

**Private Pensions
Policy and
Regulation**

**The Occupational Pension
Schemes (Scottish Parliamentary
Pensions Act 2009) Regulations**

**The Occupational Pension
Schemes (Public Service
Pension Schemes) Regulations**

Consultation on draft regulations

May 2009

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Foreword

Who this consultation is aimed at

The consultation is primarily aimed at anyone with an interest in the Scottish Parliamentary Pension Scheme, but we would be interested in views from any source.

Subject of consultation

These regulations are being made as a consequence of the Scottish Parliamentary Pensions Act 2009. The changes:

- 1 ensure the Scottish Parliamentary Pension Scheme and the First Minister and Presiding Officer Pension Scheme continue to be treated as public service pension schemes for the purpose of pensions legislation, and
- 2 make a number of consequential amendments to legislation in reserved areas not within the legislative competence of the Scottish Parliament.

Purpose of the consultation

We are seeking views on:

- The Occupational Pension Schemes (Scottish Parliamentary Pensions Act 2009) Regulations, and
- The Occupational Pension Schemes (Public Service Pension Schemes) Regulations.

The intention is that the regulations will come into force on 1st September 2009 when the remainder of the Scottish Parliamentary Pensions Act comes into force.

We have sent this consultation document to organisations who have already been involved with the Scottish Parliamentary Pension Scheme or who have expressed an interest. Please feel free to share this document with, or tell us about, anyone you think will want to be involved in this consultation.

It would be very helpful when responding to indicate whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make it clear whom the organisation represents and, where applicable, how the views of members were assembled.

This document is available on the Department's website at:

<http://www.dwp.gov.uk/consultations/2009/>

The consultation arrangements

The Department for Business, Enterprise & Regulatory Reform Code of Practice on consultation advises that a minimum of 12 weeks is appropriate for public consultations, unless there are good reasons for a shorter period. In this case, the consultation document is of a technical, specialised nature and of interest to a limited number of people. Ministers have therefore agreed a limited consultation of 8 weeks is appropriate.

How to respond

The consultation exercise will run from **6 May 2009 to 1 July 2009**. Any replies received after that date may not be taken into account. Please send your response by **1 July 2009** to:

Andy Sly
Department for Work and Pensions
The Adelphi (3rd Floor)
1-11 John Adam Street
London.
WC2N 6HT

Tel: 020 7962 8178

e-mail: andy.sly@dwp.gsi.gov.uk

Freedom of Information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions and published in a summary of responses received, and referred to in the published consultation report.

All information contained your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this not the case, you should limit any personal information which is provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this. We cannot guarantee confidentiality of electronic responses even if your IT system claims it automatically.

If you want to find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact:

Charles Cushing
Freedom of Information
Department for Work and Pensions
2nd Floor
Adelphi
1-11 John Adam Street
London.
WC2N 6HT

Please note that Charles and his team are unable to answer any questions you may have about the consultation exercise itself. Questions about the consultation should be made to the named contact on page 4.

More information about the Freedom of Information Act can be found on the website of the Ministry of Justice:

<http://www.justice.gov.uk/guidance/guidancefoi.htm>

The consultation criteria

The consultation is being conducted in line with the Government Code of Practice on Consultation - <http://www.berr.gov.uk/files/file47158.pdf> - and its seven consultation criteria, which are as follows:

- **When to Consult.** Formal consultation should take place at a stage when there is scope to influence the outcome.
- **Duration of consultation exercises.** Consultations should normally last for at least 12 weeks, with consideration given to longer timescales where feasible and sensible.
- **Clarity of scope and impact.** Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence, and the expected costs and benefits of the proposals.
- **Accessibility of consultation exercises.** Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is designed to reach.
- **The burden of consultation.** Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- **Responsiveness of consultation exercises.** Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

- **Capacity to consult.** Officials running consultation exercises should seek guidance in how to run an effective consultation exercise, and share what they have learned from the experience.

Feedback

A summary of responses will be published following the consultation. The Government will aim to publish this summary within three months of the consultation closing. The summary of responses will be available on the Department's website:

<http://www.dwp.gov.uk/consultations/2009/>

If you have any comments, suggestions or complaints about the way in which this consultation exercise has been conducted please contact the Departmental Consultation Co-ordinator:

Roger Pugh

Department for Work and Pensions Consultation Co-ordinator
2nd Floor, Britannia House
2 Ferensway
Hull, HU2 8NF
Telephone: 01482 609571
Fax: 01482 609658

E-mail: roger.pugh@dwp.gsi.gov.uk

Impact Assessment

The amendments made by the draft regulations do not impact on costs of business, charities or the voluntary sector.

Equality Impact

The amendments made by the draft regulations have no negative impact with regards to the equal treatment of any groups, eg by race, gender, disability.

Commentary on the draft regulations

The following summary explains the purpose of each of the provisions:

The Occupational Pension Schemes (Scottish Parliamentary Pensions Act 2009) Regulations

Regulation 1 deals with citation, commencement and interpretation.

Regulation 2 introduces Schedule 1.

Schedule 1 contains a number of amendments to existing secondary legislation governing occupational pension schemes.

