EXPLANATORY MEMORANDUM TO

THE OCCUPATIONAL PENSION SCHEMES (LEVY CEILING) ORDER 2009

2009 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. Purpose of the instrument

2.1 This Order specifies the amount of the levy ceiling for the financial year beginning on 1st April 2009.

2.2 It also revokes the 2008 levy ceiling Order, which relates to the financial year beginning on 1st April 2008.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Section 175 of the Pensions Act 2004 ("the Act") requires the Board of the Pension Protection Fund ("the Board") to set a levy for defined benefit occupational pension schemes (and the defined benefit element of hybrid schemes) to fund the compensation it will pay to scheme members if their employer becomes insolvent and the scheme is underfunded to a certain level.

4.2 Section 178 of the Act requires the Secretary of State for Work and Pensions to set a levy ceiling, by affirmative Order, preventing the Board from raising the levy above a set maximum.

4.3 The ceiling is uprated annually by affirmative Order in line with the general level of earnings obtaining in Great Britain (unless there is no increase in the general level of earnings). The Secretary of State reviewed the general level of earnings under section 178(5) of the Act. He concluded that earnings in Great Britain had risen by 3.6% during the year to 31st July 2008. In accordance with section 178(6) of the Act, he therefore prescribed that percentage in the Occupational Pension Schemes (Levy Ceiling – Earnings Percentage Increase) Order 2009 (S.I. 2009/200).

4.4 The ceiling is uprated in line with earnings as this is the closest approximation to the increase in a scheme's liabilities where compensation payable is linked to a member's earnings.

4.5 This Order specifies the levy ceiling figure to be imposed on the pension protection levy for the financial year beginning on 1st April 2009 as £863,412,967. In accordance with section 178(3)(a) of the Act, this amount was calculated by increasing the levy ceiling for the financial year beginning on 1st April 2008 by 3.6%.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

Rosie Winterton, Minister of State for Pensions and the Ageing Society, has made the following statement regarding Human Rights:
In my view the provisions of the Occupational Pension Schemes (Levy Ceiling) Order 2009 are compatible with the Convention rights.

7. Policy background

7.1 The Pension Protection Fund ("PPF") has been set up to provide a statutory form of compensation for members of defined benefit occupational pension schemes, where the employer has a qualifying insolvency event and the scheme is underfunded to a certain level.

7.2 The PPF is funded through an annual levy charged to all qualifying defined benefit occupational pension schemes. In addition when the PPF assumes responsibility for a scheme it takes over all assets of the scheme. The PPF also receives funding from the returns of the investment of the pension protection levy and the assets of the schemes it takes over.

Consolidation

7.3 The levy ceiling is uprated annually by affirmative Order in line with the general level of earnings obtaining in Great Britain. Consolidation is therefore not appropriate in this instance

8. Consultation outcome

8.1 Consultation was not carried out on a draft of this Order as there is no statutory requirement upon the Secretary of State to consult before he makes this type of Order under the Act and the Order does not change policy.

9. Guidance

9.1 DWP will have copies of the instrument and be in a position to explain the provisions to members of the public. This Order is to be read in conjunction with the Pension Protection Fund (Levy Ceiling) Regulations 2006 (S.I. 2006/2692).

10. Impact

10.1 This Order amends an existing regulatory regime by a pre-determined formula and has no direct impact on the private or voluntary sectors. A full impact assessment is not necessary for such legislation.

10.2 This order has only a negligible impact on the public sector.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 This is the annual uprating of the levy ceiling.
This instrument is constantly monitored by the DWP and the PPF. The instrument is reviewed at the 12 month stage, and amended accordingly.

13. Contact

John Isaac at the Department for Work and Pensions Tel: 020 7962 8136 or email: John.isaac@dwp.gsi.gov.uk can answer any queries regarding the instrument.