

EXPLANATORY MEMORANDUM TO
THE PENSION PROTECTION FUND (PENSION COMPENSATION CAP)
ORDER 2009

2009 No. 795

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 This Order sets out the level of the compensation cap for the Pension Protection Fund from 1st April 2009 as a result of a review under section 148(2) of the Social Security Administration Act 1992 by the Secretary of State of the general level of earnings in the 2007/2008 tax year.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 The primary legislation (paragraph 27(2) of Schedule 7 to the Pensions Act 2004) requires the Secretary of State to make an Order to increase the amount of the compensation cap. This requirement arises where he concludes that the general level of earnings in Great Britain has gone up over a set period of time (see section 148(2) of the Social Security Administration Act 1992).
 - 4.2 The Secretary of State has reviewed the general level of earnings in Great Britain for the purposes of determining the amount of the compensation cap. He concluded that the general level of earnings for the period from April 2007 to April 2008 (i.e. the 2007/08 tax year) exceeded the general level of earnings at the end of the period taken into account for the last such review by 3.5%. The period for the last such review, for the purposes of the current compensation Cap Order (S.I. 2008/909), was the 2006/2007 tax year
 - 4.3 The provision of a compensation cap is one of a number of measures introduced to limit the level of expenditure of the PPF.
 - 4.4 The level of compensation payable by the Board of the PPF (“the Board”) to members who are below their scheme’s normal pension age is normally limited to a maximum of 90 per cent of the compensation cap.

- 4.5 Average earnings, as measured by the Average Earnings Index and published by the Office of National Statistics, increased by 3.5 per cent in the 2007/2008 tax year. That percentage is applied to the current compensation cap, which provides an updated cap of £31,936.32. When applying the 90 per cent provision to that updated cap it will provide, at age 65, a maximum level of compensation of £28,742.69.

5. Territorial Extent and Application

- 5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

Rosie Winterton, Minister of State for Pensions and the Ageing Society, has made the following statement regarding Human Rights:

In my view the provisions of the Pension Protection Fund (Pension Compensation Cap) Order 2009 are compatible with the Convention rights.

7. Policy background

- 7.1 The Act established the Pension Protection Fund, a statutory fund run by the Board, who are a body corporate, from 6th April 2005. The PPF was set up to provide 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 benefits at PPF compensation levels.
- 7.2 The PPF provides two levels of compensation:
- for individuals who have reached their scheme's normal pension age or, irrespective of age, are either already in receipt of a survivors' pension or a pension on the grounds of ill health, the PPF will pay a 100 per cent level of compensation, subject to PPF rules; and
 - for the majority of people below their scheme's normal pension age, the PPF will pay a 90 per cent level of compensation subject to the compensation cap and PPF rules.
- 7.3 PPF compensation is funded in three ways – by means of levies charged to all eligible occupational pension schemes, by assets remaining in schemes which transfer to the PPF at the end of an assessment period, and by the investment returns from each of these. The levies incorporate a risk-based element.
- 7.4 Where an insolvency event occurs, the scheme enters an assessment period during which time the trustees or managers of the scheme are

required to provide payment to members at PPF compensation levels or scheme benefit levels, whichever is lower.

7.5 At the end of that assessment period, if a valuation shows that the scheme has assets below the level required to provide pensions at least equal to PPF compensation payments and a scheme rescue is not possible, the Board assumes responsibility for the scheme. All assets and liabilities of the scheme transfer to the PPF and the trustees or managers are discharged of their responsibilities towards the scheme.

7.6 The Board is then responsible for providing compensation payments out of the PPF, to the members of those schemes which have transferred in, in accordance with the compensation provisions.

Consolidation

7.7 The compensation cap is uprated annually by affirmative Order in line with the general level of earnings in Great Britain. Consolidation is therefore not appropriate in this instance.

8. Consultation outcome

8.1 Consultation was not carried out on a draft of this Order as there is no statutory requirement upon the Secretary of State to consult before he makes this type of Order under the Act and the Order does not change policy.

9. Guidance

9.1 DWP will have copies of the instrument and be in a position to explain it to members of the public.

10. Impact

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

10.2 The impact on the public sector is negligible.

10.3 A full impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 This is an annual uprating of the compensation cap in line with the increase in the general level of earnings. This instrument is monitored by the DWP and the PPF. The instrument is reviewed after 12 months, and the next annual uprating Order will be made as necessary.

13. Contact

John Isaac at the Department for Work and Pensions Tel: 020 7962 8136 or email: John.isaac@dwp.gsi.gov.uk can answer any queries regarding the instrument.