These amendments are consequential on the Scottish Parliamentary Pensions Act 2009. The majority of the amendments (those at paragraphs 2 to 11) apply exemptions for the Scottish Parliamentary Pension Scheme (SPPS) from certain general regulatory requirements applying to occupational pension schemes. These requirements are not appropriate for the SPPS as a parliamentary scheme funded by the Scottish Parliamentary Corporate Body and member contributions.

Paragraph 1 ensures that the requirement (at paragraph 18 of Schedule 1 to S.I. 1996/1655) on scheme trustees to disclose, to certain interested persons, the short title of an enactment setting up a scheme or determining the rate or amount of benefits under that scheme extends to the Scottish Parliamentary Pension Scheme. It does so by adding Acts of the Scottish Parliament containing provision made further to section 81(3) of the Scotland Act 1998 into paragraph 18. This is needed as Acts of the Scottish Parliament are not included in the definition of “enactment” as used at paragraph 18.

Paragraphs 2 to 11 provide for exemption from, or disapply, specific provisions in respect of any scheme made by virtue of section 81(3) of the Scotland Act 1998 (provision by the Scottish Parliament for payment of pensions, etc.). This will ensure that inappropriate statutory requirements do not apply in respect of the Scottish Parliamentary Pension Scheme. The amendments set out at paragraphs 2 to 11 add exemptions into the following regulations:

- **The Occupational Pension Schemes (Deficiency on Winding Up etc) Regulations 1996.** These regulations disapply section 75 of the Pensions Act 1995 which deals with deficiencies in fund assets on winding up and is not appropriate for the SPPS given its nature and funding arrangements.
- **The Pension Protection Fund (Entry Rules) Regulations 2005.** A provision to ensure that the SPPS will not be eligible for entry into the Pension Protection Fund.

- **The Occupational Pension Schemes (Employer Debt) Regulations 2005.** These regulations exempt a deficit in assets in the SPPS from being treated as an employer debt further to section 75 of the Pensions Act 1995.
- **The Occupational Pension Schemes (Winding up etc) Regulations 2005.** An exemption from the provision in section 73 of the Pensions Act 1995 on preferential liabilities on winding up which is not relevant to the SPPS.
- **The Pensions Regulator (Contribution Notices and Restoration Orders) Regulations 2005.** An exemption from the requirements in sections 38 (contribution notices) and 52 (restoration notices) of the Pensions Act 2004. The nature of the funding of the SPPS means there will be no reason for the Pensions Regulator to consider contribution notices or restoration orders in respect of the scheme.
- **The Occupational Pension Schemes (Fraud Compensation Payments and Miscellaneous Amendments) Regulations 2005.** The SPPS will be listed in Regulation 2 of these regulations which sets out schemes in respect of which the Pension Protection Fund may not make fraud compensation payments.
- **The Occupational Pension Schemes (Scheme Funding) Regulations 2005.** The nature of the funding of the SPPS means that it is not necessary to apply the scheme funding requirements in Part 3 of the Pensions Act 2004 to it.
- **The Occupational Pension Schemes (Regulatory Own Funds) Regulations 2005.** The SPPS is to be exempt from the requirement to hold additional assets.
- **The Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 2006.** This exemption disapplies the member-nominated trustee requirements in section 241 of the Pensions Act 2004. Rule 13 of the SPPS provides for the appointment of member-nominated trustees where required for the purposes of fulfilling the Fund trustees' obligations under section 241. This rule is in the 2009 Act to provide for the appointment of any fund trustees who were member-nominated prior to the exemption having effect and will be unnecessary once the exemption is applied to the scheme
- **Occupational Pension Schemes (Modification of Schemes) Regulations 2006.** Regulation 8 will be amended to exempt the SPPS from a power in section 68(6) of the Pensions Act 1995 which allows trustees to modify schemes by resolution in specified circumstances. Existing Regulation 8 already exempts certain types of public service scheme from the section 68(6) modification power and the 2009 Act makes discrete provision for the modification of the SPPS.

The Occupational Pension Schemes (Public Service Pension Schemes) Regulations.

Regulation 1 deals with citation and commencement

Regulation 2 is designed to ensure that the Scottish Parliamentary Pension Scheme and the First Minister and Presiding Officer Pension Scheme continue to be treated as public service pension schemes once the 2009 Act's provisions are in force.

Annex A: List of organisations consulted

Organisation
Association of British Insurers
Association of Chartered Certified Accountants
Association of Consulting Actuaries
Association of Corporate Trustees
Association of Independent Financial Advisers
Association of Pension Lawyers
Better Regulation Executive
Confederation of British Industry
Consumers' Association
Department for Business, Enterprise & Regulatory Reform
Department for Social Development (Northern Ireland)
Equality and Human Rights Commission (EHRC)
Financial Services Authority
Government Actuary's Dept
HM Revenue & Customs
H M Treasury
Joint Working Group
Law Society
Law Society of Scotland
National Association of Pension Fund
Office of the Solicitor to the Advocate General
Pensions Ombudsman
Pensions Protection Fund
Pensions Policy Institute

Scotland Office
Scottish Executive
Scottish Parliament
The Pensions Advisory Service
The Pensions Regulator
Trades Union Congress
Welsh Assembly
Welsh Office