

Pensions

Consultation on Draft Regulations

The Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008

October 2007

Introduction

1 This consultation seeks views on the enclosed draft regulations:

The Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008

- 2 Amendments to section 50 of the Pensions Act 1995 in section 273 of the Pensions Act 2004 will provide the opportunity for occupational pension schemes to simplify their internal dispute resolution procedures.
- 3 The changes to section 50 of the Pensions Act 1995 will not have effect until section 273 of the Pensions Act is commenced, which we intend to do in April 2008. Section 273 of the Pensions Act was itself amended by section 16 of the Pensions Act 2007.
- 4 The intention is these regulations will be made and laid early next year, and will come into force in April 2008.
- 5 When the revised IDR provisions come into force, the current two-stage procedure with its strict time limits for action and decisions will be replaced with something simpler and more flexible. Trustees will be able to keep their existing two-stage procedure, but will also have the opportunity to adopt a simpler process single stage process. This gives trustees the opportunity to adopt a procedure that they think best suits their scheme.
- 6 Although the changes take away the rigid and inflexible time limits, trustees will be required to issue decisions within a reasonable time. What is reasonable will be set out in a Code of Practice to be issued by the Pensions Regulator. The Regulator will be issuing the Code of Practice for consultation at the same time as these regulations.
- 7 The Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996 (SI 1996/1270) will be revoked and replaced by the attached regulations which reflect the changes to the IDR provisions.
- 8 The regulations now cover:
- A requirement to include details of the Pensions Advisory Service and the Pensions Ombudsman with the notification of any decision
 - An exemption from the requirement to provide an IDR procedure for schemes where the sole trustee is a company, and all the members are directors of the company. This provides an exemption equivalent to section 50(8)(a) (as amended) for schemes with corporate trustees

- Additional exemptions for certain specific disputes involving the new Firefighters' and Police Pension schemes
- Transitional provisions to ensure any complaints already being dealt with when the new legislation comes into force will be dealt with under the under the arrangements in place whether the complaint was made
- Some minor amendments to update regulations covering disclosure of information and the Pensions Ombudsman
- Revocation of the Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996.

The Pensions Advisory Service

- 9 When the Pensions Bill was at the Commons Committee stage, Ministers agreed in response to an opposition amendment to look at how best to ensure that people are made aware of the services offered by the Pensions Advisory Service (TPAS) without imposing unnecessary regulatory or administrative burdens on schemes.
- 10 The proposed amendment would have required every scheme to acknowledge every application under the dispute resolution arrangements to be acknowledged in writing, and for the acknowledgement to include details of the service offered by TPAS.
- 11 Whilst we are keen to see members made aware of TPAS and the service it offers we don't believe it justifies compelling every scheme to acknowledge every application in writing. There may well be cases where the dispute can be settled quickly and efficiently without the need for extensive paperwork, and where an acknowledgment would serve no useful purpose.
- 12 Nevertheless, we do recognise that with a single stage dispute resolution procedure there is a risk of disputes being referred to the Pensions Ombudsman without the applicant being aware of the service offered by TPAS. Although members are told about TPAS at the time they first join the scheme, that may be some time in the past.

We would welcome views on:

- **Whether there is a case for imposing a statutory obligation on schemes to tell IDR applicants about TPAS, and**
- **If not, whether there are other ways of making individuals aware that TPAS is there to help.**

Regulatory Impact Assessment

- 13 The Regulatory Impact Assessment accompanying the Pensions Act 2004 included an assessment of the impact on business of these changes.

