

**Private Pensions
Policy and
Regulation**

**The Occupational, Personal and
Stakeholder Pensions
(Miscellaneous Amendments)
Regulations 2009**

Consultation on draft regulations

December 2008

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Introduction

Who this consultation is aimed at

The consultation is primarily aimed at pension industry professionals, but we would be interested in views from any source.

Subject of consultation

A number of minor amendments to regulations governing occupational, personal and stakeholder pension schemes are necessary in order to:

- implement some minor policy changes;
- make some outstanding consequential amendments;
- implement requirements in the Institutions for Occupational Retirement Provision (IORP) Directive relating to occupational pension schemes investments in the sponsoring employer; and
- provide for statutory overrides in relation to revaluation and indexation.

Purpose of the consultation

We are seeking views on the enclosed draft Occupational, Personal and Stakeholder Pensions (Miscellaneous Amendments) Regulations 2009. The intention is that the regulations will come into force for most provisions on 6 April 2009. There are specific questions in paragraphs 28 to 29 on which we would like your views.

We have sent this consultation document to a large number of people and organisations who have already been involved in this work or who have expressed an interest. Please do 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/2008/>

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 professionals in the pensions industry. Ministers have therefore agreed a limited consultation of 8 weeks is appropriate.

How to respond

The consultation exercise will run from week commencing **8 December 2008 to 30 January 2009**. Any replies received after that date may not be taken into account. Please send your response by **30 January 2009** 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: pensions-sft@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>

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/2008/>

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 majority of the amendments made by the draft regulations do not impact on costs of business, charities or the voluntary sector. Where it does, an Impact Assessment is attached in Annex C.

Commentary on the draft regulations

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

1. **Regulation 1** contains the citation and commencement arrangements.
2. **Regulation 2** and other regulations mentioned in paragraph [6] amend a number of pensions Regulations in order to extend the circumstances in which a trivial commutation lump sum (i.e. the conversion of small pension pots into a cash lump sum) can be taken.
3. Existing pensions legislation allows for lump sum payments to be made in certain circumstances and operates, in the main, by cross referring to HMRC tax law, specifically the Finance Act 2004. HMRC propose to introduce secondary legislation, The Registered Pension Schemes (Authorised Payments) Regulations, in April 2009 which will provide additional circumstances where a lump sum payment can be taken as an authorised payment for tax purposes. A copy of the draft regulations can be found on the HMRC website at: <http://www.hmrc.gov.uk/finance-bill2008/clause-89-sch29-para1.pdf>
4. In circumstances where current pensions legislation allows for lump sum payments to be taken, the amendments here seek to mirror the additional circumstances set out in HMRC's draft secondary legislation.
5. These amendments seek to ensure that the administrative easement measures contained in The Registered Pension Schemes (Authorised Payments) Regulations 2009 are reflected in DWP legislation. It is proposed that the following legislation be amended in order to reflect the relevant additional circumstances being introduced:
 - The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 SI 167 – regulation 5. Amendment made by regulation 2(2) of the draft Regulations;
 - The Occupational Pension Schemes (Discharge of Protected Rights on Winding up) Regulations 1996 SI 775 – regulation 5. Amendment made by regulation 3 of the draft Regulations;
 - The Occupational Pension Scheme (Contracting-out) Regulations 1996 SI 1172 - regulations 20. Amendment made by regulation 5(4) of the draft Regulations;
 - The Occupational Pension Schemes (Contracting-out) Regulations 1996, SI 1996/1172 – regulation 60 Amendment made by regulation 5(5) of the draft Regulations;
 - The Occupational Pension Schemes (Winding Up) Regulations 1996 SI 3126 – regulation 8. Amendment made by regulation 11 of the draft Regulations;

- The Personal and Occupational Pension Schemes (Protected Rights) Regulations 1996 SI 1537 - regulation 8. Amendment made by regulation 7 of the draft Regulations;
 - The Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc) Regulations 1997 SI 785 - regulation 2. Amendment made by regulation 13 of the draft Regulations;
 - The Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 SI 1053 - regulation 15. Amendment made by regulation 17(3) of the draft Regulations; and
 - The Pension Sharing (Pension Credit Benefit) Regulations 2000 SI 1054 - regulation 3. Amendment made by regulation 18(3) of the draft Regulations.
6. **Regulation 4** amends the Occupational Pension Schemes (Revaluation) Regulations 1991¹, by inserting a power to enable trustees to modify scheme rules by resolution to reflect the lower statutory revaluation cap which is provided for in the pensions Act 2008. Where a pension scheme wants to change the rate at which it revalues pension benefits, this new power can be used. In particular, it will allow such a change to be made where the scheme rules do not allow that change.
7. This amendment is one of the “statutory overrides” which the Government undertook to introduce following the Deregulatory Review Report provided by the independent reviewers to the review in July 2007. (Deregulatory review – Government Response to consultation published 5 December 2007).
8. There are a number of schemes where the statutory revaluation and indexation requirements are reflected in scheme rules. Some of these schemes have limited powers of amendment and it has not been possible to amend scheme rules to reflect the change to the statutory indexation cap in the Pensions Act 2004. Such schemes would also be unlikely to amend scheme rules to reflect the lower revaluation cap introduced by the Pensions Act 2008. This amendment uses the power in section 68 of the Pensions Act to enable trustees to amend scheme rules by resolution for the purpose of reflecting the lower statutory revaluation cap.
9. There is a similar provision in regulation 9 in respect of changes to indexation provisions.
10. **Regulation 5(2) and (3)** amends the Occupational Pension Schemes (Contracting-out) Regulations 1996². Current regulations require employers to consult trade unions before surrendering a contracting-out certificate. In the event of a scheme winding up, this consultation requirement is an

¹ SI1991/168

² SI 1996/1172

unnecessary administrative step which can cause delay. The amendments will exempt schemes from consulting with trade unions if they are surrendering their contracting-out certificate on wind-up. This will allow for a more streamlined winding up process.

11. **Regulation 6** amends the Contracting-out (Transfer and Transfer Payment) Regulations 1996³ which provide for connected employer transfers and connected employer transfer payments. The policy intention is that these arrangements should apply where the transferring scheme is or was a salary related contracted-out scheme. Concern has been expressed that the regulations as currently drafted may not apply to schemes that were formerly contracted-out.
12. To ensure that the policy intention is reflected in the Regulations, the definitions of “connected employer transfer” and “connected employer transfer payment” are being amended to provide that the transferring scheme can include a scheme which was formerly a salary-related contracted-out scheme.
13. **Regulation 9** amends the Occupational Pension Schemes (Indexation) Regulations 1996⁴ by inserting a power to enable trustees to modify scheme rules by resolution to reflect the current statutory indexation cap (in section 51 of the Pensions Act 1995). Where a pension scheme wants to change the rate at which it increases pensions each year, this new power can be used. In particular, it may enable such a change to be made where the scheme rules do not allow that change. This amendment, in addition to the amendment introduced by regulation 4, introduces the “statutory overrides” measures as explained in paragraph 7.
14. **Regulations 12** amends the Personal Pension Schemes (Appropriate Schemes) Regulations 1997⁵ to ensure that the band of earnings on which the National Insurance (NI) rebate is paid remains in line with the band of earnings on which state second pension (S2P) accrues. In April 2009 an Upper Accrual Point (UAP) is being introduced which will replace the Upper Earnings Limit (UEL) on the band of earnings for S2P. As this band of earnings is also used to determine the level of NI rebate, we would like the relevant section of the Personal Pension Schemes (Appropriate Schemes) Regulations 1997 to reflect the introduction of the UAP in April 2009. The UAP was introduced in the National Insurance Contributions Act 2008.

