman (ABI)	The ABI has long called for the statutory inclusion of cost benefit analyses (or regulatory impact assessments) for Codes of Practice published by the Pensions Regulator, we regret that the Pensions Bill was not amended to reflect this. The premature decision to provide a step increase in resources to the new regulator for each of its first three years emphasises the on-going need to weigh up fully the likely costs and	N	The RIA for the Act did account for the start up and on-going regulator costs. RIAs will be prepared for Codes of Practice as appropriate.

Number	Responder Name	Comments	Accepted (Yes / No)	Policy View
		benefits of each regulatory change.		
29.	Nicholas Hillman (ABI)	The doubling of the levy when compared to the current levy will necessarily reduce the amount of money available to members. For example, a not-for-profit provider of stakeholder pensions with a modest average policy value would need to increase their management charge accordingly. Moreover, it is unlikely that these sorts of new costs were taken into account when the forthcoming small increase in the charge cap for stakeholder pensions was determined.	N	The levy was considered when looking at stakeholder charge.
30.	Nicholas Hillman (ABI)	Despite the continuities between Opra and the Pensions Regulator, it is inevitable that there will be some start-up costs associated with the new body which will not be there in future years. We recognise that these costs need to be recovered. It is not clear, however, why the Levy needs to continue at the new, doubled rate once this has occurred. We believe therefore that the statement accompanying the regulations should allow for the possibility of a reduction in the Levy in future years, rather than simply stating that it will be frozen.	N	Costs taken into account of future years. Opra carrying a deficit currently and this will not be cleared until year 6 at the earliest. Do not wish to fetter discretion in future.
31.	Trevor Nuthall Norwich Union	The background note does not mention the fraud compensation levy under section 189 of the Pensions Act 2004. As the Fraud Compensation	N	Background note not part of regulations. Fraud dealt with elsewhere – perhaps educational need here.

Number	Responder Name	Comments	Accepted (Yes / No)	Policy View
		Fund is, we believe, not being set up until September 2005, will the fraud compensation levy be dealt with in the Fraud Compensation Fund regulations? The existing levy regulations cover compensation levies, but the new general levy regulations do not. What provision will be made to regulate compensation levies for the period April 2005 to September 2005?		
32.	Trevor Nuthall Norwich Union	In the definition of “employer” in regulation 2(1), should the reference to “regulation 11(4)” be to “regulation 11(3)”?	N/A	Reg 11 being removed and placed in multi-employer debt regs
33.	Trevor Nuthall Norwich Union	In regulation 2(1) should there be a definition of “Regulatory Authority?”	N	Definition in primary under which regs made.
34.	Trevor Nuthall Norwich Union	In regulation 5 should the reference to “levy year” be to “financial year” as the latter is the defined term?	Y	Amended as appropriate.
Comments received after the deadline				
35.	Reg Steer (Building and Civil Engineering Benefits scheme)	The above scheme is the largest industry wide occupational pension scheme in the UK with records for 1.3m people acquired since 1982. Not all those people qualify for benefits under the Rules as there is a minimum qualifying period for benefits. Last year we paid a levy on around 450,000 who had preserved Retirement benefits in the scheme. The scheme no longer receives	N/A	Spoken to Reg Steer. Explained death in service only members do not count for levy.

Number	Responder Name	Comments	Accepted (Yes / No)	Policy View
		contributions from employers as the retirement benefit element closed to further accrual in April 2001 and was taken over by EasyBuild our Stakeholder pension scheme. However, the Scheme also provides a Death in service benefit for around 200,000 people each week. Given the transient nature of the industry the overall figure remains fairly constant but the membership has about 5000 leavers and 5000 joiners each month. Employers do contribute on a pay as you go basis for the death Benefit (about 84p per week per member) but that only covers the death benefit. We try to operate the scheme on a not for profit basis, like we do for EasyBuild. The doubling of the levy means that unless we increase employers costs, the increase has to be taken from the fund. With the possible cost of the Pension protection Fund of about £11 per head, which I accept is not directly your area of concern, the impact on the scheme's funding is dire.		
36.	Reg Steer (Building and Civil Engineering Benefits scheme)	Raising the costs to employers (there are about 6000 in the scheme currently) would have the effect I fear of many employers ceasing to provide contributions to the scheme and loss of a worthwhile Death benefit for people who work in the industry.	N	If death benefits only don't count as member.

