



The Occupational Pension Schemes and Social Security (Schemes that were Contracted-out and Graduated Retirement Benefit) (Miscellaneous Amendments) Regulations 2017

Occupational pensions legislation reviews

The proposed methodology for equalising pensions for the effect of GMPs

Government response

March 2017

Contents

- Chapter 1: Introduction 3
- Chapter 2: The Government’s response to the feedback received on the consultation questions 1 to 7 (the draft regulations) 4
- Chapter 3: Reviews 11
- Chapter 4: GMP Equalisation 14
- Annex A: Consultation respondents 21

Chapter 1: Introduction

- 1.1. On 28 November 2016 the Department for Work and Pensions published a consultation which sought views on three contracting-out issues:
 - i. The Occupational Pension Schemes and Social Security (Schemes that were Contracted-out and Graduated Retirement Benefit) (Miscellaneous Amendments) Regulations 2017 (the 2017 Regulations)
 - ii. Occupational pensions legislation reviews
 - iii. The proposed methodology for equalising pensions for the effect of GMPs
- 1.2. The consultation ended on 15 January 2017. There were 43 written responses from individuals, pension industry bodies and pension professionals. We are grateful to everyone who replied. A list of individuals and organisations that responded is at **Annex A**.
- 1.3. This response addresses most of the issues raised by respondents. A number of responses, however, concern issues which require further consideration and we do not expect to be able to take these issues forward before autumn 2017. We are aware that the industry has been calling for urgent changes to be made to the arrangements for transferring contracting-out rights to schemes that have never been contracted-out, and we will be considering these issues before then.
- 1.4. The 2017 Regulations have been made and are available on the UK legislation website: www.legislation.gov.uk/id/uksi/2017/354
- 1.5. This consultation document is available on GOV.UK:
www.gov.uk/government/consultations/occupational-pensions-draft-regulations-legislative-review-and-guaranteed-minimum-pensions-equalisation-methodology

Impact Assessment

- 1.6. The analysis of the impact of the introduction of the bereavement support payment on entitlement to an inheritable GMP will be published alongside the secondary legislation on the UK Legislation website and the GOV.UK website.

Chapter 2: The Government's response to the feedback received on the consultation questions 1 to 7 (the draft regulations)

Introduction

- 2.1. The Consultation posed seven questions concerning the draft Regulations. Chapter 2 summarises the comments received and sets out the Government's response. The Regulation numbers in the headings refer to the numbering in the final Regulations.
- 2.2. When reading these responses you may find it helpful to refer to the original consultation, which provides the context.

Chapter 1: The draft Pensions (Schemes that were Contracted-out) (Miscellaneous Amendments) Regulations 2017

Amendment of the Occupational Pension Schemes (Schemes that were Contracted-out) (No 2) Regulation 2015

Question 1: Do you agree that the draft changes to give HM Revenue and Customs (HMRC) discretion to extend the notification and payment periods for contributions equivalent premiums will deliver the policy intent?

Regulation 4(3) and (4): Notification and Payment of a contributions equivalent premium

Respondents' views

- i. There was broad agreement among most respondents that the proposed changes will deliver the policy intent. They welcomed HMRC having the discretion to extend notification and payment periods for contributions equivalent premiums that would otherwise have fallen outside the current legislation. The draft changes will help schemes to complete the GMP reconciliation process.
- ii. A few respondents asked whether HMRC propose to publish guidance or best practice guidelines to provide clarification for trustees and scheme administrators about how HMRC propose to exercise the discretion provided in the regulations, regarding late payments and notifications of contributions equivalent premiums.

- iii. A respondent asked whether regulation 11(5) of the 2015 Regulations¹ could be amended similarly for those cases where trustees may elect to pay a contributions equivalent premium.
- iv. A respondent raised a concern that the Scheme Reconciliation Service allows schemes to reconcile contracted-out liabilities for deferred and pensioner members but it does not extend to those members who were still active and in service at 5 April 2016. A couple of respondents also questioned how HMRC intend to use their discretionary powers for those individuals under and over State Pension age.

