EXPLANATORY MEMORANDUM TO

THE OCCUPATIONAL PENSION SCHEMES (LEVIES) (AMENDMENT) REGULATIONS 2007

2007 No.

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 amend the Occupational Pension Schemes (Levies) Regulations 2005 ("the Levies Regulations"), which impose levies on occupational pension schemes to fund the Pension Protection Fund (PPF). They remove from the Levies Regulations all references to the levy for the Pension Protection Fund Ombudsman ("PPF Ombudsman"). In relation to the administration levy, they substitute new amounts to be used in calculating the amount payable in respect of the levy for the financial year ending 31 March 2008 ("levy year 2007/08") and they provide for waiver of the levy in a financial year if the pension protection levy for that year has also been waived. The Regulations also contain consequential amendments.

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 PPF ("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 117 of the Act provides for the imposition of an administration levy in respect of eligible schemes to meet any expenditure of the Secretary of State which:

- relates to the establishment of the Board, or
- is paid to the Board towards its expenses out of money provided by Parliament (through Grant in Aid).

Section 117(7)(b) also provides for regulations to specify the circumstances in which the administration levy may be waived.

4.3 The Act also established the office of PPF Ombudsman. Sections 213 and 214 provide for the PPF Ombudsman to investigate and determine references of "reviewable matters" and complaints of maladministration. Section 209(7) provides for regulations to impose a levy in respect of eligible schemes.

4.4 The detail of how the PPF Ombudsman levy and the administration levy are to be calculated, collected and recovered is set out in the Levies Regulations.

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 Occupational Pension Schemes (Levies) (Amendment) Regulations 2007 are compatible with the Convention rights.

7. Policy Background

7.1 The references in the Levies Regulations to the PPF Ombudsman levy are removed in the interests of clarity. No levy has been imposed in respect of the levy years 2005/06 or 2006/07 and no levy will be collected in 2007/08. However, the Secretary of State's expenditure in respect of 2007/08 (and future years) is expected to be recouped in future years under provisions in future affirmative levy regulations. Because the amount needed is expected to be small, in the interests of cost effectiveness, it is currently anticipated that a levy may cover two or more years' expenditure. For example: it is currently anticipated that a levy will be recovered in respect of 2008/09 which will cover expenditure by the Secretary of State in respect of both 2007/08 and 2008/09. There is no intention to recover expenditure in respect of the years 2005/06 or 2006/07.

7.2 The proposed administration levy rates for the 2007/08 levy year were included in the consultation document associated with these regulations. An invoice detailing the levies due from a scheme (including the administration levy) will be received from the Pensions Regulator at the appropriate time.

7.3 By way of background to the provision for waiver of the administration levy inserted by regulation 4 of these Regulations, the Department proposes also to make regulations under section 181 of the Act ("General Waiver Regulations"). The General Waiver Regulations relate to the pension protection levy and will specify the circumstances in which any pension protection levy payable in respect of an eligible

scheme will be waived by the Board. Consultation on the General Waiver Regulations was conducted between 13 September 2006 and 5 December 2006 and they are expected to be made shortly after the draft Regulations accompanying this Explanatory Memorandum have been made.

7.4 The effect of regulation 4 of these Regulations is that, if any pension protection levy waiver is granted by the Board under the General Waiver Regulations, the administration levy will also waived. This does not apply in the case of closed schemes that no longer have an employer and have been assessed as having funding levels above the level of PPF protection, requiring the close involvement of the PPF. The administration levy will be waived in all other cases where a pension protection levy is waived as it is not expected that the PPF will have to closely monitor or engage with these pension schemes.

7.5 An overview of consultation responses is provided below. In response to consultation, these Regulations have been amended to incorporate minor technical amendments. They have not otherwise been amended.

Consultation

7.6 In accordance with sections 117(4) and 317(1) of the Act, the Secretary of State has consulted, respectively, the Board of the Pension Protection Fund and such persons as he considers appropriate.

7.7 The consultation period started on 26 October 2006 and closed on 20 December 2006. The length of the consultation struck a reasonable balance between time for respondents to contribute, and the need to have administration levy regulations for 2007/08 in place as soon as possible. Cabinet Office guidance provides that a shorter consultation period may be appropriate. Taking account of all these factors, Ministers decided that a consultation period of eight weeks was appropriate.

7.8 A list of those consulted is provided at Annex A to this memorandum. Nine responses were received with most of those expressing concern over the lack of a reason for the increase in the administration levy for the year 2007/08. The increase reflects the increased running costs of the PPF, the recovery period of setting up costs and a shortfall in levy collection in previous years.

7.9 A full response to the consultation is published on the DWP website - http://www.dwp.gov.uk/consultations/2006/

Guidance

7.10 Guidance on this Order will be put on the DWP website "What's New" section when it comes into force. The PPF will also have copies of the instrument and be in a position to explain the provisions to members of the public.

Consolidation

7.11 The administration levy for the PPF and the PPF Ombudsman are usually collected annually. Consolidation is therefore not appropriate in this instance.

8. Impact

8.1 These regulations amend an existing levy regime but impose no associated administrative costs on business, charities and the voluntary sector. A full Regulatory Impact Assessment is not necessary for such legislation.

8.2 There is no 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 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 Pensioneer 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