

**REGULATORY IMPACT ASSESSMENT  
THE OCCUPATIONAL PENSION SCHEMES (LEVY CEILING) ORDER 2006**

**Purpose and Intended Effect**

**(i) Objectives**

1. To allow the Board of the Pension Protection Fund independence to set the Pension Protection Fund levy at the rate they think appropriate to meet their liabilities and to allow them to react to shocks such as sudden economic downturns or large schemes joining the Pension Protection Fund.
2. To allow businesses to plan ahead with confidence by providing an overall ceiling which would prevent the Pension Protection Fund from increasing the levy above a certain amount.

**(ii) Background – The Pension Protection Fund**

The Pension Protection Fund which became operational on 6<sup>th</sup> April 2005 was created under the Pensions Act 2004 and is run by an independent Board. The Fund exists to pay compensation to members of eligible defined benefit pension schemes should the sponsoring employer become insolvent on or after 6 April 2005 and where there are insufficient assets in the scheme to pay the same level of benefits as the Pension Protection Fund would provide.

Schemes eligible for the Pension Protection Fund are:

- Occupational defined benefit schemes (also known as “final salary” schemes). These schemes pay members a set percentage of their final salary depending on their length of service and level of earnings. For each year that the member works for the employer, they will gain a proportion of their salary as a pension.
- Hybrid schemes (except those where the benefits are guaranteed). These are pension schemes with separate defined benefit and defined contribution sections. The defined contribution section works by the employer contributing (for example) £1 for every £2 the employee contributes into their fund. The resulting amount is used to buy an annuity, or annual income, upon retirement. The Pension Protection Fund will charge hybrid schemes a levy in relation to the defined benefit section only.

The Pension Protection Fund will provide two levels of compensation:

- For members that have reached their scheme’s normal pension age, or who are in receipt of a survivor’s pension or a pension on

the grounds of ill health, the Pension Protection Fund will pay 100% level of

compensation. The part of this compensation that is derived from post 1997 pensionable service will increase each year in line with the Retail Prices index, capped at 2.5%.

- For example, a 70 year old pensioner who retired in 2000 and is now receiving a pension of £100 per week will continue to receive that amount (£100 per week) as compensation from the Pension Protection Fund, with the part of this compensation that is derived from post 1997 pensionable service increasing each year in line with the Retail Prices index, capped at 2.5%.

- For the majority of people below their scheme's normal pension age the Pension Protection Fund will pay 90% level of compensation, capped at £25,000 at age 65. To ensure equal impact of a pension payable at different ages, the cap is adjusted by an actuarial factor to reflect a pension that is payable over a longer period (i.e. for those members under 65) or for a shorter period (i.e. for those over 75). As above, the part of this compensation that is derived from post 1997 pensionable service will increase each year in line with the Retail Prices index, capped at 2.5%.

o A 35 year old active member on a salary of £18,000 has 10 years of pensionable service towards his pension at the time of the insolvency event. With an accrual rate of  $1/60^{\text{th}}$ , his compensation would be calculated as follows:

$$\begin{array}{rcl} \text{(Years of service / accrual rate)} \times \text{salary} & = & \text{pension} \\ (10 / 60) & \times & \text{£18,000} & = & \text{£3,000.} \end{array}$$

This member would therefore receive 90% of £3,000 i.e. £2,700 per year, revalued from the time of the insolvency event to normal pensionable age in line with the Retail Prices Index (capped at 5%).

- In addition, compensation will be payable to certain survivors.

Funds will be raised through compulsory levies on each scheme that is eligible for help from the Pension Protection Fund. The amount of levy charged will be scheme specific, taking into account insolvency risk and scheme underfunding levels. In addition, when the Pension Protection Fund assumes responsibility for a scheme, it will also take in the remaining assets of that scheme to help pay towards any Pension Protection Fund compensation.

### **The levy ceiling**

The Pension Protection Fund will produce an estimate at the beginning of each year of the amount of levy it will need to raise for that financial year. In order to control the rate of increase of the levy over time, any annual increase is restricted to 25% of the levy estimate made by the Pension Protection Fund in the previous year.

The levy ceiling is a further control that would prevent the Pension Protection Fund raising levies above a set maximum. The ceiling would not, therefore, impose direct costs on business, but would limit the amount of the levy. The criteria for selecting a levy ceiling look at the balance that is required between preserving the financial flexibility and independence of the Board of the Pension Protection Fund, and keeping a control on the growth of the levy, with affordability and the reassurance to business that will provide, in mind.

