

Government response to consultation on draft regulations

The draft Pension Protection Fund (Pension Compensation on Divorce etc) Regulations 2010 and

The draft Pension Protection Fund (Pensions on Divorce etc: Charges) Regulations 2010

March 2011

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Introduction

1. Between 31 March 2010 and 22 June 2010, the Department for Work and Pensions (“DWP”) undertook a consultation exercise on the draft Pension Protection Fund (Pension Compensation Sharing on Divorce etc) Regulations 2010 and the draft Pension Protection Fund (Pensions on Divorce etc: Charges) Regulations 2010 (“the draft regulations”). The draft regulations were sent to the organisations listed in Annex A and made available on the DWP’s website.
2. The DWP received seventeen written responses to the consultation. A list of the organisations that responded is in Annex B. The DWP is grateful for the contributions to the development of the regulations, which will be laid before Parliament and will come into force on 6 April 2011, subject to Parliamentary approval.
3. 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.
4. The final regulations and accompanying explanatory memoranda will be available on The National Archives’s website at:

<http://www.legislation.gov.uk>
5. This document is available on the DWP’s website at:
<http://www.dwp.gov.uk/consultations/2010/>
6. A paper copy of this document can be obtained from:

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About responses to the consultation

7. There were seventeen responses to the consultation on the draft regulations. A list of the organisations that responded is in Annex B. The main points made by respondents and the Government's response to those points are below.

Positive comments

8. Several respondents welcomed the draft regulations and made positive comments on the regulations.
9. The respondents supported providing the facility for pension compensation to be shared on divorce etc, which they said reflected wider changes in society. They also supported the facility for the courts to make attachment/earmarking orders in respect of pension compensation. In summary, respondents said that the new provisions would help facilitate the fairness of financial settlements and allow a clean break between couples. Respondents also welcomed the provisions that allow the Pension Protection Fund ("PPF") Board to recover the costs of implementing a pension sharing order or provision.
10. The respondents expressed the view that these provisions would be of real significance to members who use them.
11. The respondents said that the move to provide for sharing in relation to pension compensation is fair to ex-partners of members whose schemes enter the PPF, and those ex-partners affected would clearly benefit from the proposed changes.

Structure for comments and responses

12. The points made by respondents and the Government's responses to these are divided into two separate sections:
 - a. comments on the draft Pension Protection Fund (Pension Compensation Sharing on Divorce etc) Regulations 2010; and
 - b. comments on the draft Pension Protection Fund (Pensions on Divorce etc: Charges) Regulations 2010.
13. The comments are divided into subject areas, so do not follow the numbering sequence in the draft regulations.
14. Where the numbering in the finalised regulations differs from that in the draft regulations this is shown in the title of the particular regulation. For instance, the provisions that were in regulation 7 of the draft regulations have become regulation 9 in the finalised regulations. Therefore, the start

of the title of the particular regulation reads “Draft regulation 7 (new regulation 9)”.

Subject areas in the draft Pension Protection Fund (Pension Compensation Sharing on Divorce etc) Regulations 2010 (“the Compensation Sharing Regulations”)

15. The subject areas covered in relation to the Compensation Sharing Regulations are:

- supply of information,
- valuing compensation,
- the implementation period,
- charges,
- revaluation,
- death of transferee,
- survivors’ benefits,
- commutation,
- early payment,
- compensation cap,
- Scotland, and
- qualifying agreements.

Subject areas in the draft Pension Protection Fund (Pensions on Divorce etc: Charges) Regulations 2010 (“the Charges Regulations”)

16. The subject areas covered in relation to the Charges Regulations are:

- Scotland, and
- applying safeguards on recovery of charges in all cases.

Comments on the Compensation Sharing Regulations

Title of the Regulations

Response to the consultation

17. One respondent said that they thought the inclusion of the word ‘sharing’ in the title of the regulations might prove misleading as the regulations also cover attachment/earmarking orders.
18. *Government response* – The Government accepted the respondent’s view. Therefore, the title of the regulations has been changed to the Pension Protection Fund (Pension Compensation Sharing and Attachment on Divorce etc) Regulations.

Supply of information about pension compensation in relation to divorce etc

Draft regulation 3 – Basic information about pensions and divorce or dissolution of a civil partnership

19. Draft regulation 3 describes the information the PPF Board must provide to the PPF member, their spouse or civil partner and the courts before a pension compensation sharing order is made. This information covers areas such as a valuation of the member’s pension compensation. The regulation sets out time limits within which this information has to be provided.
20. Regulation 3(6) requires the PPF to provide information (where that information does not include a valuation) within one month.

Response to the consultation

21. One respondent said that they considered this time frame to be somewhat arbitrary. They said that the Pension Protection Fund (Provision of Information) Regulations 2005 (SI 674) provide for the PPF Board to give notice of transfer within two months. They suggested that in order to be consistent, regulation 3 should be amended in line with the Pension Protection Fund (Provision of Information) Regulations.
22. *Government response* – The timelines in the Compensation Sharing Regulations are consistent with those in the regulation 2(6) of the Pensions on Divorce etc (Provision of Information) Regulations 2000 (SI 2000/1048), which the Government believes are the relevant comparative regulations. The information to be provided by the PPF under regulation 3(6) does not include a valuation, which might take longer for the PPF to

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produce. The Government does not consider the timeline to be arbitrary or that the same time periods on notice of transfer in to the PPF should be used for the supply of information in respect of compensation sharing.

