

**EXPLANATORY MEMORANDUM TO**  
**THE OCCUPATIONAL PENSION SCHEMES (PENSION PROTECTION FUND**  
**(COMPENSATION) AND FRAUD COMPENSATION PAYMENTS) (AMENDMENT)**  
**REGULATIONS 2023**

**2023 No. 265**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of His Majesty.

**2. Purpose of the instrument**

- 2.1 This instrument makes two technical changes to pension protection regulations. Regulation 3 of this instrument amends the Pension Protection Fund (Compensation) Regulations 2005<sup>1</sup> so that the compensation paid to child dependants of Pension Protection Fund (PPF) members does not cease if they take a break of more than twelve months between periods of full-time education. Regulation 4 of this instrument amends the Occupational Pension Schemes (Fraud Compensation Payments and Miscellaneous Amendments) Regulations 2005<sup>2</sup> to allow the Fraud Compensation Fund (FCF) to make interim payments to pension schemes to cover the cost of making an FCF application.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

**4. Extent and Territorial Application**

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales and Scotland.

**5. European Convention on Human Rights**

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

**6. Legislative Context**

*Pension Protection Fund child dependency provisions*

- 6.1 The Pension Protection Fund (Compensation) Regulations 2005<sup>3</sup> set out the persons who may be entitled to compensation from the PPF. Regulation 3 of this instrument amends these regulations. Under regulation 7 as it is currently drafted, where a child PPF member has a gap between qualifying courses of more than 12 months, they are

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<sup>1</sup> <https://www.legislation.gov.uk/uksi/2005/670/contents/made>

<sup>2</sup> <https://www.legislation.gov.uk/uksi/2005/2184/contents/made>

<sup>3</sup> <https://www.legislation.gov.uk/uksi/2005/670/contents/made>

excluded from receiving Pension Protection Fund (PPF) compensation. This instrument corrects the position so that entitlement to PPF compensation is retained, provided any subsequent course begins before the child reaches the age of 23.

*Fraud Compensation Fund interim payments provisions*

- 6.2 Applications for Fraud Compensation Fund (FCF) compensation are made under section 182 of the Pensions Act 2004 (the Act).<sup>4</sup> Section 184(2) of the Act prevents fraud compensation payments from being made to the trustees or managers of the scheme until the settlement date. The settlement date is the date at which the Board of the Pension Protection Fund (the Board) determines that no further recoveries can be obtained without disproportionate cost or within a reasonable time.
- 6.3 On an application, section 186 of the Pensions Act 2004 enables the Board to make interim payments to a scheme prior to the settlement date should the scheme have insufficient assets to meet its liabilities as prescribed in regulations.
- 6.4 Regulation 8(1)(b) of the Occupational Pension Schemes (Fraud Compensation Payments and Miscellaneous Amendments) Regulations 2005<sup>5</sup> prescribes that interim payments may be made to cover certain liabilities arising between the application date and settlement date. These liabilities are currently prescribed as the payment of guaranteed minimum pensions, pensions other than guaranteed minimum pensions payable to persons reaching normal pension age, pensions payable to beneficiaries and ill-health retirement pensions. The prescribed liabilities set out in Regulation 8(1)(b) do not cover any other cost or expense. This instrument inserts into this list an additional liability: the “costs, expenses and liabilities that arise as a consequence of the application.”
- 6.5 This amendment is being made so that the FCF can progress applications from the set of schemes which were found to be eligible for FCF compensation in *The Board of the PPF v Dalriada Trustees Ltd.*<sup>6</sup> The effects of this judgment and the response it requires are laid out in paragraphs 7.5-7.10 below.

