

The Pension Protection Fund (Prescribed Payments and Investment Costs – Amendment) Regulations 2011

Consultation on draft regulations

December 2010

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Introduction

This consultation document seeks views on the enclosed draft **Pension Protection Fund (Prescribed Payments and Investment Costs - Amendment) Regulations 2011**. The intention is that the regulations will come into force on 1 April 2011.

About this consultation

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.

Purpose of the consultation

Your comments on any aspect of the draft regulations would be welcomed. This document is on the Department's website at:

www.dwp.gov.uk/consultations/2010/

We have sent this consultation document to people and organisations who have an interest in this work. 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.

Scope of consultation

This consultation applies to England, Wales, Scotland and Northern Ireland.

Duration of the consultation

The consultation period begins on 13 December 2010 and runs until 4 February 2011.

The Government Code of Practice on Consultation recommends a minimum 12 week consultation period public consultations, unless there are good reasons for a limited consultation period. In this case, the issue is of a specialist nature that is likely to be of interest to a limited number of our pensions stakeholders only, and our Minister has agreed that a limited consultation is appropriate.

How to respond to this consultation

Please send your consultation responses, preferably by email, to:

Rob O'Carroll

Department for Work and Pensions

7th Floor, Caxton House

Tothill Street

London. SW1H 9NA

CAXTON.PPF-RESPONSES@DWP.GSI.GOV.UK

Any replies received after 4 February 2011 may not be taken into account so please ensure your response reaches us by that date.

Please remember to indicate if you are responding on behalf of an organisation or as an individual (see page 3).

Other ways of getting involved

The consultation document is available on the Department's website

www.dwp.gov.uk/consultations

Queries about the content of this document

Please direct any queries about the subject matter of this consultation, preferably by email, to:

Rob O'Carroll

Department for Work and Pensions

7th Floor, Caxton House

Tothill Street

London. SW1H 9NA

CAXTON.PPF-RESPONSES@DWP.GSI.GOV.UK

How we consult

Freedom of information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

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All information contained in 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 is not the case, you should limit any personal information 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.

To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact:

Central Freedom of Information Team
The Adelphi
1-11, John Adam Street
London WC2N 6HT

Freedom-of-information-request@dwp.gsi.gov.uk

The Central FoI team cannot advise on specific consultation exercises, only on Freedom of Information issues. More information about the Freedom of Information Act can be found at www.dwp.gov.uk/freedom-of-information

The consultation criteria

The consultation is being conducted in line with the [Government Code of Practice on Consultation](#). The seven consultation criteria are:

- **When to Consult.** Formal consultation should take place at a stage when there is scope to influence the outcome.
- **Duration of consultation exercises.** Consultations should normally last for at least 12 weeks, with consideration given to longer timescales where feasible and sensible.
- **Clarity of scope and impact.** Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence, and the expected costs and benefits of the proposals.
- **Accessibility of consultation exercises.** Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is designed to reach.
- **The burden of consultation.** Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- **Responsiveness of consultation exercises.** Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- **Capacity to consult.** Officials running consultation exercises should seek guidance in how to run an effective consultation exercise, and share what they have learned from the experience.

Feedback on the consultation process

We value your feedback on how well we consult. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact our Consultation Coordinator:

Roger Pugh
DWP Consultation Coordinator
1st floor, Crown House
2, Ferensway
Hull HU2 8NF

roger.pugh@dwp.gsi.gov.uk

In particular, please tell us if you feel that the consultation does not satisfy the consultation criteria. Please also make any suggestions as to how the process of consultation could be improved further.

If you have any requirements that we need to meet to enable you to comment, please let us know.

We will publish the responses to the consultation in a report on the consultations section of our website www.dwp.gov.uk/consultations. The report will summarise the responses and the action that we will take as a result of them.