Number	Responder Name	Comments	Accepted (Yes / No)	Policy View
37.	Reg Steer (Building and Civil Engineering Benefits scheme)	There does not seem to be any guidance in the Regulations to exclude members for whom only Death benefits are payable - such schemes run on very tight margins.	N	See definition of member in regs – excludes death only. Also see definition of registrable scheme under 59(2) and regulations as well as new definition of pension scheme from Sept 05 (inserted by section 239 of PA 04 into s1 PSA 93).
38.	Reg Steer (Building and Civil Engineering Benefits scheme)	There is also the possibility of an additional levy being raised on schemes for the Fraud Compensation Fund which I understand is not being subsumed in to the Pension Protection Fund.	N/A	Not for these regulations.

Annex C

EXTRACT FROM THE REGULATORY IMPACT ASSESSMENT

Chapter 3: Member Protection

3.1 The Pensions Regulator

3.1.1 Retaining the current regulator would fail to address weaknesses identified during the recent consultation process, undertaken as part of the Quinquennial Review of the Occupational Pensions Regulatory Authority (Opra). A National Audit Office (NAO) report also supported the need for a more pro-active, high-profile and risk-focussed regulator.

3.1.2 Opra has made a good job of fulfilling the role it was required to perform, and encouraged better governance of pension schemes. However there are flaws in the legal framework that define both Opra's current role and its powers to act or intervene in failing schemes. These flaws tend to lead to the organisation spending too much time on trivial matters that result in minor sanctions and penalties.

3.1.3 The introduction of a new pensions regulator providing support, advice and guidance to the industry will enhance the regulator's role, producing a higher profile, pro-active regulator that will be better placed to address risk to scheme members' benefits. The Pensions Regulator will move to a completely different style of regulation.

Summary of options and impact of consultation

3.1.4 There has been widespread agreement about the need for a new pensions regulator. Many responses to consultation support a regulator that has: statutory objectives that set a clear framework for its activity and provide an overarching definition of its functions; a flexible, pro-active and risk-focussed approach; a high profile in the community it regulates; and a responsive and proportionate regulatory 'tool kit' which enables it to take a targeted and appropriate approach both to direct breaches of pensions legislation and to other matters of conduct that pose a risk to members' benefits.

3.1.5 When addressing breaches of pensions legislation, the regulator should not just punish but encourage compliance with regulatory provisions via compliance visits, provision of guidance, educational material and template forms to the regulated community.

3.1.6 The intention is that these activities and approaches will create a regulator that is able to focus its resources on the areas of greatest risk and be seen to have done so. This, in turn, will cause it to be respected, and ensure that it will be seen as an authoritative force in the regulated community.

Securing compliance

3.1.7 The Regulator will have a regulatory 'tool kit' of sanctions, plus the power to serve an improvement notice. However, education, guidance, advice and support will be equally important tools to support the protection of pension scheme members' benefits.

Costs/savings

3.1.8 The introduction of the Pension Protection Fund has helped shape the responsibilities of The Pensions Regulator. It is estimated that The Pensions Regulator will have annual running costs of around £23 million per year including the cost of any monitoring and enforcement action that the regulator may need to take in respect of all the provisions in this RIA, once the new regulator is in place and well established. This represents an increase of £6 million per annum compared with Opra, and an increase in the levy of roughly 25%.

3.1.9 These additional costs would be funded through a levy on occupational and personal pensions. The increase is due to staff and non-staff costs (accommodation, codes of practice, printing, IT) to cover The Pensions Regulator's new powers and responsibilities. There will be one-off start up costs in the region of £6 million, and a further £20 million for IT development, some of which is necessitated by the difference between the new Regulator's responsibilities and those of Opra. Many of these costs would have been incurred in response to the NAO and Quinquennial Review recommendations for Opra improvement.