## **7. Policy background**

*What is being done and why?*

*Pension Protection Fund child dependency provisions*

- 7.1 The PPF pays compensation to members of defined benefit occupational pension schemes where the employer becomes insolvent on or after 6 April 2005 and the scheme has insufficient assets to secure benefits of at least PPF compensation levels.<sup>7</sup>
- 7.2 The Pension Protection Fund (Compensation) Regulations 2005<sup>8</sup> (the compensation regulations) provide for the surviving dependants, including spouses, partners, and children of deceased PPF members to also receive compensation from the PPF.
- 7.3 Under the compensation regulations, a child dependant who has a gap between qualifying courses (generally meaning full-time education of any level) of more than one year loses their entitlement to PPF survivors’ compensation which would

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<sup>4</sup> <https://www.legislation.gov.uk/ukpga/2004/35/contents>

<sup>5</sup> <https://www.legislation.gov.uk/uksi/2005/2184/contents>

<sup>6</sup> <http://www.bailii.org/ew/cases/EWHC/Ch/2020/2960.html>

<sup>7</sup> <https://www.ppf.co.uk/our-members/what-it-means-ppf>

<sup>8</sup> <https://www.legislation.gov.uk/uksi/2005/670/contents/made>

otherwise be payable until the age of 23. This has the effect of excluding many children who take a “gap year” (usually between school and university).

- 7.4 It was never the policy intention to exclude children who take a gap year from receiving survivors’ compensation. This instrument corrects this anomaly by amending the compensation regulations so that payment may be made to a surviving child dependant from the start date of a further qualifying course, provided that the course begins before the child reaches the age of 23.

*Fraud Compensation Fund interim payments provisions*

- 7.5 The Fraud Compensation Fund (FCF), administered by the Board of the Pension Protection Fund, is a statutory compensatory mechanism established in 2005 to provide compensation to occupational pension schemes where a scheme has suffered a reduction in assets due to an offence involving dishonesty and where the sponsoring employer has become insolvent.
- 7.6 In November 2020 the High Court, in the case of *The Board of the PPF v Dalriada Trustees Ltd*,<sup>9</sup> clarified that fraudulent pension ‘liberation’ schemes, if they satisfy all specified criteria, are eligible for FCF compensation. Pension ‘liberation’ fraud typically involves scheme members being persuaded to transfer their pension savings from legitimate schemes to fraudulent schemes with promises of high investment returns or access to a loan from their pension scheme before age 55.
- 7.7 Due to the nature of pension ‘liberation’ fraud, many schemes now in scope for compensation from the FCF have exhausted most or all of their assets, either as a direct result of the fraudulent offence or because of costs incurred by the trustees or managers of the scheme in trying to rectify the fraud.
- 7.8 A scheme with exhausted assets may not have sufficient funds to pay the administrative costs and expenses necessary for progressing their application to the FCF. These schemes require interim funding to pay the costs and expenses incurred during the application process. As of 31 March 2022, the Board of the Pension Protection Fund are aware of around 130 claims worth a total of £429 million facing the FCF. Approximately 70-85 per cent of these potentially eligible schemes have exhausted all of their assets and require interim funding to progress an application.
- 7.9 There is currently no means through which to provide interim funding to trustees or managers of schemes for these types of costs and expenses. Regulation 8(1)(b) of the Occupational Pension Schemes (Fraud Compensation Payments and Miscellaneous Amendments) Regulations 2005<sup>10</sup> specifies that interim payments may be made for liabilities arising between the application date and settlement date in relation to the payment of guaranteed minimum pensions, pensions other than guaranteed minimum pensions payable to persons reaching normal pension age, pensions payable to beneficiaries and ill-health retirement pensions. It does not allow interim payments to be made to cover any other cost or expense.
- 7.10 Regulation 4 of this instrument inserts into this list an additional liability for which the FCF can make interim payments: the “costs, expenses and liabilities that arise as a consequence of the application”.