23. A respondent asked how the dates in regulation 5(1)(a) and (b) interact with regulation 3(5)(c). Regulation 5 covers the information the PPF Board has to provide when notified that a pension compensation sharing order or provision or an attachment order may be made. The PPF Board has to provide the information in regulation 5 within 21 days of being notified or by the date specified by the court if that is “outside” the 21 days. Regulation 3(5) covers when the PPF Board has to provide a valuation of the member’s compensation.
24. *Government response* – Different information is being required in regulations 3 and 5. Therefore, there is not a conflict between these time limits. Regulation 3 would apply in respect of initial information and regulation 5 would apply when the PPF is notified that an order might be made. Regulation 3(5) of the Compensation Sharing Regulations deals with the provision of a valuation (under regulation 3(2)), while regulation 5 does not cover a valuation.
25. Under regulation 3(5) the PPF Board has to supply the information requested or ordered within 3 months, 6 weeks or (under regulation 3(5)(c)) in a shorter period where the member notifies the PPF Board that the information is needed in connection with court proceedings. This means that regulation 3(5)(c) could specify a period shorter than 21 days for the provision of a valuation.
26. Also, the requirements are in line with those placed on schemes. The provisions are similar to those in regulations 2(5) and 4(1) of the Pensions on Divorce etc (Provision of Information) Regulations 2000. The Government’s view is that regulation 4 is not subject to regulation 2 in the Pensions on Divorce etc (Provision of Information) Regulations.
27. However, having reviewed regulation 3, the Government considered that regulation 3(5)(b) needs to specify the date from which the period of 6 weeks begins. Consequently, regulation 3(3)(b) will make it clear that the period begins with the day that the Board receives the request or order for provision of information.
28. The respondent also said that it was unclear whether the reference to “outside” the 21 days in regulation 5(1)(b) was intended to be a later or earlier test.
29. *Government response* – On the use of the word “outside” the Government considered that the respondent had made a good point, as using “outside” means the regulation could be interpreted as meaning shorter or longer than 21 days or just longer than 21 days. Therefore, in regulation 5(1)(b)

“outside” will be changed to “if the court has specified a date which is before or after the 21 day period specified in sub-paragraph (a), by that date”, which the Government considers as being less likely to be misinterpreted. It demonstrates that the date could be shorter or longer than 21 days.

Draft regulation 6 – Information to be provided by the Board to pension compensation credit members

30. Draft regulation 6 refers to the table in the Schedule to the Compensation Sharing Regulations, which contains the information the PPF Board has to supply to the pension compensation credit member (i.e. the beneficiary of the pension compensation sharing order, once the order has been implemented). This table describes what the information is, who can receive this information and the time limit within which this information should be provided.

Response to the consultation

31. A respondent said that the table of information corresponding to regulation 6 refers to ‘forecasts’ of the pension compensation to be paid to the pension compensation credit member. They said they would like clarity on what is expected here. They were particularly concerned that members’ expectations of what they would receive could be higher than what would be provided.

32. *Government response* – The Government’s view is that members would understand that the PPF would not be able to provide a 100% accurate forecast, and that assumptions would have to be made about matters such as revaluation. The use of a different word was considered; however, “forecasts” is the term used in Schedule 1 of the Pension Protection Fund (Provision of Information) Regulations 2005 (SI 674), so it was decided to stick with this word.

Draft regulation 7 (new regulation 9) – Information to be supplied in order for the implementation period to begin

33. Draft regulation 7 (new regulation 9) sets out the information the PPF Board must have for the implementation period (the period within which the order or provision must be implemented) to start. The information required includes details such as the name and address of the transferor, who is the original member of the PPF, and the transferee, who is their former spouse or civil partner.

Response to the consultation

34. A respondent said that compliance with regulation 7 could be onerous if a transferor is reluctant to co-operate. They said that if the court decided to impose a 100% transfer (perhaps where the transferor is living abroad and there are no other assets) and the transferor succeeds in concealing his/her address, the transfer may be frustrated. They suggested that

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provision be made for dispensing with information where it is not readily obtainable.

35. *Government response* – The Government thought that this was a good suggestion. Therefore, the regulations have been amended to provide that if not all the information on the transferor is available the PPF Board is still able to proceed.
36. One respondent said that they were concerned about the requirement for all transferors and some transferees to provide all the names they have been known by, in light of the Gender Recognition Act 2005.
37. *Government response* – The PPF Board has measures in place to provide additional protection for members who have had gender reassignment. The Government considers these measures to be adequate for compliance with the Gender Recognition Act 2005.

Draft regulation 15 (new regulation 17) – Provision of information after receipt of a pension compensation attachment order

38. Draft regulation 15 (new regulation 17) prescribes the information the PPF Board has to supply to the member and the other person to the pension compensation attachment order. This information may include the cash equivalent value of the pension compensation payable before and after the implementation of the order, the date when the first payment will be made, any charges due and changes in circumstances that the Board must be informed of.

Response to the consultation

39. A respondent queried the cash equivalent value of the pension compensation. This is the cash equivalent value of the amount that would be required to make provision for the member's entitlement to pension compensation.
40. *Government response* – This provision was based on regulation 10 of the Pensions on Divorce etc (Provision of Information) Regulations 2000 (SI 1048) (see regulation 10(3)). However, regulation 10(3)(a) and (b) requires the provision of (a) the value of the pension rights or benefits of the party with pension rights; and (b) the amount of the pension of the party with pension rights after the order has been implemented. The Government considered that this information would appear to be of more use than the cash equivalent value of the compensation before and after the implementation of the attachment order.
41. As PPF officials confirmed that they would be able to supply information on the amount payable to the transferor after the order has been implemented, the regulations have been amended so that, where the compensation is in payment, they require the provision of the annual rate of the pension compensation payable to the member before

implementation of the order; and the annual rate of the pension compensation which will be payable to the member and to the other party after implementation of the order. Where compensation subject to an attachment order is not in payment, the Board is required under new regulation 17(2)(a) to provide the cash equivalent value of the relevant compensation.

