

**Private Pensions
Policy and
Regulation**

**The Occupational and Personal
Pension Schemes
(Miscellaneous Amendments)
Regulations 2010**

Consultation on draft regulations

September 2009

DWP Department for
Work and Pensions

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Foreword

This consultation document seeks views on the enclosed draft **Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2010**. The intention is that the regulations will come into force on 6 April 2010.

The consultation is primarily aimed at pension industry professionals, but we would be interested in views from any source.

Subject of consultation

A number of minor amendments to regulations governing occupational and personal pension schemes are necessary in order to:

- add a listed change on which employers are required to consult affected members if such a change is proposed to an occupational pension scheme;
- implement some minor policy changes; and
- make an outstanding consequential amendment.

Purpose of the consultation

Your comments on any aspect of the draft regulations would be welcomed. This document is on the Department's website at:
<http://www.dwp.gov.uk/consultations/2009/>

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.

It would be very helpful when responding to indicate whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make it clear whom the organisation represents and, where applicable, how the views of members were assembled.

The consultation arrangements

The Government Code of Practice on Consultation advises that a minimum of 12 weeks is appropriate for public consultations, unless there are good reasons for a shorter period. In this case, consultation will run for 12 weeks.

The consultation is being conducted in line with the Government Code of Practice on Consultation – <http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html> – and its seven consultation criteria, which are as follows:

- **When to Consult.** Formal consultation should take place at a stage when there is scope to influence the outcome.

- **Duration of consultation exercises.** Consultations should normally last for at least 12 weeks, with consideration given to longer timescales where feasible and sensible.
- **Clarity of scope and impact.** Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence, and the expected costs and benefits of the proposals.
- **Accessibility of consultation exercises.** Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is designed to reach.
- **The burden of consultation.** Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- **Responsiveness of consultation exercises.** Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- **Capacity to consult.** Officials running consultation exercises should seek guidance in how to run an effective consultation exercise, and share what they have learned from the experience.

How to respond

The consultation exercise will run from **25 September 2009 to 18 December 2009**. Any replies received after that date may not be taken into account so please ensure your response reaches us by that date

Please send your responses, preferably by email, to:

Email: adelphi-sft@dwp.gsi.gov.uk

or by post to:

Caroline Blackett
 Department for Work and Pensions
 7th Floor
 Caxton House
 Tothill Street
 London.
 SW1H 9NA
 Tel. 020 7449 7370

Please remember to indicate if you are responding on behalf of an organisation or as an individual (see page 3).

Freedom of Information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions and 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 which is 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. We cannot guarantee confidentiality of electronic responses even if your IT system claims it automatically.

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

The Central Freedom of Information Team
Department for Work and Pensions
2nd Floor, Adelphi
1-11 John Adam Street
London, WC2N 6HT
Email: freedom-of-information-request@dwp.gsi.gov.uk

More information about the Freedom of Information Act can be found on the Ministry of Justice website: [Ministry of Justice: Fol Guidance](#)

Feedback on responses

A summary of responses will be published following the consultation. The Government will aim to publish this summary within three months of the consultation closing. The summary of responses will be available on the Department's website: <http://www.dwp.gov.uk/consultations/2009/>

Feedback on this consultation

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:

Roger Pugh
DWP Consultation Co-ordinator
Room 2A, Britannia House
2 Ferensway
Hull, HU2 8NF
Tel: 01482 609571
Email: roger.pugh@dwp.gsi.gov.uk

In particular, please tell us if you feel that the consultation does not satisfy the Government Code of Practice on Consultation. 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.

Impact Assessment

A full impact assessment has not been published for these draft regulations as they have only a negligible impact on the private and voluntary sectors.

Commentary on the draft regulations

The following summary explains the purpose of each of the provisions:

