

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

## **Pension Protection Fund (Miscellaneous Amendments) Regulations 2009**

February 2009

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# Introduction

1. Between 19 December 2007 and 12 February 2008, the Department for Work and Pensions (“DWP”) undertook a consultation exercise on the draft Pension Protection Fund (Miscellaneous Amendments) Regulations 2008 (“the draft Regulations”). The draft Regulations were sent to the organisations in Annex A and made available on DWP’s website.
2. DWP received fourteen responses to the consultation. A list of respondents is included in Annex B. DWP is grateful for the contributions to the development of the Regulations, which will shortly be laid before Parliament and soon after will come into force, subject to Parliamentary approval.
3. The Pension Protection Fund (Miscellaneous Amendments) Regulations 2009 (“the Regulations”) now include the following provisions that were not in the draft Regulations that DWP consulted on:
  - a. Regulation 5(2), (3) and (4) of the Regulations amend regulations 3 and 4 of the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006 (S.I. 2006/580). The amendments are the same as the changes in regulation 2(5) of the Regulations and allow for death benefits and contribution refunds to be treated as if they had been paid before the commencement of the assessment period.
  - b. Regulation 5(5) of the Regulations inserts a new regulation, “4A” (Power to pay certain transfer payments and contribution refunds) into S.I. 2006/580. New regulation 4A requires the Board of the Pension Protection Fund to pay 90 per cent of certain transfer payments and contribution refunds to members of a pension scheme that has entered the Pension Protection Fund (“the Fund”). The transfer payments and contribution refunds are those which the member became entitled to before the assessment date, but which had not been paid by the date the pension scheme entered the Fund. There is no duty to consult on these changes as they have been made within six months of the coming into force of the power in section 166(6) of the Pensions Act 2004, which is the power used for this provision.
  - c. Regulation 6 of the Regulations amends paragraph 1 of Schedule 1 to the Pension Protection Fund (Closed Schemes) Regulations 2007 (S.I. 2007/865). The change is consistent with the changes in regulations 2(6) and 4 of the Regulations which substitute the recognised auditing concept of a ‘true and fair view’ for a ‘true and fair value’ in relation to audited scheme accounts.

4. 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.
5. The final Regulations and accompanying explanatory memoranda will be available on the Office of Public Sector Information's website at:

<http://www.opsi.gov.uk/si/si-2008-index>

6. This document is available on the DWP website at:

<http://www.dwp.gov.uk/consultations/2007/>

7. A paper copy of this document can be obtained from:

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3<sup>rd</sup> floor, The Adelphi  
1-11 John Adam Street  
London WC2N 6HT  
Email: [mary.collins@dwp.gsi.gov.uk](mailto:mary.collins@dwp.gsi.gov.uk)  
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## **Responses to the consultation on the draft Pension Protection Fund (Miscellaneous Amendments) Regulations 2008 and the Government's response**

8. There were fourteen responses to the consultation on the draft Regulations. Thirteen respondents made comments while one respondent had no comments to make. Comments on the draft Regulations and the Government's responses follow below.
9. A number of respondents pointed out minor typographical errors in the draft Regulations. These have been corrected.

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

Two respondents commented that the paragraph numbers were incorrect.

10. The paragraph numbers were incorrect due to a formatting error. The paragraph numbers have been corrected.

### *Regulation 2 (Amendment to the Entry Rules Regulations)*

11. Seven respondents made substantive, rather than typographical, comments on regulation 2(1) and (2) of the draft Regulations, which makes changes to the Pension Protection Fund (Entry Rules) Regulations 2005 (S.I. 2005/590) ("the Entry Rules") in relation to EEA Credit Institutions and Insurers. The majority of these respondents stated that they supported the changes.