Commentary on the draft regulations

Background

1. The Pension Protection Fund (PPF), which was established by the Pensions Act 2004 (the 2004 Act), is managed by the Board of the Pension Protection Fund (the Board). The PPF was established to provide compensation for members of eligible defined benefit pension schemes where there is a qualifying insolvency event in relation to the employer, and the scheme has insufficient funds to pay members benefits at a level which is at least equivalent to PPF levels of compensation.
2. The PPF was designed to ensure that income derived from the pension protection levy and assets transferred from schemes to the Board (under section 161 of the 2004 Act) is kept separate from other assets and monies such as those relating to the Board's administrative expenditure.
3. The 2004 Act created two distinct strands of income:
 - the **administration levy**, under section 117 of the 2004 Act, which was established to pay for the running costs of the Board (the running costs are met by DWP Grant-in-Aid under section 116 of the 2004 Act and recouped through the administration levy); and
 - the **pension protection levy**, under section 175 of the 2004 Act, which along with funds from schemes that transfer into the PPF and investment income, was established to contribute to the cost of pension compensation.
4. Section 173(3) of the 2004 Act sets out those items that are to be paid or transferred out of the PPF. Parliament agreed a regulation-making power (under section 173(3)(k) of the 2004 Act) to allow further "sums required for prescribed purposes" to be charged to the PPF rather than the Board's administration budget (funded by the administration levy).
5. These Regulations provide for the following four sets of costs to be made out of the PPF:
 - (i) Costs incurred by the Board in connection with making investments for the purposes of the prudent management of its financial affairs – for example this includes costs arising from the appointment, management and monitoring of the PPF's financial risks relating to its liabilities and its fund managers. It also includes expenditure that relates to the preparation and management of the assets described in its Statement of Investment Principles as part of the Board's duties under the 2004 Act.
 - (ii) Expenditure which is incurred for the purpose of exercising the Board's

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right as a creditor under the 2004 Act or its functions under that Act that relate to those rights – for example, this includes costs of obtaining advice from legal advisers, insolvency practitioners and others where the Board is involved in negotiating or enforcing its rights both in UK and overseas jurisdictions.

- (iii) Expenditure incurred in relation to the transfer of UK property, rights and liabilities to the Board – section 173(3)(j) of the 2004 Act already enables certain costs connected with the transfer of illiquid assets to be borne by the PPF but this is limited to foreign assets. These regulations will ensure that there is consistent treatment of expenditure relating to such assets whether they are UK or non-UK-based.
- (iv) Expenditure that is incidental to the Board's functions but only insofar as it relates to those costs that are also to be met from the PPF (under section 173(3) of the Act and Regulations made under that section).

6. The Government considers it appropriate to make these changes because –

- If the PPF were a pension scheme the activities that give rise to these costs would be charged to the scheme rather than the sponsoring employer.
- Certain of these costs are generated by PPF-eligible pension schemes that are more likely to enter the PPF – this puts an undue burden on well-run schemes that are unlikely to do so. Raising funds to cover these costs through the pension protection levy would mean that schemes that were more likely to enter the PPF proportionally paid more of the costs.
- In the long-term the Board of the PPF will move more toward a large scale fund management and finance operation – in this context our view is that it is appropriate for the PPF to bear the costs arising from the investment management function (including the cost of managing and monitoring the PPF's financial risks and its fund managers).
- Including these costs in the administration levy gives an inaccurate view of the costs of running these functions of the Board that are unique – by making this change the legislation will allow closer scrutiny of the Board's running costs in the administration budget.

7. The draft provisions will mean that the costs will move from the Board's administration budget (funded through the administration levy) to the PPF (funded in part through the pension protection levy). As the Board's running costs are met by DWP Grant-in-Aid (which is recouped through the administration levy) moving these costs out of the administration budget means they would no longer be subject to the Department's agreement via the budget setting process. A number of important controls would remain, however, to ensure there is sufficient transparency and oversight of costs made out of the PPF. The Board will ensure that the costs paid out of the PPF are disclosed in their Annual Report and Accounts for 2011/12 and onwards. Parliament will have oversight of the published PPF Annual Report and Accounts, and the PPF Chief Executive will

remain accountable to the DWP Permanent Secretary and Secretary of State for PPF expenditure.

