EXPLANATORY MEMORANDUM TO

THE PENSION PROTECTION FUND AND OCCUPATIONAL PENSION SCHEMES (LEVY CEILING) ORDER 2021

2021 No. 93

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 instrument ensures that average earnings are taken into account in the value of the levy ceiling, so that it maintains its value. The levy ceiling amount is used by the Board of the PPF to control 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.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the Order is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The 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 2021 which is the maximum levy amount that the PPF can charge eligible defined benefit occupational pension schemes.

6.2 The Secretary of State is required to annually uprate the levy ceiling (section 178(1) of the Pensions Act 2004)[1] 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 Pensions Act 2004 and regulation 3 of the Pension Protection Fund (Levy Ceiling) Regulations 2006 [2] provide that the review period is the period of 12 months ending on 31 July each year.

6.3 Paragraph 27(2) of Schedule 7 to the Pensions Act 2004 requires the Secretary of State to make an order increasing the amount specified for the purposes of paragraph 26A(7) where she concludes on a review under section 148(2) of the Social Security Administration Act 1992[3] that the general level of earnings in Great Britain has gone up over the tax year period. As a result of a 1.0 per cent decrease in the general level of earnings in Great Britain in the year ending 30 April 2020, the amount specified in article 4 of the Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling and Compensation Cap) Order 2020[4] ("2020 Order") will not increase.

7. Policy background

What is being done and why?

7.1 The Pension Protection Fund provides compensation to members of eligible defined benefit occupational pension schemes where the employer has a qualifying insolvency event, there is no possibility of a scheme rescue and there are insufficient assets in the scheme to pay pension benefits to (at the least) PPF compensation levels.

7.2 The PPF provides two levels of compensation:

- for members who have reached their scheme's normal pension age or, irrespective of age, are either already in receipt of a survivor's pension or a pension on the grounds of ill health, the Board will initially pay compensation at 100 per cent of the pension due at the assessment date (that is, the date at the start of the procedure by which the Board assesses whether the scheme can enter the PPF); and
- for members below their scheme's normal pension age, the Board will pay compensation at 90 per cent of the pension accrued at the assessment date, subject to an overall cap.

7.3 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.

7.4 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, with a scheme-based levy making up the remainder. The scheme-based levy is calculated using the level of a scheme's liabilities. The risk-

[1] https://www.legislation.gov.uk/ukpga/2004/35/section/178
[2] https://www.legislation.gov.uk/uksi/2006/2692/made
[3] https://www.legislation.gov.uk/ukpga/1992/5/section/148/enacted
[4] https://www.legislation.gov.uk/uksi/2020/101/contents/made

based levy is calculated using the level of a scheme's underfunding and the likelihood of employer insolvency for that scheme.

7.5 Each year the Board 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 Pension Protection Fund calculates how much it needs to raise in levy each year and this amount may be less than the ceiling.

7.6 The general level of earnings to the year ending on 31 July 2020 has decreased by 0.2 per cent[5]. Therefore, the amount of the levy ceiling for the financial year beginning on 1 April 2021 will remain the same as for the previous financial year at £1,099,445,505.

7.7 The general level of earnings in the year ending on 30 April 2020 decreased by 1.0 per cent. Therefore, the standard amount of the compensation cap for the financial year beginning 1 April 2021 remains at £41,461.07 as specified in article 4 of the 2020 Order.

7.8 For the purposes of this Order, the Secretary of State has made two measurements of the general level of earnings using the Average Weekly Earnings (AWE) estimates, produced by the Office of National Statistics[6], which is the lead measure of earnings growth in Great Britain. Each estimate represents the year on year growth rate for the specified time period; it is not seasonally adjusted but includes bonuses and arrears. The period of time set out in the legislation differs for each measure which is why two different percentage figures are used.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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 – www.legislation.gov.uk.

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.

[5] ONS Average Weekly Earnings in Great Britain
[6] https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/

12. Impact

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

12.2 There is no impact on the public sector.

12.3 An 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 part) 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 and reviewed every 12 months.

15. Contact

15.1 Kendi M'Marete at the Department for Work and Pensions. Telephone: 07769 555 752. Email: kendi.m'marete@dwp.gov.uk can be contacted with any queries regarding the instrument.

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

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