Department for Work & Pensions

Technical amendments to the Pension Protection Fund and Fraud Compensation Fund Regulations

Consultation

July 2022

Contents

Introduction

This consultation seeks views on two technical changes to the Fraud Compensation Fund (FCF) and the Pension Protection Fund (PPF) regulations. The set of draft regulations are the Occupational Pension Schemes (Fraud Compensation Fund Payments and Pension Protection Fund Compensation) (Amendment) Regulations 2023 which can be found in Annex A.

The changes are:

- inserting an additional prescribed liability that the Board of the PPF can make an interim payment for in order to cover scheme fees and costs while FCF claims are progressed.
- changing PPF provisions with regard to surviving child dependants so that a gap between qualifying courses of more than one year does not result in the loss of PPF compensation.

About this consultation

Who this consultation is aimed at

Chapter 1 of this consultation is aimed at:

- Trustees and scheme managers, including associations of professional and independent trustees
- Arm's Length Bodies (ALB) such as the Pension Protection Fund (PPF), The Pensions Regulator (TPR) and the Pensions Ombudsman (TPO)
- Pension professionals
- Pension industry bodies
- Any other interested parties

Chapter 2 of this consultation is aimed at:

- PPF members and their dependents
- Charities with an interest in bereavement and bereavement benefits
- University boards
- Student associations
- Any other interested parties

Purpose of the consultation

Chapter 1 of this consultation is focused on the proposed change to the FCF. It outlines the rationale for inserting an additional prescribed liability that the Board of the PPF, which administers the FCF, can make interim payments for under section 186 of the Pensions Act 2004. The purpose is to seek views on whether the proposed change meets the policy intent and whether there are any impacts or unintended consequences.

Chapter 2 of this consultation deals with proposed changes to the Pension Protection Fund (Compensation) Regulations 2005 so that surviving child dependants who have a gap in full-time education of more than one year do not lose their entitlement to PPF compensation. The purpose is to seek views on whether the draft regulations meet the policy intent and whether the regulations give rise to any unintended consequences.

Scope of consultation

This consultation applies to England and Wales and Scotland.

Occupational pensions policy is a devolved matter for Northern Ireland. It is anticipated that Northern Ireland will make corresponding regulations.

Duration of the consultation

The consultation period begins on 27 July 2022 and runs until 9 September 2022.

How to respond to this consultation

Please send your responses to:

Pensions Consultation Team
Department for Work and Pensions
Defined Benefit division
1st Floor
Caxton House
Tothill Street
London
SW1H 9NA

Email: pensions.consultations@dwp.gov.uk

Government response

The Government will consider the responses it has received and publish a response on GOV.UK. A summary of the responses will also be included in the Explanatory Memorandum which we intend to lay alongside the regulations when parliamentary time allows.

Timing of the regulations

Proposed legislation will be prospective and it is anticipated it will come into force in Spring 2023.

Consultation principles

This consultation is being conducted in line with the revised Cabinet Office consultation principles published in March 2018. These principles give clear guidance to government departments on conducting consultations.

Feedback on the consultation process

We value your feedback on how well we consult. If you have any comments about the consultation process (as opposed to comments about the issues which are the subject of the consultation), including if you feel that the consultation does not adhere to the values expressed in the consultation principles or that the process could be improved, please address them to:

DWP Consultation Coordinator
Legislative Strategy Team
4th Floor, Caxton House
Tothill Street
London
SW1H 9NA

Email: caxtonhouse.legislation@dwp.gov.uk

Data Protection and Confidentiality

The information that 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 Government consultation response.

For this consultation, all information including personal information may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information, 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.

For more information about what we do with personal data, you can read DWP's Personal Information Charter. For more information on the general principles of Freedom of Information, please contact the Central Freedom of Information Team: Email: freedom-of-information-request@dwp.gov.uk.

Chapter 1: FCF interim payments

Background

1. The PPF was established by the Pensions Act 2004 (the Act) to protect members of eligible defined benefit occupational pension schemes and the defined benefit element of hybrid schemes when the scheme's sponsoring employer became insolvent.[1]
2. The Board's responsibilities under the Act include the operation and administration of the FCF. The FCF is a statutory compensation body of last resort established in 2005 providing compensation to defined benefit and defined contribution occupational pension schemes where there has been a scheme asset reduction attributable to an offence involving dishonesty and where the employer has become insolvent.[2]
3. The FCF is not the only route to redress for pensions dishonesty; the Financial Services Compensation Scheme (FSCS) can provide individual compensation for pension investment failures where the activity is regulated by the Financial Conduct Authority. The Pensions Ombudsman (TPO) also handles complaints relating to pension dishonesty. The PPF coordinates with the FSCS and TPO to determine the most effective route to redress in individual circumstances.
4. Historically, the number and size of claims on the FCF has been low. In November 2020, the High Court (in *The Board of the PPF v Dalriada Trustees Ltd*[3]) clarified that scam schemes such as pension liberation schemes[4], if they satisfied specified criteria, were eligible to make a claim to the FCF.
5. There are insufficient assets within the FCF to meet claims arising from that judgement. The Compensation (London Capital & Finance plc and Fraud Compensation Fund) Act 2021 provided the Secretary of State with the power to make a loan to the Board. The loan, expected to cover 131 schemes and total approximately £250m over the period to 2025, will be repaid through the Fraud

[1] 2004 (c.35) https://www.legislation.gov.uk/ukpga/2004/35/contents

[2] The FCF compensates schemes rather than individual scheme members.