The Pensions Act 2004 requires that the Secretary of State for the Department for Work and Pensions, with approval from HM Treasury, sets the levy ceiling for 2006/7 by affirmative Order. Once set the levy ceiling will rise annually in line with the general level of earnings in Great Britain. The Act states that the Secretary of State for the Department for Work and Pensions may estimate the general level of earnings each year for this purpose in such manner as he/she thinks appropriate. He/she will then confirm the new level of the ceiling for each year by an affirmative Order which will be debated in Parliament. Under the Pensions Act 2004, the levy ceiling can only be raised beyond the level of earnings at the request of the Board of the Pension Protection Fund and with the approval of HM Treasury. There are no provisions to reduce the level of the ceiling.

The proposed levy ceiling, during the passage of the Pensions Bill, was double (“2x”) the levy estimate. The levy was estimated at that time to be £300m, giving a ceiling of £600m. The then Minister of State for Pensions, Malcolm Wicks, explained the levy ceiling as follows: “It is sensible to set a ceiling over and above the initial £300 million... The levy ceiling will be set with the anticipated Pension Protection Fund costs in mind. We have set out in the Regulatory Impact Assessment that the anticipated year-on-year costs of the Pension Protection Fund meeting its liabilities will be some £300 million. Our intention is that the levy ceiling will be set at twice that amount—in other words, at £600 million—going forward” (Hansard, Standing Committee B, 01/04/04, Col 593). Therefore, as the Pension Protection Fund has set the levy estimate for 2006/07 at £575million, the ceiling according to this formula would be £1.15bn.

### **Rationale for government intervention**

Section 178 of the Pensions Act 2004 (“The Levy Ceiling”) requires that a levy ceiling must be set. To “do nothing” and not set a ceiling would contravene legislation. The levy itself is intended to provide a reassurance to members of defined benefit schemes that they will receive compensation payments in the

event that their employer becomes insolvent. The ability of the Pension Protection Fund to fund itself properly is crucial to ensuring the Fund can always support its compensation payments. The levy ceiling gives the Pension Protection Fund the independence to set the levy at an appropriate amount to meet its liabilities and to react to unexpected shocks, and also enables business to plan ahead with confidence by providing an overall ceiling limit on the levy.

## **Consultation**

The levy ceiling is linked to the levy to be charged by the Pension Protection Fund. The Board of the Pension Protection Fund held a 12 week consultation exercise on the calculation of Pension Protection Fund levies and, following the announcement of the £575m estimate, the Board has undertaken a six week consultation. The levy ceiling is set by affirmative Order and will be debated in both Houses and will have the approval of HM Treasury.

## **Policy Options**

The Pension Protection Fund has estimated that it needs to collect £575m for the year 2006/07 and the costings relate to this levy.

The levy ceiling is a control mechanism on the amount that the Pension Protection Fund can collect through its levy.

This paper proposes four options for the levy ceiling:

- Option 1 - Do nothing (not set a levy ceiling).
- Option 2 – Set a ceiling giving the Pension Protection Fund 17.5 % headroom (i.e. £675m)
- Option 3 - Set a ceiling giving the Pension Protection Fund 52.2 % headroom (i.e. £875m)
- Option 4 – Set a ceiling giving the Pension Protection Fund 34.8 % headroom (i.e. £775m)

No options have been suggested that fall outside the boundaries of £675m to £1bn. £675m was considered to be the lowest amount that the ceiling could be set at, and would not even give the Pension Protection Fund one year's increase at the maximum of 25%. An amount this low could jeopardise the independence of the Pension Protection Fund Board, preventing them – in the immediate future – from setting the levies at the level they think is appropriate. Lower than £675m would not fit with the approach taken by the PPF as it would not allow the PPF the 'headroom' to react to worst case scenarios. It is also unlikely to have much longevity – as even a slight downturn or increase to risk may lead to the Board

requesting the ceiling be increased. At the other extreme any levy over £1bn, although it would fit with the original policy of doubling the levy estimate, would be presentationally sensitive to set, and would give the Pension Protection Fund an unnecessary amount of headroom before requiring a return to Parliament. This would not provide a reassurance to business or act as a meaningful control on the growth of the levy.