Valuing pension compensation

Draft regulation 4 – Valuation of relevant compensation for the purposes of an application for financial relief or financial provision

42. Draft regulation 4 covers the calculation of the member's pension compensation. The valuation is made on the basis of the cash equivalent value of the pension compensation, i.e. the amount of money that would be required to make provision for the member's compensation, calculated according to actuarial assumptions approved by the PPF Board.

Response to the consultation

43. A respondent said that the PPF Board should issue guidance on the basis upon which it will carry out a valuation.

44. *Government response* – There is no provision under the relevant legislation for the PPF Board to issue guidance about this and to make determinations in line with this guidance. However, the PPF's view, when consulted on this issue, was that there was no reason why the PPF would not publish the methodology they use when making the calculation.

45. One respondent said that for clarity the 'date' in regulation 4(3)(b) should be defined as the 'operational date' and tied in with the four month implementation period. The date in regulation 4(3)(b) is the date on which the valuation is carried out, which is the date that the PPF Board receive the request for the valuation.

46. *Government response* – If the 'operational date' is the date on which the valuation is carried out, this would not be consistent with the parallel provisions for pension sharing (see regulation 4 of the Pensions on Divorce etc (Provision of Information) Regulations 2000 (SI 1048)).

47. The Government considered that it was difficult to see how this valuation, which is needed before the order is made, could be tied in with the implementation period, which only starts after the order is made and the information required under regulation 7 is received. The court can not make an order without a valuation of the pension compensation entitlement of the transferor. For implementation (post-order) the date at which the transferor's compensation is to be valued is the "valuation day" (see section 111(2) and (5) of the Pensions Act 2008), i.e. the day that the

PPF Board specifies within the implementation period. This means that two valuations, one pre-order, and one after the implementation period begins, would be needed. It is possible that the amount of compensation could change between these dates and as it is the percentage that the Board has to calculate, and not the amount this could affect the amounts to which the parties are entitled. Therefore, this provision has not been changed. (In Scotland the court may specify an amount to be transferred, but as the value of the compensation may vary, it is the lesser of the amount specified in the order and the total value of the compensation which is transferred on implementation of the order.)

Draft regulation 14 (new regulation 16) – Notification of discharge of liability

48. Draft regulation 14 (new regulation 16) specifies the information that the Board has to provide to the transferor and the transferee when it discharges the pension compensation credit. This may include the valuation of the pension compensation, the value of the pension compensation debit or credit, the date of transfer and any charges due. The information varies slightly depending on whether the transferor or transferee has reached pension compensation age.

Response to consultation

49. A respondent queried the use of “valuation” and suggested that “cash equivalent value” might be more appropriate.
50. *Government response* – The Government accepted the respondent’s view. Therefore, the regulations have been amended so that “cash equivalent value” is used instead of “valuation”.

Implementation period

Draft regulation 7 (new regulation 9) – Information to be supplied in order for the implementation period to begin

51. Draft regulation 7 (new regulation 9) sets out the information that the PPF Board must have for the implementation period to start. This covers details such as the name and address of the transferor and the transferee.

Response to the consultation

52. A respondent suggested including a date by which the information had to be provided. The respondent said that they were aware of the difficulty with prescribing a deadline by which information has to be provided if there is no provision for sanctions to be applied if it is not complied with; however, they thought that not to prescribe a period at all seemed problematic and contrary to other policy areas. They said that during any intervening period the position would be uncertain from a PPF perspective.

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53. Another respondent suggested that in prescribed circumstances, the PPF should be able to begin implementation without having all the information listed, if the rights of the transferor could be identified.
54. *Government response* – The Government originally considered including a time period within which the documents required should be provided. However, there is no power for sanctions to be applied if the required information is not provided. It is normal practice to provide a sanction where a statutory requirement is not complied with. Therefore, the Government considered that a time period could not be included in the Compensation Sharing Regulations.
55. Although there is no time period within the Compensation Sharing Regulations, a time period will be included within the Court Rules that the Courts will work to when dealing with pension compensation on divorce etc. The Rules will include a time period specifying the period within which the transferor and transferee should provide their information to the PPF Board.
56. The Government considered that the suggestion that the PPF be able to proceed without all of the information listed appeared sensible. Therefore, the Compensation Sharing Regulations have been amended to provide for this.

Draft regulation 8 (new regulation 10) – Extension of implementation period

57. Draft regulation 8 (new regulation 10) explains the circumstances in which the implementation period can be extended. This includes when the PPF Board does not have all of the information it requires.

Response to the consultation

58. Two respondents asked whether it was intended to put a dispute mechanism in place where the transferor or transferee have not taken steps the PPF Board could reasonably have expected them to take. They asked what would happen in the situation where there is a disagreement between the PPF and the couple, and whether such a dispute could be referred to the PPF Ombudsman.
59. *Government response* – The Government considered that the provision of a dispute mechanism was a sensible suggestion and should be provided for, and that this could be applied to include other matters. Therefore, the decision about whether to extend the implementation period will be made a “reviewable matter”. There are two other matters in the Compensation Sharing Regulations that could be considered to be “determinations”, so could also be included as “reviewable matters”. These “determinations” are decisions by the PPF Board about “shareable compensation” (regulation 2) and charges (regulation 16).