[3] [2020] EWHC 2690 (Ch)

[4] Pension liberation typically involves individual scheme members being persuaded to transfer their pensions savings from legitimate schemes, with promises of cashing in all or part of their pension fund and often receiving a loan before age 55 without incurring an unauthorised payment tax charge. Members' pots are often significantly eroded through extortionately high administration charges with any remaining scheme funds drained.

Compensation Levy (FCL). An increase in the FCL ceiling came into force on 1 April 2022.[5]

6. The PPF has been notified that around 70 to 85 per cent of the schemes potentially in scope for FCF compensation have exhausted most or all their assets. This has occurred either as a direct result of an act of dishonesty, or from the cost of trustees investigating potential dishonesty and progressing an application for FCF compensation.
7. Schemes with exhausted assets pose significant challenges for trustees in making and progressing a FCF application, causing potentially successful claims to stall, increasing the overall claim and prolonging uncertainty for victims of pension scams.
8. Most of these schemes are run by independent trustees (IT) appointed by The Pensions Regulator (TPR) following the discovery of potential dishonesty. The IT incurs their own costs which, in the absence of any recoveries from the statutory employer or otherwise, can only be met using the scheme's assets.
9. These schemes require interim funding to cover costs such as trustee, legal and accounting fees. This would enable the trustees or managers of such schemes to investigate the dishonesty, gather evidence and make recoveries. Without this, victims of dishonesty, which may include pension liberation, may have no other recourse for compensation where other forms of redress have been pursued.

Current legislation

10. Under section 184(2) of the Act, the Board cannot make fraud compensation payments until the settlement date. This date is determined by the Board as the date after which further recoveries of value are unlikely to be obtained by the trustees or managers without disproportionate cost or within a reasonable time.
11. Section 186 of the Act allows the Board to make interim payments to trustees or managers of schemes: once an application has been made, but before the settlement date and if the Board considers that the case satisfies the specified criteria under section 182(1) of the Act.
12. The specified criteria under section 182(1) of the Act require that:
    a. the scheme is an eligible occupational pension scheme;
    b. the employer has become insolvent;
    c. an application is made which meets the prescribed requirements;[6] and

[5] The FCL increase came into force on 1 April through The Occupational Pension Schemes (Fraud Compensation Levy) (Amendment) Regulations 2022 (SI 2022/259).

[6] Section 182(1)(d) and (e) provides for the person, manner, and information in respect of which, and the period in which, an application for FCF compensation must be made.

d. the Board considers that the value of the scheme's assets has been reduced and there are reasonable grounds for believing the reduction was attributable to an act or omission constituting an offence involving dishonesty, which includes an intent to defraud.

13. The Board may only make interim payments where the trustees or managers would not otherwise be able to meet liabilities set out in Regulation 8 of the Occupational Pension Schemes (Fraud Compensation and Miscellaneous Amendments) Regulations 2005 (the 2005 Regulations).[7] The prescribed liabilities relate to the payment of pensions, money purchase liabilities or terminal illness lump sums, and not for any other reason.

14. The policy intent behind the current legislation on interim payments is to avoid undue hardship to members of schemes during the application process by covering certain benefits as they fall due.

15. However, as currently structured, interim payments are of little practical use in relation to the type of schemes that the High Court clarified were eligible for FCF compensation, should they satisfy specified criteria.

Proposed change

16. The policy intent is to amend legislation to take into account the nature of schemes, many of which were set up and used for pension liberation, that may be in scope for FCF compensation.

17. Draft regulation 3 inserts an additional prescribed liability below Regulation 8(1)(b)(iv) of the 2005 Regulations enabling the Board to make interim payments to cover scheme costs, incurred or expected, arising out of a FCF application.

18. These liabilities represent costs the trustees or managers would already incur as part of the FCF application process, had the scheme had sufficient assets to cover them. Where the scheme has sufficient assets to cover them, these are typically costs that the Board compensates when it makes fraud compensation payments, such as trustee, legal and accounting fees associated with investigating potential dishonesty, gathering evidence and making recoveries.

19. These liabilities do not cover the business-as-usual costs of running the scheme. Draft regulation 3 refers solely to costs that arise as a consequence of the application for FCF compensation. Under section 186(1) of the Act, it is at the Board's sole discretion to make an interim payment for a particular liability. The Board also retains the sole right to make an interim payment only where section 182(1) of the Act applies or may apply.

20. Current legislation further enables the Board to attach terms and conditions, including repayment, to interim payments as well as to recover interim payments

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[7] SI 2005/2184

in whole or in part should any interim payment be excessive or where the scheme becomes ineligible for fraud compensation.

