

<b>Pensions Client Directorate</b>	
	<b>The Pension Protection Fund (Miscellaneous Amendments) (No.2) Regulations 2008</b>
	Consultation on draft Regulations  May 2008

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# Foreword

## **Preface**

The Department for Work and Pensions (DWP) has become aware of instances where the sponsoring employer of a pension scheme eligible for the Pension Protection Fund (PPF) has been dissolved during a PPF assessment period. The effect of the Pensions Act 2004, in particular sections 126, 160 and 161, is that those schemes cannot be transferred into the PPF even if in all other circumstances they are ready to transfer into the PPF.

Members in schemes whose employer has dissolved during a PPF assessment period are currently receiving benefits at PPF levels as normal. We understand from the Board of the PPF that the members will continue to receive those benefits until these regulations come into force, providing the other relevant criteria are satisfied. These members will also receive PPF levels of benefits as normal should their scheme transfer into the PPF.

The draft Pension Protection Fund (Miscellaneous Amendments) (No.2) Regulations 2008 (“the draft Regulations”) amend regulation 3(1) of the Pension Protection Fund (Entry Rules) Regulations 2005 (SI 2005/590) (“the Entry Rules Regulations”) to change this position.

Regulation 3 of the Entry Rules Regulations provides that where, after the beginning of an assessment period an eligible scheme ceases to be an eligible scheme in prescribed circumstances, the scheme shall, for the purposes of Part 2 of the Pensions Act 2004, be treated as remaining an eligible scheme.

Where the sponsoring employer, the last sponsoring employer in a non-segregated multi-employer scheme or the employer or last remaining employer in relation to a section of a segregated scheme, is dissolved or liquidated during an assessment period, the scheme ceases to be eligible. The draft Regulations amend regulation 3(1) to allow such schemes or sections to remain eligible. This means that, if such schemes or sections meet the prescribed requirements, they can enter the PPF.

We would welcome views on the draft Regulations (Annex A).

Please note that the title of the draft includes the words “(No.2)”. This is because we consulted on the Pension Protection Fund (Miscellaneous Amendments) Regulations 2008 between 19 December 2007 and 12 February 2008:

<http://www.dwp.gov.uk/publications/dwp/2007/Pensions-Protection-Fund-Miscellaneous%20Amendments-Regulations-2008.pdf>

On the assumption that we proceed with the change in the draft Regulations at Annex A, we intend to insert that change into the draft Pension Protection Fund (Miscellaneous Amendments) Regulations 2008. This means the draft at Annex A would become part of those Regulations.

### **How to respond**

Please send responses to the following address by the end of 5 June 2008. Any replies received after that date may not be taken into account:

Nick Skates  
Department for Work and Pensions  
The Adelphi, 3rd Floor  
1-11 John Adam Street  
London  
WC2N 6HT

Tel: 020 7962 8872

e-mail: [PPF-Regulations-Consultation@dwp.gsi.gov.uk](mailto:PPF-Regulations-Consultation@dwp.gsi.gov.uk)

### **Consultation arrangements**

The consultation runs from 22 May to 5 June inclusive (two weeks) because the Government believes it is necessary to bring the Regulations into force as soon as possible. This will allow the schemes whose sponsoring employer has been dissolved during the PPF assessment period to transfer into the PPF without any further delay.

The two-week consultation period is in line with the Department for Business, Enterprise and Regulatory Reform's Code of Practice on Consultation. The consultation is primarily aimed at pension industry professionals. A list of those being consulted is attached at Annex B. If you have any suggestions of others who may wish to be involved in this process please contact us.

The consultation document is available on the DWP website:  
<http://www.dwp.gov.uk/consultations/2008/>. Paper copies are available on request (see contact details on previous page).

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.

The information you send us may need to be passed to colleagues within the DWP and published in a summary of responses received in response to this consultation along with a response from Government.

A summary of responses will be published following the consultation together with the responses to the consultation carried out between 19 December 2007 and 12 February 2008. The summary of responses will be available on the Department's website and paper copies will be available on request.

## **Freedom of Information**

According to the requirements of the Freedom of Information Act 2000, all information contained in the response, including personal information may be subject to publication or disclosure. By providing personal information for the purposes of the public consultation exercise, it is understood that a Respondent consents to its disclosure and publication. If this is not the case, the Respondent should limit any personal information which is provided, or remove it completely. If a Respondent requests that the information given in response to the consultation be kept confidential, this will only be possible if it is consistent with Freedom of Information Act obligations and general law on this issue. The contact point if you want to discuss this is:

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

More information about the Freedom of Information Act can be found on the website of the Department for Constitutional Affairs:  
<http://www.dca.gov.uk/foi/guidance/exguide/index.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  
2<sup>nd</sup> Floor, Britannia House  
2 Ferensway  
HULL, HU2 8NF  
Telephone: 01482 609571  
Fax: 01482 609658

e-mail: [roger.pugh@dwp.gsi.gov.uk](mailto:roger.pugh@dwp.gsi.gov.uk)

# Commentary on the draft Pension Protection Fund (Miscellaneous Amendments) (No.2) Regulations 2008

The following summary explains the purpose of the provisions:

## **Regulation 1**

This is a general regulation about citation and commencement.