³ SI 1996/1462

⁴ SI 1996/1679

⁵ SI 1997/470

Other minor amendments

15. The following regulations make other minor amendments. Amendments are being made to regulations which provide for the Regulator to impose a penalty. The amendments ensure that the penalty must be communicated by a notice in writing. In addition some references to the Regulatory Authority are being updated.

- **Regulation 2** amends regulation 27B of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991⁶. The regulation is being amended to update references to the Regulatory Authority and references which permit trivial commutation and lump sum payments to be taken from accrued rights.
 - **Regulation 8** amends regulation 11 of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996⁷. The regulation is being amended to update references to the Regulatory Authority.
 - **Regulation 10** amends the Occupational Pension Schemes (Transfer Values) Regulations 1996⁸. The regulation is being amended to update references to the Regulatory Authority.
 - **Regulation 14** amends the Occupational Pension Scheme (Age-Related Payments) Regulations 1997⁹. The regulation is being amended to update references to the Regulatory Authority.
 - **Regulation 15** amends the Pension on Divorce etc. (Provision of Information) Regulations 2000¹⁰. The regulations are being amended to update references to the Regulatory Authority.
 - **Regulation 16** amends the Pension on Divorce etc. (Charging) Regulations 2000¹¹. The regulations are being amended to update references to the Regulatory Authority.
 - **Regulation 17** amends the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000¹². This regulation updates references to the Regulatory Authority and to permitted trivial commutation.
 - **Regulation 18** amends the Pension Sharing (Pension Credit Benefit) Regulations 2000¹³. This regulation updates references to the Regulatory Authority and to permitted trivial commutation and lump sum payments taken from accrued rights.
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- The Government has already consulted on the draft Pension Sharing (Pension Credit Benefit)(Amendment) Regulations 2008. These amendments allow pension credit benefit members of occupational pension schemes to take

⁶ SI 1991/167

⁷ SI 1996/1655

⁸ SI 1996/1467

⁹ SI 1997/946

¹⁰ SI 2000/1048

¹¹ SI 2000/1049

¹² SI 2000/1053

¹³ SI2000/1054

pension credit benefit before normal benefit age (usually, normal benefit age is between the ages of 60 and 65) either as a lump sum or as a pension subject to provisions of the Finance Act 2004. The response to this consultation is published at <http://www.dwp.gov.uk/consultations/2008/govt-resp-ppscb-amdt-regs08.pdf>. These amendments will also come into force on 6 April 2009 and will be included in the Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2009.

- **Regulation 19** amends The Stakeholder Pension Schemes Regulations 2000¹⁴. It updates various references to the “Pensions Regulator”.
- **Regulation 20** amends The Occupational Pension Schemes (Independent Trustee) Regulations 2005¹⁵. The regulation is being amended to update references to the Regulatory Authority.
- **Regulation 24** amends regulation 11 of the Occupational Pension Schemes (Fraud Compensation Levy) Regulations 2006¹⁶. The regulation is being amended so that it more closely reflects the requirements of section 10 of the Pensions Act 1995.

16. **Regulation 21** amends the Occupational Pension Schemes (Scheme Funding) Regulations 2005¹⁷ to ensure that the modification in paragraph 9(5) of Schedule 2, which applies to the extent that the actuary in a particular scheme has the sole power to set the contribution rate, also applies by virtue of paragraph 9(7) where (and only to the extent that) the actuary has the power to set the contribution rate in a given set of circumstances.

17. There are a small number of pension schemes in which the actuary alone determines the contributions payable to the scheme. The intention in this area was that the legislation should not, as far as possible, override the essential balance of power where scheme rules give the scheme actuary the sole power to determine the contribution rate. The modification in paragraph 9(5) of Schedule 2 to the Scheme Funding Regulations therefore provides for the actuary to certify that the level of contributions in these cases to be no less than that which the actuary would have provided for. The amendment to paragraph 9(7) is intended to ensure that the modifications in para 9(5) and 9(6) still apply where the scheme actuary sets the rates in a given set of circumstances, but only where that given set of circumstances exists.

18. Regulation 21 also amends regulation 17 of the Scheme Funding Regulations so that Part 3 of the Pensions Act 2004 does not apply to a section of a scheme which is winding up, but only where a specified part or proportion of the assets of the scheme is attributable to that section and cannot be used for the purposes of any other section of the scheme. The amendment is intended

¹⁴ SI 2000/1403

¹⁵ SI 2005/703

¹⁶ SI 2006/558

¹⁷ S.I. 2005/3377

to cover those sections of defined benefit occupational pension schemes which are winding up, including those created at a time when contributions to the scheme were no longer payable by the employer.

19. **Regulation 22** amends the Occupational Pension Schemes (Investment) Regulations 2005 (the Investment Regulations) to transpose the requirements of Article 18(1)(f) of the IORP Directive¹⁸. These requirements impose restrictions on the proportion of a scheme's resources that may be invested in the sponsoring employer ('employer-related investments' or 'ERIs').
20. The existing Investment Regulations already limit ERIs to a maximum of 5% of the market value of the scheme's resources, but include transitional arrangements which disapply these restrictions to schemes that had ERIs in excess of 5% before 6 April 1997. They also contain exemptions in respect of investments in the sponsoring employer by Collective Investment Schemes, employer-related investments derived from members' voluntary contributions and investment in certain specified qualifying insurance policies. However, although the Government took advantage of the discretion available under Article 22(4) to postpone transposition of Article 18(1)(f), this cannot continue beyond 23 September 2010, the date when the majority of regulation 22 will come into force and the above remaining exemptions will be removed.
21. Regulation 22 ensures that the current exemption allowing unlimited employer-related investment of resources in an account with a person who has permission to accept deposits is brought within the 5% limit required by Article 18(1)(f) by 2010. It also adds the Bank of England to the exemption as it is, from April 2009, and includes it in the exemption as it will be from 2010. The Bank of England is a financial institution which is permitted under Financial Services Authority rules to provide banking services to its pension scheme but whose scheme is currently prohibited by regulation 13 from using those banking services.
22. **Regulation 23** amends the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006¹⁹ by providing a power for the Pensions Regulator to impose a civil penalty on a person who has failed, without reasonable excuse, to comply with certain requirements to consult. Regulation 7(3) requires employers to consult before making certain changes in relation to the pension scheme. It is important that employers undertake this consultation, so we propose to allow the Regulator to impose a penalty on employers who fail to consult.

¹⁸ Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision

¹⁹ SI2006/349

23. **Regulation 25** amends the Occupational Pension Schemes (Member-Nominated Trustees and Directors) Regulations 2006²⁰.
24. Sections 241 to 243 of the Pensions Act 2004 and SI 2006/714 require occupational trust schemes to appoint a minimum number of Member-Nominated-Trustees (MNTs) or, in the case of schemes with a corporate trustee structure, Member-Nominated-Directors (MNDs) of the trustee company.
25. Regulation 3 of SI 2006/714 prescribes exemptions from the requirement for corporate trustees to have MNDs. In particular, paragraph (m) provides an exemption where a scheme "is a scheme where the sole director or all the directors are independent within the meaning given by section 23(3) of the 1995 Act". This reflects the policy view that it would be inappropriate to require a company which is performing an independent professional role to appoint MNDs.
26. The purpose of the amendment is to ensure the policy applies correctly in certain schemes whose trustee structure involves two (or more) corporate trustees, one of which is a general trustee company (i.e. where the directors perform a role similar to that of lay trustees) and at least one of which is an independent corporate trustee which performs a professional function.
27. Amending regulation 21 inserts a new paragraph into regulation 5 of SI 2006/714 so that that an independent corporate trustee in such a scheme is not required to appoint MNDs. The opportunity to make minor changes to the wording of regulation 3(m), to make its meaning clearer.

