

**THE OCCUPATIONAL PENSION SCHEMES (WINDING UP,
WINDING UP NOTICES AND REPORTS ETC) (AMENDMENTS)
REGULATIONS 2007**

Government response to the consultation

July 2007

DWP Department for
Work and Pensions

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Introduction

1. On 11 May 2007, the Government undertook a consultation exercise on the draft Occupational Pension Schemes (Winding up, winding up notices and reports etc). These regulations include amendments to:
 - (a) the Occupational Pension Schemes (Winding up) Regulations 1996 (S.I. 1996/3126);
 - (b) the Pension Sharing (Pension Credit Benefit) Regulations 2000 (S.I. 2000/1054); and
 - (c) the Occupational Pension Schemes (Winding up Notices and Reports etc.) Regulations 2002 (S.I. 2002/459).

The consultation ended on 8 June 2007.

2. Seventeen written responses to the consultation were received. Fourteen of these were from organisations, and the remaining three were from Government Departments. A list of respondents (including organisations with no comments) is at page 10. The Government is very grateful to all who contributed to the consultation. Their comments have been very helpful in finalising the regulations.
3. The Occupational Pension Schemes (Winding up, winding up notices and reports etc) (Amendments) Regulations 2007 will be laid shortly.
4. The Regulations will be available on HMSO's website at <http://www.legislation.hmso.gov.uk/stat.htm#2007>.
5. This document is available on the Department's website at <http://www.dwp.gov.uk/consultations/2007/index.asp>
6. A paper copy of this document can be obtained from:
Olu Abe
Department for Work and Pensions
3rd Floor
Adelphi
1-11 John Adam Street
London WC2N 6HT
Email: olu.abe@dwp.gsi.gov.uk
7. This document describes the policy underpinning the changes being made. Comments on the regulations should not however be

taken as an authoritative interpretation of the law. Such an interpretation can only be provided by a Court.

Contents of the draft regulations

8. The draft regulations amend regulation 8(6)(b)(i) of the Occupational Pension Scheme (Winding Up) Regulations 1996 (S.I. 1996/3126). This enables trustees to discharge small accrued pension entitlements by way of winding up lump sum or trivial commutation lump sum payments regardless of whether the member had a right under the scheme rules to the lump sum.
9. Regulation 3 adds a new sub-paragraph (c) to regulation 3(2) of the Pension Sharing (Pension Credit Benefit) Regulations 2000. This enables trustees or managers to discharge pension credit benefits as winding up lump sums. This is subject to meeting the conditions for such lump sums in paragraph 10 of Schedule 29 to the Finance Act 2004 (c.12).
10. Regulation 4 adds a new paragraph (6) to regulation 9 of the Occupational Pension Schemes (Winding Up Notices and Reports etc.) Regulations 2002. This paragraph applies to trustees or managers of occupational pension schemes which commence winding up on or after 1st October 2007. This requires trustees or managers to submit their first winding up report to the Pensions Regulator after two, rather than three years.

Responses to consultation (specific comments and Government's response)

11. The following paragraphs set out the issues raised in response to the consultation exercise, and provides the Government's response, which may be taken as an indication of how the Government plans that the regulations should work in practice.

Regulation 2 – the Occupational Pension Schemes (Winding up 1996 (S.I.1996/3126)

12. One respondent suggested the use of winding up lump sums might help some trustees in some cases, but in others it would generate another difficult decision (whether to pay lump sums rather than secure pension benefits, and what conversion term to use) and, as a consequence, increase administrative costs.