## **Regulation 2**

***NB:** Where this commentary refers to an employer, it includes the last sponsoring employer in a non-segregated multi-employer scheme and the sponsoring employer or last sponsoring employer of a section of a segregated scheme and “scheme” includes a section of a segregated scheme.*

In order to determine whether an eligible scheme, whose sponsoring employer has experienced an insolvency event, may transfer in to the Pension Protection Fund (PPF), the scheme must go through a PPF assessment period. At present, if during an assessment period a scheme’s sponsoring employer is dissolved, that scheme ceases to be eligible to enter the PPF. It is possible, therefore, that for a scheme that should be able to enter the PPF, in all other circumstances except for the fact that its sponsoring employer has been dissolved, the Board of the PPF are unable to transfer the scheme into the PPF.

This regulation amends regulation 3 of the Pension Protection Fund (Entry Rules) Regulations 2005 (“the 2005 Regulations”), so that a scheme remains an eligible scheme if its sponsoring employer dissolves or liquidates during a PPF assessment period and can therefore be transferred into the PPF. Specifically, this regulation ensures that a scheme whose sponsoring employer dissolves during a PPF assessment period remains an eligible scheme and is therefore able to enter into the PPF.

Regulation 2(3) of these regulations provides that where there is a segregated scheme, each section of that scheme is treated as if it were a separate scheme. This ensures that each section of a segregated scheme is able to enter into the PPF if it meets the appropriate conditions. This amendment also applies to the existing provisions in regulation 3(1) of the 2005 Regulations. Where a section of a segregated scheme becomes a scheme described in regulation 2(1)(k) of the 2005 Regulations because a member has died, this amendment ensures that that section can enter into the PPF if it meets the appropriate conditions.

## **Impact assessment**

A full Impact Assessment has not been published for this instrument as it has only a negligible impact on the private and voluntary sectors.

# Annex A

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**2008 No.**

**PENSIONS**

**The Pension Protection Fund (Miscellaneous Amendments)  
(No.2) Regulations 2008**

*Made* - - - -

*Laid before Parliament*

*Coming into force* - -

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 126(3), 315(2) and 318(1) of the Pensions Act 2004(a).

In accordance with section 317(1) of that Act, he has consulted such persons as he considers appropriate.

**Citation and commencement**

1. These Regulations may be cited as the Pension Protection Fund (Miscellaneous Amendments) (No.2) Regulations 2008 and shall come into force on XXX.

**Amendment of the Pension Protection Fund (Entry Rules) Regulations 2005**

2.—(1) The Pension Protection Fund (Entry Rules) Regulations 2005(b) are amended in accordance with this regulation.

(2) In regulation 3(1) (schemes which cease to be eligible schemes), at the end of sub-paragraph (b) insert—

“or

(c) the employer in relation to the scheme, or the last remaining employer in relation to a multi-employer scheme, is dissolved or liquidated,”.

(3) After regulation 3(2), insert—

“(3) In its application to a segregated scheme, paragraph (1) has effect as if each section of the scheme were a separate scheme.”.

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

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(a) 2004 c.35. Section 318(1) is cited for the meaning it gives to “prescribed” and “regulations”.  
(b) S.I. 2005/590. Relevant amending instrument is S.I. 2006/580.

*Date*

Minister of State,  
Department for Work and Pensions

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Pension Protection Fund (Entry Rules) Regulations 2005 (S.I. 2005/590) (“the Entry Rules Regulations”). Pension schemes are required to go through an assessment period to determine whether they can enter the Pension Protection Fund (“the Fund”). Some schemes cease to be eligible to enter the Fund during the assessment period because the sponsoring employer is dissolved. Regulation 2(2) of these Regulations allows such schemes to remain eligible to enter the Fund.

Regulation 2(3) changes the way regulation 3(1) of the Entry Rules Regulations applies to segregated schemes. It amends regulation 3 so that each section of a segregated scheme can remain eligible to enter the Fund.

A full Impact Assessment has not been published for this instrument as it has only a negligible impact on the private and voluntary sectors.

## Annex B

### 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  
Welsh Assembly  
William Mercer