Consultation questions

Regulations 4 and 9 (statutory overrides)

28. Regulations 4 and 9 introduce a power for trustees to modify schemes by resolution to reflect the lower statutory revaluation cap and indexation caps. The regulations as drafted extend to all trust based occupational pension schemes. We would be grateful for your views whether there are any types of schemes where it would be inappropriate for the trustees to be able to make use of the power to modify provided by the draft regulations.

Regulation 22 (amendments to the (Investment Regulations))

29. **Exemptions:** There are clearly other institutions that are, like the Bank of England, exempt from needing authorisation under FSMA 2000 to accept deposits, or which are exempt from requiring authorisation to carry out regulated activity under FSMA 2000 altogether. We need to know, therefore,

²⁰ SI 2006/714

whether you believe that any of these institutions should also be covered in Regulation 13(3) of the Investment Regulations.

30. **Costs:** The effect of the proposed changes to the Investment Regulations will (with certain exceptions) require the trustees or managers of schemes with employer-related investments in excess of the 5 per cent limit, to instruct their investment managers to liquidate the excess employer stock and use the proceeds to purchase alternative assets. The scheme will bear the one-off cost of the transaction process.
31. We expect the aggregate cost of the removal of the transitional provisions to be the sum of the per-scheme transaction cost across all the affected schemes. Overall, we expect this to be very small as we believe the transaction costs will be low and that only a small number of schemes will be affected. We would be grateful to know if you share this view.

Annex A – List of organisations consulted

Organisation
Age Concern England
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
Bank of England Pension Fund
Brains SA Pension Scheme
British Bankers Association
British Chambers of Commerce
Better Regulation Executive
Carers UK
Confederation of British Industry
Consumers' Association
Department for Business, Enterprise & Regulatory Reform
Department for Social Development (Northern Ireland)
Engineering Employers' Federation
Equality and Human Rights Commission (EHRC)
Federation of Small Businesses
Financial Ombudsman Service
Financial Services Authority
Government Actuary's Dept
HM Revenue & Customs
H M Treasury
Hewitt Associates
Help the Aged
Industry Wide Pension Schemes Group
Institute of Chartered Accountants
Institute of Chartered Accountants in Scotland
Institute of Directors
Investment and Life Assurance Group
Investment Management Association
Joint Working Group
Law Debenture
Law Society
Law Society of Scotland
National Association of Pension Funds
National Consumers Council
National Pensioners Convention

Office of Fair Trading
Pensions Investments Research Consultants Ltd
Pensions Management Institute
Pensions Ombudsman
Pensions Policy Institute
Scottish Parliament
Scotland Office
Small Business Service BERR
Society of Pension Consultants
The Actuarial Profession
The Construction Company
The Pensions Advisory Service
The Pensions Regulator
Trades Union Congress
UK Social Investment Programme
Welsh Assembly
Welsh Office
Which?
Eversheds
Hammonds LLP

Annex B – The draft regulations

2009 No. [draft 6con]

PENSIONS

**The Occupational, Personal and Stakeholder Pensions
(Miscellaneous Amendments) Regulations 2009**

Made - - - -

Laid before Parliament

Coming into force in accordance with regulation 1

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 11(5)(b) and (c), 12C(1)(a) and (c), 20(1) and (2), 21(1), 28(4), 32A(2)(c), 45(3)(a), 71(6), 101C(2), 168(1) and (4), 181(1), 182(2) and (3) and 183(1) of the Pension Schemes Act 1993(a), sections 10(3), 40(1), 68(2)(e), 74(3)(e), 91(5)(c)(iii), 124(1) and 174(2) and (3) of the Pensions Act 1995(b), sections 1(3), 2(7), 41(1) and (2), 45(2) and 83(4) and (6) of, and paragraph 7(4) of Schedule 5 to, the Welfare Reform and Pensions Act 1999(c) and sections 232, 242(10), 243(2), 314, 315(2), (4) and (5) and 318(1) of the Pensions Act 2004(d).

In accordance with section 185(1) of the Pension Schemes Act 1993(e), section 120(1) of the Pensions Act 1995, section 83(11) of the Welfare Reform and Pensions Act 1999 and section 317(1) of the Pensions Act 2004, the Secretary of State has consulted with such persons as the Secretary of State considers appropriate.

Citation and commencement

1.—(1) These Regulations may be cited as the Occupational, Personal and Stakeholder Pensions (Miscellaneous Amendments) Regulations 2009.

(2) Except where paragraph (3) applies, these Regulations come into force on 6th April 2009.

(3) Regulation 22 comes into force—

(a) for the purposes of paragraph (3)(b), on 6th April 2009, and

(b) for all other purposes, on 23rd September 2010.

Amendment of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991

2.—(1) The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991(f) are amended in accordance with this regulation.

(a) 1993 c.48.

(b) 1995 c.26.

(c) 1999 c.30.

(d) 2004 c.35.

(e) Section 185(1) was amended by paragraph 46 of Schedule 3, and paragraph 80(a) of Schedule 5, to the Pensions Act 1995.

(f) S.I. 1991/167.

- (2) In regulation 5 (short service benefit in lump sum form)(a)—
- (a) the words “permitted in accordance with paragraph (a), (b), (e), (f) or (g) of the lump sum rule in section 166(1) of the Finance Act 2004(b) (lump sum rule)” become paragraph (a) of regulation 5, and
 - (b) after paragraph (a), insert—
 - “; or
 - (b) prescribed under regulation 3(c) or 5(a) of the Registered Pension Schemes (Authorised Payments) Regulations 2008(c).”.
- (3) In regulation 27B (offence and penalties)(d), for “Occupational Pensions Regulatory Authority may” substitute “Regulatory Authority may by notice in writing”.

Amendment of the Occupational Pension Schemes (Discharge of Protected Rights on Winding Up) Regulations 1996

3.—(1) The Occupational Pension Schemes (Discharge of Protected Rights on Winding Up) Regulations 1996(e) are amended in accordance with this regulation.

(2) In regulation 5 (conditions upon which appropriate policies of insurance may be commuted)(f)—

- (a) in paragraph (1), for “paragraph (2) or (3)” substitute “paragraph (2), (2A) or (3)”, and
- (b) after paragraph (2), insert—
 - “(2A) This paragraph is satisfied if the lump sum payment is a payment by a registered pension scheme—
 - (a) to or in respect of a member that is described in regulations 6 to 11 of the Registered Pension Schemes (Authorised Payments) Regulations 2008; or
 - (b) that is described in regulation 16 of those Regulations,
 and in this paragraph, “registered pension scheme” has the meaning given in section 150(2) (meaning of “pension scheme”) of the Finance Act 2004.”.