How to respond

- 14 Your comments on any aspect of the draft regulations would be welcomed. Please ensure your response reaches us by **18th December 2007**
- 15 This document is also available on the Department's website at:<http://www.dwp.gov.uk/consultations/2007/>
- 16 Please send your responses, preferably by email, to:

Email: david.hone@dwp.gsi.gov.uk

David Hone
Department for Work and Pensions
3rd Floor
The Adelphi
1-11 John Adam Street
LONDON WC2N 6HT

Tel 020 7962 8684

Consultation arrangements

- 17 Because of the specialised and limited nature of this consultation, Ministers have decided it is not appropriate to publish it under the provisions of the Cabinet Office Code of Practice on consultation. It does, however, apply best practice from the Code.
- 18 A list of those being consulted is attached. If you have any suggestions of others who may wish to be involved in this process please contact us.
- 19 It would be very helpful when replying to indicate whether you are responding as an individual or representing the views of an organisation.
- 20 According to the requirements of the Freedom of Information Act 2000, all information contained in the response, including personal information, may be subject to publication or disclosure. By providing personal information, for the purposes of the public consultation exercise, it is understood that a Respondent consents to its disclosure and publication. If this is not the case, the Respondent should limit any personal information which is provided or remove it completely. If a Respondent requests that the information given in response to the consultation be kept confidential, this will only be possible if it is consistent with Freedom of Information Act obligations and general law on this issue.

- 21 The contact point if you want to discuss this is:

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

More information about the Freedom of Information Act can be found on the website of the Ministry of Justice:
www.justice.gov.uk/whatwedo/freedomofinformation.htm

Feedback

- 1 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/2007/index.asp>.
- 2 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

Organisations to be consulted:

Confederation of British Industry
Faculty and Institute of Actuaries
The Pensions Ombudsman
Law Society
Law Society of Scotland
Occupational Pensions Schemes Joint Working Group
The Pensions Advisory Service
The Pensions Regulator
Trades Union Congress

2008 No. 000

PENSIONS

**The Occupational Pension Schemes (Internal Dispute Resolution
Procedures Consequential and Miscellaneous Amendments)
Regulations 2008**

<i>Made</i> - - - -	2008
<i>Laid before Parliament</i>	2008
<i>Coming into force</i> - -	2008

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 113(1)(d), 181(1) and 182(2) and (3) of the Pension Schemes Act 1993⁽¹⁾, and sections 50(8)(c) and (9)(c), 124(1) and 174(2) and (3) of the Pensions Act 1995⁽²⁾.

In accordance with section 185(1) of the Pension Schemes Act 1993 and section 120(1) of the Pensions Act 1995 the Secretary of State has consulted with such persons as he considers appropriate.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008 and shall come into force on [6th April 2008].

(2) In these Regulations “the Act” means the Pensions Act 1995.

Notification of decision from trustees or managers [power s 113(1)(d) PSA 1993]

2.—(1) When the trustees or managers of an occupational pension scheme or, as the case may be, the specified person⁽³⁾, notify the applicant of their decision in relation to a pension dispute in accordance with section 50(5)(b) of the Act (dispute resolution arrangements – duties of trustees or managers), the notification shall include—

- (a) a statement that TPAS (the Pensions Advisory Service)⁽⁴⁾ is available to assist members and beneficiaries of the scheme in connection with any difficulty with the scheme which remains unresolved and the address at which the Pensions Advisory Service may be contacted; and
- (b) a statement that the Pensions Ombudsman appointed under section 145(2) of the Pension Schemes Act 1993⁽⁵⁾ (appointment of the Pensions Ombudsman) may investigate and determine any

(1) 1999 c.48. Section 181(1) is cited because of the meaning there given to “prescribe” and “regulations”.
(2) 1995 c.26. A new section 50 is substituted by section 273 of the Pensions Act 2004 (c.35) (“the 2004 Act”) as amended by section 16 of the Pensions Act 2007 c.22. Section 124(1) is cited because of the meaning there given to “prescribed” and “regulations”.
(3) “Specified person” is a term used in section 50(4A) of the Pensions Act 1995. Sub-section (4A) is inserted by section 273 of the 2004 Act.
(4) The Pensions Advisory Service Limited is a company limited by guarantee under the Companies Act 1985 (c.6); registered number 2459671.
(5) Section 145(2) was amended by section 274 of the 2004 Act.

complaint or dispute of fact or law in relation to a scheme made or referred in accordance with that Act and the address at which he may be contacted.

