

**Pensions Protection and
Stewardship Division**

**The Pension Protection Fund
(Miscellaneous Amendments)
Regulations 2010**

Government response
to the consultation on draft regulations

March 2010

Contents

Section 1 – Introduction	3
Section 2 – Responses to the consultation on the draft Pension Protection Fund (Miscellaneous Amendments) Regulations 2010 and the Government’s response	5
Annex A – List of those consulted on the draft Pension Protection Fund (Miscellaneous Amendments) Regulations 2010	14
Annex B – List of respondents to the consultation on the draft Pension Protection Fund (Miscellaneous Amendments) Regulations 2010	15

Section 1 – Introduction

1. Between 26 October 2009 and 15 January 2010, the Department for Work and Pensions (“DWP”) undertook a consultation exercise on the draft Pension Protection Fund (Miscellaneous Amendments) 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 twelve 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 shortly be laid before Parliament and will come into force soon after, subject to Parliamentary approval.
3. The Pension Protection Fund (Miscellaneous Amendments) Regulations 2010 (“the Regulations”) now include the following provisions that were not in the draft Regulations that DWP consulted on:
 - a. regulation 2 which amends Schedule 9 to the Pensions Act 2004, and regulation 3 which amends the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005, to make a determination by the Board of the Pension Protection Fund to waive interest charged on late payment of the pension protection levy or the failure to make such a waiver a reviewable matter;
 - b. regulation 4(2) which amends the Pension Protection Fund (Compensation) Regulations 2005, removes the six month notice period for applications for early payment of compensation – the draft Regulations replaced the six month’s period with a two month period, and the Regulations now remove the period entirely;
 - c. regulation 4(2) also removes the requirement for an application for early payment to include the address of the scheme in which the applicant was a member;
 - d. regulation 4(4) of the draft Regulations inserted new regulation 26 into the Pension Protection Fund (Compensation) Regulations 2005, to modify paragraphs 8, 10, 11 and 14 of the compensation provisions within Schedule 7 to the Pensions Act 2004 in respect of career average revalued earnings schemes – the Regulations now also insert a new regulation 27 to modify the same paragraphs in respect of schemes where only part of pension entitlement is determined on a career average revalued earnings basis; and

**Government response –
The Pension Protection Fund (Miscellaneous Amendments) Regulations 2010**

- e. regulation 5 inserts new regulation 19A into the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006 to require the Board of the Pension Protection Fund to charge interest if the pension protection levy is paid late – the Regulations now extend and clarify the grounds on which the Board may waive the interest.
4. 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.
5. The final Regulations and accompanying explanatory memoranda will be available on the Office of Public Sector Information's website at:

<http://www.opsi.gov.uk/si/si-2010-index>
6. This document is available on the DWP website at:

<http://www.dwp.gov.uk/consultations/2009/>
7. A paper copy of this document can be obtained from:

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Section 2 – Responses to the consultation on the draft Pension Protection Fund (Miscellaneous Amendments) Regulations 2010 and the Government’s response

8. There were twelve 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 are below.

Draft regulation 1 (Citation and commencement)

9. There were no comments on this regulation.

Draft regulation 2(2) – Early payment of pension compensation

Background and policy intent

10. Under paragraph 25 of Schedule 7 to the Pensions Act 2004 and regulation 2 of the Pension Protection Fund (Compensation) Regulations 2005 a person can apply for the early payment of pension compensation from any age between 50 and their normal pension age. Compensation is actuarially reduced to reflect early payment.
11. The current provisions to allow early payment of pension compensation at age 50 or above reflect the current tax law on when a person may take their pension early. However, the Finance Act 2004 changes tax law so that normal minimum pension age will increase from age 50 to age 55 from 6 April 2010 with transitional protection for individuals in specified circumstances. The policy intent is to align the legislation on early payment of pension compensation with the legislation on early payment of pensions.
12. The current provisions also require certain information from applicants for early payment of pension compensation. At present applicants must give six months notice of the date from when they want early payment of pension compensation to start. The policy intent is to simplify the requirements.

