**EXPLANATORY MEMORANDUM TO**

**THE PENSION PROTECTION FUND AND OCCUPATIONAL PENSION SCHEMES (LEVY CEILING) ORDER 2023**

**2023 No. 116**

**AND**

**THE PENSION PROTECTION FUND AND OCCUPATIONAL PENSION SCHEMES (LEVY CEILING) (NO. 2) ORDER 2023**

**2023 No. 117**

## 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 His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

## 2. Purpose of the instrument

2.1 The Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling) (No. 2) Order 2023 increases the maximum amount of levy ('the levy ceiling') which can be collected in the financial year 2023-2024 by the Board of the Pension Protection Fund.[1] The levy ceiling is increased annually in line with the general level of earnings.

2.2 The Department intended the Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling) Order 2023 (S.I. 2023/116) to achieve this, but unfortunately the instrument contains errors and is defective. The Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling) (No. 2) Order 2023 therefore revokes the Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling) Order 2023 (S.I. 2023/116) before it comes into force.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 We have written to the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee to explain and apologise for defects in (and the late laying of) the Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling) Order 2023 (S.I. 2023/116).

3.2 The Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling) Order 2023 (S.I. 2023/116) is defective and cannot operate as intended. The Order is revoked entirely by the Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling) (No. 2) Order 2023 before it comes into force, so it never has effect. The No. 2 Order contains the intended operative provisions.

3.3 The laying of the Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling) Order 2023 (S.I. 2023/116) has been delayed slightly to allow it to be laid at

[1] https://www.ppf.co.uk/

the same time as the Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling) (No. 2) Order 2023 to avoid confusion and ensure legal certainty.

3.4 The Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling) (No. 2) Order 2023 is being issued free of charge to all known recipients of S.I. 2023/116.

## 4. Extent and Territorial Application

4.1 The extent of these instruments (that is, the jurisdiction(s) which the instruments form part of the law of) is Great Britain.

4.2 The territorial application of these instruments (that is, where the instruments produce a practical effect) is Great Britain.

4.3 The Department for Communities in Northern Ireland will be introducing its own legislation to mirror the increase in the levy ceiling.

## 5. European Convention on Human Rights

5.1 As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

## 6. Legislative Context

6.1 The Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling) (No. 2) Order 2023 sets out the levy ceiling for the Pension Protection Fund (PPF) from 1 April 2023, which is the maximum amount that the PPF can charge eligible schemes.

6.2 Under section 178(1) of the Pensions Act 2004[2] ("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. 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 Ceiling) Regulations 2006[3] provide that the review period is the period of 12 months ending on 31st July each year.

6.3 The Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling) (No. 2) Order 2023 revokes last year's levy ceiling increase Order (S.I. 2022/88[4]). It also revokes the Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling) Order 2023 (S.I. 2023/116), as explained in paragraph 3 above.

## 7. Policy background

***What is being done and why?***

7.1 The Pension Protection Fund (PPF) provides compensation to pension scheme members whose employer has become insolvent and cannot meet scheme liabilities. The PPF is funded by the pension protection levy that is charged to eligible 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.

[2] https://www.legislation.gov.uk/ukpga/2004/35/section/178
[3] https://www.legislation.gov.uk/uksi/2006/2692/made
[4] https://www.legislation.gov.uk/uksi/2022/88/pdfs/uksi_20220088_en.pdf

7.2 The pension protection levy is divided into a risk-based levy, which is required by law to be at least 80 per cent of the total levy, and a scheme-based levy which makes 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 Pension Protection Fund ('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 in the Order. 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 while 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 £1,178,605,581 for the 2022/23 financial year ending 31 March 2023.

7.5 The Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling) (No. 2) Order 2023 specifies that the growth in Average Weekly Earnings to the year ending 31 July 2022 has increased by 5.8 per cent.[5] Therefore, this instrument increases the level of the levy ceiling by 5.8 per cent to £1,246,964,705 for the financial year beginning on 1 April 2023.

## 8. European Union Withdrawal and Future Relationship

8.1 These instruments do not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## 9. Consolidation

9.1 As these instruments do 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.[6]

## 10. Consultation outcome

10.1 Consultation was not considered necessary as these are routine instruments which represent no policy shift.

## 11. Guidance

11.1 No guidance is being issued on these instruments since they are based on existing legislation.

## 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 these instruments because they are not regulatory measures. They relate to the functions of the Pension Protection

[5]https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/averageweeklyearningsbysectorearn02/current?_sm_au_=iVVsQ1HF4PvWMvnPW2MN0K7K1WVjq
[6] https://www.Legislation.gov.uk

Fund (PPF) and are 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 The approach to monitoring of this legislation is that the Order is monitored by the Department for Work and Pensions and the PPF and reviewed every 12 months.

## 15. Contact

15.1 Benjamin Tudor at the Department for Work and Pensions. Email: benjamin.tudor@dwp.gov.uk can be contacted with any queries regarding these instruments.

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.

15.3 Laura Trott, Minister for Pensions at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.