1. **Regulation 1** contains the citation and commencement arrangements. All provisions will come into force from 6 April 2010.
2. **Regulation 2** amends the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (SI 1996/1715) to remove the Devonport Royal Dockyard Pension Scheme from the list of those pension schemes which are exempt from the professional advisers requirements.
3. The Trust Deed of the Devonport Royal Dockyard gave the Ministry of Defence the right to nominate a trustee director to the board of trustees and required any changes to the pension scheme to be approved by the Ministry of Defence. The Deed also contained the stipulation that the Government Actuary should be appointed as actuary to the scheme. The Ministry of Defence has now relinquished its role of authority (held in the name of the Secretary of State for Defence) and its right to appoint a trustee director. It therefore follows that the trustees should be freed from the restriction to use the Government Actuary alone and be able to obtain actuarial advice from another suitably qualified actuary (as defined in the regulations). This regulation will also remove the exemption on the appointment of an auditor.
4. This change only affects the one scheme. The principal employer (Devonport Royal Dockyard Ltd), the parent group (Babcock International Group Ltd) and the Devonport Royal Dockyard Pension Trustees Ltd have previously been consulted on the proposal and no issues or objections arose.
5. **Regulation 3** and **Regulation 5** replace references to specific actuarial guidance notes adopted or prepared by the Board for Actuarial Standards (BAS) with more generic references to any relevant standards issued by the Board.
6. The BAS, an operating body of the Financial Reporting Council, is responsible for setting technical actuarial standards in the UK. It adopted a number of Guidance Notes (GNs) from the Actuarial Profession but is now developing a new set of Technical Actuarial Standards (TASs). Since each GN will not be replicated by a separate TAS, this amendment will change specific references to GN19 and GN49 in regulations to a more generic term that directs the reader to any relevant standards that the BAS has issued on the respective subjects.
7. **Regulation 3** replaces a reference in the Occupational Pension Schemes (Winding Up) Regulations 1996 (SI 1996/3126) to the BAS guidance note

“GN19” [Retirement Benefit Schemes – Winding-up and Scheme Asset Deficiency] with a general reference to “any relevant BAS standards”.

8. **Regulation 5** replaces a reference in the Occupational Pension Schemes (Scheme Funding) Regulations 2005 (SI 2005/3377) to the BAS guidance note “GN49” [Occupational Pension Schemes – Scheme funding matters on which advice of actuary must be obtained] with a general reference to any relevant standards issued by the BAS, which the actuary should have regard to when advising trustees and managers on the matters listed in section 230(1) of the Pensions Act 2004.
9. These are minor changes which are not expected to have any financial impact on the private, public or voluntary sectors. In undertaking their duties, occupational pension scheme actuaries will refer to any standards issued by the BAS which are relevant, rather than to a named guidance note.
10. **Regulation 4** makes an amendment to the Pension Sharing (Valuation) Regulations 2000 (SI 2000/1052) to correct certain cross references in these regulations.
11. This is a minor amendment which will have no impact on the private, public or voluntary sectors.
12. **Regulation 6** amends the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (SI 2006/349). Employers are required to consult with affected members or their representatives when certain significant changes (known as “listed changes”) are proposed to work-based pension arrangements. The amendment adds changing the definition of pensionable earnings to the listed changes on which an employer is required to consult when such a change is proposed to a defined benefit occupational pension scheme. Changing the definition of pensionable earnings can have a significant impact on pension benefits and members should have the opportunity to have their views heard about such a proposed change.
13. The impact on business of this additional listed change is negligible. The Government believes that most employers are already consulting affected members of their defined benefit occupational pension schemes when changes to the definition of pensionable earnings are proposed.

Consultation questions

14. We would welcome comments on:

- (a) the policy proposals;
- (b) the draft regulations; and
- (c) our assessment of the impact of the regulations.

Annex A: List of organisations consulted

Organisation
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 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
Federation of Small Businesses
Financial Ombudsman Service
Financial Services Authority
Government Actuary's Dept
HM Revenue & Customs
H M Treasury
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
Investment Management Association
Joint Working Group
Law Debenture
Law Society
Law Society of Scotland
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 Pensions Advisory Service
The Pensions Regulator
Trades Union Congress
Welsh Assembly
Wales Office
Which?

Annex B: Draft regulations

2010 No.

PENSIONS

**The Occupational and Personal Pension Schemes
(Miscellaneous Amendments) Regulations 2010**

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - - - *6th April 2010*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 47(5)(a), 73B(4)(a) and 124(1) of the Pensions Act 1995(a), sections 30 and 83(4) of the Welfare Reform and Pensions Act 1999(b) and sections 230(2) and (3), 259(1) and (2) and 318(1) of the Pensions Act 2004(c).

In accordance with section 120(1) of the Pensions Act 1995, section 83(11) of the Welfare Reform and Pensions Act 1999 and section 317(1) of the Pensions Act 2004, the Secretary of State has consulted with such persons as the Secretary of State considers appropriate.

Citation and commencement

1. These Regulations may be cited as the Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2010 and shall come into force on 6th April 2010.

Amendment of the Occupational Pension Schemes (Scheme Administration) Regulations 1996

2.—(1) The Occupational Pension Schemes (Scheme Administration) Regulations 1996(d) are amended as follows.

(2) In regulation 3 (exemptions from the professional advisers requirements)—

- (a) omit paragraph (1)(j), and
- (b) in paragraph (2)(b)(i)(e), omit “(j),”.