Commentary

8. The following summary explains the purpose of each of the provisions:
9. **Regulation 1** contains the citation and commencement arrangements. It gives the title of these regulations and specifies the date they are proposed to come into force. All provisions are intended to come into force on 1 April 2011.
10. **Regulation 2(2)** inserts new regulation 1A into the 2008 Regulations – this gives an interpretation of the legislative references.
11. **Regulation 2(3)** amends references to GB and NI legislation in the Pension Protection Fund (Prescribed Payments) Regulations 2008 (the 2008 Regulations). It also amends the introductory wording of regulation 2 of the 2008 regulations to align with other amendments made by these regulations.
12. **Regulation 2(4)** inserts the following new regulations into the 2008 Regulations –
 - New regulation 3 makes provision for the Board to make payments from the PPF in order to meet expenditure incurred by the Board in relation to making investments for the purposes of prudent management of the PPF. This includes, for example, expenses for the purposes of the prudent management of the PPF; costs associated with appointment of fund managers; the monitoring of the fund managers performance and implementation of systems in order to seek the best return that is consistent with a prudent and appropriate level of risk. It also includes related costs to the extent that they are relevant to investment activities, such as investment advice in relation to determining the quantum of the pension protection levy.
 - New regulation 4 makes provision for the Board to make payments incurred from the exercise of its creditor rights under section 137 of the 2004 Act where the Board assumes the rights and powers of the trustees or scheme managers of a pension scheme. The provision permits costs associated with the Board exercising its rights under sections 40(5), 49(5), 54(5) or 56(5) of the 2004 Act where the Pensions Regulator is seeking to impose or has imposed a contribution notice or restoration order in relation to the scheme. This regulation also provides for expenditure in relation to the recovery of a debt due from the employer or former employer to the Board or the scheme insofar as that expenditure relates to provisions referred to in paragraph 4 of the regulations.
 - New regulation 5 allows the Board to make payments out of the PPF for the purposes of meeting expenditure incurred in relation to the transfer of property, rights and liabilities to the Board where the property is situated within

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the United Kingdom. This ensures there is parity in the treatment of UK and non-UK-based assets.

- New regulation 6 allows the Board to make payments out of the PPF for the purposes of meeting supplementary or incidental expenditure under section 111 of the 2004 Act. The expenditure must relate to the Board's functions under 173(3) of the 2004 Act or the 2008 Regulations (as amended by these draft Regulations).

13. **Regulation 3** repeals the Pension Protection Fund (Payments to meet Investment Costs) Regulations 2005 (the 2005 Regulations). New regulation 3 of the 2008 Regulations is intended to cover everything that is provided for by the 2005 Regulations. Consequently our view is that there is no need to retain the 2005 Regulations, and revoking them simplifies the PPF legislation by reducing the number of Statutory Instruments.

Impact assessment

The changes in these regulations will have no impact on the overall costs to business and civil society organisations, and only a negligible impact on the public sector. The regulations are not, therefore, accompanied by an impact assessment.

Consultation questions

We would welcome any comments. We would especially welcome comments on:

(a) the policy proposals

- In particular whether it is appropriate for these costs to be moved from the Board's administration budget to the PPF.

(b) the draft regulations

- It would be helpful to know in particular whether you think the new regulations 3 and 4 of the Pension Protection Fund (Prescribed Payments) Regulations 2008 would cover all of the Board's costs relating to its investment functions and insolvency-related functions respectively.

(c) our assessment of the impact of the Regulations

- The proposed changes to legislation are not intended to impose any additional burdens on PPF-eligible pension schemes or sponsor employers. Please let us know if you think that may not be the case and why.

Annex A: List of organisations consulted

Age Concern /Help the Aged
Actuarial Profession
Association of British Insurers
Association of Chartered Certified Accountants
Association of Consulting Actuaries
Association of Corporate Trustees
Association of District Judges
Association of Independent Financial Advisers
Association of Pension Lawyers
Board for Actuarial Standards
British Chambers of Commerce
Better Regulation Executive
Carers UK
Confederation of British Industry
Consumers' Association
Department for Business, Innovation & Skills
Department for Social Development (Northern Ireland)
Engineering Employers' Federation
Equality and Human Rights Commission (EHRC)
Eversheds
Faculty & Institute of Actuaries
Family Justice Council - Money and Property sub committee
Family Proceedings Rule Committee
Federation of Small Businesses
Financial Ombudsman Service
Financial Services Authority
Government Actuary's Department
HM Revenue & Customs
HM Treasury
Hammonds LLP
Her Majesty's Courts Service (HMCS)
Hewitt Associates
Independent Pensions Research Group
Industry Wide Pension Schemes Group
Institute of Chartered Accountants in England and Wales (ICAEW)
Institute of Chartered Accountants in Scotland
Institute of Directors
Institute of Payroll and Pensions Management
Investment and Life Assurance Group
Investment Management Association
Joint Working Group

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Law Society
Law Society of Scotland
Ministry of Justice
National Association of Pension Funds
National Consumers Council
National Pensioners Convention
Northern Ireland Office
Office of Fair Trading
Pensions Management Institute
Pensions Ombudsman
Pensions Policy Institute
Scottish Parliament
Scotland Office
Society of Pension Consultants
The Pension Protection Fund
The Pensions Advisory Service
The Pensions Regulator
Trades Union Congress
Welsh Assembly
Wales Office
Which?