## **Costs and Benefits**

Sectors and groups affected by the levy ceiling:

- The trustees of defined benefit pension schemes
- Employers associated with these schemes
- The scheme members
- The Pension Protection Fund

## **Option 1 – Do Nothing**

The Secretary of State is required by the Pensions Act 2004 to set a levy ceiling (see s178 “The Levy Ceiling”). Therefore a “Do Nothing” option would contravene legislation. The reason that the Government has discounted this option is that the provisions under the Pensions Act 2004 that deal with the Pension Protection Fund levy have been designed for there to be a levy ceiling – the provisions made in the Act would therefore not work effectively without a ceiling. One consequence of not having a levy ceiling would be that the Pension Protection Fund could set a levy at any rate it considered appropriate, which could be detrimental to business if the levy were to rise beyond affordable limits.

## **Option 2 – Set a ceiling giving the Pension Protection Fund 17.5 % headroom (i.e. £675m)**

£675m would give the PPF 17.4% headroom. This would keep the potential impact on employers, trustees and scheme members, in particular of small and medium sized businesses, to a minimum, should the Pension Protection Fund levy reach the limit of the ceiling in the future. In addition to this, as there is no provision to reduce the ceiling once it has been set, a lower figure would avoid an unnecessarily high ceiling in the event that scheme funding improves, and the levy reduces.

However, while a lower ceiling would provide the necessary reassurance to business, it would not give the Pension Protection Fund the possibility of being sufficiently well funded for the purposes of dealing with shocks such as economic downturns or large schemes joining the Pension Protection Fund. This could mean a return to Parliament within twelve months to debate a raise (see table below).

The table below shows the financial year the levy estimate would meet the ceiling, in different situations. It makes a broad assumption about the level of earnings (this is relevant to the uprating of the ceiling) and is for illustrative purposes only.

<b>Levy ceiling</b>	
<b>£675m</b>	
Financial year during which the levy estimate will reach the ceiling, if levy rises at 10% p/a	<b>2010/2011</b>
Financial year during which the levy estimate will reach the ceiling, if levy rises at 25% p/a	<b>2007/8</b>

**Option 3 – Set a ceiling giving the Pension Protection Fund 52.2 % headroom (i.e. £875m)**

This option, which gives the Pension Protection Fund 52.2% headroom, would have a higher impact on business should the Pension Protection Fund levy reach the full amount represented by the ceiling. As a result the Pension Protection Fund would have the ability to significantly raise the levy in order to react to economic shocks, but potentially to an unnecessarily high level. To allow the levy to rise to £875m without government intervention would not reassure business that the ceiling works as a meaningful control on the growth of the levy.

The table below shows the financial year the levy estimate would meet the ceiling, in different situations. It makes a broad assumption about the level of earnings (this is relevant to the uprating of the ceiling) and is for illustrative purposes only.

<b>Levy ceiling</b>	
<b>£875m</b>	
Financial year during which the levy estimate will reach the ceiling, if levy rises at 10% p/a	<b>2015/2016</b>

Financial year during which the levy estimate will reach the ceiling, if levy rises at 25% p/a	<b>2009/10</b>
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**Option 4 – Set a ceiling giving the Pension Protection Fund 34.8 % headroom (i.e. £775m)**

The Government believes that this option, which gives the Pension Protection Fund 34.8% headroom, would give the Pension Protection Fund the flexibility to deal with any economic downturns or large schemes calling on the Pension Protection Fund’s safety net of compensation. This would then ensure compensation payouts at the level originally promised to scheme members, and keep the levy within set limits so smaller or weaker schemes would not be overburdened.

The table below shows the financial year the levy estimate would meet the ceiling, in different situations. It makes a broad assumption about the level of earnings (this is relevant to the uprating of the ceiling) and is for illustrative purposes only.

<b>Levy ceiling</b>	
<b>£775m</b>	
Financial year during which the levy estimate will reach the ceiling, if levy rises at 10% p/a	<b>2013/2014</b>
Financial year during which the levy estimate will reach the ceiling, if levy rises at 25% p/a	<b>2008/09</b>

**Benefits**

Option 1 would not benefit scheme members or employers as there would be no limit controlling the growth of the levy, and would mean that the requirements of the Act were not being met. Option 2 would have limited benefits for all of the groups concerned, apart from the initial presentation of a low ceiling as it would place the Pension Protection Fund at risk of being underfunded.

This could mean:

- Either a reduction to the rate of compensation for members of schemes which have joined the Pension Protection Fund, or

- The ceiling would have to be raised following debate in Parliament.

Option 3 would also have limited benefits. Although the Pension Protection Fund would have the potential to be very well funded, schemes might not be able to cope if the full amount represented by the ceiling were charged. The Government believes that this option would not reassure to employers, scheme trustees or scheme members. The Government does not believe that the ceiling needs to be so high just to enable the Pension Protection Fund to cope with financial shocks.