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<sup>9</sup> <http://www.bailii.org/ew/cases/EWHC/Ch/2020/2960.html>

<sup>10</sup> <https://www.legislation.gov.uk/ukxi/2005/2184/made>

## **8. European Union Withdrawal and Future Relationship**

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

9.1 This instrument does not consolidate previous instruments.

## **10. Consultation outcome**

10.1 A public consultation on a draft of this instrument took place from 27 July 2022 to 9 September 2022.<sup>11</sup> The purpose of the consultation was to seek views on the proposal to amend the provisions governing Fraud Compensation Fund (FCF) interim payments and Pension Protection Fund (PPF) child dependants. A consultation period lasting six weeks was considered appropriate due to the limited scope and targeted impact of both measures. The consultation was expected to be primarily of interest to the pensions industry.

10.2 During the consultation period, officials in the Department for Work and Pensions also hosted a round table meeting with support from three of its Arm's Length Bodies (the PPF, The Pensions Regulator and The Pensions Ombudsman), inviting independent trustees to comment on the FCF interim payments proposals. Detail of the consultation responses can be found in the Government response, which has been published alongside these regulations.<sup>12</sup> Summaries of the main themes raised by respondents are as follows:

### *Pension Protection Fund child dependency provisions*

10.3 Four organisations responded to questions about the amendment to the Pension Protection Fund compensation regulations. All agreed that the draft regulations met the stated policy intent, and none identified any unintended consequences.

### *Fraud Compensation Fund interim payments provisions*

10.4 Six organisations responded to the consultation. All welcomed the change to the FCF interim payments regulations and agreed that it met the stated policy intent. Four respondents expressed concern over a provision that enables the Board to demand repayment of interim payments from trustees. Three respondents suggested that interim payments should be extended to the period preceding the formal application and should cover costs such as those associated with the sponsoring employer's insolvency. One respondent suggested reforming the FCF and its Fraud Compensation Levy, which recovers from eligible pension schemes the cost of the compensation paid.

### *Government response*

10.5 Having considered the consultation responses, the Department for Work and Pensions has made one change to broaden the scope of the FCF provisions. This was done by

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<sup>11</sup> <https://www.gov.uk/government/consultations/technical-amendments-to-the-pension-protection-fund-and-fraud-compensation-fund-regulations/consultation-document-technical-amendments-to-the-pension-protection-fund-and-fraud-compensation-fund-regulations>

<sup>12</sup> <https://www.gov.uk/government/consultations/technical-amendments-to-the-pension-protection-fund-and-fraud-compensation-fund-regulations>

adding the word “expenses” to address concern that the previous categories were too narrow and to bring the wording of the regulations in line with that used in *The Board of the PPF v Dalriada Trustees Ltd*<sup>13</sup> to describe the same set of expenditure. Aside from this change, the Government has decided to proceed with the amendments as laid out in the consultation document.

## **11. Guidance**

- 11.1 Information and guidance on the Fraud Compensation Fund (FCF) can be found here.<sup>14</sup> Information and guidance on the Pension Protection Fund (PPF) can be found here.<sup>15</sup>

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because the changes do not create a regulatory, or deregulatory, impact on business.

## **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

- 14.1 The approach to monitoring of this instrument is that it will be monitored by the Department for Work and Pensions and the Board of the Pension Protection Fund and reviewed as necessary.

## **15. Contact**

- 15.1 Benjamin Tudor ([benjamin.tudor@dwp.gov.uk](mailto:benjamin.tudor@dwp.gov.uk), 0300 092 0160) at the Department for Work and Pensions can be contacted with any queries regarding the FCF Regulations and Jill Metcalfe ([jill.metcalfe@dwp.gov.uk](mailto:jill.metcalfe@dwp.gov.uk)) can be contacted regarding the PPF Regulations.
- 15.2 Fiona Frobisher, Deputy Director for Private Pensions Policy, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Laura Trott, Minister for Pensions, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

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<sup>13</sup> <http://www.bailii.org/ew/cases/EWHC/Ch/2020/2960.html>

<sup>14</sup> <https://www.fraudcompensationfund.co.uk/>

<sup>15</sup> <https://www.ppf.co.uk/>