

EXPLANATORY MEMORANDUM TO
THE PENSION PROTECTION FUND (MISCELLANEOUS AMENDMENTS)
(NO. 2) REGULATIONS 2012

2012 No. 3083

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. **Purpose of the instrument**
 - 2.1 The purpose of this instrument is to correct an error in the procedural method used to make the Pension Protection Fund (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/1688), those Regulations can be found at: <http://www.legislation.gov.uk/ukxi/2012/1688/contents/made>. This instrument will be issued free of charge to all known recipients of those Regulations.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 Following scrutiny of the Pension Protection Fund (Miscellaneous Amendments) Regulations 2012 the Committee has reported the Department for Work and Pensions (Ninth Report of Session 2012-13), for making those Regulations without a draft of them having been laid before, and approved by a resolution of, each House of Parliament (the affirmative resolution procedure). In a Memorandum to the Committee dated 23 October 2012 the Department acknowledged with regret that this was an error and apologised for it.
 - 3.2 This instrument implements the Committee's recommendation to correct the error by severing the original instrument into two and re-making those parts that are subject to the negative resolution procedure. The remaining part of the original instrument that is subject to the affirmative resolution procedure will be corrected in a future instrument as soon as possible.
4. **Legislative Context**
 - 4.1 The Pension Protection Fund (Miscellaneous Amendments) Regulations 2012 included a minor consequential amendment to the Pension Protection Fund (Reference of Reviewable Matters to the PPF Ombudsman) Regulations 2005 which are subject to the affirmative resolution procedure under the Pensions Act 2004.
 - 4.2 Where an instrument includes changes to any regulations that are subject to the affirmative resolution procedure then the instrument must follow this process and not be made unless a draft of it has been laid before Parliament and approved by each House.
 - 4.3 This instrument corrects the error in part by revoking and remaking those regulations included in the Pension Protection Fund (Miscellaneous Amendments) Regulations 2012 that may come into force without being

approved by both Houses of Parliament. (under the negative resolution procedure)

- 4.4 This instrument also provides transitional protection to ensure that anything done under the legislation amended by the Pension Protection Fund (Miscellaneous Amendments) Regulations 2012 up to the date this instrument comes into force, will continue to have effect under this instrument. This includes applications or notifications received or issued by the Board of the Pension Protection Fund over that period.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The Pension Protection Fund (Miscellaneous Amendments) Regulations 2012 amends existing secondary legislation where reference is made to valuations under section 143 of the Pension Act 2004, to detail how the Board will determine the funding position of an eligible scheme without obtaining an actuarial valuation. Those Regulations also make changes to existing secondary legislation where it refers to applications for reconsideration for entry to the Pension Protection Fund to detail how a scheme is to demonstrate it is unable to provide a protective benefits quotation, and what alternative information will be required. A protected benefits quotation is a quote from an insurance provider of the costs of buying an annuity policy to secure scheme members' benefits at the level of compensation they would receive if the scheme transferred to the Pension Protection Fund.

7.2 This instrument is purely corrective and mirrors the policy changes made by the Pension Protection Fund (Miscellaneous Amendments) Regulations 2012 with the exception of those changes made to the Pension Protection Fund (Reference of Reviewable Matters to the PPF Ombudsman) Regulations 2005 which will be corrected by an instrument subject to the affirmative resolution procedure as soon as possible.

- *Consolidation*

7.3 Consolidation of the regulations included within this instrument will be included in due course in the Department's "The Law Relating to Social Security" (the Blue Volumes), which are available at no cost to the public on the internet at: <http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/>

8. Consultation outcome

This instrument does not make any changes to the policy. Therefore no consultation is required.

9. Guidance

9.1 The Department can provide advice on the policy behind the Pension Protection Fund (Miscellaneous Amendments) Regulations 2012 through either written or verbal correspondence.

9.2 The Board provides guidance and advice on the operational processes used to implement the changes made by Pension Protection Fund (Miscellaneous Amendments) Regulations 2012. This can be found on the Pension Protection Fund website: <http://www.pensionprotectionfund.org.uk>.

