

THE PENSION PROTECTION FUND

The Draft Occupational Pension Schemes (Levies) (Amendment) Regulations 2007

Government response to the consultation

February 2007

DWP Department for
Work and Pensions

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Introduction

1. Between 13 September 2006 and 5 December 2006, the Department for Work and Pensions (DWP) undertook a consultation exercise on the draft Occupational Pension Schemes (Levies) (Amendment) Regulations 2007, which amend the Occupational Pension Schemes (Levies) Regulations 2005 (SI 2005/842) (“the Levies Regulations”). The draft regulations were sent to the organisations in Annex A and made available on the DWP’s website.
2. DWP received nine responses to the consultation. A list of respondents is in Annex B. DWP is grateful for the contributions to the development of these regulations, which will shortly be laid before Parliament and will come into force soon after.
3. The draft of the regulations that was sent out for consultation has been amended to incorporate minor technical amendments. No other amendments have been made.
4. This document sets out the main points made about the draft regulations and provides the Government’s response. Comments on the regulations should not however be taken as an authoritative interpretation of the law. Such an interpretation can only be provided by a court.
5. The draft regulations require the approval by both Houses of Parliament before they come into force.
6. The final regulations will be available on the Office of Public Sector Information’s website at <http://www.opsi.gov.uk/si/si-2007-index.htm>
7. This document is available on the DWP website at <http://www.dwp.gov.uk/consultations/2006/>
8. A paper copy of this document can be obtained from:

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Background on the Pension Protection Fund

9. The Pension Protection Fund (PPF) provides a statutory level of compensation to members of eligible defined benefit and hybrid occupational pension schemes when an employer becomes insolvent, there is no possibility of a scheme rescue and there are insufficient assets in the scheme to pay benefits at PPF compensation levels.
10. The PPF is funded by means of levies charged to all eligible schemes (i.e. schemes which can claim PPF compensation) and any assets remaining in schemes which transfer to the PPF at the end of an assessment period. There are four main levies:
 - The administration levy
 - The scheme-based levy
 - The risk-based levy
 - The Pension Protection Fund Ombudsman levy.
11. In general terms where an employer has an insolvency event and the pension scheme has insufficient funds to pay PPF compensation levels (“protected liabilities”) the scheme enters an assessment period. During this period a valuation is undertaken to determine the amount of assets in the scheme against members’ protected liabilities. Benefits payable by the trustees during the assessment period are restricted to PPF compensation levels.
12. At the end of the assessment period if the valuation shows that the scheme assets are insufficient to pay protected liabilities and a scheme rescue is not possible the scheme enters the PPF. The property, rights and liabilities transfer to the Board of the PPF (the Board) and the trustees or managers are discharged of their responsibilities towards the scheme, and the scheme is treated as if it were wound up. The Board is then responsible for providing compensation out of the PPF in accordance with the compensation provisions.
13. At the end of the assessment period if the valuation shows that assets are sufficient to pay at least protected liabilities the PPF has no further involvement with the scheme and the scheme is required to wind up outside of the PPF.

Response to the consultation and the Government's response

14. Two of the nine responses did not comment on the draft regulations. The other respondents commented mainly on regulation 3, which introduces rates for the administration levy for the financial year ending 31 March 2008.

15. The comments of those who responded to the consultation exercise with the Government's response follow.

Regulation 2

16. Respondents welcomed the removal of references to the Pension Protection Fund Ombudsman's levy from the Levies Regulations. Respondents specifically welcomed the Government's confirmation that it expected the 2007/08 PPFO levy to be small and that in the interests of cost effectiveness this levy will be recouped in future years.

Regulation 3

17. The majority of respondents commented that the Government had not provided any justification for the increase in the administration levy for 2007/08.

Government response

18. *For the first two years of the PPF being operational (2005/06 and 2006/07), the levy was set at a rate to recoup £15 million per annum. The proposed 2007/08 levy rate has been set at a rate to recoup an estimate of £20 million per annum.*

The increase in the administration levy represents effective financial management and is based on a number of factors:

- (i) The PPF estimate that running costs will increase from £12.4 million in 2006/07 to £14.2 million for 2007/08. Added to this is a depreciation figure of £1.1 million.*
- (ii) The amount of costs to the DWP of setting up the PPF. These costs amount to £2.2 million per annum, together with depreciation of £0.9 million on fixed assets purchased by DWP as part of the PPF set-up, to be recovered over a three year period.*
- (iii) A shortfall from the proposed administration levy collection in 2005/06 and 2006/07.*

19. The majority of respondents noted that they would welcome an indication of the projected administration levy in future years.

Government response

20. *The 2007/08 Administration levy includes the 3rd and final instalment of the recovery of DWP set-up costs, including depreciation, and so administration levies in future years will no longer be inflated by these recoverable amounts. Future levies will therefore represent the costs of funding the infrastructure of the PPF and, in particular, its assessment and compensation operations. These costs are driven by the number of schemes going through a PPF assessment process (which ultimately derives from the levels of corporate insolvencies) and by the number of members receiving PPF compensation (which will grow consistently as schemes are accepted into the PPF).*

21. Some respondents commented that the ability of companies to increase prices in general are restricted by market concerns and that the same principles should apply to the PPF.

Government response

22. *The Government believes that the administration levy for 2007/08 has been set at a rate which strikes a fair balance between the burden on levy payers and the ability of the PPF to carry out its statutory duty to provide pension protection to eligible scheme members.*

Regulation 4

23. Some respondents sought clarity on the rationale for not waiving the administration levy, while the pension protection levy is waived, if the scheme is an authorised scheme under section 153 (closed schemes) of the Pensions Act 2004.

Government response

24. *Closed schemes, under section 153 of the Pensions Act 2004, should still be required to pay the administration and PPFO levies because the PPF will have a high level of involvement in such schemes' future investment policies and there is potential for maladministration complaints.*

Annex A – List of those consulted

Association of British Insurers
Association of Consulting Actuaries
Association of Pension Lawyers
Association of Pensioner 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

Annex B - List of respondents

Name	Organisation
Richard Barlow	Electricity Supply Pension Scheme
Nigel Biggs	Unilever
David Everett	Association of Consulting Actuaries
Graham Everness	Watson Wyatt Limited
Robert Inglis	The Actuarial Profession
Mayer, Brown, Rowe & Maw	Mayer, Brown, Rowe & Maw LLP
John Mortimer	The Society of Pension Consultants
Vincent O'Brien	Cape PLC
Ruston Smith	Tesco