21. When the Board makes fraud compensation payments, any interim payments made prior to the settlement date must be taken into account alongside any recoveries of value.[8] This way, the proposed change will not constitute additional costs on the FCF when the Board pays fraud compensation as they are deducted from the final amount. The change will therefore not increase the quantum of claims on the FCF nor will it affect FCL payers' contributions.

22. Draft regulation 3 will only enable the Board to make interim payments to cover costs that arise between the application and the settlement dates. This ensures that only schemes in respect of which an application has been made and whose eligibility has been assessed by the Board may receive interim payments.[9]

23. This proposed change represents a proportionate and timely way to provide interim funding to these schemes. The change facilitates access to compensation for eligible schemes where other forms of redress have been pursued.

Costs

24. The proposed change may increase PPF administrative costs. The change will not affect the PPF Administration Levy which funds the operation of the FCF.

25. Trustees may incur negligible familiarisation costs in relation to PPF guidance.

Impact assessment

26. An Impact Assessment is not necessary for this regulation. It is not foreseen that the proposed change would impose any significant additional burden on trustees or managers of qualifying schemes. This is because trustees or managers are not obliged to claim for interim payments, nor is the Board obliged to make them. The change simply enables the trustees or managers to cover costs that they would otherwise have been able to cover had the scheme had sufficient assets.

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[8] Section 184(3) of the 2004 Act defines a recovery of value as any increase in the scheme's assets obtained by the trustees or managers from any reduction in the scheme assets attributable to an offence involving dishonesty.

[9] Upon an application for FCF compensation, the Board must apply a statutory 'dishonesty test' to assess the claim. This test is found in section 182(1)(b) of the 2004 Act and requires the Board to consider whether it has reasonable grounds for believing that a scheme asset reduction was attributable to an act or omission constituting an offence involving dishonesty.

Questions

Regarding the proposed change set out above:

Question 1

Do the draft regulations achieve the stated policy intent?

Question 2

Do you foresee the draft regulations placing any new regulatory burden or cost on trustees or managers of schemes? If yes, please provide details.

Question 3

Do you foresee any unintended consequences with the new draft regulations? If yes, please provide details.

Chapter 2: Surviving child dependants

Background

27. Under the Pension Protection Fund (Compensation) Regulations 2005 (the compensation regulations), a child dependant who has a gap between qualifying courses[10] of more than one year loses their entitlement to PPF survivors' compensation which would otherwise be payable until the age of 23. This has the effect of excluding many children who take a "gap year" (usually between school and university) and is inconsistent with the Financial Assistance Scheme (FAS) provisions for surviving child dependants.

28. It was not the policy intention to exclude children who take a gap year from receiving survivors' compensation. Draft regulation 4 is intended to correct this anomaly by amending the compensation regulations so that payment may be made to a surviving child dependant from the start date of a further qualifying course, provided that that course begins before the child reaches the age of 23.

Current legislation

29. The compensation payable to the surviving dependents of deceased PPF members is set out in Part 3 of the Pension Protection Fund (Compensation) Regulations 2005. Regulation 7 provides for the period for which PPF compensation is payable and regulation 7(2) stipulates that surviving child dependants receive compensation while they are under the age of 23 and attending a qualifying course. Regulation 7(2)(b) allows for a gap of one year between qualifying courses so that, providing the later course starts within one year of the end of the previous course and before the child reaches the age of 23, compensation is payable from the date the later course begins.

30. Many children take a year out after completing their A-levels (or equivalent) and before starting a university or other further education course (commonly known as a "gap year"). However, the actual gap in education is often greater than a calendar year – for example if a child takes their A-levels in June 2021, takes a gap year, and starts at university in October 2022, the gap would be approximately 15 months. Under the current regulations, such children would lose their entitlement to PPF survivors' compensation on completion of their A-levels, and it would not be reinstated on the commencement of their university course.

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[10] A qualifying course is defined in the compensation regulations but, in general, it relates to full-time education of any level.

Proposed change

31. It was not the intention that compensation should cease to be payable to children in this situation. The draft regulations, therefore, amend regulation 7(2)(b) to remove the requirement that any gap between qualifying courses should be less than one year. Payment can then be made to surviving child dependants from the start date of a further qualifying course, provided that that course begins before the child reaches age 23.

Costs

32. The proposed change will affect very few PPF members. As at 5 April 2022, the PPF was paying compensation to approximately 480[11] surviving child dependants and only a small sub-set of these will be impacted by amending the regulations. The costs to the PPF are, therefore, negligible and there will be no impact on PPF levies.

Impact assessment

33. The proposed changes have no impact on business therefore an impact assessment is not required.

Questions

Regarding the proposed change set out above:

Question 1

Do the regulations meet the stated policy intent?

Question 2

Are you aware of any unintended consequences arising from the regulations? If yes, please provide details.

[11] PPF Analysis, 05 April 2022, rounded to the nearest 10