Government Response

- i. We note the views expressed on this point.
- ii. HMRC, in collaboration with the Department for Work and Pension (DWP), is updating online guidance for schemes and pension administrators of salary related contracted-out occupational pension schemes. HMRC will be working with stakeholders to update this manual for publication from spring 2017. HMRC regularly publish a countdown bulletin for administrators and others in the pension industry which provides additional guidance on the ending of contracting-out on the GOV.UK website:

<https://www.gov.uk/government/collections/national-insurance-services-to-pensions-industry-countdown-bulletins>

- iii. We agree that an amendment is required to give HMRC the discretion to extend the notification where trustees elect to pay a CEP where specific conditions are met and have amended the regulations accordingly. This provision will be replicated for Northern Ireland which mirrors the provisions for Great Britain.
- iv. The scheme reconciliation service was made available to schemes to reconcile their deferred and pensioner members. A scan of HMRC records was run in December 2016. The scan automatically closed open periods of contracted-out employment held on HMRC records using the Scheme Contracted-out Number (SCON) provided by employers. Details of all active members identified by the scan will be shared with pension scheme administrators to reconcile their records. HMRC will apply the same discretion to individuals under and over State Pension age.

Question 2: Do you agree that the proposed changes will now correctly reflect the policy intention as outlined in paragraph 1.14 above?

Regulation 4(5): (alteration of scheme rules)

¹ the 2015 Regulations - The Occupational Pension Schemes (Schemes that were Contracted-out)(No.2) Regulations 2015 (S.I. 2015/1677) - <http://www.legislation.gov.uk/ukSI/2015/118/contents/made>

Respondents' views

- 2.3. We received a number of comments about draft regulation 4(5), the contents of which are briefly noted as follows:
- i. Some respondents agreed that the proposed amendments would help to achieve the policy intention to protect accrued rights when scheme rules are changed.
 - ii. One respondent thought that some readers of the consultation would not understand the implications of the proposed change, based on the explanation given in the consultation document and suggested that we clarify the matter in the Government response document.
 - iii. A couple of respondents did not agree that the proposed amendments will reflect the policy intention behind regulation 42 of the 1996 Regulations². They thought that while there may be merit in adding this new spouse/civil partner exemption to regulation 17(1)(a) of the 2015 Regulations, it covered a different point entirely to the current regulations, and that no explanation was given in the consultation document for the removal of the existing exemption. In their view the amendment should not be included in the Regulations.
 - iv. A couple of respondents suggested revoking regulation 17 of the 2015 Regulations as there are adequate protections under section 67 of the Pensions Act 1995 and trust law.

Government Response

- 2.4. In light of the points raised by certain respondents in relation to proposed amendments to regulation 17, the Government proposes not to take these forward at this time, but to reflect further on what, if any, additional provision is required in this area going forward. We will then consult with industry as appropriate. Any proposed legislative provision would not be implemented before autumn 2017 in order to give DWP time to consult on any further changes that are necessary.

Question 3: Do you agree that the changes we have made to regulations 21 and 22 make it clear in which circumstances an inheritable GMP should be paid following the introduction of the new BSP?

Regulations 4(6) and (7) of the 2017 regulations provide:

Circumstances for the purposes of section 17(6) of the 1993 Act in which widower's and widow's or surviving civil partner's guaranteed minimum pensions is payable

² the 1996 Regulations –The Occupational Pension Schemes(Contracting-out) Regulations 1996 (S.I. 1996/1172) was revoked and replaced by the 2015 Regulations

Period for the purposes of section 17(6) of the 1993 Act in which widower's and widow's or surviving civil partner's guaranteed minimum pensions is payable

Respondents' views and Government Response

2.5. There was broad agreement that the changes we have made will make it clear in which circumstances and for what period an inheritable GMP should be paid. One respondent suggested a minor drafting change to the regulations which we agree with and have made the change as a result.

