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

Consultation on draft regulations

20 May 2011

DWP Department for Work and Pensions

Contents

Introduction

This consultation covers a consequential amendment to provisions in the Pensions Act 1995 that:

- is required as a result of changes to the tax treatment of savings into pensions in the Finance (No.3) Bill 2011, and
- allows greater flexibility for individuals and schemes to meet tax charges on a voluntary basis, as suggested in consultation responses to the Finance (No.3) Bill 2011.

A summary of the consultation is provided on page 8.

About this consultation

Who this consultation is aimed at

This consultation is aimed at individuals who have responsibility for administering occupational pensions.

Purpose of the consultation

The Government welcomes your comments on whether the proposed amendments to the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997, which are contained in the draft Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) (Amendment) Regulations 2011 meet the policy objective of allowing a member to agree to surrender rights under an occupational pension scheme for the purpose of meeting an annual allowance charge. A draft can be found at Annex A of this document.

Scope of consultation

This consultation applies to England, Wales and Scotland.

Duration of the consultation

The consultation period begins on 20 May 2011 and runs until **17 June 2011**.

How to respond to this consultation

Please send your consultation responses to:

Scheme Administration Team
Department for Work and Pensions
7th Floor
Caxton House
Tothill Street
London SW1H 9NA

Fax 0207 449 7127

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

Please ensure your response reaches us by **17 June 2011**.

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 an organisation, please make it clear who the organisation represents, and where applicable, how the views of members were assembled. We will acknowledge your response.

We have sent this consultation document to a 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.

Queries about the content of this document

Please direct any queries about the subject matter of this consultation to:

Michelle Boreland
Department for Work and Pensions
7th Floor
Caxton House
Tothill Street
London SW1H 9NA

Phone 0207 449 7372

Fax 0207 449 7127

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

How we consult

Freedom of information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

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 purposes 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 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.

To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact:

Central Freedom of Information Team
The Adelphi
1-11, John Adam Street
London WC2N 6HT

Freedom-of-information-request@dwp.gsi.gov.uk

The Central FoI team cannot advise on specific consultation exercises, only on Freedom of Information issues. More information about the Freedom of Information Act can be found at www.dwp.gov.uk/freedom-of-information

The consultation criteria

The consultation is being conducted in line with the Government Code of Practice on Consultation – Government Code of Practice on Consultation (BIS). The seven consultation criteria are:

- **When to Consult**. Formal consultation should take place at a stage when there is scope to influence the outcome.
- **Duration of consultation exercises**. Consultations should normally last for at least 12 weeks, with consideration given to longer timescales where feasible and sensible.

The Government Code of Practice on Consultation recommends a minimum 12 week consultation period public consultations, unless there are good reasons for a limited consultation period. In this case, consultation will run 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.

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.

The Government has consulted extensively on the 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. The Government response to the consultation clearly stated that provision will be made to enable voluntary arrangements to be entered into if schemes are not caught by the statutory requirements set out in the Finance (No.3) Bill 2011.

The purpose of this consultation is solely to address the exemption to provisions in section 91 of the Pensions Act 1995 that is necessary to allow the proposals to operate and it does not therefore represent any new policy.

This is a technical consultation addressing the draft legislation to remove the legal barrier which currently prevents a member from surrendering their rights under an occupational pension scheme and is being targeted at groups who are likely to have an opinion on this technical change. It is likely to be of limited interest as the numbers of people affected by the change are likely to be few.

Consequently the Government believes a short consultation is appropriate.

It should be noted that there is no statutory obligation to consult[1] on the consequential amendments to the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997 which relate to the mandatory requirement for a scheme to pay the tax charge on notification from the member which is provided for in the Finance (No.3) Bill 2011, but it has been decided to consult on that provision in any event, and our Minister has agreed that a limited consultation is appropriate.

- **Clarity of scope and impact**. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence, and the expected costs and benefits of the proposals.
- **Accessibility of consultation exercises**. Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is designed to reach.
- **The burden of consultation**. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- **Responsiveness of consultation exercises**. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- **Capacity to consult**. Officials running consultation exercises should seek guidance in how to run an effective consultation exercise, and share what they have learned from the experience.

Feedback on the consultation process

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:

Roger Pugh
DWP Consultation Coordinator
1st floor, Crown House
2, Ferensway
Hull HU2 8NF

Phone 01482 584681

Email roger.pugh@dwp.gsi.gov.uk

1 Section 120(2)(d) of the Pensions Act 1995 states that the Secretary of State is not required to consult on proposed regulations if they state they are consequential on a specified enactment and are made within 6 months of that enactment coming into force.

In particular, please tell us if you feel that the consultation does not satisfy the consultation criteria. Please also make any suggestions as to how the process of consultation could be improved further.

If you have any requirements that we need to meet to enable you to comment, please let us know.

We will publish the responses to the consultation by 18 July 2011 in a report on the consultations section of our website www.dwp.gov.uk/consultations.The report will summarise the responses and the action that we will take as a result of them.

Impact Assessment

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

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 (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 at http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply.

