



Department  
for Work &  
Pensions

# Consultation – amendment to Employer Debt Regulations

Consultation on a proposed change to the Occupational  
Pension Schemes (Employer Debt) Regulations 2005

May 2013

---

# Contents

Introduction.....	3
About this consultation .....	3
Who this consultation is aimed at: .....	3
Purpose of the consultation .....	3
Scope of consultation .....	3
Duration of consultation.....	3
How to respond to this consultation.....	4
How we consult .....	4
The consultation criteria .....	5
Feedback on the consultation process .....	5
Proposed amendment to the Occupational Pension Schemes (Employer Debt) Regulations 2005.....	7
Background .....	7
Detail .....	7
Proposal .....	8
Questions .....	8

# Introduction

This consultation concerns a proposed amendment to the Occupational Pension Schemes (Employer Debt) Regulations 2005 to address a drafting issue identified by the Joint Committee on Statutory Instruments (JCSI) in their second report of 2010/11.

## About this consultation

### **Who this consultation is aimed at:**

This consultation is intended for auditors, advisors and trustees of defined benefit pension schemes, plus employers providing or involved in those schemes.

### **Purpose of the consultation**

The purpose of this consultation is to seek comments from scheme trustees and other interested parties on whether the draft Regulations achieve their intended outcome.

### **Scope of consultation**

This consultation applies to England, Wales and Scotland. It is anticipated that Northern Ireland will make corresponding regulations.

### **Duration of consultation**

This consultation runs from 10 May to 7 June 2013. Please ensure your response reaches us by 7 June.

The Government's new Consultation Principles were introduced on 17 July 2012, the new Principles are at <https://www.gov.uk/government/publications/consultation-principles-guidance>

## How to respond to this consultation

Please send your consultation responses to:

Ruth Saunders  
1<sup>st</sup> Floor, Caxton House  
Tothill Street,  
London  
SW1H 9NA

Email: [ruth.saunders@dpw.gsi.gov.uk](mailto:ruth.saunders@dpw.gsi.gov.uk)

Please ensure your response reaches us by 7 June 2013.

When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who 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.

### Queries about the content of this document

Please direct any queries about the subject matter of this consultation to:

Ruth Saunders  
1<sup>st</sup> Floor, Caxton House,  
6-12 Tothill Street,  
London  
SW1H 9NA

Email: [ruth.saunders@dpw.gsi.gov.uk](mailto:ruth.saunders@dpw.gsi.gov.uk)

Telephone: 020 7449 7394

## How we consult

### Freedom of information

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

All information contained in your response, including personal information, may be subject to publication or disclosure, if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided,

or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.

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

Central Freedom of Information Team  
Caxton House,  
6-12 Tothill Street,  
London  
SW1H 9NA  
[Freedom-of-information-request@dwp.gsi.gov.uk](mailto:Freedom-of-information-request@dwp.gsi.gov.uk)

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

## **The consultation criteria**

The consultation is being conducted in line with the new Cabinet Office consultation principles. The key principles are:

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before;
- departments will need to give more thought to how they engage with and consult with those who are affected;
- consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy; and
- the principles of the Compact between government and the voluntary and community sector will continue to be respected.

## **Feedback on the consultation process**

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

Elias Koufou  
DWP Consultation Co-ordinator  
2<sup>nd</sup> floor, Caxton House  
London  
SW1H 9NA  
Phone: 020 7449 7439

Email: [elias.koufou@dwp.gsi.gov.uk](mailto:elias.koufou@dwp.gsi.gov.uk)

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

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

We will publish the responses to the consultation in a report on the consultations section of the website <https://www.gov.uk/government/publications>. The report will summarise the responses and the action that we will take as a result of them.

# Proposed amendment to the Occupational Pension Schemes (Employer Debt) Regulations 2005

## Background

The Occupational Pension Schemes (Employer Debt) Regulations 2005<sup>1</sup> (“the 2005 Regulations”) were amended by the Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2010<sup>2</sup> (“the 2010 Regulations”).

The 2010 Regulations were reported by the Joint Committee on Statutory Instruments (JCSI) for defective drafting in respect of Regulation 4 (amendment of regulation 2 of the 2005 Regulations).

We have now produced an amendment to address the drafting error intend, if possible, to include it in a package of miscellaneous amendments currently being drafted and due to come into force in October 2013.

## Detail

Regulation 7 of the 2010 Employer Debt Regulations inserted new regulations 6ZA to 6ZD of the 2005 Regulations (“the restructuring provisions”) which introduced provision for circumstances in which an employer in a multi-employer occupational pension scheme could undergo restructuring without an employment-cessation event occurring. An employment cessation event would usually give rise to an employer debt (under section 75 of the Pensions Act 1995). Regulation 4 of the 2010 Regulations inserted definitions consequential to the restructuring provisions.

Regulation 4(3) was reported by the JCSI for defective drafting in respect of sub-paragraph (b)(ii) of the definition of “receiving employer”.

The policy intention was to provide that where an organisation was undergoing restructuring but merely changing its status, all other things remaining the same, the ‘receiving employer’ could be the new legal status of the exiting employer. The intention was to capture situations, for example, where an organisation is changing from an unincorporated charity to incorporated company.

However, some stakeholders in the pensions industry subsequently raised concerns that the provision did not meet that policy intention and organisations found it difficult or impossible to use, rendering it of limited practical value.

In 2011, further amendments were made to the 2005 Regulations and regulation 6E (flexible apportionment arrangements) was introduced (“the FAA provisions”). Regulation 6E sets out a new way that an employer in a multi-employer occupational

---

<sup>1</sup> S.I. 2005/678

<sup>2</sup> S.I. 2010/725

pension scheme can apportion its liabilities in relation to the scheme to another employer on leaving the scheme. The Department took the view when drafting regulation 6E that it did not require a provision to clarify that this applied to the new legal status of the leaving employer.

From informal discussions with stakeholders, we understand that, in practice, employers are relying on the FAA provisions rather than the restructuring provisions and that the restructuring provisions are not well used, if they are used at all.

## Proposal

In the draft Regulations – the Occupational Pension Schemes (Employer Debt) (Miscellaneous Amendment) Regulations 2013, we propose that regulation 2 of the 2005 Regulations is amended to replace paragraph (b) of the definition of “receiving employer”.

It is not thought that this would have a direct impact on the flexible apportionment arrangements in regulation 6E of the 2005 Regulations as there is no direct read across.

The impact on pension schemes is expected to be minimal. We have carried out a short informal consultation with affected stakeholders and they tell us that our belief about the level of use this regulation has is correct. The aim of this further consultation is to test this understanding further.

## Questions

1. Should we amend the definition of “receiving employer” to remove the provision that makes reference to the new legal status of the exiting employer, as set out in the draft Regulations? Specifically:

- a) Is this provision being used?
- b) If so, by whom and in what circumstances?
- c) If the provision is not being used, do you know why?
- d) Would removing this provision have any unintended consequences?
- e) Does regulation 6E of the 2005 Regulations (the FAA provisions) adequately provide for the circumstances which were thought to be provided by regulation 2 (b) (ii) of the 2005 Regulations?
- f) Are you content that 6E can be used instead and that it applies to ‘change of legal status employers’?