

**The Occupational Pension Schemes (Winding up,
winding up notices and reports etc) (Amendment)
Regulations 2007**

Consultation on Draft Regulations

MAY 2007

DWP Department for
Work and Pensions

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Introduction

1. The Parliamentary and Health Service Ombudsman's report "Trusting in the Pensions Promise" recommended that the Government review the time taken to wind up final salary schemes. This recommendation was accepted by the Government.
2. DWP worked closely with the Pensions Regulator, Her Majesty's Revenue and Customs (HMRC) and the pensions industry to review the main reasons for delays in the winding up process under the current regulatory framework. The review resulted in the publication of the Secretary of State's report "Speeding up winding up of occupational pension schemes"¹ on 2 November 2006, which put forward proposals (administrative, regulatory and legislative) to speed up the process. The draft Regulations in this consultation document will:
 - enable trustees to discharge small accrued pension entitlements (including pension credit members²) by way of winding up lump sum payments, even if members did not have a right to the lump sum under the scheme rules. This will reduce the administrative costs to schemes; and
 - require schemes which started to wind up after 1 October 2007 to report to the Pensions Regulator after two years after they start winding up, instead of the current three years.

Winding Up Lump Sum Payments

3. Section 74 of the Pensions Act 1995 and the Occupational Pension Scheme (Winding up) Regulations 1996 set out a number of ways in which trustees can discharge liabilities in respect of scheme members when a defined benefit ("DB") and hybrid occupational pension scheme winds up. One of these ways is to pay a cash lump sum to members. Lump sums may only be used to discharge liabilities in certain circumstances. At the moment these are where the member has a right under the scheme rules to a lump sum and where the lump sum is authorised by HMRC as a winding up lump sum or a trivial commutation lump sum. In order for the lump sum to be authorised by HMRC the relevant conditions in the Finance Act 2004 must be complied with.³
4. Prior to 6 April 2006, trustees could discharge their liability to pay pensions by payment of a lump sum only if the lump sum was a trivial commutation lump sum permitted by relevant HMRC legislation and where the scheme rules enabled them to do so. The rules which applied to trivial commutation lump sums were changed by the Finance Act 2004 for lump

¹ <http://www.dwp.gov.uk/publications/dwp/2006/pensions/speedup-windup-pens.pdf>

² A consequential amendment to the pensions on divorce legislation will allow a winding up lump sum payment for pension credit members where their employer contributes to the scheme

³ These are in schedule 29 paragraphs 7 to 10.

sums paid on or after 6 April 2006. That Act also introduced new types of lump sums called “winding up lump sums”.

5. The Secretary of State’s report into speeding up winding up tackles this issue by enabling trustees should discharge small accrued pension entitlements by way of winding up lump sum or trivial commutation lump sum payments, even if members did not have a right to the lump sum under the scheme rules.

Pensions on Divorce

6. As part of the financial settlement on dissolution of a marriage, the Court may order that a member’s pension be shared with their ex-spouse. The ex-spouse’s share of the pension is discharged into a pension scheme (usually a different scheme to the member) as a pension credit and the ex-spouse becomes a pension credit member of a pension scheme. A consequential amendment is required to pension sharing legislation so that pension credit benefit can be paid as a winding up lump sum, where the pension credit member satisfies the conditions for such a payment.

Reports to the Pensions Regulator

7. Trustees or managers of both DB and DC occupational pension schemes are currently required⁴ to report to the Pensions Regulator after three years from the date the scheme starts winding up, and then to make yearly progress updates until the winding up is complete.
8. Once the requirement to make a report applies to a scheme the Pensions Regulator may use its powers under section 72B of the Pensions Act 1995 to issue directions to facilitate winding up. It will issue a direction if it thinks it is appropriate having regard to any of grounds set out in section 72B. These grounds are for example, that the trustees or managers are not taking all necessary steps to complete winding up, steps taken by trustees or managers involve unreasonable delay, or winding up is being delayed or obstructed by the failure of any person to provide information etc.
9. The Secretary of State’s report into winding up proposed reducing the current requirement to make reports from three years to two years. This will allow the Pensions Regulator to receive essential data at an earlier stage. This also means that they will, at an earlier stage, be able to issue directions to facilitate winding up.

⁴ Under section 72A of the 1995 Pensions Act.