Summary

The Government has announced that, from the 2011-12 tax year, the annual allowance for tax-privileged pension saving will be reduced from £255,000 to £50,000 and that from 6 April 2012 the lifetime allowance will be reduced from £1.8million to £1.5million.

Individuals who exceed these limits may incur an annual allowance tax charge. The Government published a consultation document on 30 November 2010 on options to manage high annual allowance tax charges from pension benefits.

The Government's response in the discussion document published on 3 March 2011, set out that individuals who incur high tax charges from exceeding the reduced annual allowance will have the option to elect to meet these charges from their pensions benefits. Legislation has been included in paragraph 15 of Schedule 17 to the Finance (No.3) Bill 2011 which provides for how this will work in practice. This can be found using the following link:

http://www.hmrc.gov.uk/budget-updates/march2011/finance-bill.pdf

In most cases an individual who has an annual allowance charge in excess of £2,000 will be able to elect for their pension scheme to pay their annual allowance charge in return for an actuarial adjustment to their accrued benefits within the scheme. Where a member cannot require the scheme to pay some or all of their annual allowance charge from their accrued benefits in the scheme (with their pension rights reduced accordingly), they will be able to seek to reach a voluntary arrangement with the scheme to pay the annual allowance charge from their accrued benefits in the scheme and their rights are reduced accordingly.

Section 91 of the Pensions Act 1995, however, currently prohibits a member from surrendering their pension rights which would prevent schemes from making this reduction.

Consequently, the Government proposes to make regulations to permit surrender of pension benefits for the purpose of meeting an annual allowance tax charge.

The Government welcomes views on whether the amendments contained in the draft Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) (Amendment) Regulations 2011 achieve the policy objective of allowing a member to agree to a surrender of their rights under a pension scheme, for the purpose of meeting an annual allowance charge.

Removing barriers in pensions legislation to allow scheme members to meet their Annual Allowance charges from their pension benefits

Background

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 (AA) for tax-privileged pension saving will reduce from £255,000 to £50,000. Individuals will be able to carry forward any unused annual allowance from the previous three years.

The Government anticipates that most individuals, employers and pension schemes will adapt so that pension savings remain below the AA. This means that a minority of those affected will actually incur an AA tax charge.

However, it is possible that some people will trigger tax charges that could be difficult to manage from current income, particularly in the early years of the regime. This is expected to be most prevalent among high earners with long service in traditional, final salary defined benefit (DB) pension schemes, given the potential for uneven accrual in these schemes.

The Government believes it is for individuals to manage their own tax affairs. However, the Government also believes that where individuals do face high AA charges, it is necessary to provide additional support, and has committed to introduce a facility to enable them to meet high AA charges from their pension benefits.

On 30 November 2010, the Government published “Options to meet high annual allowance charges from pension benefits: a discussion document”. This launched an informal consultation, which closed on 7 January 2011, and considered two broad options for meeting the tax liability: payment from pension benefits at the point the charge arises, or payment at the point the pension benefit crystallises. The purpose of this exercise was to establish which of two broad options better meets the Government’s objectives, and how it would work in practice.

In light of the strong preference expressed by the vast majority of respondents, the Government has decided that where AA liabilities are met from pension rights, the tax should be paid at the point the charge arises. Legislation contained in Schedule 17 to the Finance (No.3) Bill 2011 enables individuals to elect for their pension scheme to pay some or all of their annual allowance charge on their behalf, with the scheme making a consequential adjustment to the individual’s pension rights. It will also be possible for members and schemes to agree payment of the tax charge with a commensurate reduction in the member's pension rights on a voluntary basis.

To enable the scheme to make such a reduction a change is required to section 91 of the Pensions Act 1995.

The draft Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) (Amendment) Regulations 2011

1. Section 91 of the Pensions Act 1995 provides that where a person is entitled to a pension under an occupational pension scheme, or has a right to a future pension under such a scheme, they cannot surrender that right.
2. The draft Regulations contained at Annex A of this document aim to remove the barrier which prevents pension schemes from making a consequential reduction to a scheme member's pension rights if they have nominated for their scheme to pay their AA charge on their behalf, or entered into a voluntary agreement to do so.
3. Section 94(1)(b) of the Pensions Act 1995 provides that sections 91-93 of the Pensions Act 1995 do not apply in relation to schemes falling within a prescribed class or description. The Government believes that the best way to remove the barrier preventing schemes from making the reduction in pension rights is to amend the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997 by prescribing a scheme meeting an annual allowance charge on a member's behalf, in return for a consequential adjustment of the member's pension benefits, and whether required by statute or on a voluntary basis, as such a class of scheme.
4. The draft Regulations at Annex A provide that the prohibition on assignment, commutation or surrender of an entitlement to a pension in section 91(1)(a) of the Pension Schemes Act 1993 (c. 48) (inalienability of occupational pension) does not apply to any adjustments made to a person's pension benefits:
   - as a consequence of the scheme administrator making a payment in respect of that person's annual allowance charge under a voluntary arrangement, or
   - under section 237E(1) of the Finance Act 2004 (c.12) as a consequence of the scheme administrator making a payment in respect of that person's annual allowance charge under the arrangements provided for in section 237B of that Act.

