Pensions Client Directorate

The Pension Protection Fund (Miscellaneous Amendments) Regulations 2010

Consultation on draft regulations

October 2009

Department for Work and Pensions

Contents

Preface

Through this consultation document the Department for Work and Pensions seeks views on the draft **Pension Protection Fund (Miscellaneous Amendments) Regulations 2010**. The draft statutory instrument makes amendments to existing regulations governing the payment of pension compensation by the Board of the Pension Protection Fund and the collection of the pension protection levy. The consultation is primarily aimed at employers, pension scheme administrators, trustees, managers and pensions industry professionals, but we would be interested in views from any source.

Subject of consultation

The draft statutory instrument contains a number of amendments to regulations governing pension compensation and the collection of the pension protection levy which are necessary in order to:

- change the earliest age from which most people can be entitled to payment of pension compensation from age 50 to 55 to align with the provision in the Finance Act 2004 which changes the minimum pension age from 50 to 55 from April 2010;

- enable people to apply for early payment of pension compensation at least two months (rather than the current six months) before the requested payment date, to remove that two month rule in limited cases and to reduce the amount of information which must be provided with the application;

- modify the calculation of pension compensation for active members of Career Average Revalued Earnings schemes to reflect the way in which pension benefits are calculated in those schemes;

- introduce the provision allowed by the Pensions Act 2008 to enable the Board of the Pension Protection Fund to charge interest when the pension protection levy is paid late; and

- set the rate of interest and to provide for a waiver of the interest, by the Board of the Pension Protection Fund, in specific circumstances.

The intention is that the regulations relating to the payment of interest will come into force on 1 April 2010 to coincide with the start of the levy year and that the amendments relating to pension compensation will come into force on 6 April 2010.

Your comments on any aspect of the draft regulations would be welcomed. This document is on the Department for Work and Pension's website at: http://www.dwp.gov.uk/consultations/2009/

How to respond to this consultation

The consultation exercise runs from **26 October 2009 to 15 January 2010.** Any replies received after the closing date may not be taken into account so please ensure your response reaches us by that date

Please send your responses, preferably by email, to:
caxton.ppf-responses@dwp.gsi.gov.uk
or by post to:

John Isaac
Department for Work and Pensions
7th Floor Caxton House
Tothill Street
London.
SW1H 9NA
Tel. 020 7449 7419

When responding, please state whether you are doing so 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. We will acknowledge your response.

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.

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 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 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:

The Central Freedom of Information Team
Department for Work and Pensions

2nd Floor, Adelphi
1-11 John Adam Street
London, WC2N 6HT
Email: freedom-of-information-request@dwp.gsi.gov.uk

More information about the Freedom of Information Act can be found on the Ministry of Justice website: Ministry of Justice: FoI Guidance

The consultation arrangements

The Cabinet Office 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 will run for 12 weeks.

The consultation is being conducted in line with the Government Code of Practice on Consultation – http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html – and its seven consultation criteria, which are as follows:

- **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 this consultation

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
Room 2A, Britannia House
2 Ferensway
Hull, HU2 8NF

Tel: 01482 609571
Email: roger.pugh@dwp.gsi.gov.uk

In particular, please tell us if you feel that the consultation does not satisfy the Government Code of Practice on Consultation. 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.

What we will do after the consultation

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/2009/

Impact Assessment

An assessment of the impact on private and voluntary sector pension schemes of the provisions in draft regulation 3 for charging interest on the late payment of the pension protection levy was included as part of the Impact Assessment that accompanied the Pensions Act 2008 and published on 5 December 2007. Copies of that assessment are available in the libraries of both Houses of Parliament and may also be obtained from the DWP website:
http://www.dwp.gov.uk/resourcecentre/ria.asp.

A full impact assessment has not been published for the provisions on early payment of pension protection fund compensation nor the provisions on Career Average Revalued Earnings schemes as the proposed changes are expected to have a negligible impact on the private, public and voluntary sector.

Commentary on the draft regulations

The following summary explains the purpose of each of the provisions in the draft statutory instrument:

1. **Regulation 1** contains the citation and commencement arrangements. Regulation 3 will come into effect from 1 April 2010 and regulation 2 will come into effect from 6 April 2010.

2. **Regulation 2** amends the Pension Protection Fund (Compensation) Regulations 2005. Under the existing rules a person can be entitled on application, to early payment of pension compensation from any age between 50 and their normal pension age. The level of compensation paid is actuarially reduced to reflect the early payment of compensation.

