

The Pension Protection Fund (Prescribed Payments and Investment Costs – Amendment) Regulations 2011 – Government response to consultation on draft Regulations

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Introduction

Between 13 December 2010 and 4 February 2011, the Department for Work and Pensions (DWP) conducted a consultation exercise on draft Regulations intended to move certain costs from the Board of the Pension Protection Fund administration budget (funded through the administration levy) to the Pension Protection Fund (funded in part through the pension protection levy).

This document is the Government's formal response to the consultation. It presents the main points made by respondents in relation to the consultation and provides the Government's response to those points.

The consultation

1. These Regulations make provision for the Board of the Pension Protection Fund ("the Board") to make payments from the Pension Protection Fund ("the PPF") to meet certain expenditure which is currently met by the Board's administration budget.
2. The Regulations provide for the following categories of costs to be paid out of the PPF:
 - (i) Expenditure incurred by the Board which relates to the prudent investment of the PPF by virtue of its functions under the Pensions Act 2004 ("the Act") and in relation to the prudent investment by schemes which are being assessed to see whether they can enter the PPF. This includes those costs resulting from the management and valuation of the PPF's financial risks relating to its investments. It also includes the appointment of fund managers for example, and expenditure that relates to the preparation and management of the assets described in its Statement of Investment Principles as part of the Board's duties under the Act.
 - (ii) Costs that arise as a result of the exercise of the Board's rights as a creditor to recover debts or its functions under the Act that relate to those rights. This includes, for example, costs of obtaining advice from legal advisers, insolvency practitioners and other professionals where the Board is involved in negotiating or enforcing its rights in recovering debts both in UK and overseas jurisdictions – this includes such activities undertaken in connection with the exercise of the Pensions Regulator's powers.
 - (iii) Payments connected with the transfer of UK property, rights and liabilities to the Board – section 173(3)(j) of the Act already enables certain costs connected with the transfer of foreign property, rights and liabilities to be borne by the PPF. These Regulations mean that costs connected with UK-based assets are treated in the same way.
 - (iv) Expenditure that is incidental or conducive to the Board's functions

but only to the extent that it relates to those costs that may be met from the PPF (under section 173(3) of the Act and these Regulations).

Overview of consultation responses

The Department received five responses to the consultation: two respondents, including the Board, provided comments; three respondents had no comments to make.

The Department is grateful for the responses received. A list of those consulted is provided at the Annex to this document.

Respondents' views on the proposed changes can be broadly summarised as follows:

- There was agreement that the changes, which move certain costs from the administration levy to the pension protection levy, should not have a significant effect on pension schemes or their sponsors – the Regulations do not therefore create additional burdens.
- There was a concern that the costs being moved could easily become “lost” in the relatively large pension protection levy – however the commitment in the consultation document that the Board would ensure that these costs are disclosed in their Annual Report and Accounts for 2011/12 onwards was welcomed.
- It was felt that the administration levy, which the Government had previously announced would be unchanged for 2011/12, should be slightly reduced to take account of these changes which it will no longer need to support.
- As part of their response the Board felt that the Regulations might overlook one or more relevant provisions. The Board suggested, therefore, that a more description-based structure would mitigate this risk and avoid unintended consequences.

Summary of the changes to the Regulations

The Regulations have not changed significantly from the consultation draft but the Department has made some changes in response to the contributions to the consultation. The most significant alterations to the consultation draft are:

The Department felt there was a case for modifying the Regulations to add an additional provision, so that where the Board incurs costs for activities related to its investment or insolvency functions, under sections of the Pensions Act

2004 not listed in the Regulations, that expenditure should be charged to the Fund.

The draft Regulations have been modified to include some costs on investments made by schemes and recoveries of debts owed to schemes – as such costs can have a bearing on the Board's investment and recoveries costs relating to the PPF.

Modifications have been made to provide that costs of the Board in relation to recovery of debts owed to the Board on levies are not covered.

The finalised Regulations and accompanying Explanatory Memorandum will be available on the Office of Public Sector Information's website at:
<http://www.legislation.gov.uk/uksi/2011>

The consultation and Government response

This section covers the comments on the questions in the consultation document, and sets out the Government's response.

Q1 – We would especially welcome comments on the policy proposals, in particular whether it is appropriate for these costs to be moved from the Board's administration budget to the PPF.

Very few respondents commented specifically on this question. Broadly there was agreement however that the changes, which move certain expenditure from the administrative levy to the pension protection levy, should not have a significant effect on pension schemes or their sponsors.

As part of their response, the Board welcomed and supported the proposal. In the Board's view it is entirely logical that these costs, which are concerned with either managing assets into the PPF or managing investments, should be borne by the PPF rather than the administrative budget. The Board cited a number of examples where this is the case, including that the current arrangements make cost/benefit analysis less transparent – their response said that on major cross-border insolvencies the sums involved are in the billions of pounds and the Board's actions may reduce the claim on the PPF (and hence on levy payers) by tens or hundreds of millions. In this context the Board felt that the substantial professional fees, which are necessary to obtain the best result, appear wholly disproportionate when charged to the relatively small administrative budget.

