

Pensions

Consultation on Draft Regulations

**The Pension Sharing (Pension
Credit Benefit) (Amendment)
Regulations 2008**

DWP Department for
Work and Pensions

May 2008

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The Pension Sharing (Pension Credit Benefit) (Amendment) Regulations 2008

Preface

Who this consultation is aimed at

- 1 This consultation is aimed mainly at pension scheme administrators, family lawyers and people who have benefited from a pension share on divorce, or on dissolution of a civil partnership.^a

Subject of consultation

- 2 This consultation concerns the rules for the payment of pension credit benefit arising from a pension share on divorce.
- 3 The Government in its response to the consultation on the Deregulatory Review of Private Pensions gave a commitment to abolish safeguarded rights (rights derived from contracting-out rights on pension sharing) and to look at other aspects of pension sharing on divorce legislation with a view to aligning the payment of pension credit benefits with the rules that apply to private and occupational pensions.
- 4 Legislation to abolish safeguarded rights is in the Pensions Bill and the draft Pension Sharing (Pension Credit Benefit) (Amendment) Regulations 2008 make provisions which will align the rules for the payment of pension credit benefit with other pension rights held in occupational pension schemes. It is proposed that these regulations will come into force on 1 October 2008. This will enable pension credit benefit members to have the same choices as other occupational pension scheme members on when and how to draw their pension.

Purpose of the consultation

- 5 This consultation seeks views on the draft Pension Sharing (Pension Credit Benefit) (Amendment) Regulations 2008. In particular we wish to know whether implementing the regulations in October 2008 will create any difficulties and whether there will be any costs associated with implementing the regulations.

Scope of consultation

- 6 This consultation applies to England, Wales and Scotland.

^a In this document references to divorce will also apply on nullity or dissolution of a civil partnership.

Duration of the consultation

7 The consultation period begins on 29 May 2008 and runs until 21 July 2008.

How can you respond to this consultation?

8 Please send your consultation responses to:

Dave Nicks
Department for Work and Pensions
Private Pensions Policy
3rd Floor
Adelphi
1-11 John Adam Street
London
WC2N 6HT

Phone: 020 7962 8828

or:

E-mail: dave.nicks@dwp.gsi.gov.uk

Please ensure your response reaches us by 21 July 2008.

9 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 a larger 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

10 Any queries about the subject matter of this consultation should be made to:

Dave Nicks
Department for Work and Pensions
Private Pensions Policy
3rd Floor
Adelphi
1-11 John Adam Street
London
WC2N 6HT

Phone: 020 7962 8828

or:

E-mail: dave.nicks@dwp.gsi.gov.uk

- 11 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.

Freedom of information

- 12 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.
- 13 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 purpose 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.
- 14 If you want to find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact:

Name: Charles Cushing
Address: Department for Work and Pensions, Adjudication and Constitutional Issues, Information Policy Division, Freedom of Information Unit, 1-11 John Adam Street, London WC2N 6HT
Phone: 0207 962 8581
Email: charles.cushing@dwp.gsi.gov.uk

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

The consultation criteria

- 15 The Cabinet Office Code of Practice on Consultation recommends a minimum 12 week consultation period for public consultations, unless there are good reasons for a limited consultation period.
- 16 The intention to consider alignment of the rules on payment of pension credit benefit with those applying to private and occupational pensions more generally was highlighted in the Government's response to the consultation on the Deregulatory Review. As the issue is highly specialised and there are

a limited number of interested stakeholders, the Minister has agreed that a limited consultation is appropriate.

Feedback on this consultation

- 17 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: Department for Work and Pensions' Consultation Coordinator,
Room 2A, Britannia House, 2, Ferensway, Hull HU2 8NF
Phone: 01482 609571
Fax: 01482 609658
Email: roger.pugh@dwp.gsi.gov.uk

- 18 In particular, please tell us if you feel that the consultation does not satisfy these criteria. Please also make any suggestions as to how the process of consultation could be improved further.
- 19 If you have any requirements that we need to meet to enable you to comment, please let us know.
- 20 The responses to the consultation will be published by 31 August 2008 in a report on our consultation website that will summarise the responses and the action that we will take as a result of them.