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60. “Reviewable matters” are decisions made by the PPF Board, which are reconsidered by a committee of the PPF Board (the "Reconsideration Committee"), and a decision is taken by the committee on the matter. A determination made by the Reconsideration Committee may then be referred to the PPF Ombudsman, if the applicant is not satisfied.
61. Two respondents asked whether it was intended that the PPF have a duty to report to the Pensions Regulator if the four month implementation period is breached.
62. *Government response* – The Pensions Regulator can not regulate the PPF because the PPF is not a pension scheme, and the Regulator’s statutory jurisdiction is confined to occupational and personal pension schemes. Regulation 35 encompasses the failure to make a determination, which would be a reviewable matter and therefore could be considered by the PPF Ombudsman (see section 213 of the Pensions Act 2004 and the Pension Protection Fund (Reference of Reviewable Matters to the Pension Protection Fund Ombudsman) Regulations 2005 (SI 2024)).

Draft regulation 9 (new regulation 11) – Postponement or cessation of implementation period when an application for leave to appeal out of time is made

63. Draft regulation 9 (new regulation 11) provides that the implementation period can be postponed or cease when an application for leave to appeal out of time is made. It sets out when this postponement or cessation ends.

Response to the consultation

64. A respondent said that they would like clarity on the reasoning behind a deadline of 21 days for the PPF Board to inform the court it has discharged the liability starting from when the PPF Board receives the notification. The respondent said they believe that 28 days would be more consistent with other requirements.
65. *Government response* – 21 days is consistent with the requirement on pension schemes (see regulation 4 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (SI 2000/1053)). Also, in the situation where the parties may have to go back to court for another order, or may be acting on the order unaware that it can not be implemented, it would appear that there is a need for expedition, particularly where the requirement is not onerous or complicated.

Charges

66. The Compensation Sharing Regulations allow the PPF Board to recover the costs it incurs for dealing with pension compensation on divorce etc from the member and their former spouse/civil partner.

Response to the consultation

67. A respondent commented that the Compensation Sharing Regulations did not provide a mechanism for quantifying the charges, did not indicate whether they will be broadly in line with other pension providers and provided no mechanism for challenging the reasonableness of such charges.
68. *Government response* – The PPF Board will publish its charges, which are likely to be in line with those set out by the National Association of Pension Funds (NAPF), although the PPF Board has different matters to take into account; for example, the pension compensation cap. The provisions in the Compensation Sharing Regulations are broadly similar to the provisions for pension sharing, in the Pensions on Divorce etc (Charging) Regulations 2000, which do not contain any mechanism for quantification or for challenging the amount. Also, the Government thought that it was difficult to see how a mechanism could be expressed in legislation.
69. However, on the third point made by the respondent, a provision has been inserted into new regulation 35 (Amendment of Schedule 9 to the Pensions Act 2004) permitting the parties to challenge the imposition of any charges relating to compensation sharing or implementation of a pension sharing order. As set out above, charges will become a “reviewable matter”, meaning that couples can have the PPF Board’s determination reconsidered.

Draft regulation 16 (new regulation 18) – Charges in respect of pension compensation sharing costs etc recoverable by the Board

70. Draft regulation 16 (new regulation 18) permits the PPF Board to recover charges from the parties in relation to the costs incurred with pension compensation sharing. This could be for the cost of providing information, implementing and discharging the pension compensation credit and administration costs. The parties can pay these charges or they can be deducted from their pension compensation. The PPF Board must have notified the parties of the charges and the method that will be used to collect the charges.

Response to the consultation

71. A respondent said that regulation 16(6)(b) refers to the party from whose entitlement the PPF Board intends to make the deduction being “liable” to pay those charges and they thought that the reference to liability rather than responsibility suggested a legal onus. They suggested that the wording the “Board notifies the responsible party” should be used instead.
72. *Government response* – There is a legal “onus” whatever wording is used. The wording follows that in regulation 9(3)(d) and (5) of the Pensions on Divorce etc (Charging) Regulations 2000 (SI 1049). Therefore, the Government considers that it is advisable to follow the existing wording

unless there are good reasons for doing something different. The Compensation Sharing Regulations could alternatively require the PPF Board just to notify the ‘responsible party’ (or party liable to pay the charges). However, the Government’s view is that this would complicate things as no-one would know until the court order is made which party is responsible for paying the charges. Therefore, the PPF would have to notify both parties of all pre-implementation costs. Also, there may be complications where the parties are responsible for a particular proportion of the charges, or where one party seeks to recover costs from the other party as a debt. However, the Government agreed that there was no need to notify both parties of the method by which and the date on which the charges may be recovered. Accordingly, regulation 18(6)(d) now requires the Board to notify only the party liable to pay the charges.

Draft regulation 17 (new regulation 19) – Reimbursement between parties to pension compensation sharing

73. Draft regulation 17 (new regulation 19) explains that where one party pays the other party’s charges, the first party can recover this money as a debt due from the second party.

Response to the consultation

74. A respondent thought that it was not clear how the debt referred to would be created.

75. *Government response* – The Government’s view was that it was clear how the debt would be created (draft regulation 17 itself creates the debt). Regulation 8 of the Pensions on Divorce etc (Charging) Regulations 2000 (SI 1049) has the same provision allowing one party to reclaim costs from the other party.

Revaluation

Draft regulation 24 (new regulation 27) – Manner in which percentage increase in general level of prices is to be determined

76. Draft regulation 24 (new regulation 27) specifies the mechanism for determining the percentage increase in the general level of prices, which is used for revaluing pension compensation payable to a transferee who has not reached pension compensation age at the date of transfer.

Response to the consultation

77. A respondent asked if the “two months before...” timeframe in draft regulation 24(a) and (b) could be made crystal clear, e.g. if it is now June, should it be measured at April or March.