(2) For the purposes of paragraph (1)(a), “member” has the meaning ascribed to it in section 124(1) and 125(4) of the Act (interpretation of Part 1 and supplementary), and “members” is to be construed accordingly.

Exempted schemes [power s 50(8)(c) PA 1995]

3. An occupational pension scheme of a description prescribed for the purposes of section 50(8)(c) of the Act (schemes to which section 50 does not apply) is a scheme in relation to which the sole trustee of the scheme is a company and all members of the scheme are directors of that company.

Exempted disputes [power s 50(9)(c) PA 1995]

4. A dispute of a description prescribed for the purposes of section 50(9)(c) of the Act (exempted disputes) is a dispute in respect of which a notice of appeal has been issued by the complainant in accordance with—

- (a) regulation H2 of the Police Pensions Regulations 1987(**6**) (appeal to board of medical referees);
- (b) rule H2 of Schedule 2 to the Firemen’s Pension Scheme Order 1992(**7**) (appeal to medical referee);
- (c) rule 2 of Part 6 of Schedule 1 to the Firefighters’ Compensation Scheme (Scotland) Order 2006(**8**) (appeal to medical referee);
- (d) regulation 31 of the Police (Injury Benefit) Regulations 2006(**9**) (appeal to board of medical referees);
- (e) rule 2 of Part 6 of Schedule 1 to the Firefighters’ Compensation Scheme (England) Order 2006(**10**) (appeal to medical referee);
- (f) regulation 72 of the Police Pensions Regulations 2006(**11**) (appeal to board of medical referees);
- (g) rule 4 of Part 8 of Schedule 1 to the Firefighters’ Pension Scheme (England) Order 2006(**12**) (appeals against decisions based on medical advice);
- (h) regulation 31 of the Police (Injury Benefit) (Scotland) Regulations 2007(**13**) (appeal to board of medical referees);
- (i) rule 4 of Part 8 of schedule 1 to the Firefighters’ Pension Scheme (Scotland) Order 2007(**14**) (appeals against decisions based on medical advice);
- (j) regulation 72 of Part 7 of the Police Pensions (Scotland) Regulations 2007(**15**) (appeal to board of medical referees);
- (k) rule 4 of Part 8 of Schedule 1 to the Firefighters’ Pension Scheme (Wales) Order 2007(**16**) (appeals against decisions based on medical advice); or
- (l) rule 2 of Part 6 of Schedule 1 to the Firefighters’ Compensation Scheme (Wales) Order 2007(**17**) (appeal to medical referee).

(6) S.I. 1987/257; the relevant amending instruments are S.I. 2003/535, and 2004/1491 and S.S.I. 2003/406 and 2004/486.

(7) S.I. 1992/129; the relevant amending instrument is S.I. 1997/2309. The scheme name is changed for England and Scotland by S.I. 2004/2306 and for Wales by S.I. 2004/2918. The schemes is revoked with transitional and saving provisions, see S.I. 2006/3432, S.I. 2007/199 and S.I. 2007/1072.

(8) S.S.I. 2006/338.

(9) S.I. 2006/932.

(10) S.I. 2006 1811.

(11) S.I. 2006 3415.

(12) S.I. 2006/3432.

(13) S.S.I. 2007/68.

(14) S.S.I. 2007/199.

(15) S.S.I. 2007/201.

(16) S.I. 2007/1072.

(17) S.I. 2007/1073.

Transitional provisions

5.—(1) Any disagreement which was on-going before 6th April 2008 under arrangements made and implemented under section 50(1) of the Act shall continue until the procedure under those arrangements comes to an end, as if the relevant legislative provisions governing those arrangements were still in force.