The Government's response

The Government welcomes the responses received which broadly support the proposed changes.

Q2 – We would welcome comments on the draft regulations in particular whether the new regulations 3 and 4 would cover all of the Board's costs relating to its investment functions and insolvency-related functions.

As part of their response the Board felt that the structure of the draft Regulations, which lists the legislative references to the Board's functions, might overlook one or more relevant provisions – for example as a result of an omission or new issues arising for example. The Board had also suggested that a more description-based structure would mitigate this risk and avoid unintended consequences.

The Board also felt that the title of draft regulation 5 might better read “Payments to meet costs of transfer of property, rights and liabilities to the Board” in order to align with Schedule 6 to the Pensions Act 2004.

The Government’s response

The Department carefully considered the Board’s submission. Our conclusion, on balance, was that including the statutory references ensures that the Regulations are more consistent with section 173 of the Pensions Act 2004, and makes the provisions more accurate. The Department felt that the risk of missing something would still be a risk if activities were instead listed and that listing activities may raise questions about how the Regulations fit with the Pensions Act 2004.

In response to the Board’s concerns we feel there is a case for modifying the Regulations to add an additional provision, so that where the Board incurs costs for activities related to its investment or insolvency functions, under the Pensions Act 2004 not listed in the Regulations, that expenditure should be charged to the PPF. The Board necessarily conducts a wide range of activities in relation to the investment and recoveries functions and we agree with the PPF that it is possible that the draft Regulations might not cover all the relevant provisions for example where new circumstances arise. Therefore the new regulations 3 and 4 have been modified to provide that where the Board incurs expenditure in relation to the exercise of any of its statutory functions under the Pensions Act 2004 connected with its investment or recoveries activities, those costs are to be paid out of the PPF.

The Department has made a drafting change to the title of new regulation 5 in response to the Board’s comments – this change makes the title clear that this provision concerns the transfer of UK property, rights and liabilities to the Board.

Q3 – We would welcome comments on our assessment of the impact of the Regulations.

Respondents agreed with the Department’s assessment that the changes should not impose any additional burdens on PPF-eligible pension schemes or sponsor employers. The Board confirmed that, while there will be a change in the distribution of the funding, it will not need to increase the protection levy simply to accommodate transferred costs.

One respondent expressed a concern that the costs being moved could easily become “lost” in the relatively large pension protection levy, though welcomed the commitment in the consultation document that the Board would ensure that these costs are disclosed in their Annual Report and Accounts for 2011/12 onwards. This respondent also felt that the administration levy, which the Government had previously announced would be unchanged for 2011/12, should be slightly reduced to take account of these changes which it will no longer need to support.

The Government's response

The Government welcomes the responses, which confirm that these Regulations do not impose burdens on business or others.

The Department acknowledges the concern over the transparency of the costs. The Board has confirmed that following changes resulting from these Regulations it will consider and where appropriate revise its reporting procedures to ensure transparency for stakeholders. In addition, the Board has already given a commitment to ensure that the costs paid out of the PPF will be disclosed in their Annual Report and Accounts for 2011/12 and onwards. Parliament will have oversight of the published PPF Annual Report and Accounts, and the PPF Chief Executive will remain accountable to the DWP Permanent Secretary and Secretary of State for the PPF expenditure.

The rates for the PPF Administration Levy are set annually but are not a direct reflection of that year's costs. The levy rates are set so that they can be fixed for a number of years to allow planning and avoid unnecessary annual changes. As a result, the levy rates reflect anticipated costs for a number of years as well as taking into account the effect of any deficits or surpluses from previous years. Of course, the change in funding source will mean that the Board's administration budget will be lower from 1 April 2011, and this will be taken into account when rates are calculated for future years. The benefit of the reduction for 2011/12 will therefore be felt in later years.

Annex A: List of organisations consulted

Age Concern / Help the Aged
Actuarial Profession
Association of British Insurers
Association of Chartered Certified Accountants
Association of Consulting Actuaries
Association of Corporate Trustees
Association of District Judges
Association of Independent Financial Advisers
Association of Pension Lawyers
Board for Actuarial Standards
British Chambers of Commerce
Better Regulation Executive
Carers UK
Confederation of British Industry
Consumers' Association
Department for Business, Innovation & Skills
Department for Social Development (Northern Ireland)
Engineering Employers' Federation
Equality and Human Rights Commission (EHRC)
Eversheds
Faculty & Institute of Actuaries
Family Justice Council - Money and Property sub committee
Family Proceedings Rule Committee
Federation of Small Businesses
Financial Ombudsman Service
Financial Services Authority
Government Actuary's Department
HM Revenue & Customs
HM Treasury
Hammonds LLP

Her Majesty's Courts Service (HMCS)

Hewitt Associates

Independent Pensions Research Group

Industry Wide Pension Schemes Group

Institute of Chartered Accountants in England and Wales (ICAEW)

Institute of Chartered Accountants in Scotland

Institute of Directors

Institute of Payroll and Pensions Management

Investment and Life Assurance Group

Investment Management Association

Joint Working Group

Law Society

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

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?