Amendment of the Occupational Pension Schemes (Revaluation) Regulations 1991

4.—(1) The Occupational Pension Schemes (Revaluation) Regulations 1991(g) are amended in accordance with this regulation.

(2) After regulation 13 (lump sum in respect of service before 6th April 1975), insert—

“Purpose for which trustees may modify the scheme

13A.—(1) This regulation prescribes a purpose for which the trustees of a trust scheme may by resolution modify the scheme under section 68 of the Pensions Act 1995 (power of trustees to modify schemes by resolution).

- (2) The purpose is to change—
- (a) the method for determining the rate or amount; or
 - (b) the rate or amount,
- by which the scheme revalues benefits(h).”.

(a) Regulation 5 was substituted by S.I. 2007/814.
 (b) 2004 c.12.
 (c) S.I. 2008/XXX.[Drafting Note – this S.I. has not yet been made and may be made in 2009.]
 (d) Regulation 27B was inserted by S.I. 1996/2131.
 (e) S.I. 1996/775.
 (f) Regulation 5 was substituted by S.I. 2006/744.
 (g) S.I. 1991/168.
 (h) See sections 83 and 84 of, and paragraphs 1 and 2 of Schedule 3 to, the Pension Schemes Act 1993.

Amendment of the Occupational Pension Schemes (Contracting-out) Regulations 1996

5.—(1) The Occupational Pension Schemes (Contracting-out) Regulations 1996(a) are amended in accordance with this regulation.

(2) In regulation 9 (making of elections by employers for the variation or surrender of contracting-out certificates)(b)—

- (a) at the end of paragraph (5)(e)(i), insert “and”,
- (b) at the end of paragraph (5)(e)(ii), omit “and”,
- (c) paragraph (5)(e)(iii) becomes paragraph (5)(ea),
- (d) in paragraph (5)(ea), insert at the beginning “where the notice is not about surrendering a contracting-out certificate due to the scheme winding up, contain a statement that”, and
- (e) in paragraph (6), for “such a notice as is mentioned in this regulation” substitute “a notice under this regulation which is not about surrendering a contracting-out certificate due to the scheme winding up”.

(3) In regulation 12(4) (special provision for holding companies and subsidiaries), for “9(5)(e)(iii)” substitute “9(5)(ea)”.

(4) In regulation 20 (payment of a lump sum instead of a pension payable under a relevant scheme)(c)—

- (a) in paragraph (1) immediately before sub-paragraph (a), omit “permitted either”,
- (b) in sub-paragraphs (a) and (b) of paragraph (1), insert at the beginning “permitted”, and
- (c) after sub-paragraph (b), insert—

“; or

- (c) prescribed under regulation 3(c) or 5(a) of the Registered Pension Schemes (Authorised Payments) Regulations 2008.”.

(5) In regulation 60 (payment of a guaranteed minimum pension as a lump sum)(d), after paragraph (1)(b)(i)(bb) insert—

“(cc) a prescribed payment under regulation 3(c) of the Registered Pension Schemes (Authorised Payments) Regulations 2008; or”.

Amendment of the Contracting-out (Transfer and Transfer Payment) Regulations 1996

6.—(1) The Contracting-out (Transfer and Transfer Payment) Regulations 1996(e) are amended in accordance with this regulation.

(2) In regulation 1(2) (interpretation) in the definitions of “connected employer transfer” and “connected employer transfer payment”, after the first and third times the words “salary-related contracted-out scheme” appear insert “(or a scheme which was formerly a salary-related contracted-out scheme)”.

Amendment of the Personal and Occupational Pension Schemes (Protected Rights) Regulations 1996

7.—(1) The Personal and Occupational Pension Schemes (Protected Rights) Regulations 1996(f) are amended in accordance with this regulation.

(2) In regulation 8 (giving effect to protected rights by the provision of a lump sum)(g)—

(a) S.I. 1996/1172.

(b) Regulation 9 was amended by S.I. 2002/681.

(c) Regulation 20 was substituted by S.I. 2006/744.

(d) Regulation 60 was substituted by S.I. 2006/744 and amended by S.I. 2006/1337.

(e) S.I. 1996/1462. Relevant amending instrument is S.I. 2006/744.

(f) S.I. 1996/1537.

(g) Regulation 8 was amended by S.I. 2006/744.

- (a) in paragraph (1), for “either paragraph (1A)” substitute “paragraph (1A), (1AA)”, and
 - (b) after paragraph (1A), insert—
 - “(1AA) This paragraph is satisfied if the lump sum payment is a payment by a registered pension scheme—
 - (a) to or in respect of a member that is described in regulations 6 to 11 of the Registered Pension Schemes (Authorised Payments) Regulations 2008; or
 - (b) that is described in regulation 16 of those Regulations,
- and in this paragraph, “registered pension scheme” has the meaning given in section 150(2) (meaning of “pension scheme”) of the Finance Act 2004.”.

Amendment of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996

8.—(1) The Occupational Pension Schemes (Disclosure of Information) Regulations 1996(a) are amended in accordance with this regulation.

(2) In regulation 11 (civil penalties)(b), after “the Regulatory Authority may” insert “by notice in writing”.

Amendment of the Occupational Pension Schemes (Indexation) Regulations 1996

9.—(1) The Occupational Pension Schemes (Indexation) Regulations 1996(c) are amended in accordance with this regulation.

(2) After regulation 4 (indexation of certain transfers made on or before 6th April 2005)(d), insert—

“Purpose for which trustees may modify the scheme

5.—(1) This regulation prescribes a purpose for which the trustees of a trust scheme may by resolution modify the scheme under section 68 of the Act (power of trustees to modify schemes by resolution).

(2) The purpose is to change—

- (a) the method for determining; or
- (b) the amount of,

the annual increase in the rate of pension(e).”.

Amendment of the Occupational Pension Schemes (Transfer Values) Regulations 1996

10.—(1) The Occupational Pension Schemes (Transfer Values) Regulations 1996(f) are amended in accordance with this regulation.

(2) In regulation 11(6) (disclosure), after “the Regulatory Authority may” insert “by notice in writing”.

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

11.—(1) The Occupational Pension Schemes (Winding Up) Regulations 1996(g) are amended in accordance with this regulation.

(a) S.I. 1996/1655.

(b) Regulation 11 was substituted by S.I. 2005/704.

(c) S.I. 1996/1679.

(d) Regulation 4 was inserted by S.I. 2005/704.

(e) See section 51 of the Pensions Act 1995.

(f) S.I. 1996/1847.

(g) S.I. 1996/3126.

(2) In regulation 8(6)(b)(i) (requirements to be satisfied by transferee schemes, annuities etc.)(a), after “a lump sum that” insert “is prescribed under regulation 3(c) of the Registered Pension Schemes (Authorised Payments) Regulations 2008 or”.

Amendment of the Personal Pension Schemes (Appropriate Schemes) Regulations 1997

12.—(1) The Personal Pension Schemes (Appropriate Schemes) Regulations 1997(b) are amended in accordance with this regulation.

(2) In regulation 15(7)(e) (calculation or estimation of earnings), for “earnings limit” substitute “accrual point”.

Amendment of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997

13.—(1) The Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997(c) are amended in accordance with this regulation.

(2) In regulation 2(1)(a) (commutation of a pension under an occupational pension scheme)(d), after paragraph (ii) insert—

“(iii) the earner is prescribed under regulation 3(c) of the Registered Pension Schemes (Authorised Payments) Regulations 2008; or”.