Q1: 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 member's pension rights when the scheme has paid an individuals annual allowance charge on their behalf?

Q2: Is there any other pensions legislation that will prevent a scheme from making a reduction in a member's pension rights when the scheme has paid an individuals annual allowance charge on their behalf?

Annex A –
Draft Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) (Amendment) Regulations 2011

STATUTORY INSTRUMENTS

2011 No.

PENSIONS

Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) (Amendment) Regulations 2011

Made - - - -	***
Laid before Parliament	*t****
Coming into force - -	***

The Secretary for State for Work and Pensions, in exercise of the powers conferred by section 94(1)(b) of the Pension Act 1995(**a**), makes the following Regulations.

These Regulations are in part(**b**) consequential upon [section 66 of, and Schedule 17 to, the] Finance Act 2011(**c**) and are made within six months of those provisions coming into force. The requirement to consult in section 120(1) of the Pensions Act 1995 does not therefore apply by virtue of section 120(2)(d) of that Act. The Secretary of State nevertheless chose to consult on those provisions. In relation to the remaining provisions in the Regulations the Secretary of State has consulted such persons as the Secretary of State considers appropriate in accordance with section 120(1) of that Act.

Citation and Commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) (Amendment) Regulations 2011, and shall come into force on the coming into force on XX 2011.

Amendment to the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997

2. In regulation 8 of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997(**d**) (exemption from the inalienability and forfeiture provisions), at the end add—

“(7) Section 91(1)(a) of the 1995 Act (inalienability of occupational pension) shall not apply to a scheme where—

(a) the scheme administrator has satisfied any part of a person’s liability to the annual allowance charge under section 237A of the Finance Act 2004(**e**) (liability of

(**a**) 1995 c.26.
(**b**) See paragraph (7)(b) inserted into regulation 8 of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations by regulation 2 of this instrument.
(**c**) 2011. c. .
(**d**) S.I. 1997/785. Regulation 8 was amended by S.I 1999/1849 and 2006/744.
(**e**) 2004. c.12. Sections 237A and 237B of the Finance Act 2044 were inserted by section 66 on Schedule 17 to the Finance Act 2011 (c.).

individual) at the request of that person, to the extent that it would prevent an adjustment to that person's benefits under the scheme as a consequence of the scheme administrator satisfying that liability, or

(b) the scheme administrator has satisfied a liability under section 237B of the Finance Act 2004 (liability of scheme administrator) in respect of a person, to the extent that it would prevent a consequential adjustment to that person's benefits under the scheme under section 237E(1) of that Act (consequential benefit adjustments to be reasonable etc).

(8) In paragraph (7)—

"annual allowance charge" has the meaning given in section 227(1) of the Finance Act 2004 (annual allowance charge), and

"scheme administrator" has the meaning given in section 270 of the Finance Act 2004 (meaning of "scheme administrator")."

Signatory text

Name
Address — Minister of State for Pensions
Date — Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations amend the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997 (S.I. 1997/785) to take account of changes made to the taxation of pension scheme contributions made by the Finance Act 2011 (c.), which is due to come into force on XX July 2011.

The regulations provide that the prohibition on assignment, commutation or surrender of an entitlement to a pension in section 91(1)(a) of the Pension Schemes Act 1993 (c. 48) (inalienability of occupational pension) does not apply to any adjustments made to a person's pension benefits:

a) as a consequence of the scheme administrator making a payment in respect of that person's annual allowance charge under a voluntary arrangement, or

b) under section 237E(1) of the Finance Act 2004 (c.12) as a consequence of the scheme administrator making a payment in respect of that person's annual allowance charge under the arrangements provided for in section 237B of that Act.

A full impact assessment has not been published for this instrument as it has only a negligible impact on the private sector and civil society organisations. However, an assessment of the impact of the provisions in the Finance Act 2011 (upon which part of these Regulations are consequential) is included in a Tax Information and Impact Note published on 9th December 2010 alongside the draft Finance Bill concerning the restriction of pensions tax relief. This was updated on 3rd March 2011 to reflect further decisions relating to the restriction of pension tax relief and is available at www.hmrc.gov.uk/thelibrary/tiins. It remains an accurate summary of the impacts that apply to that legislation.

Annex B – Links to the previous consultations completed by HMRC/HMT

Restricting pensions tax relief through existing allowances: a summary of the discussion document responses

The consultation was run from 27 July - 27 August 2010, and the response was published on 14 October 2010

http://www.hm-treasury.gov.uk/d/restricting_pensions_summary141010.pdf

Options to meet high annual allowance charges from pension benefits: a summary of the discussion document responses

The consultation was run from 30 November 2010 - 7 January 2011, and the response was published on 3 March 2011

http://www.hm-treasury.gov.uk/d/pensions_benefits030311.pdf

Draft legislation, a draft Explanatory Note and a revised Tax Impact and Information Note for the options to meet high annual allowance charges from pension benefits were published on 3 March

http://www.hmrc.gov.uk/budget-updates/pensions-tax-relief.pdf