3. The Finance Act 2004 changes the normal minimum pension age from 50 to 55 from 6 April 2010 unless the individual member of a pension scheme has a protected pension age as provided for under the transitional provisions in

paragraphs 21 to 23 of Schedule 36 to that Act. The transitional provisions provide for circumstances in which an individual may have a protected pension age of less than 55 on or after 6 April 2010.

4. Regulation 2(2) reflects the changes in the Finance Act 2004 by changing the age from which a person may be entitled, on application, to early payment of pension compensation to age 55. The change would take place from 6 April 2010. The new regulation provides transitional protection for individuals with a protected pension age. A protected pension age is the age at which some schemes provide for a scheme member to apply for and receive their pension before the normal minimum pension age if they so wish.

5. For example, if a person has a protected pension age of 52 in respect of his pension in a scheme and that scheme enters the Pension Protection Fund, then compensation payable in respect of the pension from the scheme can start to be payable from age 50 at the present time and at age 52 from 6 April 2010.

6. Regulation 2(2) also reduces the notice period for an application for early payment of pension compensation from at least six months before the requested payment date to at least two months. In addition this regulation removes that notice period altogether where the applicant states in their application that they are terminally ill and as a consequence of this illness their death may be expected within six months.

7. Regulation 2(2) also reduces the information that must be included in an application for early payment. An individual will no longer have to provide the name and address of their scheme's employer as this is not needed to identify the individual concerned. The intention is that in future the application should include their name, address, date of birth and national insurance number and the name and address of the scheme of which they are a member and the date that they would like the compensation to become payable.

8. **Regulation 2(3) and (4)** modifies the provisions in Schedule 7 to the Pensions Act 2004 in relation to Career Average Revalued Earnings schemes.

9. The provision in regulation 2(3) amends regulation 25 of the Pension Protection Fund (Compensation) Regulations to reflect the fact that some cash balance schemes are also Career Average Revalued Earnings schemes. Where this is the case, they will be dealt with under the provisions in the new regulation 26 of the Pension Protection Fund Compensation Regulations 2005, rather than under the existing provisions in regulation 25.

10. Schedule 7 to the Pensions Act 2004 sets out how pension compensation is calculated. To reflect the way in which revaluation operates in relation to final salary schemes the compensation provisions in respect of members who have not attained their normal pension age include a requirement to add a revaluation amount to the member's accrued amount of pension in order to determine the member's potential entitlement to pension compensation at normal pension age. The compensation provisions reflect the fact that for

active members of final salary pension schemes there is no revaluation. In Career Average Revalued Earnings schemes, however, the amount of pension accrued or the earnings for each year of pensionable service is revalued from the end of that year of pensionable service until retirement.

11. For Career Average Revalued Earnings schemes, regulation 2(4) inserts new regulation 26 into the Pension Protection Fund (Compensation) Regulations 2005. Regulation 26 modifies the provisions in Schedule 7 to the Pensions Act 2004, substituting definitions of "accrued amount" in respect of pension compensation for active scheme members over and under normal pension age.

12. The modifications in regulation 2(4) provide that the “accrued amount” for a member of a Career Average Revalued Earnings schemes would be the initial rate of pension that a member would have been entitled to under the scheme rules had they reached their normal pension age at the time the scheme entered the assessment period (for active members) or when they left the scheme (for deferred members). That amount is calculated using whatever revaluation approach for each year's salary/salary proportion is provided for in the scheme rules.

13. **Regulation 3** amends the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006 to allow the Board of the Pension Protection Fund to charge levy payers interest when the pension protection levy is paid late. Interest would become payable from the 29th day after the levy is due at a daily rate of 5% above the Bank of England base rate. This rate of interest is consistent with the interest rate applied by the Financial Services Authority. The pension protection levy falls due on the date of the invoice but the Board of the Pension Protection Fund allow levy payers 28 days in which to pay the levy or apply for a review of the invoice. Charging interest from the 29th day is in keeping with this.

14. The regulation also describes the circumstances in which the Board of the Pension Protection Fund can exercise its discretion to waive interest on the late payment of the pension protection levy. These are where the pension protection levy can be waived as specified in regulation 4 of the Pension Protection Fund (Waiver of Pension Protection Levy and Consequential Amendments) Regulations 2007 and where charging interest would not be conducive to the prudent management of the Board’s financial affairs.