Amendment of the Occupational Pension Schemes (Age-related Payments) Regulations 1997

14.—(1) The Occupational Pension Schemes (Age-related Payments) Regulations 1997(e) are amended in accordance with this regulation.

(2) In regulation 10 (penalties), for “Occupational Pensions Regulatory Authority may” substitute “Regulatory Authority may by notice in writing”.

Amendment of the Pensions on Divorce etc. (Provision of Information) Regulations 2000

15.—(1) The Pensions on Divorce etc. (Provision of Information) Regulations 2000(f) are amended in accordance with this regulation.

(2) In regulation 1(2) (interpretation), omit the definition of “the Regulatory Authority”.

(3) In regulation 9 (penalties), after “Regulatory Authority may” insert “by notice in writing”.

Amendment of the Pensions on Divorce etc. (Charging) Regulations 2000

16.—(1) The Pensions on Divorce etc. (Charging) Regulations 2000(g) are amended in accordance with this regulation.

(2) In regulation 1(2) (interpretation), omit the definition of “the Regulatory Authority”.

(3) In regulation 9(6)(b) (charges in respect of pension sharing activity – method of recovery), for “Regulatory Authority” substitute “Pensions Regulator(h)”.

(a) Regulation 8(6) was inserted by S.I. 2005/706 and amended by S.I. 2007/1930.

(b) S.I. 1997/470.

(c) S.I. 1997/785.

(d) Regulation 2(1) was substituted by S.I. 2006/744.

(e) S.I. 1997/946.

(f) S.I. 2000/1048.

(g) S.I. 2000/1049.

(h) The Pensions Regulator was established under section 1 of the Pensions Act 2004.

Amendment of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000

17.—(1) The Pension Sharing (Implementation and Discharge of Liability) Regulations 2000(a) are amended in accordance with this regulation.

(2) In regulation 1(2) (interpretation) in the definition of “the Regulatory Authority”, for “Occupational Pensions Regulatory Authority” substitute “Pensions Regulator”.

(3) In regulation 15 (disqualification as a destination for pension credit – annuity contracts and insurance policies)(b)—

(a) in paragraph (4)—

(i) omit the word “either”, and

(ii) after sub-paragraph (a), insert—

“(aa) the condition set out in paragraph (5A) is satisfied; or”, and

(b) after paragraph (5), insert—

“(5A) The condition referred to in paragraph (4)(aa) is that the lump sum payment is prescribed under regulation 3(c) of the Registered Pension Schemes (Authorised Payments) Regulations 2008.”.

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

18.—(1) The Pension Sharing (Pension Credit Benefit) Regulations 2000(c) are amended in accordance with this regulation.

(2) In regulation 1(2) (interpretation) in the definition of “Regulatory Authority”, for “Occupational Pensions Regulatory Authority” substitute “Pensions Regulator”.

(3) In regulation 3 (commutation of the whole of pension credit benefit)(d)—

(a) in paragraph (1), after “described in paragraph (2)” insert “or (3)”, and

(b) after paragraph (2), insert—

“(3) The circumstances described in this paragraph are that the lump sum payment is prescribed under regulation 3(c) of the Registered Pension Schemes (Authorised Payments) Regulations 2008.”.

Amendment of the Stakeholder Pension Schemes Regulations 2000

19.—(1) The Stakeholder Pension Schemes Regulations 2000(e) are amended in accordance with this regulation.

(2) In sub-paragraphs (a) and (f) of regulation 3(5) (requirements applying to all stakeholder pension schemes as regards instruments establishing such schemes), omit “Occupational Pensions Regulatory”.

(3) In regulation 21(1) (access to the register), omit “Occupational Pensions Regulatory”.

Amendment of the Occupational Pension Schemes (Independent Trustee) Regulations 2005

20.—(1) The Occupational Pension Schemes (Independent Trustee) Regulations 2005(f) are amended in accordance with this regulation.

(2) In regulation 13(5) (disclosure requirements and penalty), after “the Regulator may” insert “by notice in writing”.

(a) S.I. 2000/1053.

(b) Regulation 15 was amended by S.I. 2005/2877 and 2006/744.

(c) S.I. 2000/1054.

(d) Regulation 3 was amended by S.I.s 2006/744 and 2007/1930.

(e) S.I. 2000/1403.

(f) S.I. 2005/703.

Amendment of the Occupational Pension Schemes (Scheme Funding) Regulations 2005

21.—(1) The Occupational Pension Schemes (Scheme Funding) Regulations 2005^(a) are amended in accordance with this regulation.

(2) In regulation 17 (exemptions – general)—

- (a) in paragraph (1)(1), after “a scheme” insert “or a section of a scheme”, and
- (b) in paragraph (2), in the appropriate alphabetical place insert—

““a section of a scheme” means a section of a multi-employer scheme where a specified part or proportion of the assets of the scheme is attributable to that section and cannot be used for the purposes of any other section of the scheme;”.

(3) In Schedule 2 (modification of the Act and Regulations), for paragraph 9(7) (schemes under which the rates of contributions are determined by the trustees or managers or by the actuary) substitute—

“(7) Where the power of the actuary to determine the rates of contributions payable by the employer without the employer’s agreement is subject to conditions, or where the power is only exercisable in a given set of circumstances, the modifications provided for in subparagraphs (5) and (6) have effect only where the conditions are satisfied or where the given set of circumstances exists.”.

Amendment of the Occupational Pension Schemes (Investment) Regulations 2005

22.—(1) The Occupational Pension Schemes (Investment) Regulations 2005^(b) are amended in accordance with this regulation.

(2) In regulation 12 (restrictions on employer-related investments), for paragraph (2) substitute—

“(2) Subject to regulations 13 and 16, not more than five per cent. of the current market value of the resources of a scheme may at any time be invested in employer-related investments.

(2A) Subject to regulations 14, 15, 15A and 16, none of the resources of a scheme may at any time be invested in any employer-related loan.

(2B) Subject to regulation 16, employer-related loans under regulations 14, 15 and 15A are to be regarded as employer-related investments for the purposes of determining the percentage of a scheme’s resources invested in employer-related investments under paragraph (2).”.

(3) In regulation 13 (investments to which restrictions do not apply)—

- (a) omit paragraph (2),
- (b) in paragraph (3)(b), insert at the end—
 - “; or
 - (c) the Bank of England.”,
- (c) omit paragraphs (3), (4), (7), (8) and (9),
- (d) in paragraph (10), after “of these Regulations” insert “and where it would not be reasonably practicable to otherwise dispose of them”, and
- (e) omit paragraph (13).

(4) In regulation 14 (transitional provisions)—

- (a) in paragraph (1)(a), for “; or” substitute “.”,
- (b) omit paragraph (1)(b),
- (c) in paragraph (2)(d), for “;” substitute “.”, and

(a) S.I. 2005/3377.

(b) S.I. 2005/3378.

(d) omit paragraph (2)(e).

(5) After regulation 15 (loans that become employer-related), insert—

“Deposits

15A.—(1) Regulation 12(2A) shall not prohibit the investments in paragraph (2) of this regulation to the extent that they can be construed as loans mentioned in section 40(2)(d) of the 1995 Act.

(2) This regulation applies to any employer-related investment of resources in an account (including a current, deposit or shared account) with—

- (a) a person who has permission under Part 4 of the FSM Act (permission to carry on regulated activities) to accept deposits;
- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits; or
- (c) the Bank of England.”.

