

**EXPLANATORY MEMORANDUM TO  
THE OCCUPATIONAL PENSION SCHEMES (FRAUD COMPENSATION  
LEVY) REGULATIONS 2006**

**2006 No. 558**

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 These Regulations make provision for when a fraud compensation levy is imposed on an occupational pension scheme by the Secretary of State under section 189 of the Pensions Act 2004 (c.35).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Background**
  - 4.1 The Secretary of State can impose a fraud compensation levy on defined benefit and defined contribution occupational pension schemes in order for the Board of the Pension Protection Fund (established by section 107 of the Pensions Act 2004) to make payments from the Fraud Compensation Fund to qualifying occupational pension schemes under Chapter 4 of Part 2 of the Pensions Act 2004.
  - 4.2 From 1<sup>st</sup> September 2005, the Board of the Pension Protection Fund, has been responsible for paying fraud compensation to the trustees and managers of qualifying occupational pension schemes where the scheme's assets have been reduced by an offence involving dishonesty and the employer is insolvent or unlikely to continue as a going concern. This replaces the fraud compensation scheme that was administered by the Pensions Compensation Board (PCB). The PCB was dissolved from 1<sup>st</sup> September 2005 under section 302 of the Pensions Act 2004 and the compensation scheme it administered ceased to have effect from that date, although the Board assumed responsibility for handling any outstanding matters.
  - 4.3 These provisions enable a fraud compensation levy to be imposed on most occupational pension schemes. The Regulations:
    - define when such a levy is payable;
    - set out that the levy must not exceed 23 pence per member;
    - provide for levy notices;
    - specify when a levy may be waived;
    - provide for multi-employer schemes;

- provide for those schemes with a partial guarantee from a relevant public authority;
- ensure that duplicate payments may not arise because of corresponding provisions coming into effect in Northern Ireland;
- set out the civil penalties that may be imposed for non payment;
- make amendments to the Occupational Pension Scheme (Employer Debt) Regulations 2005 (S.I. 2005/678) to ensure that any unpaid levy in respect of money purchase schemes will be treated as a debt due from the employer to the trustees or managers of a scheme, there are also minor drafting amendments.

## **5. Extent**

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 policy aim is to maintain consistency with the Pension Compensation Levy and other levy regulations as much as possible.

7.2 The Secretary of State may impose a fraud compensation levy on a scheme. Such a levy is only payable in years where the Fraud Compensation Fund needs increased funding. The Board of the Pension Protection Fund issue a notice when payment is required to increase funding. Only one such levy may be imposed in any year. The levy will be calculated according to the total number of scheme members on the last day of the scheme year which ended before the beginning of the previous financial year. If a scheme was established too late then the date it became a registrable scheme will be used to calculate the levy. The levy will be payable on the first day of the financial year or within a period of 28 days beginning with the date on which the notification is given. If a scheme is registered during a financial year the levy may be restricted to the portion of the year for which the scheme was registered. In line with other levies if a scheme loses registration status during a financial year when a levy is imposed the amount of the levy may not be adjusted.

7.3 The levy may not exceed 23 pence per member of the pension scheme - as with the Pensions Compensation Board levy a maximum rate per member needs to be set for the fraud compensation levy. This was set at 23 pence in 1997 and has been unaltered since that date including for the second Pensions Compensation Board levy set in 2004. The historically low call on the resources of the Pensions Compensation Board makes it possible to retain 23 pence as the maximum rate at this time.

- 7.4 The notice of rates of the fraud compensation levy must be in writing to the trustees or managers of the scheme and show the number of members used in the calculation. The Board of the Pension Protection Fund must take reasonable steps to find the address to send the notice to.
- 7.5 The Board of the Pension Protection Fund may waive payment of the levy if the trustees or managers of the scheme write to the Board to confirm that there is no employer in relation to the scheme (or that the employer is insolvent) and where all of the benefits are money purchase benefits and there are insufficient unallocated assets to pay the levy in full. This is slightly less generous than the Pensions Compensation Board approach which provided the option of a waiver to underfunded defined benefit schemes but it is consistent with the approach being adopted for the Pension Protection Fund and the Pensions Regulator levies. Payment may not be waived for a trust based Stakeholder pension scheme where the scheme demonstrates that either it does not have an employer or has an insolvent employer (generally such schemes do not have an employer in relation to the scheme).
- 7.6 Special provision is made for multi-employer schemes and those schemes with a partial guarantee from a local authority. Schemes will not have to pay the levy twice if a pension scheme has a base in both Great Britain and Northern Ireland. The civil penalties that may be imposed by the Pensions Regulator for non-payment are set out. Amendments to the Occupational Pension Schemes (Employer Debt) Regulations 2005 will ensure that any unpaid levy in respect of a money purchase scheme will be treated as a debt due from the employer to the trustees or managers of a scheme there are also minor drafting amendments.
- 7.7 Before the Secretary of State makes any regulations by virtue of the Pensions Act 2004 or the Pensions Act 1995, he may be required to consult such persons as he considers appropriate. He is not required to consult on all but one provision in these regulations, however, to reflect our commitment to openness there has been an eight week public consultation on these regulations that was available on the DWP website and circulated to a range of key organisations (Annex A). Consultation responses were primarily positive and mostly asked about consistency with other levy regulations, drafting adjustments have been made.

## **8. Impact**

- 8.1 A full regulatory impact assessment has not been produced for this instrument as it has no new impact on the costs to business, charities, or the voluntary sector.
- 8.2 This instrument has no impact on the public sector.

## **9. Contact**

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**Consultation List**

Association of British Insurers  
Association of Consulting Actuaries  
Association of Pension Lawyers  
Association of Pensioner Trustees  
Auditing Practices Board  
Better Regulation Executive  
British Chamber of Commerce  
Confederation of British Industry  
Consumers Association  
Council on Tribunals  
Engineering Employers Federation  
Federation of Small Businesses  
Financial Services Authority  
HM Treasury (MOCOP)  
HM Revenue and Customs  
Industry Wide Pension Schemes Group  
Institute of Chartered Accountants in England and Wales  
Institute of Chartered Accountants in Scotland  
Institute of Directors  
Investment Managers' Association  
NAPF  
National Consumers Council  
Office of Fair Trading  
Pensions Ombudsman  
Pension Protection Fund Ombudsman  
Policy and Legal Division DHSS Northern Ireland  
Small Business Service  
The Association of Corporate Trustees  
The Faculty and Institute of Actuaries  
The Law Society of England and Wales  
The Law Society of Scotland  
The Pensions Management Institute  
The Pensions Protection Fund  
The Pensions Regulator  
The Scottish Executive  
The Society of Pension Consultants  
The Welsh Assembly  
TPAS (the Pensions Advisory Service)  
Trades Union Congress