10. Impact

10.1 This instrument corrects a procedural error and there is no impact on business or the public sector.

10.2 A full impact assessment has not been prepared for this instrument. However, an assessment of the impact on the introduction of funding determinations was included as part of the impact assessment for the Pensions Act 2011. The relevant extract from that impact assessment accompanies this memorandum; the figures remain up to date.

11. Regulating small business

11.1 This instrument applies to defined benefit schemes and hybrid occupational pension schemes that are sponsored by small business, and the impact on those schemes affected by these changes is beneficial though small.

12. Monitoring & review

12.1 The outcome of removing the requirement for a section 143 valuation is that the time taken for some schemes to be assessed to ascertain whether they are eligible to transfer to the Pension Protection Fund will be shorter, reducing costs for the scheme and the Fund. We will therefore monitor business gains against the reduction in the average time spent in the assessment process.

12.2 The Department and the Board will review the policy and operational impact of these changes on an ongoing basis as part of the Department's oversight of the Board's operations.

13. Contact

Alison Humberstone at the Department for Work and Pensions Tel: 0207 4495132 or email: Caxton.ppf-responses@dwp.gsi.gov.uk can answer any queries regarding the instrument.

PENSIONS BILL 2011 – IMPACTS – ANNEX D: PENSION PROTECTION MEASURES

| | | |
|---|---|--|
| Title: Pension Protection Measures for the Pensions Bill Lead department or agency: Department for Work and Pensions Other departments or agencies: Pension Protection Fund The Pensions Regulator | Impact Assessment (IA) | |
| | IA No: DWP-PPF/TPR | |
| | Date: 09/11/2010 | |
| | Stage: Final | |
| | Source of intervention: Domestic | |
| | Type of measure: Primary legislation | |
| Contact for enquiries: Simon Capey - 020 7449 7048 | | |

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?
 The Bill makes a number of mainly minor amendments to legislation that governs the operation of the Pension Protection Fund (PPF) and the Pensions Regulator (tPR). The one substantive measure is the change of basis for indexation of pension compensation. The Government is intervening to amend legislation in the light of live running of PPF and tPR since these bodies commenced operations in April 2005, and to complement wider changes to indexation of pensions.

What are the policy objectives and the intended effects?
 The objectives: (1) to change certain operational requirements on the PPF with the intention of learning from live running and improving the overall operational activities; (2) to change rules on pension compensation so that people may defer the date from which their compensation starts to be paid, and so that certain rights due as a result of a pension sharing arrangement following a divorce etc are revalued before compensation is paid; (3) to bring the indexation of pension compensation into line with the Government's wider changes to the indexation of pensions; (4) to ensure the time periods for representations relating to the Pensions Regulator's anti-avoidance measures work fairly for business in cases with inherent complexity, such as large multi-national or

What policy options have been considered? Please justify preferred option (further details in Evidence Base)
 For all the amendments except the one to complement the change from RPI to CPI, the other option considered was to leave the legislation as now.
PPF measures: the preferred option was chosen as live running of the PPF since April 2005 has shown that the amendments would improve operational effectiveness and enhance the pension compensation paid.
Indexation of pension compensation: the other option was to continue to index pension compensation in line with RPI. The preferred option was chosen as to index pension compensation in line with RPI would, once the Government's other changes have been implemented, be inconsistent with the indexation of pensions.
Time periods relating to anti-avoidance measures: it was considered whether to extend the current

| | |
|--|---|
| When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved? | It will be reviewed on an ongoing basis as part of the DWP's oversight of the PPF's and tPR's operations. |
| Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review? | No |

SELECT SIGNATORY Sign-off For final proposal stage Impact Assessments:

PENSIONS BILL 2011 – IMPACTS – ANNEX D: PENSION PROTECTION MEASURES

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.



Signed by the responsible Minister:..... Date: 10 November 2010

PENSIONS BILL 2011 – IMPACTS – ANNEX D: PENSION PROTECTION MEASURES
2. THE SPECIFIC LEGISLATIVE PROPOSALS

PPF Technical Measures: Amendments of Part 2 of and Schedule 7 to the Pensions Act 2004 [and Schedule 8 to the Pensions Act 2008]

The Bill amends legislation around the PPF in the light of live running since April 2005.