13. **Government's response** - The intention of the regulations is to provide the option of paying winding up lump sums. We are not compelling trustees to pay trivial lump sums, but rather making this facility available to them once again, should they need it. The Government is not convinced that net administrative costs will increase as an introduction of this measure. In addition, one respondent commented that the proposal to allow trustees to discharge small liabilities through winding up lump sums would actually reduce the administrative costs associated with winding up.
14. Five respondent suggested permitting other types of schemes, primarily defined contribution (DC) schemes, to pay winding up lump sums and trivial commutation lump sums irrespective of whether the scheme rules contain the necessary provision, when discharging liabilities on winding up.
15. Two respondents commented that the amendment which permits trivial commutation or winding up lump sums should apply to all schemes, not just defined benefit schemes, which commenced winding up after 5 April 1997.
16. **Government's response** - The regulations we are amending only relate to how schemes which are not money purchase schemes may discharge liabilities in accordance with the statutory priority order under section 73 (statutory Priority Order) of the Pensions Act 1995. The regulations apply to schemes which are subject to the priority order and thus it is not possible to apply the regulations to money purchase schemes. Schemes which commenced winding up before April 1997 are not subject to the Pensions Act 1995, so it would not be possible to apply the amendments to such schemes.
17. A number of respondents suggested that consideration should be given to extending the lump sum rules on winding up to mirror other HM Revenue and Customs tax simplification measures (where scheme rules can not be amended) to allow, for example:
 - pensions in payment to be commuted, where the value of the member's current pension is less than one percent of the Life Time Allowance (LTA);
 - trivial commutation lump sum death benefit or a winding up lump sum death benefit; and
 - for the partial winding up of schemes.

18. **Government's response** – The Government will give further consideration to the proposal to extend the provisions in regulation 2, so that they mirror other HM Revenue and Customs tax simplification measures.

Regulation 3 - the Pension Sharing (Pension Credit Benefit) Regulations 2000 (S.I. 2000/1054)

19. Two respondents welcomed the provision to allow an occupational pension scheme to pay pension credit benefit as a winding up lump sum. However, they suggested the normal Finance Act 2004 condition that requires the member's employer to have contributed to the scheme before such a payment can be made be removed. Most pension credit members will not satisfy this condition because they will not have been employed by the scheme's sponsoring employer.
20. **Government's response** – In order for a pension credit member to receive a winding up lump the conditions in paragraph 10 of Schedule 29 to the Finance Act 2004 have to be satisfied. This currently requires the member's employer to contribute to the occupational pension scheme in respect of the pension credit member. For reasons unconnected with this consultation, a proposed Government amendment to Schedule 29 of the Finance Act 2004 in the Finance Bill 07 will, subject to Parliamentary approval, remove this requirement for an employer contribution and instead impose certain conditions on "any person by whom the member is employed at the time when the lump sum is paid, and who has made contributions under the pension scheme in respect of the member". Since most pension credit members will not be employed by such a person, this condition would not need to be satisfied. This should ensure that pension credit members are able to receive winding up lump sums.
21. One respondent suggested that provision should be made to stop schemes receiving pension sharing orders once a pension scheme is in wind up so as not to hold up the winding up process.
22. **Government's response** - The provisions for dealing with financial settlements on divorce are in the Matrimonial Causes Act 1973. These provisions include giving the courts powers to make pension sharing orders where appropriate. The Government would not want to restrict the court's powers to make a pension sharing order when the pension scheme is winding up, if a pension sharing order was necessary to achieve a fair settlement on divorce.

Amendments to the Matrimonial Causes Act 1973 would be also outside the scope of these regulations.

Regulation 4 - the Occupational Pension Schemes (Winding Up Notices and Reports etc.) Regulations 2002 (S.I. 2002/459).

23. One respondent suggested the timescales for reporting should take into account scheme size and complexity, and that there should be an acknowledgement within the legislation that complex cases may take longer to wind up.
24. **Government's response** – The reporting requirements, including timescales for reporting, have been in place since April 2002. They are not based on individual scheme make up, and the Government has no plans to change this. The Pensions Regulator will take a more targeted approach and will use reports under section 72A of the Pensions Act 1995 to identify schemes that appear to have been winding up for too long and intervene on a case by case basis.
25. Three respondents suggested that the case for the change in reporting from three years to two had not been made, and that the proposal will increase the cost burden on trustees, by adding one report to the process and by requiring more resources to reduce cases over two years old.
26. **Government's response** – Trustees or managers of DB benefit and DC schemes are currently required to report to the Pensions Regulator after three years from the date the scheme starts winding up, and then to make yearly progress updates until the winding up is complete.
27. Once the requirement to make a report applies to a scheme, the Pensions Regulator may use its powers under section 72B of the Pensions Act 1995 to issue directions to facilitate winding up. The requirement to report to after two, rather than three years, will give the Pensions Regulator evidence at an earlier stage to support any action it may decide to take.
28. The proposal to require trustees to make their first report to the Pensions Regulator after two years instead of three years will bring forward the cost of the first report by one year. The first report is the most expensive, however, subsequent reports are less expensive.

