EXPLANATORY MEMORANDUM TO

THE PENSION PROTECTION FUND AND OCCUPATIONAL PENSION SCHEMES (LEVY CEILING) ORDER 2022

2022 No. 88

1. Introduction

1.1 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

2.1 The Pension Protection Fund (PPF) provides compensation to pension scheme members whose employer has become insolvent and cannot meet scheme liabilities; it is funded mainly by a levy collected from pension schemes. This Order increases the levy ceiling amount used by the Board of the PPF ("the Board"). This increase ensures that rises in average earnings are taken into account when setting the levy ceiling, which controls the maximum amount of levy the Board can charge 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 The Department for Communities in Northern Ireland will be introducing its own legislation replicating this Order for 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 This Order sets out the levy ceiling for the PPF from 1 April 2022 which is the maximum amount that the PPF can charge eligible Defined Benefit (DB) schemes.

6.2 Under section 178(1) of the Pensions Act 2004 ("the 2004 Act"), the Secretary of State is required to make an Order to specify the levy ceiling before the beginning of each financial year.[1] Section 178(3) of the 2004 Act specifies that the levy ceiling must be uprated in line with the general level of earnings in Great Britain, unless there is no increase in the general level of earnings in the review period. Section 178(4) of the 2004 Act and regulation 3 of the Pensions Protection Fund (Levy

[1] https://www.legislation.gov.uk/ukpga/2004/35/section/178

Ceiling) Regulations 2006[2] provide that the review period is the period of 12 months ending on 31st July each year.

6.3 In previous years, the Secretary of State was also required to consider whether to specify the standard amount to be imposed in relation to the compensation cap under paragraphs 26 and 26A(7) of Schedule 7 to the Pensions Act 2004. Paragraph 27(2) of Schedule 7 requires the Secretary of State to increase the amount specified where there has been an increase in the general level of earnings. However, the Court of Appeal in *Secretary of State for Work and Pensions and the Board of the Pension Protection Fund v Paul Hughes and others* found the compensation cap to be discriminatory on the grounds of age[3] and as a result paragraphs 26 and 26A of Schedule 7 to the 2004 Act are dis-applied for the purposes of calculating compensation under that Schedule. For this reason, an Order under paragraph 27(2) of Schedule 7 is not being made.

7. Policy background

What is being done and why?

7.1 The PPF is funded by:

- the pension protection levy that is charged to eligible defined benefit occupational pension schemes;
- the remaining assets of schemes that enter the PPF;
- funds recovered from insolvent employers; and
- investment returns on the PPF’s assets.

7.2 The pension protection levy consists of a risk-based levy that is required by law to be at least 80 per cent of the total levy, with a scheme-based levy making up the remainder. The scheme-based levy is calculated using the level of a scheme’s liabilities, whilst the risk-based levy is calculated using the level of a scheme’s underfunding and the likelihood of employer insolvency for that scheme.

7.3 Each year the Board of the PPF is required to estimate the total amount of the pension protection levy it will collect. The levy ceiling prevents the Board from imposing a total levy in excess of the amount specified by this instrument. The ceiling is set at a level that is sufficient to allow the Board to raise a levy that ensures the safe funding of the compensation it provides, whilst providing reassurance to schemes that the levy estimate will not be above a certain amount in any one year. In practice, the Board calculates how much it needs to raise in levy each year and to date this amount has always been less than the levy ceiling.

7.4 The levy ceiling is currently £1,099,445,505 for the 2021/22 financial year ending 31 March 2022.

7.5 This instrument specifies that the growth in Average Weekly Earnings to the year ending 31 July 2021 has increased by 7.2 per cent.[4] Therefore, this

[2] https://www.legislation.gov.uk/uksi/2006/2692/made
[3] https://www.judiciary.uk/wp-content/uploads/2021/07/SSWP-BPPF-v-Hughes-and-ors-judgment.pdf
[4]https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/averageweeklyearningsbysectorearn02/current?_sm_au_=iVVsQ1HF4PvWMvnPW2MN0K7K1WVjq

instrument increases the level of the levy ceiling by 7.2 per cent to £1,178,605,581 for the financial year beginning on 1 April 2022.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

9.1 As this instrument does not amend other legislation, consolidation is not applicable. Informal consolidated text of instruments is available to the public free of charge via 'the National Archive' website.[5]

10. Consultation outcome

10.1 Consultation was not considered necessary as this is a routine instrument which represents no policy shift.

11. Guidance

11.1 No guidance is being issued on this instrument since it is based on existing legislation. The Department for Work and Pensions will have copies of the instrument and be in a position to explain it to members of the public.

12. Impact

12.1 There is no, or no significant, impact on business, charities, or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because it is not a regulatory measure. It relates to the functions of the PPF and is made in connection with the imposition of the pension protection levy.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 This Order is monitored by DWP and the Board of the Pension Protection Fund and reviewed every 12 months.

15. Contact

15.1 William Fawcett at the Department for Work and Pensions.
Email: william.fawcett@dwp.gov.uk can be contacted with any queries regarding the instrument.

15.2 Fiona Frobisher, Deputy Director for Private Pensions Policy at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

[5] https://www.Legislation.gov.uk

15.3 Guy Opperman, Minister for Pensions and Financial Inclusion at the Department for Work and Pension can confirm that this Explanatory Memorandum meets the required standard.