(2) For the purposes of paragraph (1), the relevant legislative provisions are—

- (a) section 50 of the Act as it was in force immediately before 6th April 2008; and
- (b) the Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996(18).

(3) In the case of any relevant application, regulation 3 of the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996(19) shall apply as it had effect prior to the coming into force of these Regulations.

(4) For the purposes of paragraph (3), “relevant application” means an application concerning a complaint or dispute made—

- (a) to an occupational pension scheme under the arrangements required by section 50 of the 1995 Act; and
- (b) prior to the coming into force of these Regulations.

Consequential and miscellaneous amendments

6.—(1) The Occupational Pension Schemes (Disclosure of Information) Regulations 1996(20) shall have effect with the amendments set out in paragraph (2).

(2) In Schedule 1 (basic information about the scheme) —

- (a) in paragraph 25, for “section 50(7)” substitute “section 50(8)”; and
- (b) in paragraph 26, for “OPAS” substitute “TPAS” in both places where it occurs.

(3) The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 shall have effect with the amendments set out in paragraph (4).

(4) In regulation 3 (exclusion from jurisdiction: use of internal disputes procedure)—

- (a) in paragraph (1), for “section 50(2)(b)” substitute “section 50(5)(b)”; and
- (b) in paragraph (2), for “section 50(2)(a) or (b)” substitute “section 50(5)(b)”.

(5) The Stakeholder Pension Schemes Regulations 2000(21) shall have effect with the amendments set out in paragraph (6).

(6) In the table in Schedule 2 (regulations applying to schemes which are or have been registered under section 2) in the column headed “Statutory Instrument” for “The Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996” substitute “The Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008”.

Revocation

7. The Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996 are hereby revoked.

Signed by authority of the Secretary of State for Work and Pensions.

Date

Name
Minister of State,
Department for Work and Pensions

(18) S.I. 1996/1270; amended by S.I. 1999/3198, 2004/2306 and 2918 and 2005/2877.

(19) S.I. 1996/2475, to which there are amendments not relevant to these Regulations.

(20) S.I. 1996/1655; the relevant amending instrument is S.I. 1999/3198.

(21) S.I. 2000/1403; the relevant amending instrument is S.I. 2001/934.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are for the most part consequential upon section 273 of the Pensions Act 2004 (c.35) as amended by section 16 of the Pensions Act 2007 (c.22).

By virtue of section 273 of the 2004 Act, section 50 of the Pensions Act 1995 (c.26) has been substituted by new sections 50, 50A and 50B. The new sections include much of the detail that was formerly contained in the Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996 (S.I. 1996/1270) (“the 1996 Regulations”).

Regulation 2 requires trustees or managers to make persons who apply for the resolution of a pension dispute (“applicants”) aware that the Pensions Advisory Service (TPAS) is available to assist them and the Pensions Ombudsman is available to investigate and determine any complaint or dispute, as part of the notification to the applicants of the trustees’, managers’ or specified person’s decision in relation to the pension dispute.

Regulation 3 describes an occupational pension scheme in relation to which the requirement for dispute resolution arrangements does not apply.

Regulation 4 describes exempted disputes for the purposes of section 50 of the Pensions Act 1995.

Regulation 5 provides for transitional provision, to deal with cases already being considered under the internal dispute resolution procedures as they were prior to the coming into force of these Regulations, and also to deal with cases excluded from being considered by the Pensions Ombudsman because they were already being considered under internal dispute resolution procedures prior to the coming into force of these Regulations.

Regulation 6 makes consequential amendments to other Regulations. It also updates the references to the Pensions Advisory Service.

Regulation 7 revokes the 1996 Regulations.

An impact assessment of the effect that the Pensions Act 2004, including this instrument, will have on the costs of business has been prepared and a copy placed in the libraries of both Houses of Parliament. Copies may be obtained from the Department for Work and Pensions, Better Regulation Unit, 3rd Floor, The Adelphi, 1-11 John Adam Street, London WC2N 6HT.