

EXPLANATORY MEMORANDUM TO
THE OCCUPATIONAL PENSIONS SCHEMES (FRAUD COMPENSATION LEVY)
(AMENDMENT) REGULATIONS 2022

2022 No. 259

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions (DWP) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These regulations give effect to a new Fraud Compensation Levy (FCL) ceiling applicable to eligible occupational pension schemes.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Great Britain.

4.2 The territorial application of this instrument is Great Britain.

4.3 Corresponding provisions are being made in Northern Ireland.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend Primary legislation no statement is required.

6. Legislative Context

6.1 The regulations make amendments to the following statutory instruments:

The Occupational Pension Schemes (Fraud Compensation Levy) Regulations 2006 (S.I. 2006/558)¹.

The Occupational Pension Schemes (Master Trusts) Regulations 2018 (S.I. 2018/1030)².

6.2 Regulation 3 amends the former regulations to increase the FCL ceiling to £0.65 per member for authorised Master Trusts and to £1.80 per member in the case of all other occupational pension schemes.

6.3 Regulation 4 removes regulation 23(2)(c) from the latter regulations because it is no longer required, since regulation 3(3)(b) provides for the FCL ceiling applicable to Master Trusts (see 6.2).

¹ www.legislation.gov.uk/uksi/2006/558/made

² www.legislation.gov.uk/uksi/2018/1030/contents/made

7. Policy background

What is being done and why?

- 7.1 The Pension Protection Fund (PPF) was established in 2005 by the Pensions Act 2004³. The PPF is an independent statutory body sponsored by the DWP. The PPF's responsibilities under the Act include the operation of the Fraud Compensation Fund (FCF). The FCF provides compensation to eligible occupational pension schemes where there has been a scheme asset reduction, which is attributable to an offence involving dishonesty, and where the employer has become insolvent or is unlikely to continue trading. The Fraud Compensation Levy (FCL) recovers from eligible occupational pension schemes the costs of the compensation paid from the FCF.
- 7.2 In November 2020, the High Court, in the case of *The Board of the PPF v Dalriada Trustees Ltd.*⁴, clarified that pension liberation schemes, if they satisfied all specified criteria, were able to make a claim to the FCF. Pension liberation scheme fraud involves members being persuaded to transfer their pensions from legitimate schemes to fraudulent schemes with promises of high investment returns or access to a loan from their pension scheme before age 55 without incurring a tax charge.
- 7.3 The FCF does not hold sufficient assets to meet claims arising from the judgment and the FCL ceiling is set at a level which does not allow the PPF to raise the income required to pay the claims. Claims are expected to exceed £350m. The Compensation (London Capital & Finance plc and Fraud Compensation Fund) Act⁵ received Royal Assent on 20 October 2021. The Act provides a power to the Secretary of State to make loans to the board of the PPF in respect of the FCF. The loans will be used to compensate pension schemes who are eligible to access the FCF.
- 7.4 Under the current regulations, the board of the PPF, as Scheme Manager of the FCF, can raise an annual FCL on eligible occupational pension schemes, capped at a maximum (the ceiling) of £0.75 per member and £0.30 per member for authorised Master Trusts.
- 7.5 This statutory instrument will allow the PPF to set a FCL on eligible occupational pension schemes, capped at a maximum of £1.80 per member and £0.65 per member for authorised Master Trusts.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 Informal consolidated texts of instruments are available to the public free of charge via the National Archives website⁶.

10. Consultation outcome

- 10.1 The consultation on the review of the Fraud Compensation Levy ceiling lasted for six weeks and ran from 1 November 2021 to 10 December 2021⁷.