(a) 1995 c.26. Section 73B was inserted by section 270(1) of the Pensions Act 2004 (c.35). Section 124(1) is cited because of the meaning it gives to “prescribed” and “regulations”.

(b) 1999 c.30.

(c) 2004 c.35. Section 318(1) is cited because of the meaning it gives to “prescribed” and “regulations”. Section 230(3) was amended by section 17 of, and paragraph 9 of Schedule 5 to, and section 27(2) of, and Part 8 of Schedule 7 to, the Pensions Act 2007 (c. 22).

(d) S.I. 1996/1715.

(e) Regulation 3(2)(b) was substituted by S.I. 2005/2426.

Amendment of the Occupational Pension Schemes (Winding Up) Regulations 1996

3.—(1) The Occupational Pension Schemes (Winding Up) Regulations 1996(a) are amended as follows.

(2) For regulation 1(5) (interpretation)(b) substitute—

“(5) References in these Regulations to BAS standards are to standards on winding up and scheme asset deficiency adopted or prepared, and from time to time revised, by the Board for Actuarial Standards.”.

(3) In regulation 4(1)(d)(calculation of the value or amount of scheme assets and liabilities)(c), for “the guidance given in GN19, so far as that guidance applies for the purposes of these Regulations” substitute “any relevant BAS standards”.

Amendment of the Pension Sharing (Valuation) Regulations 2000

4.—(1) The Pension Sharing (Valuation) Regulations 2000(d) are amended as follows.

(2) In regulation 3 (calculation and verification of cash equivalents for the purposes of the creation of pension debts and credits)—

(a) in paragraph (a), for “regulations 4 and 5” substitute “regulation 4”, and

(b) in paragraph (b), for “regulations 6 and 7” substitute “regulations 5 and 7”.

Amendment of the Occupational Pension Schemes (Scheme Funding) Regulations 2005

5.—(1) The Occupational Pension Schemes (Scheme Funding) Regulations 2005(e) are amended as follows.

(2) For regulation 15 (guidance relating to actuarial advice)(f) substitute—

“Guidance relating to actuarial advice

15. When advising the trustees or managers of a scheme on any of the matters specified in section 230(1) of the 2004 Act, the actuary shall have regard to any standards adopted or prepared, and from time to time revised, by the Board for Actuarial Standards which are relevant to the matters specified in that section.”.

Amendment of the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006

6.—(1) The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006(g) are amended as follows.

(2) In regulation 8(3) (listed changes: occupational pension schemes), at the end insert—

“(e) to change, in whole or in part, the definition of pensionable earnings in the scheme rules which applies to members or members of a particular description.”.

Signed by the authority of the Secretary of State for Work and Pensions.

Name

(a) S.I. 1996/3126.

(b) Regulation 1(5) was substituted by S.I. 2007/60 and amended by S.I. 2008/2301.

(c) Regulation 4 was substituted by S.I. 2005/706 as amended by S.I. 2005/2159.

(d) S.I. 2000/1052.

(e) S.I. 2005/3377.

(f) Regulation 15 was substituted by S.I. 2007/60 and amended by S.I. 2008/2301.

(g) S.I. 2006/349.

Date

Parliamentary Under Secretary of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations makes various amendments to [five] Statutory Instruments about occupational and personal pension schemes.

Regulation 2 amends the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (S.I. 1996/1715) to remove the Devonport Royal Dockyard Pension Scheme from the list of those pension schemes which are exempt from the professional advisers requirements.

Regulation 3 replaces a reference in the Occupational Pension Schemes (Winding Up) Regulations 1996 (S.I. 1996/3126) to the Board for Actuarial Standards (BAS) guidance note “GN19” with a general reference to relevant BAS standards, which should be taken into account for the purposes of calculating the value or amount of scheme assets or liabilities on wind-up.

Regulation 4 makes an amendment to the Pensions Sharing (Valuation) Regulations 2000 (S.I. 1052/2000) to correct certain cross references.

Regulation 5 replaces a reference in the Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377) to the BAS guidance note “GN49” with a general reference to any relevant standards issued by the BAS, which the actuary should have regard to when advising trustees and managers on the matters listed in section 230(1) of the Pensions Act 2004 (c.35).

Regulation 6 amends the Occupational and Personal Pension Schemes (Consultation by Employer and Miscellaneous Amendment) Regulations 2006 (S.I. 2006/349) to include changing the definition of pensionable earnings in the scheme rules in the listed changes on which an employer is required to consult the affected members before making that change to an occupational pension scheme.

A full impact assessment has not been produced for this instrument as it has only a negligible impact on the private and voluntary sectors.