15. The regulation is made under new powers in section 181A of the Pensions Act 2004 as inserted by Schedule 10 to the Pensions Act 2008, which was brought in to encourage prompt payment by all levy payers and to decrease the risk to the Pension Protection Fund of lost revenue as a result of not being able to invest the pension protection levy at the earliest opportunity.

16. The operational detail and processes used to notify and collect interest on the late payment of the pension protection levy are matters to be decided by the Board of the Pension Protection Fund.

17. Interest collected will form part of the Pension Protection Fund.

18. Schedule 10 to the Pensions Act 2008 also inserts provisions into the Pension Schemes Act 1993 and the Pension Act 2004 – to enable interest to be charged on late payment of the general levy (used to fund the Pensions Regulator and the Pensions Ombudsman and the Pension Protection Fund Ombudsman) and the Pension Protection Fund administration levy – and elsewhere in the Pensions Act 2004 to enable interest to be charged on late payment of the fraud compensation levy. Ministers have decided not to commence these provisions at this stage.

Consultation questions

19. We would in particular welcome comments on:

    (a) the regulations that implement the change to the age from which a person may be entitled to early payment of pension compensation and changes to the application process;

    (b) whether the provisions work for Career Average Revalued Earnings schemes;

    (c) the rate of interest and the point from which it would be charged in the event of late payment of the pension protection levy.

Annex A – the Draft Pension Protection Fund (Miscellaneous Amendments) Regulations 2010

STATUTORY INSTRUMENTS

2010 No. [consultation draft]

PENSIONS

The Pension Protection Fund (Miscellaneous Amendments) Regulations 2010

Made - - - -

Laid before Parliament

Coming into force in accordance with regulation 1(2)

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 181A(1) and (5), 315(2), (4) and (5) and 318(1) of, and paragraphs 25(1) and 33 of Schedule 7 to, the Pensions Act 2004(**a**).

[The Secretary of State has consulted such persons as the Secretary of State considers appropriate in accordance with section 317(1) of that Act.]

Citation and commencement

1.—(1) These Regulations may be cited as the Pension Protection Fund (Miscellaneous Amendments) Regulations 2010.

(2) These Regulations come into force—

(a) for the purposes of this regulation and regulation 3, on 1st April 2010, and

(b) for the purposes of regulation 2, on 6th April 2010.

Amendment of the Pension Protection Fund (Compensation) Regulations 2005

2.—(1) The Pension Protection Fund (Compensation) Regulations 2005(**b**) are amended as follows.

(2) In regulation 2 (circumstances where a person shall be entitled to early payment of compensation)—

(a) for paragraph (2)(b), substitute—

"(b) on the date on which the compensation is to become payable early—

(i) the person has attained the age of 55; or

(ii) paragraph 22 of Schedule 36 to the Finance Act 2004(**c**) (rights to take benefit before normal benefit age) applies to the person and that person has attained—

(aa) the age of 50; and

(**a**) 2004 c.35. Section 181A is inserted by paragraph 5 of Schedule 10 to the Pensions Act 2008 (c.30). Section 318(1) is cited for the meaning it gives to "prescribed" and "regulations".

(**b**) S.I. 2005/670.

(**c**) 2004 c.12. Paragraph 22 was amended by paragraphs 54 and 55 of Schedule 10, and paragraph 43 of Schedule 23, to the Finance Act 2005 (c.7).

(bb) the age referred to in paragraph 22(8) of that Schedule.”,

(b) in paragraph (3)(a)(ii), omit—

(i) “the employer to which”, and

(ii) “relates”,

(c) in paragraph (3)(c), for “six” substitute “two”, and

(d) for paragraph (4), substitute—

“(4) The requirement in paragraph (3)(c) does not apply if—

(a) the Board decides to waive it, which the Board can only do on the ground that compliance with that requirement would, in the Board’s opinion, cause hardship to the person who would like to receive the payment of compensation early;

(b) the person has applied for a terminal illness lump sum under paragraph 25B(2) of Schedule 7 to the Act; or

(c) the notice referred to in paragraph (2)(a) includes a statement that the person is suffering from a progressive disease and that their death in consequence of the disease can reasonably be expected within six months.”.