³ www.legislation.gov.uk/ukpga/2004/35/contents

⁴ www.bailii.org/ew/cases/EWHC/Ch/2020/2960.html

⁵ www.legislation.gov.uk/ukpga/2021/29/contents/enacted

⁶ www.legislation.gov.uk

- 10.2 The purpose of the consultation was to seek views on the Department for Work and Pension (DWP) proposal to raise the Fraud Compensation Levy (FCL) ceiling from April 2022. The consultation was expected to be primarily of interest to those affected by the FCL, including occupational pension scheme trustees, personal pension providers and sponsoring employers of pension schemes.
- 10.3 A consultation period lasting 6 weeks was considered appropriate, as the primary audience for the consultation exercise was felt to be sufficiently expert not to need a longer period in which to respond.
- 10.4 Eleven formal consultation responses were received. Ten respondents expressed support for the provision of compensation for pension schemes affected by fraudulent activity. Nine respondents did not express support for the funding proposal set out in the consultation exercise. Nine respondents requested that the structure of the Fraud Compensation Fund (FCF) and FCL should be reviewed. Seven respondents requested that the increase to the FCL should be delayed by one year. Seven respondents requested that the PPF ensure that all efforts are made to secure restitution for occupational pension schemes affected by fraud prior to the payment of compensation from the FCF.
- 10.5 Having considered the responses, the Government has decided to increase the FCL ceiling to the levels proposed in the consultation document and set out in section 7.5 above from 1 April 2022.
- 10.6 The Government response⁸ to the consultation has been published on publication of these regulations.

11. Guidance

- 11.1 The administration of the FCL is undertaken by the Pension Protection Fund (PPF) and levy payments are collected by The Pensions Regulator on its behalf. Information and guidance can be found at the following link⁹, which will be updated to reflect the new FCL rates from 1 April 2022.

12. Impact

- 12.1 There is an impact to business in relation to occupational pensions schemes subject to the FCL. The estimated summary of impacts are set out in the accompanying Government response¹⁰. There is no impact on charities or voluntary bodies.
- 12.2 There is no impact on the public sector. A loan has been agreed with Her Majesty's Treasury to cover a proportion of the compensation required to pay defaulted schemes. No burden is placed on the taxpayer or the public sector since the industry, through the FCL, will meet the full cost of compensation over the agreed time period set out in the Government Response.
- 12.3 A Regulatory Impact Assessment has not been published for this instrument because this levy measure and its impact is excluded from the definition of a regulatory

⁷ <https://www.gov.uk/government/consultations/review-of-the-fraud-compensation-levy-ceiling/consultation-on-the-review-of-the-fraud-compensation-levy-ceiling>

⁸ www.gov.uk/government/consultations/review-of-the-fraud-compensation-levy-ceiling/consultation-on-the-review-of-the-fraud-compensation-levy-ceiling

⁹ www.ppf.co.uk/levy-payers

¹⁰ www.gov.uk/government/consultations/review-of-the-fraud-compensation-levy-ceiling/consultation-on-the-review-of-the-fraud-compensation-levy-ceiling

provision in the Small Business, Enterprise and Employment Act 2015. Therefore, it does not need to be reported on or verified under the Business Impact Target reporting requirements. Any increases in the Fraud Compensation Levy (FCL), therefore, do not count towards the Equivalent Annual Net Direct Cost to Business (EANDCB)¹¹.

- 12.4 The estimated additional cost to occupational pension schemes eligible to pay the FCL, should the levy be increased to the ceiling, is approximately £260m over the period 2022/23-2030/31.

13. Regulating small business

- 13.1 As indicated above, this instrument is not a regulatory provision.
- 13.2 The estimated cost of the FCL, if raised by the Pension Protection Fund (PPF), to private sector schemes may cover some small and micro businesses where they operate a pension scheme. However, assessing the impact of the regulations on this group is difficult, as it is not necessarily the case the small and micro pension schemes correspond to small and micro businesses. For example, many large firms may run executive pension plans with only a few members. Similarly, small employers may enter their staff in larger Master Trust schemes. As there is currently no robust evidence to link pension scheme size with employer size, it is difficult to accurately assess the impact on small and micro businesses.

14. Monitoring & review

- 14.1 In line with the Department for Work and Pensions (DWP) overall approach to stewardship of its independent statutory bodies, DWP scrutinises and approves the corporate and business plans and operating budgets of the PPF. Most such bodies, including the PPF, must submit annual reports and accounts, which are scrutinised by the National Audit Office before the Secretary of State lays them before Parliament.

15. Contact

- 15.1 Daniel Tinker or Alison Fryatt at the Department for Work and Pensions can be contacted using the email address Daniel.tinker@dwp.gov.uk or Alison.fryatt@dwp.gov.uk with any queries regarding the instrument.
- 15.2 Jackie Oatway, Deputy Director for Private Pensions and Arm's Length Bodies Partnership at DWP, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister for Pensions and Financial Inclusion at DWP can confirm that this Explanatory Memorandum meets the required standard.

¹¹ www.legislation.gov.uk/ukpga/2015/26/contents/enacted