The intention behind the changes is to:

- reduce unnecessary bureaucracy – four of the amendments remove requirements:
 - on when certain valuations must be carried out;
 - on the evidence a scheme must provide if it applies for reconsideration when it has not transferred into the PPF;
 - to make regulations on the form and content of certain determination notices made by the PPF Board; and
 - the minimum length of an assessment period;
- reduce the time and resources used on an activity by removing the requirement to take three statutory instruments through the affirmative procedures in Parliament;
- clarify how certain pension benefits flow through to pension compensation; and
- enhance the rules on pension compensation by allowing people defer the date from which their pension compensation starts to be paid and including revaluation in the calculation of pension compensation for certain pension credit members.

Savings

The I.A. shows that savings of about £500,000 per year will be achieved from the changes. This figure has been arrived at following feedback from the Pension Protection Fund. This figure is primarily made up of estimated savings of £15-20k per s143 test (the test that establishes whether a scheme's funding level means it is drawn into the PPF) for very poorly funded schemes/overfunded schemes. In addition, shortening the minimum assessment period would reduce the period over which fees are incurred, and the deferral measures would bring some savings.

Whilst there is no specific end-date for these savings which can be applied, it is not reasonable to suggest they will apply over extended time-frames. For example, savings on administration made due to changes in the 1980s are unlikely to influence the level of administrative expenditure today. So whilst it could be argued that the savings should be calculated over a different time period as the current choice is somewhat arbitrary, we believe 10 years is a reasonable period to examine and quantify the cost savings over.

On this basis the Net Present Value (NPV) of the £500,000 saving for 10 years is £4m (rounded to nearest million).

PENSIONS BILL 2011 – IMPACTS – ANNEX D: PENSION PROTECTION MEASURES

A. Scheme valuations completed before transfer into the PPF

Background

Section 143 of the Pensions Act 2004 requires a valuation of a scheme's assets and protected liabilities to be carried out before the PPF Board may determine whether or not a scheme should transfer into the PPF. A scheme's protected liabilities are basically the cost of providing benefits equivalent to pension compensation, any non-pension liabilities of the scheme and the estimated cost of winding up the scheme.

Why consider change?

The PPF Board has asked that the requirement to undertake a valuation in all cases is removed, as experience has shown that in a high proportion of cases it is clear from existing information – for example other valuations provided to the PPF in order for it to calculate a scheme's pension protection levy - whether or not a scheme would transfer into the PPF.

Options considered

Other than to leave the legislation as now, no other options were considered.

Chosen option

The Bill removes the requirement in section 143 of the Pensions Act 2004 for a valuation of a pension scheme's assets and protected liabilities to be carried out before the PPF Board may determine whether or not a scheme should transfer into the PPF.

The amendments provide the PPF Board with the power to determine in some cases that a valuation is not required because it can use other information it has (for example, a valuation undertaken for the purposes of calculating a scheme's pension protection levy) in order to determine whether or not the scheme would transfer into the PPF. The amendments also add a requirement to Schedule 9 to the Pensions Act 2004 so that the new determinations made by the PPF Board are reviewable matters (decisions that the PPF Board is required to review if requested to do so by an interested party such as the trustees of a scheme).

Ministers chose this option because it would reduce unnecessary bureaucracy for the PPF Board.

Impacts

The change in legislation is not intended to change the outcome of an assessment period for schemes or members. The change is intended to reduce unnecessary bureaucracy and provide the PPF Board with the ability to provide for a faster flow of schemes through an assessment period. Which in turn would provide increased certainty and comfort for members (i.e. because the decision on whether to transfer a scheme into the PPF could be made earlier) and reduce costs. Whilst in assessment, schemes incur investment, advisory, administration and actuarial fees. Once schemes transfer to the PPF, many of these activities will entirely cease whilst others (e.g. administration and investment) can be carried out at a reduced rate, as they benefit from economies of scale.

The change contributes to some relatively minor savings – PPF estimate less than £500,000 a year in total from all the PPF technical measures – in administration costs for both schemes in an assessment period and the PPF.

B. Reconsideration of schemes that have not transferred into the PPF

Background

If a scheme does not transfer into the PPF the scheme's trustees or managers may apply for reconsideration if they think that since the point at which a scheme's assets and protected liabilities are valued (the start of the assessment period) the scheme has become further underfunded. Under section 151 of the Pensions Act 2004 the application must include a "protected benefits quotation".