(3) In regulation 25 (cash balance schemes: modification of paragraphs 5, 15 and 19 of Schedule 7 to the Act), after paragraph (1) insert—

“(1A) This regulation does not apply to a cash balance scheme which is also a career average revalued earnings scheme within the meaning of regulation 26(1).”.

(4) After regulation 25, insert—

“PART 11

Career average revalued earnings schemes

Career average revalued earnings schemes: modifications of paragraphs 8, 10, 11 and 14 of Schedule 7 to the Act

26.—(1) This regulation applies to a career average revalued earnings scheme, that is to say an occupational pension scheme where pension entitlement is determined by reference to the member’s earnings in each year of pensionable service, and where those earnings, or a proportion of those earnings accrued as a pension, is revalued each year until the member attains normal pension age or retires.

(2) In their application to a career average revalued earnings scheme, paragraphs 8, 11 and 14 of Schedule 7 to the Act shall have effect with the following modifications—

(a) for sub-paragraph (5) substitute—

“(5) The accrued amount means an amount equal to such initial annual rate of pension as the Board may, having regard to the admissible rules, determine the member would have been entitled to had the member attained the normal pension age when the pensionable service relating to the pension ended.”, and

(b) omit sub-paragraphs (6) and (7).

(3) In their application to a career average revalued earnings scheme, the provisions of paragraph 10 of Schedule 7 to the Act shall have effect with the following modifications—

(a) for sub-paragraph (4) substitute—

“(4) The accrued amount means an amount equal to such initial annual rate of pension as the Board may, having regard to the admissible rules, determine the member would have been entitled to had the member attained the normal pension age when the pensionable service relating to the pension ended.”, and

(b) omit sub-paragraphs (5) and (6).”.

Amendment of the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006

3. After regulation 19 of the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006(**a**) (collection of the pension protection levy by instalments), insert—

“**Interest for late payment of the pension protection levy**

19A.—(1) Interest is to be charged in the case of late payment of a pension protection levy, except where there is a waiver under paragraph (6).

(2) There is late payment of a pension protection levy where that levy has not been paid within 28 days of the date on which the Board sends the notification under section 181(3)(c) of the Act (calculation, collection and recovery of levies).

(3) The rate of interest to be charged is 5% higher than—

(a) the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets, or

(b) where an order under section 19 of the Bank of England Act 1998(**b**) is in force, any equivalent rate determined by the Treasury under that section.

(4) That rate of interest is to be calculated—

(a) on a daily basis,

(b) on the amount of the pension protection levy which has not been paid, and

(c) from the first day on which there is a late payment of the pension protection levy until the day on which that levy is paid.

(5) Where the interest to be charged includes a fraction of a penny, that fraction is to be ignored.

(6) There is a waiver under this paragraph where the Board decides not to charge interest—

(a) in any of the circumstances specified in regulation 4 of the Pension Protection Fund (Waiver of Pension Protection Levy and Consequential Amendments) Regulations 2007(**c**) (circumstances in which pension protection levy may be waived), or

(b) because charging interest would not be conducive to the prudent management of the Board’s financial affairs.”.

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

Name
Parliamentary Under-Secretary of State,
Date Department for Work and Pensions

(**a**) S.I. 2006/580.
(**b**) 1998 c.11.
(**c**) S.I. 2007/771.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Pension Protection Fund (Compensation) Regulations 2005 (S.I. 2005/670) ("the 2005 Regulations") and the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006 (S.I. 2006/580) ("the 2006 Regulations").

Regulation 2 amends the 2005 Regulations. [...]

Regulation 3 amends the 2006 Regulations. [...]

A full impact assessment has not been produced for the provisions in regulation 2 as they have no impact on the private or voluntary sectors. An assessment of the impact on private and voluntary sector pension schemes of the provisions in regulation 3 is included in the impact assessment that accompanied the Pensions Act 2008. Copies of that assessment are available from the libraries of both Houses of Parliament and may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 6B, Caxton House, London SW1H 9NA or from the DWP website: http://www.dwp.gov.uk/resourcecentre/ria.asp.

Annex B: List of organisations consulted

Organisation
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 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
Federation of Small Businesses
Financial Ombudsman Service
Financial Services Authority
Government Actuary's Department
HM Revenue & Customs
HM Treasury
Hammonds LLP
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
Law Debenture
Law Society
Law Society of Scotland
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
Pinsent Masons
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?