EXPLANATORY MEMORANDUM TO

THE PENSION PROTECTION FUND (LEVY CEILING) REGULATIONS 2006

2006 No. 2692

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 make provision for various issues relating to the Pension Protection Fund levy ceiling, as described below.

2.2 The levy ceiling is a statutory restraint imposed on the Pension Protection Fund levy, as an overall limit that the levy cannot surpass, and was set at £775m for 2006/07 (financial year). The levy ceiling is uprated annually in line with the general level of earnings, as determined by the Secretary of State, by an affirmative Order.

2.3 These Regulations prescribe the dates to be used to review any increases in the general level of earnings each year.

2.4 The Regulations also prescribe the date by which the Secretary of State must have specified, by Order, the earnings percentage by which the levy ceiling will increase as a result of the review.

2.5 The Board of the Pension Protection Fund ("the Board) must undertake public consultation before requesting the ceiling is raised beyond the annual uprating. These Regulations prescribe the manner of that consultation.

2.6 These Regulations also prescribe a modified levy ceiling for 2007/08. This is a temporary one year measure, and is being done because the 25% rule that limits the growth of the levy will not come into force until 2008/09. Lowering the levy ceiling to £718.75m will copy the 25% rule and thereby remain consistent with policy.

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

3.1 None

4. Legislative Background

4.1 Section 175 of the Pensions Act 2004 ("the Act") (pension protection levies) provides for the Board to charge a levy to 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 ("the levy ceiling") requires the Secretary of State for Work and Pensions to set a levy ceiling with approval from HM Treasury, by affirmative Order, preventing the Board from raising the levy above a set maximum. The levy ceiling for 2006/07 was set at £775m by SI 2006/742.

4.3 Once set, the ceiling is uprated annually in line with the increase in general level of earnings in Great Britain, as determined by the Secretary of State. The dates to be used in assessing the earnings increase, to uprate the ceiling are to be prescribed under section 178(4) and (7) of the Act.

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 The ceiling can only be raised above the level of earnings at the request of the Board, and with the approval of HM Treasury. However, the Board must have consulted before making its request and the nature of its consultation is to be prescribed under s178(9) of the Act.

4.6 Section 177 of the Act ("amounts to be raised by the pension protection levies") provides that the levies cannot increase by more than 25% each year. However, this rule only comes into force from the second year after the transitional period onward. The transitional period is the period of 12 months beginning on 1st April 2006.

4.7 As a result section 177(4) of the Act allows the levy ceiling to be modified and lowered during the first year after the transitional period so that there is always an appropriate functioning restraint on the growth of the levy.

5. Extent

5.1 These Regulations apply to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1 The Pension Protection Fund ("the 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 insolvent event and the assets in the scheme would not provide pensions at Pension Protection Fund compensation levels.

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 assumes all assets of the scheme.

7.3 There is no formal requirement to consult on regulations made within 6 months of the relevant powers commencing. DWP are not required to consult SSAC as these Regulations have no impact on DWP benefits.

7.4 This instrument does not amend any previous instruments, although it is related in part to the Occupational Pension Schemes (Levy Ceiling) Order 2006 (S.I.2006/ 742).

7.5 Guidance on the Regulations will be put on the DWP website "What's New" section when they come into force. The PPF will also have copies of the instrument and be in a position to explain them to members of the public. These Regulations will also be referred to when the affirmative Order to uprate the ceiling (which uses the dates prescribed in these Regulations) is debated in both Houses in the spring.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has negligible impact on business, charities or voluntary bodies.

8.2 There is no impact on the public sector.

9. Contact

Any enquiries about the contents of this memorandum should be addressed to: Ms Clare de Ste Croix, Pensions Protection and Stewardship Division, Department for Work and Pensions or Email: Clare.de-Ste-Croix@dwp.gsi.gov.uk, telephone: 020 7712 2734.