

# **GOVERNMENT RESPONSE TO CONSULTATION ON DRAFT REGULATIONS**

**The Pensions Regulator  
(Miscellaneous Amendment)  
Regulations 2009**

March 2009

# Contents

Introduction.....	2
Responses to the consultation on the draft Pensions Regulator (Miscellaneous Amendment) Regulations 2009 and the Government’s response .....	3
Annex A – List of respondents to the consultation.....	5

## Introduction

Between 15 December 2008 and 6 February 2009, the Department for Work and Pensions (“DWP”) undertook a consultation exercise on the draft Pensions Regulator (Miscellaneous Amendment) Regulations 2009 (“the draft Regulations”). The draft regulations were made available on the DWP website.

DWP received thirteen responses to the consultation. A list of respondents is included at Annex A. The Department is grateful for the contributions received. The final regulations will be laid before Parliament and will shortly come into force, subject to Parliamentary approval.

This document sets out the main points made by respondents and provides the Government’s response. The response should not however be taken as an authoritative interpretation of the law. Such an interpretation can only be provided by a Court.

The final Regulations and accompanying explanatory memorandum will be available on the Office of Public Sector Information’s website at:  
<http://www.opsi.gov.uk/si/si-2009-index>

This document is available on the DWP website at:  
<http://www.dwp.gov.uk/consultations/2008>

A paper copy of this document can be obtained from:

Ian Garland,  
Department for Work and Pensions  
3<sup>rd</sup> floor  
The Adelphi  
1-11 John Adam Street  
London WC2N 6HT  
Email: [ian.garland@dwp.gsi.gov.uk](mailto:ian.garland@dwp.gsi.gov.uk)  
Telephone: 020 7712 2115

# **Responses to the consultation on the draft Pensions Regulator (Miscellaneous Amendment) Regulations 2009 and the Government's response**

There were 13 responses to the consultation on the draft Regulations. Comments on the draft Regulations and the Government's responses follow below.

## **Regulation 1 (Citation and commencement)**

There were no comments on this paragraph

## **Regulation 2 (Amendment to the Financial Support Directions Regulations)**

The proposal to increase the look back period for Financial Support Directions (FSDs) from 12 to 24 months was welcomed by almost all of the respondents as a sensible amendment which would be helpful to the Pensions Regulator and the recipients of the FSD. However, a number of respondents suggested that, as drafted, the transitional arrangements in moving from a 12-month period to a 24-month period did not work as intended. The regulation has been redrafted to reflect the policy intention that the move to a 24-month look back period should be incremental.

One respondent suggested that companies might have to live with a longer period of uncertainty and therefore there would be a greater desire for companies to seek clearance and this could have an impact on costs for the employer and the Regulator. Neither the Regulator nor the Department believe that increasing the look back period to 24 months will increase the uncertainty markedly or have the impact suggested. Normally, an employer event, for example a corporate restructure or a de-merger, would mean that employers should give consideration to the impact on their pension scheme, and satisfy themselves that the appropriate support is in place. The extension of the look back period would not alter this fundamental principle. Since 2005 employers and their advisers have become more familiar with what might be appropriate for clearance; this change would not disturb the Regulator's guidance on clearance events, or employers' understanding of the current arrangements.

## **Regulation 3 (Amendment to the Notifiable Events Regulations)**

There was general agreement from the respondents that the notifiable events framework needed rationalization. All respondents welcomed the proposals as a helpful simplification that would not contribute risk to schemes or to the Pension Protection Fund, but some respondents suggested that there was a need to go further and for the Regulator and Department to consider how the list of notifiable events could be further reduced. Others sought clarification of some aspects of the framework, while one respondent suggested that a new notifiable event based on the Regulator's Type A events relevant to clearance (for example, capital adjustment, buy-back or special dividend) could be introduced. This would place a new onus on the employer to report rather than relying on the trustees, who have a primary

responsibility for protection of scheme benefits, to police this type of event. This is an issue that has been considered previously but it was concluded that to do so would result in moving towards a compulsory clearance process, contrary to Ministerial commitment. Such a move would likely increase costs on the Regulator and business.

One response suggested including in the notifiable events framework the current requirement to notify the Regulator of the commencement of wind-up during a recovery plan period. The purpose of the notifiable events framework is to give the Regulator early warning of problems so remedial action can be considered. But the Regulator's directions provide for exceptions to notification which is not always required when a scheme is funded to an appropriate level. It would not be appropriate to include notification of commencement of wind-up during a recovery plan period within that framework.

As mentioned above, a number of the respondents, albeit from an overall total of 13, suggested that there might be scope for further easements in the notifiable events framework. The Department will work closely with the Regulator to continue to monitor the framework, as it does with all areas of pensions policy. If, in future, there is a case for further rationalization on the basis of the Regulator's operational experience and the experience of business and the pensions industry, we will bring forward proposals for consultation.

The explanatory note has been amended accordingly.

## **Annex A – List of respondents to the consultation**

Aon Consulting  
Buck Consultants Ltd  
The Confederation of British Industry  
HBOS Group Pensions  
Hewitt  
The Institute of Chartered Accountants in England and Wales  
Mercer  
The Pensions Management Institute  
The Royal Mail Pensions Trustees Limited  
Sacker and Partners  
Scottish Life  
The Society of Pension Consultants  
J W D Trythall