Question 4: It would be helpful to know, from your experience, approximately what percentage of schemes are likely to provide an inheritable GMP regardless of the survivor's circumstances (for example as their scheme rules require that this is paid to everyone), and what percentage will provide an inheritable GMP by following the statutory requirements of section 17 of the 1993 Act (for example by checking that the appropriate State benefit is in payment or that the survivor has reached the appropriate age). We believe that the latter approach will represent a minority of schemes but we are seeking some quantification:

Respondents' views and Government Response

2.6. From the responses we have received, although no actual percentages were provided, it would appear that the vast majority of schemes pay an inheritable GMP regardless of the survivor's circumstances. This confirms our understanding and suggests that the introduction of the new Bereavement Support Payment will have a very minimal impact on schemes' administration.

- i. **For a scheme that provides an inheritable GMP regardless of the survivor's circumstances (the former approach), will there be any costs associated with the change to regulations? These costs can be expressed in financial terms or in terms of staff time (e.g. 1 hour for 12 admin staff).**

Respondents' views and Government Response

2.7. We only received one response to this question which advised that there would be no costs associated with the regulations for schemes that provide an inheritable GMP regardless of the survivor's circumstances. Whilst this is only a solitary response, it does however support our thinking that such schemes will not be impacted by the change.

- ii. **For a scheme that provides an inheritable GMP by following the statutory requirements for each member (the latter approach), what additional costs might the scheme incur from updating their administrative processes to take account of the change, e.g. changing guidance, making staff aware of the new requirements? These costs can be expressed in financial terms or in terms of staff time (e.g. 1 hour for 12 admin staff).**

Respondents' views and Government Response

- 2.8. Again, we only received one response that provided specific details of costs. The costs provided, which mostly due to minor administration changes are relatively minor and are broadly in line with our thinking. It was also mentioned that schemes, because legislation is over-riding, may wait until a further substantive change is required to their scheme rules which would reduce costs further as the changes could be rolled up. In summary, again we don't think that the introduction of these changes will have a significant impact on administrative processes for schemes that follow the statutory requirements.

Regulation 4(8): fixed rate revaluation of guaranteed minimum pension for early leavers

- 2.9. The consultation posed three questions concerning the review of fixed rate revaluation of GMPs for early leavers. This chapter summarises the feedback received and sets out the Government's response.

Question 5: Do you agree with the underlying earnings increase assumption proposed by GAD?

Respondents' views

- 2.10. There were mixed views with regard to the underlying earnings increase assumption. Some felt that GAD's assumption was high compared to 2.3% average weekly earnings over the past decade, and given that the view was intended for the medium term, did not take into account the most recent economic forecasts. However, some respondents felt that since GAD's initial assessment market implied expectations for inflation have increased and in view of this they thought a nominal rate of 3.5% pa was currently within the range of reasonable assumptions that could be adopted. One respondent noted that over the last 30 years, future earnings growth had been consistently over-estimated.

Government Response

- 2.11. GAD reviewed the average earnings increase assumption in light of updated forecasts provided by the Office of Budget Responsibility in their November 2016 Economic Outlook and January 2017 Fiscal Sustainability Report. They also considered more recent independent forecasts as well as updated the approach set out in their original report allowing for more recent market-implied RPI inflation expectations. Although more recent forecasts are based on a weaker outlook for economic growth and productivity, market-implied RPI price inflation expectations have increased since the average earnings increase assumption was considered by GAD in their October 2016 report. In view of the on-going uncertainty regarding the medium term outlook GAD suggested a neutral assumption for average earnings increases might currently lie in the range 3.25% pa to 4% pa over the expected period of GMP

reevaluation for leavers between 2017 and 2022. In view of this and taking into account feedback we have received, we consider that GAD's original recommendation of 3.5% pa for the earnings increase assumption is the appropriate starting point for deciding the fixed rate of GMP reevaluation for leavers in the period from 2017 to 2022.

Question 6: Is it correct to adopt a medium term view on earnings assumptions?

Respondents' views

2.12. There seemed to be general agreement that adopting a medium term approach seemed sensible given the expected age range of people leaving pensionable service between April 2017 and April 2022.

Government Response

2.13. Given the responses, we are satisfied a medium term view is appropriate given the circumstances. As discussed above, GAD reviewed the assumption in light of more recent forecasts and updated market conditions. In doing so, GAD looked mainly over the next 10 years allowing for the fact that the rate of GMP reevaluation will apply for leavers between 2017 and 2022 so short term factors are perhaps less relevant in this context.