Why consider change?

PENSIONS BILL 2011 – IMPACTS – ANNEX D: PENSION PROTECTION MEASURES

The PPF Board has advised that many schemes especially small ones find it impossible to obtain a quote. The PPF Board has asked for the requirement for a "protected benefits quotation" to be removed.

Options considered

Other than to leave the legislation as now, no other options were considered.

Chosen option

The Bill removes the requirement in section 151 of the Pensions Act 2004 that an application for reconsideration must include a "protected benefits quotation". The trustees or managers of a scheme that has not transferred into the PPF may apply for reconsideration by the PPF Board if they think that their scheme has become further underfunded.

The amendments provide the PPF Board with a power to determine whether or not a scheme should transfer into the PPF, after an application for reconsideration, using any information the PPF Board has available and any additional information it may request.

Ministers chose this option because it would reduce unnecessary bureaucracy for the PPF Board.

Impacts

The change is intended to reduce unnecessary bureaucracy as the inability to get a protected benefits quotation at all and/or in the prescribed format hinders the assessment and reconsideration process for schemes and therefore creates uncertainty, costs and administrative issues for the PPF Board, schemes and their members. The change in legislation is intended to remove those uncertainties, costs and administrative issues.

The change contributes to some relatively minor savings – PPF estimate less than £500,000 a year in total from all the PPF technical measures – in administration costs for both schemes in an assessment period and the PPF.

C. The content of certain determination notices made by the PPF

Background

Section 152 of the Pensions Act 2004 deals with reconsideration of schemes; it includes a requirement for regulations to be made to prescribe the form and content of notices to be provided by the PPF Board. To date regulations have not been made under the power.

Why consider change?

Regulations have not been made under section 152. The lack of Regulations has not, however, prevented the PPF Board from making the small number of determinations it has needed to.

Options considered

Other than to leave the legislation as now, no other options were considered.

PENSIONS BILL 2011 – IMPACTS – ANNEX D: PENSION PROTECTION MEASURES

Chosen option

The Bill removes the requirement in section 152 of the Pensions Act 2004 that notices about reconsideration issued by the PPF Board must be in a prescribed form and contain such information as may be prescribed. The amendments enable the PPF Board to issue a notice which is in a form and contains such information as may be decided by the PPF Board.

Ministers chose this option because it would reduce unnecessary bureaucracy for the PPF Board.

Impacts

The change is intended to reduce unnecessary bureaucracy. The change in legislation has no impact other than to remove an unnecessary regulation-making power.

D. The minimum length of a PPF assessment period

Background

Subsection 172(1) of the Pensions Act 2004 stipulates that an assessment period for the PPF must last for a minimum of 12 months. When a sponsoring employer experiences a qualifying insolvency an eligible scheme will go through an assessment period before the PPF Board decides whether or not the scheme will transfer into the PPF. We understand that the intention behind subsection 172(1) was to ensure that any applications for fraud compensation payments under Chapter 4 of Part 2 of the Pensions Act 2004 would have been made before a scheme transferred into the PPF.

Why consider change?

The PPF Board has asked for the period to be removed so that smaller less complicated cases could transfer into the PPF more quickly. There are few instances of fraud and to hold up the transfer of all schemes appears to be unreasonable. If a fraud were to be discovered after a scheme has transferred into the PPF the PPF Board has the power to transfer funds from the Fraud Compensation Fund into the PPF.

Options considered

Other than to leave the legislation as now, no other options were considered.

Chosen option

The Bill removes the requirement in section 172 of the Pensions Act 2004 that an assessment period for the PPF must last for a minimum of 12 months.

Ministers chose this option because it would reduce unnecessary bureaucracy for the PPF Board.

Impacts

The change is intended to reduce unnecessary bureaucracy and as with the change to section 143 of the Pensions Act 2004, this change is intended to provide the PPF Board with the ability to provide for a faster flow of schemes through an assessment period.

The change contributes to some relatively minor savings – PPF estimate less than £500,000 a year in total from all the PPF technical measures – in administration costs for both schemes in an assessment period and the PPF.