78. *Government response* – The Government’s view is that “month” means calendar month (see Schedule 1 of the Interpretation Act). When considering the respondent’s point the Government sought the view of the

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PPF on how it operates currently. The PPF said that it must be two complete calendar months before; so in the example above, where it is now June, it should be measured at March. The wording is the same as in regulation 13 of the Pension Protection Fund (Compensation) Regulations 2005 (SI 670).

79. The Government agreed with the respondent that it could be made clearer, thereby providing more certainty. Therefore, the wording has been amended so that it reads “B is the general level of prices... for the month which falls two complete months before the first day of the month during which the transfer day falls”. The Government hopes this provides greater clarity.
80. The Compensation Sharing Regulations now refer to the “general level of prices” instead of the “retail prices index”. This change was consulted on in the consultation on the draft Financial Assistance Scheme and Pension Protection Fund (Valuation, Revaluation and Indexation Amendments) Regulations 2011. Part 3 of the consultation document set out the new proposed wording.
81. The change in wording provides greater flexibility as a particular measure of inflation is not stated in the Compensation Sharing Regulations. The Government intends that the measure of inflation to be used will be the Consumer Prices Index (CPI). The Government’s view is that the CPI is a more appropriate measure of the inflation faced by pensioners than the Retail Prices Index (RPI). It is also a more stable measure and is used for the Bank of England inflation target.

Death of transferee before discharge of liability

Draft regulation 13 (new regulation 15) – Discharge of liability where the transferee dies before the Board has discharged liability for a pension compensation credit

82. Draft regulation 13 (new regulation 15) describes what happens when the transferee dies before the PPF Board has provided them with their pension compensation credit. The PPF Board must notify the deceased transferee’s personal representative or executor. If the transferee has a surviving partner or dependants they may become entitled to pension compensation.

Response to the consultation

83. One respondent said that they are concerned that the PPF Board may be unable to discharge its liabilities or potentially “overpay” where there is a delay in the receipt of notification that the transferee has died.

84. *Government response* – The Government recognises that there may be delays in notification and that this could cause problems; however, the personal representative is under a duty to notify the PPF Board.
85. The Government also recognises that it is possible that there might be “overpayments”. For this situation, a provision similar to regulation 8 of the Pension Protection Fund (Compensation) Regulations 2005 (SI 670) has been included. This means that the PPF Board will be able to reclaim monies that have been overpaid. This provision (new regulation 26) also requires the Board to backdate claims for periodic compensation in cases where there has been a delay in claiming periodic compensation (for example where a surviving dependant has made a late claim for compensation).

Survivors’ benefits

Draft regulation 18 (new regulation 20) – Circumstances where a surviving partner is not entitled to periodic compensation

86. Under draft regulation 18 (new regulation 20) a widow, widower or surviving civil partner is not entitled to pension compensation where a relevant partner is entitled to the pension compensation or where the member’s scheme did not provide for payment of a survivor’s pension.

Response to the consultation

87. Two respondents were concerned about the effect of draft regulation 18(b). This provides that the surviving partner of a transferee is not entitled to pension compensation where there was no provision to pay a survivor’s pension under the admissible rules of the relevant scheme. The respondents were concerned that the effect of draft regulation 18(b) was that pension compensation sharing would not be available where the scheme rules did not provide for a survivor’s benefit.
88. *Government response* – The Government’s view is that this regulation is in line with the Pension Protection Fund (Compensation) Regulations 2005 (SI 2005/670) (‘the Compensation Regulations’), regulation 3(a) of which provides that survivors’ benefits are not available for a spouse or civil partner where the deceased member had nominated a partner to whom they were not married or in a civil partnership with to receive compensation as a survivor. Regulation 3(b) of the Compensation Regulations also provides that the spouse or civil partner of a deceased member is not entitled to periodic compensation where there was no provision to pay a survivor’s pension under the admissible rules of the scheme. .
89. Where a member’s rights in an occupational scheme are shared as a result of divorce etc, the availability of survivors’ benefits depends on the scheme rules. It is possible that the scheme may not provide survivors’ benefits. The Government’s view is that where the scheme did not provide

survivors' benefits the compensation provided in place of that pension should not provide survivors' benefits. Whilst it is possible that the rights from a scheme which did not provide survivors' benefits could be used to provide survivors' benefits (e.g. where a double life annuity is purchased), this would not increase the total value of the rights transferred. The Government's view is that where a survivor of the transferor would not have received compensation as a survivor, a survivor of the transferee should not receive compensation. (It should be noted that pension compensation does not have a Guaranteed Minimum Pension (GMP) element.)

Draft regulation 22 (new regulation 24) – Amount of periodic compensation that can be paid in the case of a surviving dependant

90. Draft regulation 22 (new regulation 24) describes the amount of pension compensation to be paid to surviving dependants, depending on the circumstances. The amount will vary depending on whether a surviving partner or relevant partner is also entitled to pension compensation. The amount will also vary according to the number of surviving dependants.

Response to the consultation

91. One respondent said that they thought that draft regulation 22(1) was confusing because it suggested that the amount of the periodic compensation calculated under that paragraph is what the surviving dependant will get, although paragraphs (2) and (3) make it clear that he/she will only ever get a proportion of that amount. The respondent said that it needed to be made clear that the calculation in paragraph (1) is the base figure for working out the surviving dependant's pension.

92. *Government response* – The Government's view is that the respondent was right and that the wording is confusing. New regulation 24(1) is now subject to new regulations 24(2) and (3). This is similar to regulation 6(1) of the Pension Protection Fund (Compensation) Regulations 2005 (SI 670).

Draft regulation 23 (new regulation 25) – Period of payment

93. Draft regulation 23 (new regulation 25) explains when pension compensation payments to a surviving dependant will begin and cease. The date at which payments will cease depends on the dependant's circumstances and age.