Annex B: The draft Pension Protection Fund (Prescribed Payments and Investment Costs – Amendment) Regulations 2011

STATUTORY INSTRUMENTS

2011 No. [consultation draft]

PENSIONS

The Pension Protection Fund (Prescribed Payments and Investment Costs – Amendment) Regulations 2011

Made - - - -

Laid before Parliament

Coming into force - -

1st April 2011

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 173(3)(k), 315(2), (4) and (5) and 318(1) of the Pensions Act 2004⁽¹⁾.

[In accordance with section 317(1) of that Act, the Secretary of State has consulted such persons as the Secretary of State considers appropriate before making these Regulations.]

Citation and commencement

1.—(1) These Regulations may be cited as the Pension Protection Fund (Prescribed Payments and Investment Costs – Amendment) Regulations 2011.

(2) These Regulations come into force on 1st April 2011.

Amendment of the Pension Protection Fund (Prescribed Payments) Regulations 2008

2.—(1) The Pension Protection Fund (Prescribed Payments) Regulations 2008⁽²⁾ are amended as follows.

(2) After regulation 1 (citation and commencement), insert—

“Interpretation

1A. In these Regulations—

“the 2004 Act” means the Pensions Act 2004;

“the 2005 Order” means the Pensions (Northern Ireland) Order 2005⁽³⁾.”.

(3) In regulation 2 (payments to meet certain costs)—

(a) for the words before paragraph (a), substitute—

“There is to be paid out of the Pension Protection Fund any sums required for the purposes of meeting expenditure incurred by the Board on—”, and

(b) in paragraph (a)—

(i) for “Pensions Act 2004”, substitute “2004 Act”, and

(1) 2004 c.35. Section 318(1) is cited for the meaning it gives to “prescribed” and “regulations”.

(2) S.I. 2008/664.

(3) S.I. 2005/255 (N.I. 1).

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- (ii) for “Pensions (Northern Ireland) Order 2005”, substitute “2005 Order”.
- (4) After regulation 2 (payments to meet certain costs), insert—

“Payments to meet investment costs

3.—(1) Any sums required for the purposes of meeting expenditure incurred by the Board(4) referred to in paragraphs (2) and (3) are to be paid out of the Pension Protection Fund.

(2) The expenditure referred to in this paragraph is any expenditure which is made in accordance with—

- (a) section 113 of the 2004 Act (investment of funds);
 - (b) section 114 of the 2004 Act (investment principles) and any regulations made under that section; and
 - (c) section 134(2)(a) of the 2004 Act or Article 118(2)(a) of the 2005 Order (directions relating to investment).
- (3) The expenditure referred to in this paragraph is any expenditure—
- (a) which relates to any investment made, or to be made, by the Board; and
 - (b) which is made in accordance with the provisions listed in paragraph (4).

(4) The provisions listed in this paragraph are—

- (a) section 110 of the 2004 Act or Article 101(1) of the 2005 Order (Board’s functions);
- (b) section 115 of the 2004 Act (borrowing);
- (c) sections 174 to 181 of the 2004 Act or Articles 157 to 164 of the 2005 Order (the levies);
- (d) Chapter 5 of Part 2 of the 2004 Act or Chapter 5 of Part 3 of the 2005 Order (gathering information);
- (e) Chapter 6 of Part 2 of the 2004 Act or Chapter 6 of Part 3 of the 2005 Order (reviews, appeals and maladministration); and
- (f) paragraphs 13, 14 and 23(b) of Schedule 5 to the 2004 Act (employees, staff and expenses of the Board).

Payments to meet costs in exercising the powers of the trustees and recovery of funds

4.—(1) Any sums required for the purposes of meeting expenditure incurred by the Board referred to in paragraphs (2) and (3) are to be paid out of the Pension Protection Fund.