Question 7: Do you agree that DWP should continue to apply the 0.5% premium for fixing the rate or are there good arguments to remove or adjust the premium?

Respondents' views

2.14. Whilst some respondents believed that it was reasonable to retain the 0.5% premium, citing current economic uncertainty and the fact that it was not unreasonable to charge for providing schemes with certainty over their ongoing liabilities, others thought that there was good reason to remove the premium.

2.15. Those who felt the premium should be removed felt that the risk element was being overplayed given the medium term underlying earnings increase outlook. They also cited, as set out in paragraph 2.1 of GAD's paper, that those who have had fixed rate reevaluation applied to their GMPs have generally done much better than those who have had reevaluation linked to average weekly earnings. Another reason given for removing the premium was the fact that following the introduction of the new State Pension, reevaluation will no longer have an impact on State Benefits as after April 2016 the link to the old additional State Pension was broken. Respondents therefore argue that the premium will simply become an additional benefit to schemes members when they leave pensionable service, rather than providing protection for the State.

Government Response

- 2.16. The Government has considered very carefully the responses to this question. We accept that it is possible the Government has to date overestimated the risk that earnings would turn out to be greater than the fixed rate set given that the fixed rate has generally increased by a greater amount than earnings themselves. We further accept that the nature of the relationship between schemes and the State has fundamentally changed since the introduction of the single-tier pension. We have taken on board these arguments and taking into account the need to provide a more balanced approach that still provides protection to members at affordable cost for schemes we have decided to remove the premium we have previously added for schemes who choose to use the fixed rate revaluation method.
- 2.17. This results in an overall new rate of fixed rate revaluation for those leaving pensionable service after 5 April 2017 of 3.5% pa.

Chapter 3: Reviews

Introduction

- 3.1. Chapter 2 of the Consultation outlined two areas where the Department committed to review specific legislative provision:
- regulations 3 and 4 of the Occupational and Stakeholder Pension Schemes (Miscellaneous Amendments) Regulations 2013; and,
 - the transitional arrangements that were put in place following the abolition of defined contribution contracting-out in April 2012.
- 3.2. Our purpose in including the reviews in the Consultation was to obtain views that would help inform information gathering.

Review No. 1: Regulations 3 and 4 of the Occupational and Stakeholder Pension Schemes (Miscellaneous Amendments) Regulations 2013 - “the 2013 Regulations”

We asked: Question 8: Do you have any concerns relating to regulation 3 of the 2013 regulations which the Department is not already aware of?

Regulation 3. Amendment of the Occupational Pension Schemes (Contracting-out) Regulations 1996

- 3.3. Chapter 2 of the Consultation outlined the background to Regulation 3 of the 2013 Regulations. As explained, stakeholders had, prior to consultation, already made us aware of two issues relating to regulation 3, specifically:
- that its application could potentially result in more generous benefits being provided by the altered scheme than were originally provided in the scheme in accordance with the RST; and
 - actuarial certification issues.
- 3.4. With regard to the first issue, the policy intention is to protect contracted out accrued rights and to ensure little change in the overall value of pension benefits paid by the scheme if there is a rule change, and believe that existing requirements provide for this. Going forward, we will reflect and consult as appropriate on whether any further changes to legislation are necessary, in this regard.
- 3.5. As we explain in the Consultation document, the second issue (actuarial certification) also needs further consideration and any changes to the legislation would be not be implemented before autumn 2017.

Regulation 4. Amendment of the Contracting-out (Transfer and Transfer Payment) Regulations 1996

Question 9: Apart from the issues mentioned, do you have any concerns about regulation 4 and bulk transfer arrangements?

- 3.6. Paragraphs 2.8 - 2.10 of the Consultation outlined the context for the changes made by regulation 4 of the 2013 Regulations. Stakeholders alerted us to a problem with bulk transfers without member consent to schemes that have never been contracted-out. The issue was how such transfers can take place now that contracting-out has ended. Before contracting-out was abolished, if a scheme wished to receive a bulk transfer but could not because, as the receiving scheme, it had never been contracted-out, it could adopt a workaround by becoming contracted-out for a short period, thereby becoming a formerly contracted-out scheme. With the ending of contracting-out, schemes are no longer able to use this workaround. Some stakeholders have asked whether, because the workaround is no longer possible, we could make changes to enable this type of transfer to take place.

