

EXPLANATORY MEMORANDUM TO
THE PENSION PROTECTION FUND (REVIEWABLE MATTERS AND
REVIEW AND RECONSIDERATION OF REVIEWABLE MATTERS)
(AMENDMENT) REGULATIONS 2006

2006 No. 685

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 These Regulations insert additional reviewable matters into Schedule 9 (reviewable matters) to the Pensions Act 2004 (c.35) and amend the Pension Protection Fund (Reviewable Matters) Regulations 2005 (Statutory Instrument 2005/600) and the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005 (Statutory Instrument 2005/669).
 - 2.2 Schedule 9 to the Act lists matters that are reviewable. These are known as reviewable matters. Any disputes about a reviewable matter will be dealt with by a two stage PPF internal process. If this process does not resolve the matter to the satisfaction of the applicant, the matter can be referred to the independent PPF Ombudsman.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 A body corporate known as the Board of the Pension Protection Fund (PPF) is established by section 107 of the Pensions Act 2004. The Pension Protection Fund Ombudsman is a new office, established by section 209(1) of the Pensions Act 2004.
 - 4.2 Four further reviewable matters have been identified which need to be added. Some of these were identified as other regulations were being prepared. Supporting amendments are also made to the relevant Regulations to adjust the list of interested persons i.e. those people who may seek a review and also prescribe the period during which the Board of the PPF's *failure* to reach a decision must occur under regulation 6(2) of the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006.

- 4.3 Accordingly, these provisions extend the list of areas that may be reviewed by the Board of the Pension Protection Fund and ultimately the PPF Ombudsman by:
- amending Schedule 9 to the Pensions Act 2004 which lists the matters that may be reviewed;
 - amending the Schedule to the Pension Protection Fund (Reviewable Matters) Regulations 2005 (Statutory Instrument 2005/600);
 - amending the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005 (Statutory Instrument 2005/669).

5. Extent

- 5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

The Minister of State for Pensions Reform, Stephen Timms, has made the following statement regarding Human Rights:

In my view the provisions of the Pension Protection Fund (Reviewable Matters and Review and Reconsideration of Reviewable Matters) (Amendment) Regulations 2006 are compatible with the Convention rights.

7. Policy background

- 7.1 Schedule 9 to the Pensions Act 2004 lists the Board of the Pension Protection Fund matters that are reviewable. The attached regulations amend and modify Schedule 9 and supporting regulations in respect of a number of further matters that have been identified during the course of preparing regulations made under the Pensions Act 2004.
- 7.2 The new reviewable matters apply where:
- The Board of the PPF, on receipt of a notice from an insolvency practitioner under section 120, is required by the Pension Protection Fund (Provision of Information) Regulations 2005 (Statutory Instrument 2005/674) to provide information to the insolvency practitioner and the trustees or managers of a scheme. Provision of this information or the failure to provide such information needs to be reviewable. The Board of the PPF is also required to provide information in connection with applications made by the trustees or managers of an eligible scheme under section 129(1) or notices given by the Regulator under section 129(4). Failure to provide information following an application or a notice is subject to review.
 - Any step is taken by the Board of the PPF under section 163(4)(a) – about the amount of an overpayment to a scheme member and the recovery from future compensation payments of an overpayment

that has occurred during an assessment period and that is outstanding after the Board has assumed responsibility for the scheme.

- Determinations are made by the Board of the PPF under Regulations relating to section 163(6) – the circumstances where the Board is not required to recover overpaid scheme benefits, or the failure to make such determinations.
- Determinations are made by the Board of the PPF under Regulations relating to the recovery of overpayments in section 168 – whether such recovery would cause hardship and whether an overpayment may be recovered from a person’s entitlement as adjustments to future compensation payments.

7.3 Before the Secretary of State makes any regulations by virtue of the Pensions Act 2004 or the Pensions Act 1995, he may be required to consult such persons as he considers appropriate. In accordance with section 317(1) of the Pensions Act 2004 an eight week public consultation on these regulations has taken place. The document was available on the DWP website and circulated to a range of key organisations (Annex A). One consultation response queried whether the right to a review should also apply to survivors in a particular instance. This was always the policy intent but a small change has been made for clarity. Minor drafting amendments have been made where appropriate.

8. Impact

8.1 A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business, charities or voluntary bodies.

8.2 This instrument has no impact on the public sector.

9. Contact

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Consultation List

Association of British Insurers
Association of Consulting Actuaries
Association of Pension Lawyers
Association of Pensioner Trustees
Auditing Practices Board
Better Regulation Executive
British Chamber of Commerce
Confederation of British Industry
Consumers Association
Council on Tribunals
Engineering Employers Federation
Federation of Small Businesses
Financial Services Authority
HM Treasury (MOCOP)
HM Revenue and Customs
Industry Wide Pension Schemes Group
Institute of Chartered Accountants in England and Wales
Institute of Chartered Accountants in Scotland
Institute of Directors
Investment Managers' Association
NAPF
National Consumers Council
Office of Fair Trading
Pensions Ombudsman
Pension Protection Fund Ombudsman
Policy and Legal Division DHSS Northern Ireland
Small Business Service
The Association of Corporate Trustees
The Faculty and Institute of Actuaries
The Law Society of England and Wales
The Law Society of Scotland
The Pensions Management Institute
The Pensions Protection Fund
The Pensions Regulator
The Scottish Executive
The Society of Pension Consultants
The Welsh Assembly
TPAS (the Pensions Advisory Service)
Trades Union Congress