Response to the consultation

94. One respondent said that imposing an upper limit of age 23 for receipt of payments by a child in all circumstances was at odds with section 29(3)(b) of the Matrimonial Causes Act 1973, which imposes no upper age limit for financial provision for a child where "there are special circumstances which justify the making of an order...".

Consultation – Government response to consultation on the draft Pension Protection Fund (Pension Compensation on Divorce etc) Regulations 2010 and the draft Pension Protection Fund (Pensions on Divorce etc: Charges) Regulations 2010

95. *Government response* – The Government’s view is that age 23 is in line with general PPF provisions, see regulation 7 of the Pension Protection Fund (Compensation) Regulations 2005 (SI 670), and that there should not be dependants in this situation getting compensation past 23 where other dependants can not. It is only the existing rights under the scheme, or under Schedule 7 of the Pensions Act 2004, which can be shared. Carving out new rights in relation to pension sharing or pension compensation sharing could only be achieved at the expense of the scheme, or of the PPF in relation to pension compensation. Therefore, this provision has not been changed.
96. One respondent said that where the surviving dependant is attending a qualifying course, periodic compensation should be payable until they leave the course or reach 23, whichever is the later. The draft regulations said “whichever is the earlier”.
97. *Government response* – The Government’s view is that the respondent is correct. This appears to be a fault with the wording, so the regulations have been amended.
98. As a result of making this change the Government added a definition of child of the family to the regulations.

Commutation

Draft regulation 25 (new regulation 28) – Circumstances in which periodic compensation may be commuted

99. Draft regulation 25 (new regulation 28) sets out the circumstances in which pension compensation can be commuted by the transferor and the transferee. Regulation 25(d) provided that the transferee must be between the ages of 60 and 74 when they take the commutation.

Response to the consultation

100. Three respondents questioned the transferee having to be aged 60 before they could take a commutation.
101. *Government response* – The Government accepted the respondents’ views. There is power in Schedule 5 of the Pensions Act 2008 for regulations to provide for early payment of a commutation lump sum. Also, transferors can take a lump sum of compensation early if they qualify. Therefore, the regulations have been amended so that transferees can take a lump sum of pension compensation at age 55. It is only where the transferee commutes their entire entitlement to compensation by taking a PPF trivial commutation lump sum payment (see new regulation 29) that they must have reached the age of 60.

Draft regulation 26 (new regulation 29) – Circumstances in which the portion of compensation to be commuted may exceed 25 per cent

102. Draft regulation 26 (new regulation 29) provides that where the pension compensation to be commuted is a PPF trivial commutation lump sum it can exceed 25 per cent of the total pension compensation amount. It sets out the qualifying factors for the lump sum to be a PPF trivial commutation lump sum.

Response to the consultation

103. One respondent said that they were concerned that there is no requirement to confirm that no previous trivial commutation lump sum has been taken, or if a trivial commutation lump sum is taken it is within the commutation period. They said that this might give rise to overpayments and penalty tax charges.

104. *Government response* – The Compensation Sharing Regulations have been amended to allow trivial commutation where a previous lump sum has been taken, provided that the second lump sum is taken within the commutation period. This is consistent with regulation 20 of the Pension Protection Fund (Compensation) Regulations 2005, the parallel provision for members. The requirement relates to all the pension and compensation rights of the transferee, not just the rights transferred under Schedule 5 to the Act, and therefore the provisions have to be consistent with the conditions which apply to pension compensation entitlement under Schedule 7 of the Pensions Act 2004.

105. New regulation 29 has also been amended to make it clear that pension compensation credit members can not trivially commute more than once (unless the proposed commutation payment is to be paid within 12 months of a previous trivial commutation payment). One of the conditions of trivial commutation under this regulation is that the commutation exhausts the person's rights to pension compensation.

Draft regulation 27 (new regulation 30) – Manner in which an option to commute may be exercised

106. Draft regulation 27 (new regulation 30) states that where a transferee wishes to commute their pension compensation they must notify the PPF Board of this and provide specific information. The Board may also require the transferee to produce any other relevant documents or information.

Response to the consultation

107. One respondent said that they were concerned about possible overpayments. They said this could arise where there had already been a trivial commutation and the PPF Board was not aware of it. In these circumstances an unauthorised payments charge might arise in connection with the payment of the trivial commutation lump sum.

108. *Government response* – Draft regulation 27 said that the transferee must give notice if they want to commute, and include their name, address, date of birth, national insurance number and the percentage of the compensation they want to commute. The Government's view is that the respondent's comment relates to draft regulation 26. Pension compensation credit members can not trivially commute pension compensation to which they are entitled by virtue of a pension compensation sharing order more than once.

Early payment of compensation

Draft regulation 28 (new regulation 31) – Circumstances where a transferee is entitled to early payment of periodic compensation

109. Draft regulation 28 (new regulation 31) described the circumstances where a transferee is entitled to early payment of pension compensation. The transferee must give notice to the PPF Board, be aged 55 or older, provide certain information and usually give the Board at least two months notice.

Response to the consultation

110. One respondent said that these provisions could be amended to better match the Pension Protection Fund (Miscellaneous Amendments) Regulations 2010 (SI 2010/560).

111. *Government response* – The difference to regulation 2 of the Pension Protection Fund (Compensation) Regulations is that that regulation does not have the 2 month requirement (see regulation 28(3)(b)). This difference is as a result of the consultation on the draft regulations commencing before the Pension Protection Fund (Miscellaneous Amendments) Regulations 2010 (SI 560) were in force (6th April 2010). The 2 month notice requirement has been removed. However this regulation has been amended to make it clear that early payment may also apply where the pension compensation credit member commutes compensation.