A number of respondents suggested extending the scope of the amendments in regulation 2(2) and (3) of the draft Regulations so that credit institutions and insurers outside the European Economic Area (EEA) could make an application to the Board of the PPF in the same way as trustees of other institutions that cannot experience an insolvency event as defined in section 121 of the Pensions Act 2004 (insolvency event, insolvency date and insolvency practitioner). Other respondents commented that there should be "an explicit link between a scheme being subject to PPF levies, and being able to access the PPF." One respondent sought confirmation of the process, in respect of the PPF, whereby an eligible scheme's sponsoring employer, which is based outside the UK, suffers an insolvency event.

12. Where an eligible scheme's sponsoring employer is based outside the UK and suffers an insolvency event (which is not a qualifying insolvency event for the purposes of Part 2 of the Pensions Act 2004) the employer can nevertheless generally apply for a winding up order from the court under section 221 of the Insolvency Act 1986 ("the 1986 Act") or Article 185 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405). The eligible

scheme would then be able to commence a PPF assessment period by virtue of section 121(3)(g) of the Pensions Act 2004.

13. The reasons that additional steps are needed to be taken in respect of EEA Credit Institutions and EEA Insurers are set out below in paragraphs 14 through 16.
14. Regulation 3(1) of the Credit Institutions (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/1045) provides that: "On or after the relevant date [5 May 2004] a court in the United Kingdom may not, in relation to an EEA credit institution or any branch of an EEA credit institution—
  - (a) make a winding up order pursuant to section 221 of the 1986 Act or Article 185 of the 1989 Order [N. Ireland];
  - (b) appoint a provisional liquidator;
  - (c) make an administration order."
15. The equivalent provision for EEA Insurers is in regulation 4(1) of the Insurers (Reorganisation and Winding Up) Regs 2004 No. 353.
16. Any institution which is an overseas company but is also an EEA credit institution (or a UK branch of one) or EEA insurer is therefore currently unable to apply to the UK courts under section 221 of the 1986 Act. This means that an EEA credit institution and insurer can only be wound-up under the laws of the country where its head office is located. A winding-up in another jurisdiction would not satisfy the definition of "insolvency event" within section 121 of the Pensions Act 2004. Also, article 1(2) of the EC Regulation on Insolvency Proceedings 2000 does not apply to insolvency proceedings concerning "credit institutions".
17. Furthermore, the provisions within sections 127 to 129 of the Pensions Act 2004 do not apply to EEA Credit Institutions and EEA Insurers. Section 127 applies when an insolvency event has occurred with which EEA Credit Institutions and Insurers are unable to comply. The bodies to whom sections 128 and 129 apply are those listed under regulation 7 of the Entry Rules (public bodies, charities and trade unions).
18. The Government has decided not to extend the Regulations further at this stage. However, the Government would welcome views on whether the Entry Rules continue to work as intended, and in particular, whether there are other employers that should be treated along the same lines as those listed in regulation 7 of the Entry Rules. The Government will consider submissions for a future set of amendment regulations.

Only one respondent commented on the substance of regulation 2(4) of the draft Regulations, which amends regulation 17(2) of the Entry Rules so that the Board of the PPF is able to pay compensation to persons entitled to benefits in respect of members who died before the assessment period started. The respondent welcomed the change, having been witness to “instances where the existing situation was giving rise to considerable distress”.

19. Regulation 5(2), (3) and (4) of the Regulations will now also amend regulations 3 and 4 of the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006 (S.I. 2006/580). The amendments are the same as the changes in regulation 2(5) in the Regulations (regulation 2(4) in the draft Regulations) and allow for death benefits and contribution refunds to be treated as if they had been paid before the commencement of the assessment period.

*Regulation 3 (Amendment to the Compensation Regulations)*

Eight respondents commented on regulation 3 of the draft Regulations, which modifies Schedule 7 to the Pensions Act 2004 in respect of the provision of revaluation by the PPF. Respondents generally welcomed the proposals. The majority of respondents did, however, comment that the provisions were unclear about the circumstances in which the PPF would not provide revaluation; for example, whether the PPF would not provide revaluation only where the scheme does not provide revaluation for any member, or whether the PPF would not provide revaluation on a member-by-member basis.