(2) The expenditure referred to in this paragraph is any expenditure made in accordance with—

- (a) section 40(5) of the 2004 Act (content and effect of a section 38 contribution notice) or Article 36(5) of the 2005 Order (content and effect of an Article 34 contribution notice);
- (b) section 49(5) of the 2004 Act (content and effect of a section 47 contribution notice) or Article 45(5) of the 2005 Order (content and effect of an Article 43 contribution notice);
- (c) section 54(5) of the 2004 Act or Article 50(5) of the 2005 Order (content and effect of a restoration order);
- (d) section 56(5) of the 2004 Act (content and effect of a section 55 contribution notice) or Article 52(5) of the 2005 Order (content and effect of an Article 51 contribution notice);
- (e) section 137 of the 2004 Act or Article 121 of the 2005 Order (Board to act as creditor of the employer); and
- (f) regulation 7A(1)(d) of the Occupational Pension Schemes (Employer Debt) Regulations 2005(5) or regulation 7A(1)(d) of the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005(6) (regulated apportionment arrangements).

(4) The Board of the Pension Protection Fund is established under section 107 of the Pensions Act 2004.

(5) S.I. 2005/678. Regulation 7A was inserted by S.I. 2005/2224, substituted by S.I. 2008/731 and amended by S.I. 2008/1068.

(6) S.R. 2005 No. 168. Regulation 7A was inserted by S.R. 2005 No. 387, substituted by S.R. 2008 No. 132 and amended by S.R. 2008 No. 178.

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- (3) The expenditure referred to in this paragraph is any expenditure—
- (a) which relates to the recovery of any debt due from the employer or former employer to—
 - (i) the Board; or
 - (ii) the scheme; and
 - (b) which is made in accordance with the provisions listed in paragraph (4).
- (4) The provisions listed in this paragraph are—
- (a) section 110 of the 2004 Act or Article 101(1) of the 2005 Order;
 - (b) section 134 of the 2004 Act or Article 118 of the 2005 Order (directions);
 - (c) Chapter 5 of Part 2 of the 2004 Act or Chapter 5 of Part 3 of the 2005 Order;
 - (d) Chapter 6 of Part 2 of the 2004 Act or Chapter 6 of Part 3 of the 2005 Order; and
 - (e) paragraphs 13, 14 and 23(b) of Schedule 5 to the 2004 Act.

Payments to meet UK property costs

5. Any sums required for the purposes of meeting expenditure incurred by the Board by virtue of section 161(5) of, and paragraphs 1 to 6 of Schedule 6 to, the 2004 Act or Article 145(5) of, and paragraphs 1 to 6 of Schedule 5 to, the 2005 Order (expenditure associated with transfer of property, rights and liabilities to the Board) are to be paid out of the Pension Protection Fund.

Payments to meet supplementary costs

6.—(1) Subject to paragraph (2), any sums required for the purposes of meeting expenditure incurred by the Board in accordance with section 111 of the 2004 Act or Article 101(2) of the 2005 Order (supplementary powers) are to be paid out of the Pension Protection Fund.

(2) Sums are only to be paid in accordance with paragraph (1) where the expenditure referred to in paragraph (1) relates to the exercise of the Board's functions under the provisions mentioned in paragraph (3).

- (3) The provisions referred to in paragraph (2) are—
- (a) the provisions mentioned in regulation 2(a);
 - (b) the provisions listed in regulations 3(2) and 4(2);
 - (c) the provisions listed in regulation 3(4), but only to the extent that the functions listed in those provisions relate to any investment made, or to be made, by the Board;
 - (d) the provisions listed in regulation 4(4), but only to the extent that the functions listed in those provisions relate to the recovery of any debt due from the employer or former employer to—
 - (i) the Board; or
 - (ii) the scheme;
 - (e) the provisions mentioned in regulation 5; and
 - (f) the provisions mentioned in section 173(3)(a) to (j) of the 2004 Act (Pension Protection Fund).".

Revocation of the Pension Protection Fund (Payments to meet Investment Costs) Regulations 2005

3. The Pension Protection Fund (Payments to meet Investment Costs) Regulations 2005(7) are revoked.

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

(7) S.I. 2005/1610.

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Date

Name
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 (Prescribed Payments) Regulations 2008 (S.I. 2008/664). They also revoke the Pension Protection Fund (Payments to meet Investment Costs) Regulations 2005 (S.I. 2005/1610).

[to be completed]

An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
