

**EXPLANATORY MEMORANDUM TO**  
**THE PENSION PROTECTION FUND (WAIVER OF PENSION**  
**PROTECTION LEVY AND CONSEQUENTIAL AMENDMENTS)**  
**REGULATIONS 2007**

**2007 No. 771**

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 (“the Waiver Regulations”) specify the circumstances in which amounts payable by way of any pension protection levy may be waived.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Background**
  - 4.1 Section 107 of the Pensions Act 2004 (“the Act”) establishes the Board of the Pension Protection Fund (“the Board”). The Board is a statutory public corporation, at arms’ length from Government, which will pay compensation to members of eligible pension schemes when the employer is insolvent and the pension scheme is underfunded. Section 126 of the Act makes provision about which occupational pension schemes are eligible schemes.
  - 4.2 Section 175 of the Act provides for the imposition of a pension protection levy in respect of eligible schemes. These levies contribute to the Pension Protection Fund (PPF).
  - 4.3 Section 181 of the Act sets out the provisions for the calculation, collection and recovery of the pension protection levy. Subsection (8)(b) provides for regulations to specify the circumstances in which any pension protection levy may be waived. These circumstances are prescribed in these Regulations.
  - 4.4 The Government has recently laid in draft before Parliament The Occupational Pension Schemes (Levies) (Amendment) Regulations 2007. The effect of regulation 4 of those Regulations is that in most cases where any pension protection levy waiver is granted under the Waiver Regulations, the administration levy will also be waived.

4.5 The Government will also shortly lay before Parliament another set of Regulations (the Pension Protection Fund (Miscellaneous Amendments) Regulations 2007. Those Regulations will include an amendment to the Pension Protection Fund (Entry Rules) Regulations 2005 which will affect one of the categories of schemes for which a waiver can be granted under the Waiver Regulations for the PPF financial year 2006/07 (see regulation 4(1) of the Waiver Regulations). As a result of that amendment, such schemes will cease to be eligible schemes for subsequent financial years.

## **5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain.

## **6. European Convention on Human Rights**

James Purnell, Minister of State for Pensions Reform has made the following statement regarding Human Rights:

In my view the provisions of the Pension Protection Fund (Waiver of Pension Protection Levy and Consequential Amendments) Regulations 2007 are compatible with the Convention rights.

## **7. Policy Background**

7.1 The PPF is funded in two ways – by means of levies charged to all eligible schemes, i.e. those schemes that can claim compensation, and by the assets remaining in schemes which transfer to the PPF at the end of an assessment period. There are four PPF specific levies, of these the scheme-based and risk-based levies are collectively known as the pension protection levy.

7.2 The PPF and the Department for Work and Pensions (DWP) have identified categories of pension scheme where the risk of a scheme calling on the PPF is extremely unlikely and where there is a sufficient business case for such schemes to be able to apply to the Board of the PPF for a waiver to be considered. Those categories of scheme, of which there are four, are prescribed in regulation 4, which will enable the Board to grant the waiver of levies in very limited circumstances.

7.3 Schemes that match the prescribed circumstances may apply to the Board for consideration of a waiver of their pension protection levy.

### *Consultation*

7.4 In accordance with section 317(1) of the Act, the Secretary of State has consulted such persons as he considers appropriate.

7.5 The consultation period started on 13 September 2006 and closed on 5 December 2006. The consultation was conducted in accordance with the Cabinet Office Code of Practice on Consultation. The Waiver Regulations consulted on also included a number of Miscellaneous

Amendments. For ease of reference and simplicity, those miscellaneous amendments have now been consolidated with other provisions in a single set of Regulations (“The Pension Protection Fund (Miscellaneous Amendments) Regulations 2007”). These will be laid shortly after the Waiver Regulations. The overview of consultation responses below therefore reflects the comments made to the Waiver Regulations only.

- 7.6 A list of those consulted is provided at Annex A to this memorandum. 15 responses were received in response to this consultation. As a result, the Waiver Regulations have been amended to incorporate minor, including technical, amendments.
- 7.7 Respondents welcomed the introduction of powers to waive the pension protection levy in prescribed circumstances. A number of respondents proposed additional circumstances, specific to their own situation, where the pension protection levy might be waived. It was decided that the proposed circumstances were not appropriate for inclusion in the Waiver Regulations. It was also the view of officials that if any amendment was to be made then it may be more appropriate to amend The Pension Protection Fund (Entry Rules) Regulations 2005 (“the Entry Rules Regulations”). DWP will keep the Entry Rules Regulations under review.
- 7.8 Respondents requested that the draft regulations be amended so that if the Board refuses to grant a waiver then the Board must state, in writing, the Board’s reasons for its decision. The regulations have been amended accordingly.
- 7.9 Respondents also requested that the draft regulations be amended to remove any suggestion that the Board has a power to seek additional information from anyone it wants when determining an application in respect of the levy waiver. The draft regulations have been amended to make it clear that any additional information needed to determine an application for a waiver can be sought only from applicants.
- 7.10 A full response to the consultation is published on the DWP website - <http://www.dwp.gov.uk/consultations/2006/>

#### *Guidance*

- 7.11 Details of the levy waiver application process will be set out in guidance written and published by the PPF.

#### *Consolidation*

- 7.12 This instrument does not amend another instrument. Consolidation is therefore not appropriate in this instance.

## **8. Impact**

8.1 A full Regulatory Impact Assessment has not been produced for this instrument as it has a negligible impact on the costs of business, charities or the voluntary sector.

8.2 There is a negligible impact on the public sector.

## **9. Contact**

Nick Skates at the Department for Work and Pensions, tel: 020 7962 8872 or e-mail: [Nick.Skates@dwp.gsi.gov.uk](mailto:Nick.Skates@dwp.gsi.gov.uk) can answer any queries regarding the instrument.

## **Annex A**

### **List of those consulted**

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 Ombudsman Service  
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 Association of Pension Funds)  
National Consumers Council  
Occupational Pension Schemes Joint Working Group  
Office of Fair Trading  
Pensions Ombudsman  
Pension Protection Fund Ombudsman  
Policy and Legal Division DSD Northern Ireland  
Small Business Service  
The Association of Corporate Trustees  
The Faculty and Institute of Actuaries  
The Insolvency Service  
The Law Society of England and Wales  
The Law Society of Scotland  
The Pension Protection Fund  
The Pensions Management Institute  
The Pensions Regulator  
The Scottish Executive  
The Society of Pension Consultants  
The Welsh Assembly  
TPAS (the Pensions Advisory Service)  
Trades Union Congress