Policy: Aligning the payment rules

- 21 The Finance Act 2004 aligned the payment rules for occupational and personal pension schemes from 6 April 2006. Such pensions can be taken at age 50 (55 from April 2010), part of which can be commuted into a tax free lump sum known as a pension commencement lump sum.
- 22 Regulations currently restrict the circumstances when pension credit benefit held in occupational pension schemes can be paid before normal benefit age. These restrictions do not apply to pension credit benefit from personal pensions.
- 23 The proposed amendments to the Pension Sharing (Pension Credit Benefit) Regulations 2000 will bring the payment rules for pension credit benefit in line with the tax rules and also with the rules on preserved benefits in regulations 5 and 8(2) of the Occupational Pension Schemes (Preservation of Benefits) Regulations 1991 (SI 1991/167). This would enable pension credit benefit held in an occupational pension scheme to be paid from age 50 (55 from 2010) or where ill health permanently prevents a pension credit member from following his/her occupation with a pension commencement lump sum. The amendments would also enable payment of certain lump sums before normal benefit age (e.g. pension commencement lump sum).
- 24 These amendments will, alongside the abolition of safeguarded rights (which is subject to Parliamentary approval) allow pension credit benefit members the same choices as other private pensions scheme members to decide when and how to draw their pension.
- 25 We have decided not to carry forward cross references to the Pension Sharing (Safeguarded Rights) Regulations 2000 or to make consequential amendments to those regulations, because the Safeguarded Rights Regulations will be revoked once safeguarded rights are abolished by the Pensions Bill.

Commentary on draft regulations

Regulation 1

- 1 A general provision setting out the date the regulations are to come into force and defining the Pension Sharing (Pension Credit Benefit) Regulations 2000 (SI 2000/1054) as the principal Regulations.

Regulation 2

- 2 This regulation removes the definition of “incapacity” from the principal regulations. This is consequential to the substitution made by regulation 4.

Regulation 3

- 3 This regulation substitutes regulations 3 and 4 of the principal Regulations with a new regulation which will allow pension credit members of occupational pension schemes to take their pension credit benefit as a lump sum subject to certain rules in section 166(1) of the Finance Act 2004. This will allow these pension credit members the same choices as other pension scheme members.
- 4 The existing regulation 3 cross refers to regulation 9 of the Pension Sharing (Safeguarded Rights) Regulations 2000. Even though this cross reference has been removed, until safeguarded rights are abolished regulation 9 will still have to be complied with.

Regulation 4

- 5 This regulation amends regulation 7 of the principal Regulations to
 - enable pension credit benefit to be paid before normal benefit age when either the pension credit member satisfies the ill-health condition (as defined by the Finance Act 2004) or has attained normal minimum pension age as defined by that Act (currently age 50 and 55 from 5 April 2010) and
 - provide that pension credit benefit can be paid without that person’s consent where the person’s earning capacity is destroyed or impaired by physical or mental infirmity and the person is incapable of making a decision for themselves.

Regulation 5

- 6 This regulation amends regulation 13 of the principal Regulations consequential to the substitution made by regulation 3.

Regulation 6

- 7 This regulation tidies up a cross reference in regulation 22 of the principal regulations.

Consultation questions

We would welcome comments on:

- (a) the policy proposals,
- (b) the draft regulations,
- (c) whether implementing the regulations from October 2008 will create any difficulties and if this is not possible when would implementation be possible?

and

- (d) whether the regulations will impose any additional costs or provide savings for pension schemes or employers. If so, an indication of those costs or savings would be welcome?

2008 No.

PENSIONS

**The Pension Sharing (Pension Credit Benefit) (Amendment)
Regulations 2008**

<i>Made</i>	- - - -	2008
<i>Laid before Parliament</i>		2008
<i>Coming into force</i>	- -	2008

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 101C(2), 101D(2)(b) and (4)(b), 101E(1)(c), 101F(6)(b) and 181(1) of the Pension Schemes Act 1993(a).

In accordance with section 185(1) of that Act(b) the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Sharing (Pension Credit Benefit) (Amendment) Regulations 2008 and shall come into force on 1st October 2008.

(2) In these Regulations “the principal Regulations” means the Pension Sharing (Pension Credit Benefit) Regulations 2000(c).

Amendment of regulation 1 of the principal Regulations

2. In regulation 1(2) of the principal Regulations (citation, commencement and interpretation), omit the definition of “incapacity”.