The Government considers that Option 4 would strike the right balance by ensuring the Pension Protection Fund could manage their finances and deliver compensation payments to scheme members.

### **Costs**

Although the levy itself imposes costs on business which were in the RIA that accompanied the Pensions Bill 2004, the levy ceiling imposes no direct costs. It is a capping mechanism designed to keep the levy under a certain amount. Option 1 (“do nothing”) would have an unknown cost to business that could be very high should the Pension Protection Fund be able to raise the levy with no meaningful limit in place. Option 2 (£675m) has the potential to keep immediate costs from rising, but this could be for only a very short time, as the levy ceiling would need to be raised in order to properly fund the Pension Protection Fund, leading to schemes having to pay increased levies. Option 3 (£875m) would mean that the levy costs could rise to a high level before a return to Parliament is necessary. Option 4 (£775m) would provide an acceptable cost in the event of the full amount represented by the ceiling being raised by the Pension Protection Fund while giving them sufficient independence to manage their compensation promise.

### **Equity and fairness**

The ceiling ensures fairness in that it is a single cap that applies to the Pension Protection Levy. The Pension Protection Fund levy, which the ceiling relates to, will be charged to the trustees of all eligible final salary schemes and the final salary element of hybrid schemes.

The intention behind the proposed options is to help members of defined benefit pension schemes with insolvent sponsoring employers. These members could work for a variety of companies in a variety of industries, and the employers could be located anywhere in Great Britain. This means that there should not be a disproportionate impact on any particular group or race, and the consequences for members will not differ according to their group or race. Nor would the regulations affect relations between certain groups or races.

Through the Pension Protection Fund levy all members of final salary pension schemes will have a meaningful level of income to rely on should their employer become insolvent.

### **Small Firms Impact Test**

Relatively few small and medium businesses (less than 4% of this group<sup>1</sup>) offer either final salary or hybrid pension schemes so the Pension Protection Fund will have limited impact on the small firms sector as a whole.

Option 1 would not be a reassurance or protection for small and medium businesses, or business in general, as the Pension Protection Fund could levy increasingly high amounts. Option 3, £875m would have a similar effect, since business would be obliged to pay higher costs for pension protection. Subsequently this option would impact more severely on smaller firms. Option 2, £675m, would help keep costs low for all firms but potentially only for a very short period of time. The Government believes that Option 4, a ceiling at £775m, will protect the employees of small and medium sized businesses by ensuring that the Pension Protection Fund cannot charge an unacceptably high levy, while providing them with a safety net should their employers become insolvent.

### **Competition Assessment**

The same calculation methodology for the levy will apply to all Pension Protection Fund defined benefit schemes and the defined benefit section of hybrid schemes. Details of the calculation are provided in the Pension Protection Fund levy consultation document. The consultation document is owned by, and is available from, the Pension Protection Fund. It will not prevent new defined benefit schemes opening, and should encourage current schemes to stay open by providing the reassurance of a safety net should the employer become insolvent and the scheme be left underfunded.

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<sup>1</sup> This information is taken from the Cross-Border Pensions RIA, as suggested by the Small Business Service.

## **Enforcement, sanctions and monitoring**

The Pension Protection Fund will review their levy estimate each year, and produce a new estimate accordingly. In conjunction with this, the Secretary of State for Work and Pensions will review the level of earnings in Great Britain, and raise the ceiling by affirmative Order in line with this at a level he/she considers appropriate. The levy ceiling can only exceed this level of increase following recommendation from, and consultation by, the Board of the Pension Protection Fund. Once a recommendation is received the Department for Work and Pensions will review the level of the ceiling to establish whether it is still at an appropriate level to achieve the policy intent. In doing so the Department for Work and Pensions will take into account the responses to the Board's consultation and the Pension Protection Fund's levy estimate. Primary Legislation requires the Secretary of State to review the levy ceiling on a yearly basis, increasing the levy ceiling in line with the general level of earnings. If the Pension Protection Fund's levy estimate reaches the levy ceiling and it asks that Secretary of State increase the levy ceiling then the Department for Work and Pensions will review the policy at that stage. Primary legislation prevents any reduction of the levy ceiling.

## **Implementation and delivery plan**

The levy ceiling would come into effect by affirmative Order on 1 April 2006 at the same time as the Pension Protection Fund levy. Provisions in the Pensions Act 2004 allow for the ceiling to increase by the same amount as the general level of earnings each year. This increase will be reviewed by the Secretary of State for Work and Pensions, who will then confirm the levy ceiling amount for the next year by affirmative Order, taking this into account.

