

The Pensions Regulator (Miscellaneous Amendment) Regulations 2009

Consultation on Draft Regulations

Department for Work and Pensions

December 2008

Contents

Foreword and Consultation Arrangements	Page 3
Commentary on the draft regulations	Page 6
The draft regulations (Annex A)	Page 8

Foreword

Preface

1. The Government is seeking views on the enclosed draft of the *Pensions Regulator (Miscellaneous Amendment) Regulations 2009*.

Who this consultation is aimed at

2. The Government welcomes contributions from employers and their representatives, the pensions industry, including pensions professionals, experts and advisers, trade unions and other pensions stakeholders.

Subject of consultation

3. This consultation concerns the Government's proposals to amend the prescribed period in which the Pensions Regulator can issue a Financial Support Direction; and removes certain events from the Regulator's notifiable events framework.

Scope of Consultation

4. This consultation applies to England, Wales and Scotland.

Duration of the Consultation

5. The consultation period begins on 15 December 2008 and runs until 6 February 2009.

6. Your comments on any aspect of the draft Regulations would be welcomed. This document is available on the Department's website at:
<http://www.dwp.gov.uk/consultations/2008/index.asp>

How to respond

7. Please send your consultation responses to:

By post:
Ian Garland
Department for Work and Pensions
The Adelphi (3rd Floor)
1-11 John Adam Street
London
WC2N 6HT
Tel: 020 7712 2115

Email: Ian.Garland@dwp.gsi.gov.uk

Please ensure your response reaches us by 6 February 2009.

8. 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.

Queries about the content of this document

9. Any queries about the subject matter of this consultation should be made to Ian Garland at the above address.

Freedom of information

10. 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.

11. 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.

12. If you want to find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact: Charles Cushing, Department for Work and Pensions, Information Policy Division, Central Freedom of Information Team, Adelphi 1-11 John Adam Street, London, WC2N 6HT charles.cushing@dwp.gsi.gov.uk or carol.smith14@dwp.gsi.gov.uk . Please note that Charles and Carol, cannot advise on this particular consultation exercise, only on Freedom of Information issues.

13. More information about the Freedom of Information Act can be found on the website of the Ministry of Justice Fol pages

The consultation criteria

14. The consultation is being conducted in line with the Government Code of Practice on Consultation - www.berr.gov.uk/files/file47158.pdf - 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.

15. The Government Code of Practice on Consultation recommends a minimum 12 week consultation period public consultations, unless there are good reasons for a limited consultation period. In this case, the issue is specialised and of interest to pensions stakeholders and our Minister has agreed that a limited consultation is appropriate.

Feedback on this consultation

16. 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:

Name: Roger Pugh
Address: DWP Consultation Coordinator,
Room 4F, Britannia House, 2, Ferensway, Hull HU2 8NF
Phone: 01482 609571
Fax: 01482 609658
Email: roger.pugh@dwp.gsi.gov.uk

17. 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.

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

19. The responses to the consultation will be published in due course in a report on our consultation website that will summarise the responses and the action that we will take as a result of them. We will aim to publish this summary within three months of the consultation closing.

Commentary on the draft regulations - Financial Support Directions

Background to Financial Support Directions (FSD)

20. A Financial Support Direction (FSD) is one of the two main anti-avoidance powers available to the Pensions Regulator. An FSD may be issued to an employer or someone who is connected or associated with the employer, requiring that the recipient put in place appropriate financial support for an occupational pension scheme, where the sponsoring employer of the scheme is a service company, or is insufficiently resourced. We have made proportionate changes to the anti avoidance powers of the Regulator in particular to deal with these risks. The Government recently strengthened the Regulator's anti-avoidance powers through the Pensions Act 2008 following a consultation exercise earlier this year.

21. The Government's response to the consultation on the amendments to the Regulator's powers, published on 20 October, explained that it had examined the extent of the look back period for FSDs. The prescribed period for issuing an FSD ends with the Regulator's determination (section 43(9) of the 2004 Act) but the process leading up to that point can be complex and involved, not only for the Regulator, who may not be notified of the relevant events or circumstances immediately. Concern was raised during the consultation that this can also have a potential impact on the recipient, who may wish to make representations in response to the warning notice and need time to prepare a case.

22. The Regulator has experienced difficulties in operation, as have relevant parties involved in this process. In some instances cases that might have come within the ambit of a FSD only came to the Regulator's attention several months or more after an association or connection was severed. This means that there was insufficient time to complete the process. This potentially affects members' benefits and could put the Pension Protection Fund (PPF) at risk. The Regulator's operational experience suggests that a period of 24 months is more suitable and the Government has accepted this view.

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

Regulation 1 contains the citation and commencement arrangements.

Regulation 2 (1) replaces regulation 5 of the principal regulations and stipulates that for the purposes of section 43(9) the prescribed period in which the Regulator can exercise the FSD power – the lookback period - is 24 months. It also provides for a staged increase in the lookback period from 12 to 24 months until the Transition Date of 6 April 2010 when the full 24 months will apply.