Our proposals for consultation

10. This consultation document seeks views on the Occupational Pension Schemes (Winding up, winding up notices and reports etc) (Amendment) Regulations 2007 (“the draft regulations”).
11. The draft regulations amend regulation 8(6)(b)(i) of the Occupational Pension Scheme (Winding up) Regulations 1996 (S.I. 1996/3126). This enables trustees to discharge small accrued pension entitlements by way of winding up lump sum or trivial commutation lump sum payments regardless of whether the member had a right under the scheme rules to the lump sum. Similar amendments are made to the Pension Sharing (Pension Credit Benefit) Regulations 2000 (SI 2000/1054) to allow pension credit benefits to be paid as winding up lump sums. Regulation 3 is amended so that pension credit benefit may be paid as a lump sum where that payment qualifies as a winding up lump sum under paragraph 10 of Schedule 29 of the Finance Act 2004.
12. The draft regulations add a new regulation 9(6) of the Occupational Pension Schemes (Winding up Notices and Reports etc) Regulations 2002 (S.I. 2002/459). This requires schemes which start to wind up after 1 October 2007 to report to the Pensions Regulator after two years from when they started winding up, instead of the current three years.
13. These Regulations are intended to come into force on 1 October 2007.

Benefits and costs of our proposals

14. The proposal to allow trustees to discharge their liabilities to scheme members with small accrued pension entitlements by way of winding up lump sums to scheme members will not impose any additional costs on schemes. Instead, trustees who make use of this proposal will reduce the administrative costs to schemes by being able to discharge small accrued pension entitlements more easily.
15. The proposal to require trustees or managers of schemes which commence winding up after 1 October 2007 to make their first report to the Pensions Regulator after two years instead of three years will bring forward the cost of the first report by one year. However by giving the Pensions Regulator the necessary information at an earlier stage, it should better support the aim of reducing the length of time for schemes to wind up and thus the overall costs of winding up.

Target Audience

16. This consultation is primarily aimed at pension industry professionals but views from the wider public are also welcome.

DWP website

17. This document is available on the Department's website at www.dpw.gov.uk/consultations/2007

How to respond

18. The consultation exercise will run from 11 May 2007 to 8 June 2007. Any replies received after that date may not be taken into account. Please send your response by **8 June 2007** to:-

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

Tel: 020 7962 8500
Email: Winding-up@dwp.gsi.gov.uk

Consultation arrangements

19. Because of the highly specialised nature of this consultation, Ministers have decided that it is not appropriate to publish this document under the provisions of the Cabinet Office Code of Practice on consultation. This consultation does, however, apply best practice from the Code.
20. A list of those being consulted is attached in the Appendix. If you have any suggestions of others who may wish to be involved in this process please contact us.
21. 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.
22. 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 2000 obligations and general law on this issue. The contact point to discuss this is:-

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

23. More information about the Freedom of Information Act can be found on the Website of the Department for Constitutional Affairs: -
www.dca.gov.uk/foi/guidance/exguide/index.htm.

Feedback

24. 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 at : -
www.dwp.gsi.gov/consultations/2007/index/asp

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

Roger Pugh
Department for Work and Pensions Consultation Co-ordinator
Britannia House
2 Ferensway
Hull
HU2 8NF
Telephone: 01482 609571
Fax: 01482 609658
E-mail: Roger.Pugh@dwp.gsi.gov.uk

Regulatory Impact Assessment

25. As the proposed changes to legislation will have a negligible net cost to business, a Regulatory Impact Assessment is not necessary.

 STATUTORY INSTRUMENTS

2007 No.

PENSIONS

The Occupational Pension Schemes (Winding up, winding up notices and reports etc) (Amendment) Regulations 2007

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	<i>1st October 2007</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by section 101C(2) of the Pension Schemes Act 1993⁽⁵⁾ and sections 72A(2)(a) and 74(3)(e) of the Pensions Act 1995⁽⁶⁾.

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 such persons as he considers appropriate before making these Regulations.

Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Winding up, winding up notices and reports etc) (Amendment) Regulations 2007 and shall come into force on 1st October 2007.

Amendment of the Occupational Pension Schemes (Winding up) Regulations 1996

2. In paragraph (6)(b)(i) of regulation 8 of the Occupational Pension Schemes (Winding up) Regulations 1996⁽⁷⁾ (requirements to be satisfied by transferee schemes, annuities etc) omit the words “who has a right under the scheme rules to the payment”.