What the draft Regulations said

13. Regulation 2(2) of the draft Regulations amended the Pension Protection Fund (Compensation) Regulations 2005.

**Government response –
The Pension Protection Fund (Miscellaneous Amendments) Regulations 2010**

14. Regulation 2(2)(a) of the draft Regulations reflected the requirements in the Finance Act 2004.
15. Regulation 2(2)(b) of the draft Regulations reduced the current notice period for applications for early payment of compensation from six months before the requested payment date to two months. Regulation 2(2)(d) stipulated that the new two month period would not apply in specified circumstances.
16. Regulation 2(2)(b) – (c) of the draft Regulations also provided for the reduction in the information that must be included in an application for early payment. Currently an individual must provide the name and address of their scheme's employer. The draft Regulations removed the requirement and provided that the application should include their name and national insurance number and the name and address of the scheme of which they were a member and the date that they would like the compensation to become payable.

Response to the consultation

17. In response to the consultation one respondent suggested that the transitional protection within the Finance Act 2004 often needs to be read together with HM Revenue and Customs guidance. The respondent assumed that the Board of the Pension Protection Fund will make it clear to trustees of schemes in an assessment period that the trustees will need to satisfy themselves about the legal basis for early payment of a pension and that the Board of the Pension Protection Fund would accept decisions unless they were manifestly wrong.
18. *Government Response* – The provisions implemented by regulation 4 (2)(a) (draft regulation 2(2)(a)) apply in the case of a person whose scheme has transferred into the Pension Protection Fund and who wants to take their compensation early. Decisions about early payment of pension while a scheme is within an assessment period are a matter for scheme trustees. The Pension Protection Fund does, however, work closely with trustees during the assessment period.
19. In its response to the consultation the Board of the Pension Protection Fund replied that it is content for the six months notice period to be removed in its entirety and not replaced by a two month period.
Government Response – The Regulations now remove the six month notice period.
20. The Pensions Act 2008 introduced provisions that enable a person to claim their pension compensation as a lump sum if they are terminally ill. To complement those provisions the draft Regulations removed the requirement for the notice period 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. As the Regulations now remove the notice period entirely it is no longer necessary to make a specific mention of terminal illness within the Regulations.

21. In response to the reduction of information that must be included within an application for early payment, the Board of the Pension Protection Fund replied that it also does not need the address of the scheme. One other respondent also suggested that to ask for the address of the scheme could be confusing as it was not always clear what the address of the scheme is. Is it, for example, that of the chair of trustees or the sponsoring employer?
Government Response – In the light of those responses the requirement for the applicant to provide the address of the scheme has been removed.

Draft regulation 2(3) and (4) – Pension compensation career average revalued earnings schemes

Background and policy intent

22. The pension compensation provisions within Schedule 7 to the Pensions Act 2004 are based on members having final salary scheme benefits. However, career average revalued earnings schemes do not work on a final salary basis, and using the Schedule 7 provisions to calculate the amount of compensation is not appropriate.
23. The policy intent is to provide for the determination of the entitlement to pension compensation for members of career average revalued earnings schemes using the admissible rules of such a scheme.

What the draft Regulations said

24. The draft Regulations inserted new regulation 26 into the Pension Protection Fund (Compensation) Regulations 2005, which in turn would modify the pension compensation provisions within Schedule 7 to the Pensions Act 2004 to allow compensation to be calculated by the Board of the Pension Protection Fund having regard to the admissible rules of career average revalued earnings schemes (which will include provision for revaluation of earnings or pension accrued each year).

Response to the consultation

Cash balance schemes that are also career average revalued earnings schemes

25. Two respondents asked for the Regulations to include provisions for those cash balance schemes which use career average revalued earnings.