Substitution of regulations 3 and 4 of the principal Regulations

3. For regulations 3 and 4 of the principal Regulations, substitute—

(a) 1993 c.48; sections 101C, 101D, 101E and 101F of the Pension Schemes Act 1993 were inserted by section 37 Welfare Reform and Pensions Act 1999 (c.30). Section 101E(1) was amended by paragraph 148 of Schedule 27 to the Civil Partnership Act 2004 (c.33) and section 101F(2) was amended by article 122 of S.I. 2001/3649. Section 181(1) is cited because of the meaning it gives to “prescribe” and “regulations”.

(b) Section 185(1) was amended by paragraph 46 of Schedule 3, and paragraph 80(a) of Schedule 5, to the Pensions Act 1995 (c.26).

(c) S.I. 2000/1054; relevant amending instruments are S.I. 2000/2691, 2001/3649, 2003/1727, 2005/3377, 2006/744, 2006/778, 2007/60, 2007/1930, 2008/1050.

“Pension credit benefit in lump sum form

3. For the purposes of section 101C(2) of the 1993 Act (basic principle as to pension credit benefit), the circumstances in which the trustees or managers of a scheme may provide for payment of pension credit benefit in the form of a lump sum before normal benefit age are those which permit payment of a lump sum in accordance with paragraph (a), (b), (e), (f) or (g) of the lump sum rule in section 166(1) of the Finance Act 2004(a) (lump sum rule).”.

Amendment of regulation 7 of the principal Regulations

4. In regulation 7 of the principal Regulations (early retirement or deferred retirement)—
- (a) for paragraph (3), substitute—

“(3) The benefit referred to in paragraph (2) must not be payable before normal benefit age except where the person entitled to that benefit has either—

 - (a) met the ill-health condition specified in paragraph 1 of Schedule 28 to the Finance Act 2004 (registered pension schemes – defined benefits and money purchase arrangements – ill-health condition) immediately before that person became entitled to that benefit; or
 - (b) attained normal minimum pension age as defined in section 279 of that Act (other definitions).”;
 - (b) in paragraph (4)(a), for “incapacity or serious ill health”, substitute “physical or mental infirmity”; and
 - (c) omit paragraph (6).

Amendment of regulation 13 of the principal Regulations

5. In regulation 13 of the principal Regulations (conditions on which pension credit benefit secured by insurance policies and annuity contracts may be commuted) for “if it satisfies the requirements of regulation 3 or 4 (commutation of the whole of pension credit benefit, or commutation of part of pension credit benefit)”, substitute “in the circumstances described by regulation 3 (pension credit benefit in lump sum form)”.

Amendment of regulation 22 of the principal Regulations

6. In regulation 22(1) of the principal Regulations (requirements to be met by an eligible scheme), omit “any of sub-paragraphs (a) to (e) of” and “(a), (c) or (e)”.

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

Date

Name
Minister of State,
Department for Work and Pensions

(a) 2004 c.12.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Pension Sharing (Pension Credit Benefit) Regulations 2000 (S.I. 2000/1054) (the “principal Regulations”).

Regulation 1 provides for citation, commencement and interpretation.

Regulation 2 amends regulation 1 of the principal Regulations in order to reflect the changes made by regulations 3 and 4 of these Regulations.

Regulation 3 substitutes regulations 3 and 4 of the principal Regulations with a new provision which specifies the circumstances in which the pension credit benefit may be commuted.

Regulation 4 amends regulation 7 of the principal Regulations to allow benefits which are different from pension credit benefit to be paid before normal benefit age where the person entitled to benefit is in ill health or has reached normal minimum pension age. It also makes amendment to the circumstances in which the trustees or managers are able to pay benefit without the consent of the person entitled to the benefit.

Regulation 5 amends regulation 13 of the principal Regulations in order to reflect the changes made by regulation 3 of these Regulations.

Regulation 6 amends regulation 22 of the principal Regulations by updating references to certain provisions of the Finance Act 2004.

An Impact Assessment has not been produced for this instrument as it has no impact on the costs of business, charities or voluntary bodies.

ANNEX A

List of Consultees

Association of British Insurers
Association of Consulting Actuaries
Association of Pension Lawyers
The Actuarial Profession
Civil Service Pensioners Alliance
Confederation of British Industry
Department for Social Development Northern Ireland
Financial Services Authority
The Law Society
Law Society of Scotland
HM Revenue & Customs
HM Treasury
Ministry of Justice
National Assembly of Wales
National Association of Pension Funds
The Pensions Advisory Service
Pensions Management Institute
Pensions Ombudsman
Pension Protection Fund
The Pensions Regulator
Resolution
Scottish Executive
Scottish Family Law Society
Society of Pension Consultants
TUC