Compensation Cap

Draft regulation 30 (new regulation 33) – Restriction of amount of compensation payable

112. Draft regulation 30 (new regulation 33) applies the compensation cap to the transferee's entitlement to pension compensation where the transferee becomes entitled to pension compensation after the transfer day in a particular situation. Revaluation may mean that when the pension compensation comes into payment, the annual value of the compensation payable to the transferee exceeds the compensation cap. In these circumstances, the compensation payable is capped.

Response to the consultation

113. One respondent asked whether there was any requirement to compare the transferee's benefits against the cap since the notional cash equivalent is based upon the transferor's benefits restricted (where appropriate) to the projected cap. They said that the PPF should not lose out in "value" terms, although there is a potential for "moral hazard" in certain situations.
114. *Government response* – The Government was concerned about revaluation possibly taking the transferee's compensation over the cap level. So this measure tests their compensation entitlement against the cap to ensure that it is not over that level.
115. This is the only circumstance in which the compensation cap is applied again.
116. The cap will already have been applied to the transferor's compensation where this is necessary.
117. When the courts make a pension compensation sharing order, they can only take into account the shareable compensation payable to the transferor (i.e. the capped value of the pension compensation). Therefore, the compensation cap has already been applied when the order is made. However, the cap may be applied when the pension compensation credit member begins to receive periodic compensation where the amount projected for revaluation proves to be lower than the amount that is actually applied, and the compensation credit member's compensation exceeds the level of the cap at that time.
118. The transferee's benefits will not be tested against the cap where the transferor was either in receipt of early payment of compensation as a result of ill-health or over normal pension age at the transfer date.
119. Where the transferor has retired early the cap will already have been applied to their compensation where appropriate. The transferee's benefits will not be subject to a further test against the cap, as the transferor's benefits would not be subject to a future test against the cap.

Response to the consultation

120. One respondent was concerned about the situation where the transferor has more than one normal pension age (NPA) in a scheme and was "in between" those ages at the date the scheme transferred to the PPF. They set out an example where a transferor aged 62 had a small tranche of NPA 60 benefits in payment and the bulk of compensation due to come into payment at NPA 65. In general, the NPA 60 tranche would not have been tested against the cap, but the tranche of benefits due at age 65 would be tested against the cap.

Consultation – Government response to consultation on the draft Pension Protection Fund (Pension Compensation on Divorce etc) Regulations 2010 and the draft Pension Protection Fund (Pensions on Divorce etc: Charges) Regulations 2010

121. The respondent said that in situations where the transferor's benefits are tested against the cap, and the transferee has compensation in their own right deriving from the same scheme or an associated scheme, the 'credit' benefits are ring-fenced. They noted that there may be members with more than one compensation entitlement within connected schemes who would have their compensation aggregated.
122. The Government sought clarification from the respondent about their concerns. They explained that they were concerned about a transferee who has shared benefits from a scheme and benefits in their own right from the same, an associated or a connected scheme where the total entitlement takes them over the cap, being subject to the cap for all of this benefit.
123. *Government response* – Where appropriate, transferors who have more than one tranche of compensation get each tranche tested against the cap. Where the cap is applied, it is the compensation entitlement after the application of the cap that is shared. The court can only make an order in relation to benefits to which the (potential) transferor is entitled. As compensation derived from benefits under the same or a linked scheme has to be aggregated, the order may only be made in relation to benefits which have already had the (projected) cap applied.
124. Transferees who get compensation as a result of a pension compensation credit will have had this tested against the cap where appropriate. If they also have benefits in the same, an associated or a connected scheme in their own right, whilst this is tested against the cap, it is done separately from the test performed on the credit element. Therefore, they could go up to the level of the cap on both of these types of benefits.
125. The aim is to share the compensation to which the transferor is entitled, so any compensation the transferee has in their own right is subject to a separate application of the cap.
126. The Government accepted the respondent's view that the provisions should make it clear how the application of the cap is to be carried out where there is more than one 'tranche' of benefit to be shared by virtue of a pension compensation sharing order, and these benefits derive from the same scheme. Therefore, new regulation 34 covers the situation where the transferee has a different compensation age for different tranches of compensation, and could also cover a situation where a subsequent order is made by the court on a different date. It is similar to regulation 22 of the Compensation Regulations.
127. Regulation 22 of the Compensation Regulations requires the cap levels as at the date that the relevant tranches of compensation first come into payment to be applied to the annual rate of compensation.

Consultation – Government response to consultation on the draft Pension Protection Fund (Pension Compensation on Divorce etc) Regulations 2010 and the draft Pension Protection Fund (Pensions on Divorce etc: Charges) Regulations 2010

128. The cap in relation to the previous compensation is calculated in the normal way, and the percentage of the cap that the first tranche has ‘used up’ is calculated. The same is done for a subsequent tranche, unless the previous tranche has used up 100% of the cap, in which case no compensation is payable from subsequent tranches.
129. The cap in relation to the later tranche has to be restricted by applying a ‘revised cap fraction’, to take account of the fact that the earlier tranche has already ‘used up’ a proportion of the cap. This is done by aggregating the cap percentages and converting to a fraction.
130. This approach is followed in new regulation 34. Instead of referring to benefits A, B and C, as in regulation 22 of the Pension Protection Fund (Compensation) Regulations, regulation 34 refers to previous and later tranches of compensation, which the Government thought set out the mechanism with more clarity. The regulation does not refer to ‘benefits’ because it is not concerned with any benefits which might have already been paid to the transferor under the scheme.