**Government response –
The Pension Protection Fund (Miscellaneous Amendments) Regulations 2010**

26. *Government Response* – The DWP consider that the Regulations already provide for such schemes. Regulation 4(3) (regulation 2(3) in the draft regulations) inserts paragraph (1A) into regulation 25 of the Pension Protection Fund (Compensation) Regulations 2005, which relates to cash balance schemes. New paragraph (1A) provides that regulation 25 does not apply to those cash balance schemes which are also career average revalued earnings schemes (as defined in new regulation 26(1)).
27. Another respondent thought that new legislation depended upon the concept that career average revalued earnings schemes are also cash balance schemes, albeit of a special sort. They recommended that the words “a cash balance scheme which is also” in proposed paragraph (1A) should be deleted.
28. *Government Response* – The DWP has decided not to alter the provision drafted. There is separate provision in the regulations for cash balance schemes (regulation 25) and career average revalued earnings schemes (new regulation 26). New regulation 25(1A) provides that regulation 25 “does not apply to a cash balance scheme which is also a career average revalued earnings scheme”. The effect of this is that where a cash balance scheme *is* also a career average revalued earnings scheme, that scheme comes under new regulation 26 (career average revalued earnings schemes), not regulation 25 (cash balance schemes).

Career Average Revalued Earnings schemes that do not revalue in some years

29. One respondent asked for clarification on the position of career average revalued earnings schemes that revalue on a discretionary basis (that is, schemes in which revaluation applies in some years but not in others).
30. *Government Response* – The DWP has considered this and has amended the description of a career average revalued earnings schemes in new regulation 26(1) so that such a scheme is one which *may revalue* each year’s earnings or pension accrual. This clarifies that regulation 26 does apply to those career average revalued earnings schemes that revalue on a discretionary basis.
31. The provisions have also been redrafted so that it is clearer that the accrued amount is calculated in accordance with the admissible rules. Only where these are not clear will the Board of the Pension Protection Fund determine the accrued amount, and this will be done by having regard to the admissible rules.

Method of revaluation after assessment date for career average revalued earnings schemes

32. One respondent suggested that the proposed changes only allow for revaluation in career average revalued earnings schemes prior to leaving the scheme or entering an assessment period (whichever is earlier). Revaluation after this time is provided under the Pensions Act 2004 in the same way for final salary and career average revalued earnings schemes (paragraphs 11(4)(b) and 14(4)(b) of Schedule 7), at 2.5 per cent a year or RPI if lower, regardless of the revaluation that would apply under scheme rules. The respondent queried whether this was consistent with the policy intention bearing in mind that some career average revalued earnings schemes revaluation in deferment may be less generous than 2.5 per cent a year.
33. *Government Response* – The DWP considers that revaluation on the basis used by the Board of the Pension Protection Fund is appropriate and consistent. Once a scheme is in an assessment period the members are paid at the lower of scheme or pension compensation levels, rather than their scheme benefits. Revaluing on this basis is consistent with paying a level of benefits in line with pension compensation. Should the scheme transfer into the Pension Protection Fund members would therefore be treated in an equal fashion.

Schemes that have final salary and career average revalued earnings benefits

34. One respondent suggested that the draft Regulations appeared to assume that a pension scheme is either a career average revalued earnings scheme or a final salary scheme. They suggested that most career average revalued earnings schemes were formerly final salary schemes that have gravitated to becoming career average revalued earnings schemes, which meant that there are elements of both types of benefits in the same scheme.
35. *Government Response* – The DWP accepts the respondent's view and the Regulations now also insert new regulation 27 into the Pension Protection Fund (Compensation) Regulations 2005 so that specific provision is made for such schemes. New regulation 27 modifies Schedule 7 to the Pensions Act 2004 to provide for compensation for the benefits accrued by members of such schemes to be made up of two elements that are added together. One element is calculated according to the general approach in Schedule 7 appropriate for that part of the pension that is final salary related, and the other element is calculated using the career average revalued earnings schemes modifications to Schedule 7 for that part of the pension which is calculated on a career average revalued earnings scheme basis.

Drafting changes

36. Several respondents suggested that the reference to “paragraphs 8, 11 and 14” in new regulation 26(2) and (4) needed to be changed to “paragraphs 8 and 11” as paragraph 14 of Schedule 7 to the Pensions Act 2004 refers to lump sums rather than regular pension payments. They suggested that paragraph 14 needed to be amended separately so that the amendment made changes to lump sum payments. Similarly, respondents suggested that paragraph 10 of Schedule 7 relates to lump sums not pensions, so the substituted text needed to be amended so that it referred to lump sums rather than pensions.
37. *Government Response* – The DWP considers that the respondents are correct and the Regulations reflect those comments.

