Government response - Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997 – amendment

July 2011

DWP Department for Work and Pensions

Contents

Introduction

1. The consultation covers consequential amendments to Regulations made under the Pensions Act 1995 concerning the surrender of pension benefits.

2. On 14 October 2010 the Government announced reforms to pensions tax relief to ensure that it remains fair, affordable and sustainable. As part of these reforms, from the 2011-12 tax year, the annual allowance for tax-privileged pension saving will be reduced from £255,000 to £50,000.
Individuals who exceed these limits may incur an annual allowance tax charge.

3. The amendments are required as a result of provisions in the Finance (No.3) Bill 2011 that allow high annual allowance tax charges to be met from scheme benefits.

The Consultation

4. On the 20 May 2011 the Department for Work and Pensions ("DWP") published a consultation paper inviting comments on proposed amendments to the Occupational Pensions Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997. The consultation was sent to the organisations listed in Annex A.

5. The Government 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. In this case the consultation ran for 4 weeks. This is because the provisions need to be in force as soon as possible after the Finance (No.3) Bill 2011 receives Royal Assent to avoid creating a situation where the Finance Act provisions are inoperable because of the restrictions in section 91 of the Pensions Act 1995.

6. The Code of Practice recognises that it will be possible to run a shorter consultation where the provisions being consulted on are the result of a previous consultation, where they are of a technical nature, where they represent no major policy shift or are of very limited interest.

7. The Government consulted extensively on changes to the annual and lifetime allowances and on options to manage high annual allowance charges from pension benefits. Details of the HM Treasury (HMT) / HM Revenue and Customs (HMRC) consultation can be found at Annex B. This consultation addressed exemptions to the provisions in section 91 of the Pensions Act 1995 that would otherwise prevent schemes from meeting annual allowance charges from scheme benefits. Since the provisions being consulted on were the result of a previous consultation and were of a technical nature it was considered that a shorter consultation period was appropriate in this case.

8. A paper copy of this Government response can be obtained from:

Lisa Hayes

Department for Work and Pensions

7th Floor, Caxton House

Tothill Street

London, SW1H 9NA

Email: adelphi.sft@dwp.gsi.gov.uk

9. This document describes the comments made by respondents and provides the Government response. The response should not however be taken as an authoritative interpretation of the law. Such interpretation can only be provided by a court.

10. Ten responses were received. The majority were detailed, and complex and many were about the changes to the tax treatment of pension benefits in the Finance (No.3) Bill 2011 rather than the draft regulations. Whilst we have not been able to comment on these points in this consultation response we have passed them on to HMRC to consider.

11. A list of respondents is provided in Annex B. The Government is very grateful to everybody that took time to comment.

Impact Assessment

12. The regulations impose no costs on business or the voluntary sector.

13. A Tax Information and Impact Note, covering the impact of this measure was published by HMRC on 9 December 2010 alongside draft legislation for the Finance Bill (No.3) Bill 2011 concerning the restriction of pensions tax relief. This was updated on 3 March 2011 to reflect further decisions relating to the restriction of pensions tax relief and is available on the HMRC website. It remains an accurate summary of the impacts that apply.

Responses to consultation questions

Question 1: Do you agree that the amendments made in the draft legislation at Annex A remove the barrier preventing schemes from making a reduction to a members pension rights when the scheme has paid an individual annual allowance charge on their behalf?

14. All those that addressed this question agreed the amendment removed the legislative barrier to allow occupational pension schemes to make a reduction to member benefits in order to pay any annual allowance charge on their behalf.

15. One respondent suggested that express provision should be made to make clear that any voluntary agreement to pay the AA charge on behalf of a member (out of that member's accrued benefits under the scheme) is excluded from section 91(1)(a). We consider this unnecessary. The effect of removing schemes that satisfy the member's AA charge from the scope of section 91(1)(a), is that any agreement to do so between the member and the scheme will not be covered by the provision in section 91 which renders agreements to effect any of the things mentioned in section 91(1)(a) to (c) unenforceable.

16. A few respondents raised concerns over the precise wording of the regulations, and suggested that the wording should reflect the fact that the scheme administrator will make the benefit adjustment at the same time as paying the AA charge for the member. The Government has considered these points raised and has made some minor changes to the wording to provide greater clarity, without changing the overall intention of the regulations.

17. In addition, there were a number of comments about whether the regulations permit reduction to contingent dependent benefits, on what basis actuarial reductions should be made, and whether the regulations limit any reduction to an amount which is fair and reasonable. There were also questions raised as to whether schemes whose rules do not allow surrender of benefits would be able to pay the AA charge voluntarily, and whether section 67 of the Pension Act 1995 (the "subsisting rights" rules) would prevent rule amendments.

18. These questions are outside the scope of these regulations. The draft Registered Pension Schemes (Modification of Scheme Rules) Regulations 2011, recently consulted upon by HMRC, provide that the rules of a scheme paying an annual allowance charge for the member, either under the new statutory regime, or under a voluntary arrangement, will be modified to allow for a consequential adjustment to be made to the member's benefits, and this is on the basis that is just and reasonable having regard to normal actuarial practice.

Question 2: Is there any other pensions legislation that will prevent a scheme from making a reduction in a members pension rights when the scheme has paid an individuals annual allowance charge on their behalf

19. None of the responses identified any other pension legislation that would prevent an occupational pension scheme from making a reduction.

20. Some respondents suggested that there may be prohibitions on the surrender of section 9(2B) rights (post-1997 contracted-out rights in a DB scheme). There are no such prohibitions in pension legislation. One comment was made that adjustments to benefits under a voluntary agreement should be made subject to sections 159 Pension Schemes Act 1993 and section 155 Pension Schemes (Northern Ireland) Act 1993. There is no need to make express statutory provision for this; voluntary arrangements will be subject to these provisions.

21. Two respondents suggested that equivalent provision should be made for insurers to pay the AA charge for members of a contracted-based scheme, that is, a personal pension scheme. HMRC are considering this point.

22. Several respondents raised technical issues about the provisions introduced by the Finance (no.3) Bill 2011 which have been referred to HMRC for their further consideration.

Thank You

23. The Government would once again like to thank everybody who took time to comment on this consultation document.

Annex A – List of organisations consulted.

Actuarial Profession

Association of British Insurers

Association of Chartered and Certified Accountants

Association of Consulting Actuaries

Association of Pension Lawyers

Confederation of British Industry

DSD, Northern Ireland

DWF

Financial Ombudsman Service

Hymans

Joint Working Group on Occupational Pensions

National Association of Pensions Funds

Pensions Management Institute

Slaughter and May

Society of Pension Consultants

The Federation of Small Businesses

The Law Society

The Law Society of Scotland

The Pensions Advisory Service

The Welsh Assembly

Towers Watson

Trades Union Congress

Travers Smith

Veolia

Annex B – List of respondents

Aon Hewitt

Association of Consulting Actuaries

Association of Pension Lawyers

Heath Lambert Employee Benefits

Mercer

Pensions Management Institute

RPMI Limited

The Law Society of Scotland

The Society of Pensions Consultants

In addition, we had one response from an individual.

ISBN: 978-1-84947-664-5

Department for Work and Pensions

July 2011