Scotland

Response to consultation

131. A respondent said that the regulations were not clear in their application to Scotland, and that the distinction between the matters that have to be legislated in Scotland and those that do not was not clear.
132. *Government response* – The Government accepted the respondent’s comments. The regulations have been amended to provide for application in Scotland. For instance, there have been changes to regulation 4(1)(a) (insertion of “financial provision”), regulation 4(1)(b) (reference to a qualifying agreement), and regulation 5(1)(a) (reference to a qualifying agreement). Implementing these changes led the Government to include references inadvertently omitted to Scottish and Northern Ireland legislation, references to a pension compensation attachment order in regulation 5(1) and 5(2)(b) and references to Scottish and Northern Ireland legislation and to civil partnership legislation in regulation 17(1).

Qualifying agreements

New regulation 8 – Circumstances in which an agreement is to be entered into, in order to be considered a “qualifying agreement” for the purposes of section 110(1)(a) of the Act

Response to consultation

133. A respondent said that the Compensation Sharing Regulations should include provision for when the parties enter into a “qualifying agreement” in Scotland.
134. *Government response* – New regulations 7 and 8 have been included to provide for pension compensation sharing or attachment by means of a “qualifying agreement”. These only exist in Scotland and may be used by the transferor and the transferee to determine the financial settlement on divorce or dissolution of a civil partnership. They can be used to share pension rights.
135. Provision has been included in new regulation 8 for the circumstances in which an agreement is to be entered into in order to be considered a “qualifying agreement”. These are that the agreement makes financial provision equivalent to a pension compensation sharing order or a capital sum order, that the transferor has notified the Board that a qualifying agreement is to be made and that the transferor and transferee have entered into an agreement.

Impact on the pension protection levy

Response to the consultation

136. Two respondents mentioned the impact of the Compensation Sharing Regulations on the pension protection levy.
137. One of these respondents said that whilst the costs of administration would be charged to the divorcing parties, the scale of receipts versus the actual costs incurred should be kept under review to ensure there was no impact on levypayers. The other respondent said that whilst the overall size of the original compensation would not increase there should not be an impact on levypayers due to indirect costs.
138. *Government response* – The Pensions Act 2008 requires the compensation payable to the transferor to be reduced by the percentage transferred, so there is no increase in the overall compensation. The Compensation Sharing Regulations include provision for the PPF Board to require the parties to pay any costs incurred in implementation of a pension compensation sharing order. Therefore, there should be no financial impact upon the PPF from these measures.

Comments on the Charges Regulations

139. Only minor changes have been made to the Charges Regulations as a result of comments received during the consultation.

Scotland

Regulation 2 – Information to be provided where the Board is under a duty to comply with a relevant order or provision

140. Regulation 2 describes the information that the Board must provide to the parties where a relevant order or provision has been made before the Board assumed responsibility for a scheme. This includes the date the PPF took responsibility for the scheme and the fact that the PPF will implement the order.

Response to consultation

141. A respondent said that the regulations were not clear in their application to Scotland.

142. *Government response* – The Government accepted the respondent's view. Changes have been made to regulation 2(1), which lists the provisions when the duty to provide information applies. More provisions have been added to the list. In amending the regulations to cover Scotland, the Government also made changes so that the regulations cover attachment orders and Northern Irish provisions.

Applying safeguards on recovery of charges in all cases

New regulation 3 – General requirements as to charges

Response to consultation

143. One respondent commented that the safeguards on the recovery of charges should be applied to all cases, not only those where the PPF Board intends to recover the charges by a deduction from compensation entitlement.

144. *Government response* – The Government accepted the respondent's view. New regulation 3 covers the preconditions. These preconditions have not changed from the draft regulations; however, they now apply to charges paid upfront and deducted from compensation in relation to both pension sharing orders and attachment orders.

145. The preconditions are that:

Consultation – Government response to consultation on the draft Pension Protection Fund (Pension Compensation on Divorce etc) Regulations 2010 and the draft Pension Protection Fund (Pensions on Divorce etc: Charges) Regulations 2010

- the scheme had informed the party/parties in writing of their intention to recover the costs incurred,
- the scheme had provided the party/parties with a written schedule of the charges they intend to impose, and
- the PPF had provided the party/parties with a written schedule of charges owed and the date by which payment is required.

146. The Charges Regulations now provide that only one of the parties will have to be informed of the charges. This is in line with the provisions on pensions on divorce. Regulation 4(3)(ii) previously required the Board to provide the party from whom the Board intended to recover the charges with a schedule of charges owed within 14 days of assuming responsibility for the scheme. This duty now requires the Board to inform the parties of the date that the Board assumed responsibility for the scheme, and that the Board will implement the order. This is because the preconditions for the recovery of the charges now apply in all cases (under regulation 3(a) and (b)). The 14 day period may not be appropriate in the case of an attachment order.

Coming into force date for Regulations

Response to consultation

147. One respondent said that to fit in with tax legislation they thought both sets of regulations should take effect from 6 April 2011, otherwise it would affect the calculation of the annual allowance for pension scheme members.
148. *Government response* – The Government agreed with the respondent's view. The in force date for both sets of regulations has been amended so that they come into force on 6 April 2011.

Annex A – List of those consulted

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

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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

Pinsent Masons

Resolution

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 – List of respondents to the consultation

Association of Consulting Actuaries

Association of Her Majesty's District Judges

Association of Pension Lawyers

Confederation of British Industry

Family Procedure Rule Committee

Hewitt Associates

HM Revenue & Customs

Law Society of Scotland

Ministry of Justice

Norton Rose

Pendragon

Pensions Ombudsman

Resolution

Society of Pension Consultants

The Pension Protection Fund

Towers Watson

Windsor Actuarial Consultants