Draft regulation 3 – Interest for late payment of the pension protection levy

Background and policy intent

38. Section 181A of the Pensions Act 2004 as inserted by Schedule 10 to the Pensions Act 2008, provides regulation-making powers to require the Board of the Pension Protection Fund to charge interest if the pension protection levy is paid late. Section 181A was brought in to encourage prompt payment by all levy-payers. The policy intent is to set the rate of interest that will be applied and to enable the Board of the Pension Protection Fund to waive interest in certain circumstances.
39. 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.
40. Interest collected will form part of the Pension Protection Fund.

What the draft Regulations said

41. Regulation 3 of the draft Regulations inserted a new regulation 19A into the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006 to provide for the Board of the Pension Protection Fund to charge interest if the pension protection levy is paid late.
42. In the draft Regulations, new regulation 19A required the Board of the Pension Protection Fund to charge levy-payers from the 29th day after the pension protection levy is due, at a daily rate of 5 per cent above the Bank of England base rate.

43. Regulation 19A also provided the circumstances in which the Board of the Pension Protection Fund would have discretion to waive interest on the late payment of the pension protection levy.

Response to the consultation

Rate of interest

44. Three respondents felt that the rate of interest to be applied was penal.

45. *Government Response* – The DWP's view is that the rate of interest is not penal and in any case can only apply where the pension protection levy has not been paid within 28 days of the day on which the Board of the Pension Protection Fund sends notification of the amount of levy to be paid. The rate of interest provided in new regulation 19A is consistent with the interest rate applied by the Financial Services Authority.

46. One respondent commented that the rate of interest could be interpreted in a number of ways. *Government Response* – The opening words of new regulation 19A(4) and (5) have been altered in the light of this comment.

Point interest should be charged from

47. Several respondents commented on the point from which interest should be charged. Some commented that a levy invoice may be unexpectedly high or received earlier than expected, in which case trustees would require longer than 28 days to pay the invoice. One respondent asked for advance notice or longer to pay, and one respondent felt that trustees should not be charged interest if a bill is paid a few days late as that would be uneconomical for the Board of the Pension Protection Fund to pursue. One asked for interest to be applied 28 days after receipt of a bill or 35 days after the due date. One drew a comparison with HMRC rates of interest and commented that there was no due date for payment of the levy suggesting that interest be charged 30 days after the Board of the Pension Protection Fund sent notification and 10 days after final appeal process.

48. *Government Response* – Under section 175(5)(d) of the Pensions Act 2004 the Board of the Pension Protection Fund is required to determine, for each levy year, the time or times during the year when the pension protection levy becomes payable. The Board sets this out each year in its Levy Determination. In most cases the invoice is payable on the date the invoice is sent. The Board of the Pension Protection Fund does, however, 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.

49. However, new regulation 19A does provide the Board of the Pension Protection Fund with powers to waive interest. DWP noted the comments

**Government response –
The Pension Protection Fund (Miscellaneous Amendments) Regulations 2010**

relating to the timing, and possibly unexpected size, of pension protection levy invoices. However, the purpose of the publication of the Board of the Pension Protection Fund's Levy Determination before the start of a levy year is to enable schemes to know how their invoice will be calculated, and although invoices are not currently sent on the same date each year, levy-payers should be aware that the liability is going to arise and plan accordingly.

Waiver of interest

50. One respondent felt that the waiver provisions in draft regulation 19A were vague and suggested that the Board of the Pension Protection Fund should be required to publish guidance on the circumstances in which this flexibility will be used. The Pension Protection Fund replied that to ensure the effective implementation of the regime it required more flexibility in the waiver provisions.

51. *Government Response* – In the light of these responses, new regulation 19A(7) and (8) provide the circumstances where the Board of the Pension Protection Fund may waive all the interest in a particular case or only part of the interest in a particular case.