The Pensions Act 2004, which created the Pension Protection Fund, included several simplification measures. For example, Minimum Funding Requirements (MFR) has been replaced with scheme funding. Schemes subject to the MFR are required to hold a minimum level of assets to meet their pension liabilities as assessed on the basis of an MFR test, and any funding shortfalls under the MFR must be made good within specific timescales. The MFR has been widely criticised since its introduction in 1997, and it is clear that it has not worked as intended. It has increased regulation and costs for sponsoring employers, without delivering the level of security which many people expected. It is also considered to have inhibited investment decisions by some schemes, causing them to focus on meeting the conditions of the MFR, rather than on developing an appropriate funding strategy for meeting their specific pension commitments. The new framework for scheme funding will operate in an environment of greater transparency and disclosure of information about scheme funding to scheme members.

In addition, the Government has relaxed indexation requirements on schemes, reducing the indexation cap from 5 percent to 2.5 percent in the Pensions Act 2004. Overall, the Pensions Act 2004 reduced certain costs for defined benefit occupational pension schemes whilst at the same time providing increased protection to scheme members.

**Post implementation and review**

See above, “Enforcement, sanctions and monitoring”.

**Summary and Recommendation**

The tables below provide a summary of the costs and benefits of the proposed policy options.

**Summary of Costs:**

	<b>Levy ceiling</b>		
	Option 2 £675m	Option 3 £875m	Option 4 £775m
Financial year during which the levy estimate will reach the ceiling, if levy rises at 10% p/a	2010/2011	2015/16	2013/2014
Financial year during which the levy estimate will reach the ceiling, if levy rises at 25% p/a	2007/8	2009/10	2008/9

**Summary of benefits/ costs**

**Option 1 – Do Nothing**

No levy ceiling will be set.

***Disadvantages***

- As the Secretary of State for the Department for Work and Pensions is required to set a levy ceiling under the Pensions Act 2004, this option would contravene legislation. One possible result of this would be that the Pension Protection Fund would have the power to increase the levy with no meaningful limit.

***Option 2 – £675m***

The levy ceiling will be set at £675m.

***Advantages***

-Initially this option would please the pensions industry.

***Disadvantages***

-The Pension Protection fund levy would have immediately met the ceiling limit, meaning the Secretary of State for Work and Pensions may have to return to Parliament to debate raising the ceiling which would remove the independence of the Pension Protection Fund to manage its own finances at arms length from government and fail to provide a meaningful reassurance to business.

***Option 3 – £875m***

The ceiling will be set at £875m, using results from the modelling process.

***Advantages***

-This will ensure the Pension Protection Fund can potentially raise the levy several times, leaving the Pension Protection Fund well funded and able to deal with economic downturns and large cases for many years.

***Disadvantages***

- Given the size of the levy itself, this would be a controversial option, potentially excessive for dealing with shocks such as economic downturns or large schemes coming into the Pension Protection Fund. Alternatively, should scheme funding improve, then the ceiling will become disproportionately high, as the Secretary of State for Work and Pensions does not have the power to lower the ceiling once it is set.

***Option 4 – £775m***

The Levy ceiling will be set at £775m.

***Advantages***

- This should allow the Pension Protection Fund to manage its funding flexibly and independently, whilst allowing for sudden economic downturns or other shocks for several years. This option also retains the effectiveness of the ceiling as a control over the growth of the levy itself, meaning that business can be reassured that the costs of the levy will remain affordable.

***Disadvantages***

- £775m could still be seen as a relatively high figure, given the original £600m estimate.

The objective is to allow the Pension Protection Fund sufficient independence and financial flexibility to meet its promised compensation payments and to manage its finances optimally. Option 2 (£675m) could risk limiting the independence of the Pension Protection Fund financially or force compensation levels to be reduced.

Option 3 (£875m) could result in a disproportionately high ceiling not needed for the Pension Protection Fund to manage their finances and deal with any shocks.

The recommended option is that a Pension Protection Fund levy ceiling is adopted according to the terms set out in Option 4 (£775m). This option would not only be consistent with original policy as proposed during the passage of the Bill, but it would enable the Pension Protection Fund room to manage its finances comfortably, meet its promised compensation payments and provide an adequate reassurance to business.

## **Ministerial Declaration**

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed        *Stephen Timms*  
Date         6 February 2006

Stephen Timms MP

Minister of State for Pensions Reform

Department for Work and Pensions