(6) In regulation 16 (multi-employer schemes)—

- (a) in paragraphs (1), (2) and (3), for “15” substitute “15A”, and
- (b) in paragraph (5)(a), for “12(2)(a)” substitute “12(2)”.

(7) In regulation 17 (scheme undertaking cross-border activities)—

- (a) in paragraph (c), after “;” insert “and”,
- (b) for paragraph (d), substitute—
“(d) regulation 13(12),” and
- (c) omit paragraphs (e) and (f).

Amendment of the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006

23.—(1) The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006^(a) are amended in accordance with this regulation.

(2) In regulation 18 (exclusivity of remedy)—

- (a) for the heading and paragraph (1), substitute—

“Remedies for failure to comply

18.—(1) The only remedies for a failure to comply with any obligations under regulations 6 to 16 in respect of any proposal or decision to make a listed change are—

- (a) making a complaint to the Regulator,
- (b) an improvement notice issued under section 13 of the Pensions Act 2004 (improvement notices), and
- (c) a penalty imposed under regulation 18A.” and

(b) in paragraph (2), after “A complaint” insert “under paragraph (1)(a)”.

(3) After regulation 18, insert—

(a) S.I. 2006/349.

“Penalties

18A.—(1) Where a person fails, without reasonable excuse, to comply with a requirement to consult under regulation 7(3), the Regulator may by notice in writing require that person to pay a penalty.

(2) Any such penalty must be paid within 28 days and must not exceed—

- (a) in the case of an individual, £5,000; and
- (b) in any other case, £50,000.”.

Amendment of the Occupational Pension Schemes (Fraud Compensation Levy) Regulations 2006

24.—(1) The Occupational Pension Schemes (Fraud Compensation Levy) Regulations 2006(a) are amended in accordance with this regulation.

(2) In regulation 11 (penalties), after “the Regulator may” insert “by notice in writing”.

Amendment of the Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 2006

25.—(1) The Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 2006(b) are amended in accordance with this regulation.

(2) In regulation 3(m) (prescribed exemptions from requirement to have member-nominated directors of corporate trustees), for “the sole director, or all the directors” substitute “all the directors (or the sole director) of the trustee (or trustees)”.

(3) In regulation 5 (modifications of sections 241 and 242 of the Act)—

(a) in paragraph (1), for “paragraphs (2) to (6)” substitute “paragraphs (2) to (7)”, and

(b) after paragraph (6), insert—

“(7) In relation to a scheme where—

- (a) every trustee is a company,
- (b) at least one trustee only has independent directors (or a sole independent director) within the meaning given by section 23(3) of the 1995 Act, and
- (c) at least one trustee has one or more directors who are not independent within that meaning,

section 242 of the Act is modified as if after subsection (1), there were inserted—

“(1A) But subsection (1) does not apply where such a company only has independent directors (or a sole independent director) within the meaning given by section 23(3) of the Pensions Act 1995.”.”.

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

Date

Name
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the following Regulations about occupational, personal and stakeholder pension schemes: [...]

(a) S.I. 2006/558.
(b) S.I. 2006/714.

IMPACT ASSESSMENT

Summary: Intervention & Options

Department /Agency: Department for Work and Pensions	Title: Impact Assessment of regulations to introduce statutory overrides	
Stage: Consultation	Version:	Date: November 2008
Related Publications: Deregulatory Review - Government Response, Deregulatory Review- response to consultation		

Available to view or download at:

http://www.dwp.gov.uk/pensionsreform/deregulatory_review.asp

Contact for enquiries: Olu Abe

Telephone: 020 7962 8500

What is the problem under consideration? Why is government intervention necessary?

Inability to amend scheme rule to reflect the reduction to the statutory indexation and proposed reduction to the revaluation requirements . Restrictive provisions in scheme rules which preclude, or restrict employers negotiating for, changes to scheme rules to reflect the current cap on indexation (reduced from 5% to 2.5% in 2005) and which will also restrict the ability for scheme rules to be amended to reflect the proposed reduction to the revaluation cap in the current Pensions Bill.

What are the policy objectives and the intended effects?

The aim is to enable Trustees to amend scheme rules to take advantage of the reduced indexation and revaluation caps without having to gain the approval of scheme members. This will provide significant savings for DB schemes, thus helping to maintain high quality DB provision. Changes to the revaluation cap are expected to allow possible savings to schemes of between £250 million and £400 million over the long term.

What policy options have been considered? Please justify any preferred option.

The Government response to the reviewers' report published on 22 October 2007 sets out the options in relation to a statutory override and the response to the consultation published on 5 December 2007 sets out the action proposed.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The impact of the proposals will be reviewed as part of the rolling deregulatory review.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Lord Bill McKenzie

.....Date: 2 December 2008

Summary: Analysis & Evidence

Policy Option: Reduce revaluation cap and introduce override	Description: Reduce revaluation cap accompanied by a statutory override
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Savings for employers are generated from a corresponding reduction in the level of inflation protection provided for members' benefits. Public sector estimates indicate that costs of increased payments of income related state benefits are negligible
	One-off (Transition) Yrs	
	£ 0	
	Average Annual Cost (excluding one-off)	
	£ 250 million	Total Cost (PV) £ 4.4 billion
Other key non-monetised costs by 'main affected groups'		

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Analysis suggests that if employers took advantage of the reduction in the cap to 2.5% it could lead to possible average savings of the order of £250 million per year (2007/08 prices), although savings could reach as much as £400 million in the long term.
	One-off Yrs	
	£ 0	
	Average Annual Benefit (excluding one-off)	
	£ 250 million	Total Benefit (PV) £ 4.4 billion
Other key non-monetised benefits by 'main affected groups' Employer sponsoring schemes – increased profits because of lower pension scheme costs could result in: higher wages for employees; increased employment and improved company viability. Scheme members may increase likelihood of continuing defined benefit pension provision by employer.		

Key Assumptions/Sensitivities/Risks All employers sponsoring defined benefit schemes will implement the new requirement. Long term inflation is 2.9%

Price Base Year 2007	Time Period Years 43	Net Benefit Range (NPV) £ 0	NET BENEFIT (NPV Best estimate) £ 0
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What is the geographic coverage of the policy/option?	Great Britain
On what date will the policy be implemented?	April 2009
Which organisation(s) will enforce the policy?	PO and Courts
What is the total annual cost of enforcement for these organisations?	£ Negligible
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	£ 0
What is the value of changes in greenhouse gas emissions?	£ 0
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro Small Medium Large
Are any of these organisations exempt?	No No N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £ N/A	Decrease of £ N/A	Net Impact £ N/A

Key:	Annual costs and benefits: Constant Prices	(Net) Present Value
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Summary: Analysis & Evidence

Policy Option:
Statutory override for LPI

Description: Introduce a statutory override to enable schemes to take advantage of the reduction in the cap on LPI

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition)	Yrs	
	£ 0		Savings for employers are generated from a corresponding reduction in the level of inflation protection provided to pensions in payment. Public sector- estimates indicate that costs of increased payments of income related state benefits are negligible.
	Average Annual Cost (excluding one-off)		
£ 20 million		Total Cost (PV)	£ 0.9 billion
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£ 0		Employers would benefit from reduced scheme costs
	Average Annual Benefit (excluding one-off)		
£ 20 million		Total Benefit (PV)	£ 0.9 billion
Other key non-monetised benefits by 'main affected groups' Employer sponsoring schemes – increased profits because of lower pension scheme costs could result in: higher wages for employees; increased employment and improved company viability. Scheme members may increase likelihood of continuing defined benefit pension provision by employer.			