29. If the time taken for a scheme to wind up remains the same, then the proposal will add the cost of one subsequent (less expensive) report for schemes. However the objective of the proposal, along with the full package of administrative and regulatory measures announced in the Secretary of State's report "*Speeding Up Winding Up Of Occupational Pension Schemes*" (published November 2006), is designed to shorten the length of time taken to wind up a scheme. The earlier report will alert the Pensions Regulator to any barriers to wind up earlier. In addition, we understand that significant charges are payable as retainer fees (for example that of an actuary, legal advice and administrator) for each year the scheme continues winding up and that measures to speed up wind up could therefore lead to savings. That is why the Government believes the proposed changes to legislation will have a negligible net cost to business.

General Winding Up comments

30. Some general suggestions and comments were made about the winding up of schemes. These are set out below.
31. Two respondents suggested that, where winding up commences after A-Day for DC schemes, and the employer insolvent/dissolved and the sole trustee, the Pensions Regulator should consider appointing an Independent Trustee.
32. **Government Response** - The Government is not convinced changes are necessary because this is a situation where the Pensions Regulator would look to appoint an independent trustee.
33. Three respondents suggested the issuing of further legislative clarification or guidance would be helpful regarding the equalisation of guaranteed minimum pensions (GMP).
34. **Government Response** - The Government's position regarding the equalisation of GMPs is clear. It has always been our opinion, based on legal advice, that the GMP does not have to be equalised. It is the overall pension that must be equal between men and women. The Pensions Regulator will publish regulatory guidance this autumn, which will explain how it will regulate schemes winding up and lay out what it considers best practice. The Pensions Regulator will consider whether to include guidance on GMP equalisation.

35. One respondent suggested the reluctance of some parties to expedite winding up work could be tackled by the Pensions Regulator using its existing powers.
36. **Government Response** - The Pensions Regulator has made it clear that it will not be afraid to use its powers particularly in relation to directions, improvement notices and third party notices, and its powers under section 89 of the Pensions Act 2004 (to publish reports of individual investigations) where it considers it the best way to bring wind up to a conclusion.
37. One respondent commented that if the Government was concerned about speeding up the winding up of schemes, then it would demonstrate some concern about GMP reconciliation and the delivery of information by HM Revenue and Custom's NISPI.
38. **Government Response** - The Government is concerned about the time it takes to wind up schemes. For a number of years, HM Revenue and Customs' NISPI unit has been seeking ways in which to provide GMP reconciliation data in an electronic format. For example, NISPI is rolling out its Shared Workspace project, which involves using a secure HM Revenue and Custom's server as a means of exchanging data electronically with pension scheme administrators, allowing information to flow between them and NISPI more quickly.
39. One respondent suggested giving trustees the ability to suspend transfer payments, especially where they are satisfied that it causes no disadvantage to members.
40. **Government Response** - The Government will give further consideration to this proposal to see if it would benefit schemes in wind up. However, in order to be convinced that such a change was appropriate - given that it would mean delaying the member from exercising their statutory right to a transfer – the Government would require robust evidence to support such a proposal.
41. Respondents also made a number of helpful drafting suggestions. These were considered by our drafting lawyers and were taken on where it was considered the change would be beneficial.

Thanks

42. We are most grateful to everyone who took the time to comment on this consultation document.

List of respondents:

Addleshaw Goddard LLP
Advocate General for Scotland
Association of British Insurers
Association of Pension Lawyers
AXA Life
Confederation of British Industry
Department for Social Development Northern Ireland
Friends Provident Life and Pensions Limited
Government Actuary's Department
HM Revenue and Customs
Institute of Chartered Accountants in England and Wales
Mercer Human Resource Consulting Limited
National Association of Pension Funds
Prudential
Society of Pension Consultants
Spence and Partners
Watson Wyatt Limited