Amendment of the Pension Sharing (Pension Credit Benefit) Regulations 2000

3. In paragraph (2) of regulation 3 of the Pension Sharing (Pension Credit Benefit) Regulations 2000⁽⁸⁾ (commutation of the whole pension credit benefit) insert—

- (a) at the end of sub-paragraph (b) “or”;
- (b) after sub-paragraph (b)—

“(c) qualifies as a winding up lump sum for the purposes of paragraph 10 of Part 1 of that Schedule.”.

(5) 1993 c. 48. Section 101C was inserted by section 37 of the Welfare Reform and Pensions Act 1999 (c.30).

(6) 1995 c. 26. Section 72A was inserted by section 49(1) of the Child Support, Pensions and Social Security Act 2000 (c. 19). Section 74(3)(e) was inserted by section 270(2)(c) of the Pensions Act 2004 (c. 35).

(7) S.I. 1996/3126. Regulation 8(6) was inserted by S.I. 2005/706.

(8) S.I. 2000/1054, the relevant amending instrument is S.I.2006/744.

Amendment of the Occupational Pension Schemes (Winding up Notices and Reports etc.) Regulations 2002

4. After paragraph (5) of regulation 9 of the Occupational Pension Schemes (Winding up Notices and Reports etc.) Regulations 2002⁽⁹⁾ (reports to the Authority about winding up: time limits) add—

“(6) In the case of winding up which begins on or after 1st October 2007, the first report to be made under section 72A must be made—

- (a) after the end of the period of two years beginning with the day on which the winding up begins, and
- (b) before the end of the period of three months beginning with the end of the period that applies under sub-paragraph (a).”.

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

[2007]

Name
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulation)

These Regulations amend the Occupational Pension Schemes (Winding up) Regulations 1996 (S.I. 1996/3126), the Pension Sharing (Pension Credit Benefit) Regulations 2000 (S.I. 2000/1054) and the Occupational Pension Schemes (Winding up Notices and Reports etc.) Regulations 2002 (S.I. 2002/459).

Regulation 2 omits parts of regulation 8(6)(b)(i) of the Occupational Pension Schemes (Winding up) Regulations 1996. As a result trustees may discharge their liabilities to members by payment of a lump sum, even if members did not have a right to the lump sum under the scheme rules.

Regulation 3 adds a new sub-paragraph (c) to regulation 3(2) of the Pension Sharing (Pension Credit Benefit) Regulations 2000. This allows trustees or managers of occupational pension schemes which have pension credit members to discharge their liabilities to such members by payment of a winding up lump sum. This is subject to meeting the conditions for such lump sums in paragraph 10 of Schedule 29 to the Finance Act 2004 (c.12).

Regulation 4 adds a new paragraph (6) to regulation 9 of the Occupational Pension Schemes (Winding up Notices and Reports etc.) Regulations 2002. This paragraph applies to trustees or managers of occupational pension schemes which commence winding up after 1st October 2007. The requirement to submit their first winding up report to the Pensions Regulator applies from the date which is two years after the date winding up commenced. From that date the trustees or managers will have three months in which to submit their winding up report.

A full regulatory impact assessment has not been produced for these Regulations as only a negligible impact on the private or voluntary sectors is foreseen.

⁽⁹⁾ S.I. 2002/459.

Annex B

List of those consulted:

Association of British Insurers
Association of Consulting Actuaries
Association of Corporate Trustees
Association of Independent Financial Advisers
Association of Pension Lawyers
British Chambers of Commerce
Confederation of British Industry
Consumers' Association
Department for Constitutional Affairs
Department of Social Development (Northern Ireland)
Faculty and Institute of Actuaries
Federation of Small Businesses
Financial Ombudsman Service
Financial Services Authority
Government Actuary's Dept
HM Revenue & Customs
Institute of Chartered Accountants in England and Wales
Institute of Chartered Accountants in Scotland
Institute of Directors
Investment Management Association
The Law Society
The Law Society of Scotland
National Association of Pension Funds
National Consumers Council
National Pensioners Convention
Pensions Management Institute
Pensions Ombudsman
Pensions Protection Fund
Resolution
Scotland Office
Scottish Executive
Society of Pension Consultants
The Pensions Advisory Service
The Pensions Regulator
Trades Union Congress