Key Assumptions/Sensitivities/Risks

Long term inflation 2.9%

Approximately 25% of schemes rules would be changed as a result of this measure

Price Base Year 2007	Time Period Years 43	Net Benefit Range (NPV) £ 0	NET BENEFIT (NPV Best estimate) £ 0
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What is the geographic coverage of the policy/option?	Great Britain			
On what date will the policy be implemented?	April 2009			
Which organisation(s) will enforce the policy?	PO and Courts			
What is the total annual cost of enforcement for these organisations?	£ Negligible			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ Negligible			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)
Increase of	£ N/A	Decrease of	£ N/A
Net Impact			£ N/A

Key:	Annual costs and benefits: Constant Prices	(Net) Present Value
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Evidence Base (for summary sheets)

Introduction

1. The Government announced a rolling deregulatory review in May 2006. As part of the review it appointed Chris Lewin and Ed Sweeney in December 2006 to act as external reviewers and to make recommendations for change. Their report, "Deregulatory Review of Private Pensions" containing recommendations for change, was published on 25 July 2007.
2. This Impact Assessment is an abridged and slightly amended version of the impact assessment published in conjunction with the Government response to the reviewers' report which was published on 22 October 2007. The Governments' response to the consultation was published on 5 December 2007. This amended version of the impact assessment considers the following changes to legislation applying to private pension schemes:
 - Introduction of a statutory override to enable all scheme rules to be changed to reflect the reduction in the revaluation cap from 5% to 2.5% for future accrued rights.. This measure is in the 2007/8 Pensions Bill. This impact assessment considers the impact of the override alongside the introduction of the lower revaluation cap.
 - The introduction of a statutory override to enable scheme rules to be amended (where they could otherwise not be) to reflect the reduction in the cap on increases to pensions in payment (LPI) from 5% to 2.5% which came into effect from April 2005. The override would only apply for pensions accrued from a future date.

Background to the legislation on private pensions

3. The present regulatory system governing occupational pensions has grown incrementally over the course of the past thirty years. It is now, by common consent, lengthy, complicated and hard to understand. Although each successive layer usually had the aim of protecting scheme members or simplifying the regulatory structure, there have been unintended consequences, leading to undesirable outcomes. Whilst by no means wholly attributable to the growth of regulatory burdens, there is little doubt that the weight of regulation has contributed to a belief by some employers that the costs and risks of having their own pension schemes are becoming too great.

Government objective

4. The Government is committed to reducing legislative burdens on employers but recognises that there needs to be a balance between reducing legislative complexity and making legislation simpler, and protecting members' interests.
5. The Government also recognises that it is important that there should be scope, where appropriate, for scheme rules to be amended to reflect any legislative easements.

Revaluation

6. The revaluation legislation currently requires schemes to protect the value of early leavers' deferred pensions against inflation by increasing the amount of pension payable from normal pension age by the increase in the retail price index (RPI) over the period of deferment, or by 5 per cent compound, whichever is the less. Providing revaluation for deferred pensions imposes costs on employers, and provides benefits for former members of schemes in the form of an element of protection of the value of the deferred pension.
7. Scheme rules set out the circumstances and conditions in which benefits may be paid to members. It is common for new compulsory legislation to override scheme rules (hence

'statutory override') so that the rules must be read and applied as if the legislative requirement was reflected in scheme rules. This means that trustees and employers are not forced to amend their rules when new legislation is introduced, but they usually do take an early opportunity to ensure that their scheme rules comply with statutory requirements.

8. Some scheme rules allow very limited scope for amendment and may not provide for either employers or trustees of schemes to make amendments to reflect any subsequent relaxations to the legislative requirements which have already been incorporated into scheme rules. This leads to a form of “one way valve” where legislation imposes requirements with which schemes must comply but does not provide an override where the legislative requirements are relaxed. This means that employers are not able to take advantage of any legislative easements introduced to reduce burdens on employers. The proposal is that the reduction in the cap on revaluation from 5% to 2.5% be accompanied by a statutory override in regulations to enable scheme rules to be amended to reflect the lower cap where trustees agree (it is also proposed to introduce a statutory override to enable scheme rules to be amended (where they otherwise could not be) to reflect the reduction in the cap in indexation (LPI) from 5% to 2.5% for future accruals (see paragraph 13)).

Change being taken forward

Reduction of the revaluation cap from 5% to 2.5% and provide a statutory override to enable all schemes to amend scheme rules to reflect the new cap

9. The Government proposes to reduce the cap on revaluing deferred pensions to 2.5% for all pension rights accrued from a date in the future and the measures to achieve this are in the 2007/8 Pensions Bill. This will provide savings for employers sponsoring occupational pension schemes and demonstrates that the Government is committed to making changes which will reduce burdens on employers. The savings and costs of the proposal will build up over time as the change to the cap will only apply to rights built up from a future date- pension rights accrued until then will have to be revalued under the current regime. Individuals with deferred pensions are likely to have a number of different sources of pension income so the impact on one part of that overall income may not necessarily bear so heavily on the individual's total pension income. The Government has decided that the power provided by a statutory override should only be exercisable with trustee agreement

Statutory override to enable schemes to implement easements the statutory requirement to increase pensions in payment (Limited price indexation (LPI))

10. Schemes are required to increase any pension rights earned on or after 6 April 1997 when those pension rights come into payment. Until April 2005 schemes had to increase those rights by RPI or 5% whichever is less. The reduction in the LPI cap from 5% to 2.5% was introduced in April 2005 to reduce burdens on business. However, a number of employers have not been able to take advantage of the flexibility because of restrictions in their scheme rules.
11. Some scheme rules allow very limited scope for amendment and may not allow either employers or trustees of schemes to make amendments to reflect any subsequent relaxations to the legislative requirements which have already been incorporated into scheme rules. As highlighted in paragraph 8 this leads to a form of “one way valve” where legislation imposes requirements with which schemes must comply but does not provide an override where the legislative requirements are relaxed.
12. As a balance to the legislative override which imposes certain requirements on schemes, Government wants to provide those schemes with the scope to make amendments to reflect

relaxations in the statutory requirements. Anecdotal evidence is that around a quarter of occupational pension schemes were unable, because of constraints on amendments to scheme rules, to make changes to reflect the reduction in the LPI cap from 5% to 2.5% from April 2005.

13. The Government proposes introduction of a statutory override for the reduction in the LPI cap from 5% to 2.5%. This would introduce flexibility that some employers would like. It would enable them, if they wish, to amend their scheme rules to reflect legislative easements for future accruals, providing trustees agree. It could result in savings for employers and might provide them with an incentive to continue to provide defined benefit schemes for their employees. The override will only enable schemes to amend the rules in respect of future accruals and would not for example enable schemes to introduce a rule change which would cap LPI at 2.5% for all accruals since the change was introduced in April 2005.

Financial consequences

Impact on schemes/employers

Reduced revaluation cap accompanied by a statutory override

14. A reduction in the cap would deliver potential savings for employers. These are estimated to be around £250 million a year on average although in the long term they could rise to as much as £400 million a year. The key assumption in this is a long term inflation rate of 2.9%, in line with HM Treasury forecasts. All private sector defined benefit pension schemes will be able to take advantage of the reduction in the cap. As most defined benefit pension schemes are provided by medium/ large enterprises the proposal is more likely to be of benefit to organisations of those sizes.