20. Regulation 3 of the Regulations has been amended to clarify the circumstances in which the PPF will not provide revaluation. Regulation 3 modifies Schedule 7 to the Pensions Act 2004, so that the PPF will not provide revaluation for active or deferred scheme members, where immediately before the assessment date, the admissible rules of the scheme do not provide for any revaluation of the benefits payable to or in respect of any member. The PPF will therefore continue to provide revaluation in all other cases as provided by Schedule 7.

Almost half of those who responded commented that the PPF should amend its guidance for undertaking a valuation in accordance with section 179 of the Pensions Act 2004.

21. The PPF will make schemes aware of the modifications to Schedule 7 to the Pensions Act 2004 and that s179 valuations should be carried out, where necessary, in accordance with these modifications.

*Regulation 4 (Amendment to the Information Regulations)*

22. Regulation 4 of the draft Regulations which would have amended the Pension Protection Fund (Provision of Information) Regulations 2005 (S.I. 2005/674) has been removed from the Regulations. It was decided that this was not the appropriate way to meet the policy intention, which was to allow the trustees to send information to the last known address of the individual concerned except where the trustees have received notification that the individual has moved. The Government therefore intends to include a revised provision in a future set of Miscellaneous Regulations which it will consult on.

*Regulation 5 (Amendment to the Valuation Regulations)*

<p>One respondent commented that the explanatory note on the amendment to the Pension Protection Fund (Valuation) Regulations 2005 (S.I. 2005/672) refers to a “true and fair value” being an actuarially recognised concept rather than an auditing concept in the definition of relevant accounts.</p>
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23. The explanatory note has been amended accordingly.

## **Annex A – List of those consulted**

Aon Consulting  
Association of British Insurers  
Association of Consulting Actuaries  
Association of Corporate Trustees  
Association of Independent Financial Advisers  
Association of Pension Lawyers  
Association of Pensioner Trustees  
Auditing Practices Board  
Better Regulation Executive  
British Chambers of Commerce  
Confederation of British Industry  
Consumers Association  
Council on Tribunals  
Department for Social Development (Northern Ireland)  
Engineers Employers Federation  
Faculty and Institute of Actuaries  
Federation of Small Businesses  
Financial Ombudsman Service  
Financial Services Authority  
Gissings & Co  
HM Treasury (MOCOP)  
HM Revenue and Customs  
Industry Wide Pension Schemes Group  
Insolvency Service  
Institute of Chartered Accountants in England and Wales  
Institute of Chartered Accountants in Scotland  
Institute of Directors  
Investment Managers' Association  
KPMG  
Law Society of England and Wales  
Law Society of Scotland  
Legal & General  
National Association of Pension Funds  
National Audit Office  
National Consumer Council  
Occupational Pension Schemes Joint Working Group  
Occupational Pensioners' Alliance  
Occupational Pensions Defence Union  
Office of Fair Trading

Pension Protection Fund  
Pension Protection Fund Ombudsman  
Pensions Advisory Service  
Pensions Management Institute  
Pensions Ombudsman  
Pensions Regulator  
Pensions Research Accountants' Group  
Scottish Executive  
Small Business Service  
Society of Pension Consultants  
Trades Union Congress  
Watson Wyatt  
Welsh Assembly  
William Mercer

## **Annex B - List of respondents to the consultation on the draft Pension Protection Fund (Miscellaneous Amendments) Regulations 2009**

The Actuarial Profession

Aon Consulting

Association of Consulting Actuaries

Association of Pension Lawyers

British Chambers of Commerce

CMS Cameron McKenna

Herbert Smith

Hewitt

KPMG

Mercer

The Pensions Trust

The Society of Pension Consultants

UBS Investment Bank

Watson Wyatt