Commentary on the draft regulations - Notifiable Events

Background to Notifiable Events

24. The Pensions Regulator (Notifiable Events) Regulations 2005 provide for 13 notifiable events. The intention behind the notifiable events regime is to reduce the risk of

calls on the PPF or to scheme members by providing an early warning of insolvency or underfunding and so giving the Regulator the opportunity to intervene where appropriate.

25. The Notifiable Events framework was a new departure in UK pensions legislation and in the light of operating the regime over the past three and a half years, the Regulator has now assessed the events against a set of effectiveness criteria such as the cost to the provider, the cost to the Regulator, the degree of risk and the availability of the information from another source. It has also looked at the operational value of the information contained in reports made to the Regulator. Although the Regulator has concluded that the regime is broadly sound as it stands, three events have proved to be of little or no value to the Regulator or the PPF. The Department agrees with the Regulator's conclusion that these events should be removed from the framework.

26. The events in question are:

- Two or more changes in key scheme post: The Government accepts that frequent changes in the holders of these posts can indicate weakening scheme governance, but they are not risks in themselves.
- Credit rating change: this event covers information that is useful for the Regulator but there are alternative sources of information available to the Regulator that can provide the same information.
- Changes in key employer posts: frequent changes in senior management, such as chief executive or finance director, could indicate that the company is in financial difficulty or that there is an imminent sale or purchase of the company or its subsidiary, which could impair the company's ability to support the scheme. But such changes are not a risk in themselves. The Regulator's experience of this event indicates that too many routine staff changes have been notified causing unnecessary work. Corporate transactions and restructuring may be made known directly to the Regulator through other notifiable events, clearance applications, whistleblowing reports and routine monitoring of industry sectors, which obviates the need for the indirect route.

27. The following summary explains the purpose of the provision in the regulations:

Regulation 3 removes the three events mentioned in paragraph 27 above.

Impact assessment

28. The changes in these regulations will have a negligible impact on the costs to business, charities and the voluntary sector. The changes to the Notifiable Events framework are deregulatory and would have a cost saving impact. The regulations are not, therefore, accompanied by a impact assessment.

STATUTORY INSTRUMENTS

2008 No.

PENSIONS

The Pensions Regulator (Miscellaneous Amendment) Regulations 2009

<i>Made</i> - - - -	2009
<i>Laid before Parliament</i>	2009
<i>Coming into force</i> - -	2009

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 43(9), 69(2), 315(2) and 318(1) of the Pensions Act 2004(a).

In accordance with section 317(1) of that Act the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

Citation and commencement

1. These Regulations may be cited as the Pensions Regulator (Miscellaneous Amendment) Regulations 2008 and shall come into force on[].

Amendment of the Pensions Regulator (Financial Support Directions etc.) Regulations 2005

2. —(1) The Pensions Regulator (Financial Support Directions etc.) Regulations 2005(b) are amended in accordance with this regulation.

(2) For regulation 5 (prescribed period), substitute—

“Prescribed period

5.—(1) Subject to paragraph (2) below, the period prescribed for the purposes of section 43(9) (financial support directions – prescription of relevant time) is a period of 24 months.

(2) Until [6 April 2010] (the “Transition Date”), the period at paragraph (1) above is reduced by a period equal to the difference between 24 months and the number of complete months then remaining until the Transition Date.”.

(a) 2004 c.35; section 318(1) is cited because of the meaning it gives to “prescribe” and “regulations”.

(b) S.I. 2005/2188; relevant amending instruments are S.I. 2005/2224 and 2008/731.

Amendment of the Pensions Regulator (Notifiable Events) Regulations 2005

3. —(1) The Pensions Regulator (Notifiable Events) Regulations 2005⁽¹⁾ are amended in accordance with this regulation.

(2) In regulation 2 (notifiable events)—

(a) omit paragraph (1)(b); and

(b) omit paragraphs (2)(e) and (g).

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

	<i>Name</i>
	Minister of State,
Date	Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Pensions Regulator (Financial Support Directions etc.) Regulations 2005 (S.I. 2005/2188) and the Pensions Regulator (Notifiable Events) Regulations 2005 (S.I. 2005/900).

Regulation 1 provides for citation and commencement.

Regulation 2 amends the Pensions Regulator (Financial Support Directions etc.) Regulations 2005 by substituting regulation 5 of those Regulations with a new provision which specifies the period within which the Pensions Regulator may resolve to issue a Financial Support Direction under section 43(2) of the Pensions Act 2004 (c.35).

Regulation 3 amends the Pensions Regulator (Notifiable Events) Regulations 2005 by omitting certain provisions of regulation 2 of those Regulations which concern the reporting of certain scheme and employer-related events to the Pensions Regulator.

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

⁽¹⁾ S.I. 2005/900; the relevant amending instrument is S.I. 2005/2113.