Option	Overall costs for employers	Overall savings
Reduce the cap to 2.5%	None	£4.4 billion (PV)

Note: The savings in the table are present value figures covering the period to 2050. Savings would build up over time and in the early years would be lower but in the later years would be higher - the average falls somewhere between.

15. Savings for employers are generated from a corresponding reduction in the level of inflation protection provided for members' benefits.

16. A potential non-monetised benefit resulting from the savings for employers might be increased business profits which may lead to improved company viability.

Statutory override-change in LPI cap

17. Estimates are that around a quarter of defined benefit occupational pension schemes were unable to amend their scheme rules to reflect the reduction in the LPI cap from 5% to 2.5%. On the assumption that all of those employers are able to override their schemes rules to reflect the relaxed statutory requirement, annual savings are estimated to be in the region of £20 million (2007/08 prices) but over time savings will be greater in the long run. Total estimated savings are as follows:

Option	Overall costs for employers	Overall savings
Statutory override introduced	None	£0.9 billion (PV)

Note: Assumes average annual savings of £20 million (at 2007/08 prices).

18. Savings for employers are generated from a corresponding reduction in the level of inflation protection provided to pensions in payment.
19. Again a potential non-monetised benefit resulting from the savings for employers might be increased business profits which may lead to improved company viability.

Impact on individuals

Reduction in the revaluation cap and introduction of a statutory override

20. Analysis indicates that given the current forecasts for long term inflation a reduction in the cap on revaluation would have very little effect on average private sector incomes from defined benefit schemes as illustrated below.

Percentage reductions in average private sector DB pension income compared to the base case, long term inflation rate of 2.9% and reduction in the cap from 2009

	2.5% cap - 100% deferred pension affected by change
2020	0.2%
2030	0.5%
2040	1.1%
2050	1.6%

Source: DWP estimates

21. Deferred pensioners are likely to have a number of different sources of pension income so any impact on one part of their overall income might not necessarily bear so heavily on the individual's total pension income. The measure is likely to affect more female scheme members than male scheme members as women tend to have more breaks in their employment and therefore are more likely to have deferred pension entitlement. No concrete evidence exists as to what proportion of deferred pension entitlement relates to women as opposed to men.
22. There is a risk that a reduction in the cap accompanied by high inflation could result in a significant reduction in defined benefit pension incomes and a consequent increase in income related state benefits.
23. Increased business profits arising from the savings for employers from such a change could result in non-monetised benefits for members of schemes and employees. For example by way of higher wages for employees; increased employment opportunities within the business and improved company viability leading to increased job security. It may also result in employers continuing to offer defined benefit pension provision for their employees.
24. In addition, there is also a redistribution of pension income from the best-off DB scheme members (under current revaluation rules) to the group who are able to join DB schemes

25. It is very difficult to estimate the size of these benefits but one approach would be to consider the scenario whereby the employer chooses to channel these savings back into pension provision. Assuming all the savings from the change were spent by employers on expanding the coverage of their DB schemes, it is estimated that an upper bound of 165,000-265,000 additional DB members in the medium to long term. In practice the actual impact would certainly be lower than this since employers are unlikely to choose to spend savings on expanding the coverage of their DB schemes.
26. Whilst positive, such figures must be seen in the context of the total number of active DB scheme members, estimated to be 2.7 million in 2007, and the rate of change of membership, with a net decrease in membership of around 200,000 between 2006 and 2007 and 210,000 between 2005 and 2006.

Statutory override-change in LPI cap

27. Paragraph 11 sets out the rationale for introducing a statutory override to scheme rules. Analysis indicates that given the current forecasts for long term inflation (2.9%) the impact of a reduction in the cap on indexation from 5% to 2.5% would build up over time to a reduction of 1.2% in the average private sector defined benefit pension income by 2050. The long term impact is likely to be greater on pensioners who live longer. However, pensioners in receipt of defined pension benefits tend to belong to the best-off socio-economic groups who are most likely to have access to other assets or sources of income.

Percentage reductions in average private sector DB pension income compared to the base case

	2.5% cap from 2009-100% pension affected by the change
2020	0.5%
2030	0.9%
2040	1.1%
2050	1.2%

Source: DWP estimates

28. Savings to employers of such a change could result in non-monetised benefits for members of schemes and employees as outlined in paragraphs 28 and 29. It is estimated that there could be an upper bound increase in DB membership of 13,000 members if employers were to use all the savings in expanding coverage of their DB schemes. Again, the caveats in paragraphs 24 to 26 apply.

Summary of costs and savings

Change	Overall costs (to employees)	Overall savings (to employers)
Reduction in the revaluation cap		
Rreduce the cap to 2.5%	£4.4 billion (PV)	£4.4 billion (PV)
Statutory override-change to LPI cap		
Statutory override introduced	£0.9 billion (PV)	£0.9 billion (PV)

Competition assessment

29. The proposals would not affect any particular market sector. Nor would they have an impact on suppliers. Instead they would affect any company which has a salary related pension scheme .
30. The Government's proposal of a reduction in the revaluation cap from 5% to 2.5% will entail some minor one-off costs to administration systems, but these costs would have no impact on competitiveness.

Small firms impact test

31. These proposals would impact on employers who operate defined benefit pension schemes. Smaller companies are less likely to provide salary related occupational pension schemes for their employees than medium to larger enterprises .The proposal for reduction in the revaluation cap from 5% to 2.5% has the same impact on the costs of providing members' benefits regardless of the size of the employer.

Legal aid

32. There will be no impact on legal aid.

Sustainable Development, Carbon Assessment, Other Environment.

33. It is not expected that these proposals will have any impact in these areas.

Health impact assessment

34. The options have been considered against the screening questions for health impact assessments and such an assessment will not be necessary.

Race Equality, Disability Equality

35. These proposals do not have any consequences for race equality or disability equality.

Gender equality

36. Defined benefit pension schemes have traditionally been established in male dominated industries at a time when female participation in the labour force was far lower than it is

today. Consequently any change to the regulatory framework for defined benefit schemes is likely to impact more on men than women.

37. The proposed introduction of a statutory override alongside the lower revaluation cap however may have a particular impact on female scheme members because women tend to earn pension benefits early in their careers and then leave the work force for periods of time to undertake caring responsibilities. However, as already outlined in paragraph 20, the impact on any individual member is likely to be small.
38. On the introduction of a statutory override to enable employers to change their rules to reflect the reduction in the LPI cap from 5% to 2.5% the position is as follows. Changes in indexation rights would apply to all individual members equally, irrespective of gender, and it is an intrinsic feature of pension schemes that the aggregate amounts of pension paid out vary according to how long each pensioner lives. The introduction of a statutory override would have an impact on a higher proportion of female than male scheme members as they tend to live longer. However, indications are that male life expectancy is now increasing faster than female life expectancy and, assuming this continues, the impact on men and women should move towards becoming equal in the future.
39. The proposals for both overrides are designed to encourage continued provision of defined benefit schemes and that will be of equal benefit to men and women.

Human Rights

40. These proposals are compatible with the Human Rights Act 1998.

Rural proofing

41. These proposals have no specific impact on rural communities .

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

Annexes

No Annexes