52. Regulation 19A now works as follows:

- a. there can only be a waiver if one of the following circumstances apply:
 - i. the pension protection levy is waived;
 - ii. charging interest would not be conducive to the prudent management of the Board of the Pension Protection Fund's financial affairs; or
 - iii. it is reasonable not to charge interest in full or in part;
- b. each circumstance only applies if the Board of the Pension Protection Fund is satisfied that it exists;
- c. if a circumstance exists, the Board of the Pension Protection Fund can decide whether to waive the interest; and
- d. if the Board of the Pension Protection Fund decides to waive, it would have two options – either waive the whole interest or only part of the interest.

53. Regulation 19A(9) sets out that for the purpose of considering a waiver of all or part of the interest charged the Board of the Pension Protection Fund must have regard to such matters as the Board considers relevant including, for example, the dates on which any payments of the pension protection levy were made in previous years, and failures of the person on behalf of whom the levy is payable to reply to correspondence.

54. The DWP understands that the Board of the Pension Protection Fund intends to provide further information about its approach to charging interest as part of the 2010/11 invoicing process.

Appeal process

55. Four respondents asked what would happen if the levy invoice was appealed and how the outcome of such an appeal would influence the interest charges. It was felt that interest should not start to accrue until the appeal process is complete.
56. *Government Response* – New regulation 19A now allows the Board of the Pension Protection Fund to consider waiving interest in the light of any appeal. The Board of the Pension Protection Fund has indicated, however, that it would not expect to waive in all appeal cases. For example, where an appeal is vexatious or brought on grounds that have previously been rejected by the Pension Protection Fund Ombudsman or a court, interest is unlikely to be waived.

Reviewable matters

57. Under section 206 and 207 of, and Schedule 9 to, the Pensions Act 2004 the Board of the Pension Protection Fund on written application of an interested party must review certain decisions known as reviewable matters. One respondent questioned whether the decision to waive interest (or a failure to do so) should be a reviewable matter.
58. *Government response* – regulations 2 and 3 of the Regulations now allow any determination by the Board of the Pension Protection Fund to waive interest or the failure to make such a determination be a reviewable matter.

Annex A – List of those consulted on the draft Pension Protection Fund (Miscellaneous Amendments) Regulations 2010

Age Concern/Help the Aged	Investment Management
Actuarial Profession	Association
Association of British Insurers	Joint Working Group
Association of Chartered Certified Accountants	Law Debenture
Association of Consulting Actuaries	Law Society
Association of Corporate Trustees	Law Society of Scotland
Association of Independent Financial Advisers	National Association of Pension Funds
Association of Pension Lawyers	National Consumers Council
Board for Actuarial Standards	National Pensioners Convention
British Chambers of Commerce	Northern Ireland Office
Better Regulation Executive	Office of Fair Trading
Carers UK	Pensions Management Institute
Confederation of British Industry	Pensions Ombudsman
Consumers' Association	Pensions Policy Institute
Department for Business, Innovation & Skills	Pincent Masons
Department for Social Development (Northern Ireland)	Scottish Parliament
Engineering Employers' Federation	Scotland Office
Equality and Human Rights Commission (EHRC)	Society of Pension Consultants
Eversheds	The Pension Protection Fund
Federation of Small Businesses	The Pensions Advisory Service
Financial Ombudsman Service	The Pensions Regulator
Financial Services Authority	Trades Union Congress
Government Actuary's Dept	Welsh Assembly
HM Revenue & Customs	Wales Office
H M Treasury	Which?
Hammonds LLP	
Hewitt Associates	
Industry Wide Pension Schemes Group	
Institute of Chartered Accountants in England and Wales (ICAEW)	
Institute of Chartered Accountants in Scotland	
Institute of Directors	
Investment and Life Assurance Group	

Annex B – List of respondents to the consultation on the draft Pension Protection Fund (Miscellaneous Amendments) Regulations 2010

Association of Pension Lawyers
Aviva UK Life Legal Services
Hewitt
Mercer
rpm Ltd
Scottish Life
The Actuarial Profession
The Law Society of Scotland
The Pensions Management Institute
The Pension Protection Fund
The Society of Pension Consultants
Towers Watson