Respondents' views and Government Response

- 3.7. Prior to the Consultation, stakeholders had identified the issue outlined above. In the feedback to the Consultation, respondents articulated similar points. We are considering the issues relating to transfers from contracted-out schemes to schemes that have never been contracted-out, and hope to be in a position to consult on any proposed changes by autumn 2017.

Review No. 2: transitional arrangements that were put in place following the abolition of defined contribution contracting-out in April 2012

Question 10: Are there any issues that you think the Department needs to be aware of in relation to the transitional arrangements?

- 3.8. Chapter 2 of the Consultation explained that the Department introduced secondary legislation providing a detailed framework for the abolition of defined contribution (DC) contracting-out in 2012. The legislation included provision for transitional arrangements that are necessary for administrative 'tidying-up' of 'late' National Insurance rebates.³ The impact assessment accompanying the legislation committed the Department to reviewing the transitional provisions.⁴
- 3.9. We invited stakeholders' views on these arrangements but very few comments were received, and most of those were in support of the transitional arrangements. One comment was that payment of late rebates to schemes was a 'better option' as opposed to money going to individuals. On this

³ Part 2 of The Pensions Act 2007 (Abolition of Contracting-out for Defined Contribution Pension Schemes (Consequential Amendments) (No 2) Regulations 2011 (S.I. 2011/1724) - <http://www.legislation.gov.uk/ukSI/2011/1724/contents/made>

⁴ <http://www.legislation.gov.uk/ukSI/2011/1724/impacts>

specific point analysis shows that the bulk of late rebate payments fall to be paid in the three tax years following the tax year to which the rebate relates, thereby ensuring that most of the late rebate payments will have gone to members' pension schemes. The transitional arrangements ensure that adjustments to rebates for periods prior to April 2012 are paid to individuals' pension schemes up to April 2015 by an automated process.

Respondents' views and Government Response

- 3.10. Whilst very few comments were received concerning the transitional arrangements DWP had arranged for the ending of DC contracting-out, DWP has become aware of a couple of issues concerning the payments to individuals and communication of those payments.
- 3.11. Firstly we become aware that there were some backlogs with HMRC making payments to individuals. This issue has, however, now been addressed and payments are being made.
- 3.12. The second issue concerned communication. This highlighted that individuals may not be aware how their State Pension might be affected by being contracted-out and that their State Pension would still be adjusted to reflect that they were contracted-out in spite of the fact that they may only receive a refund from DWP, rather than any pension from a previous employer.
- 3.13. We therefore intend to address this by revising the letters which are sent to individuals with their payments to explain how the individual's State Pension will be affected by being contracted-out and why they might choose to invest their refund in a personal pension.
- 3.14. Subject to resolving this issue, and given that there are no other major issues resulting from the transitional arrangements, it is our intention is to conclude the review of the transitional arrangements for the abolition of DC contracting-out. We conclude that the transitional arrangements are working (and have worked) satisfactorily.

Chapter 4: GMP Equalisation

- 4.1. The consultation posed four questions concerning the proposed methodology. This Chapter summarises the feedback received and sets out the Government's response.

Question 11: Is the proposed methodology the best approach? What, if any, other methods should we consider?

Respondent's views

General comments

- 4.2. There was broad agreement by most respondents that the proposed methodology was a distinct improvement on the 2012 proposal as it avoids ongoing administration costs and potential "gold plating" or "double uplift" of benefit. Moreover it was suggested that it offers schemes a relatively simple way to convert GMPs into ordinary scheme benefits and was more practical and less onerous than the Government's previous proposal.
- 4.3. However, several respondents did question the requirement to equalise given the UK's decision to leave the EU and more generally whether there is an actual legal requirement to equalise. To avoid any uncertainty over the requirement to equalise, it was suggested that we should not consider any action until the outcome of the action Lloyds Trade Union are proposing to take against Lloyds bank over whether benefits need to be equalised for the effect of GMPs, and the impact of the UK's departure from the EU on UK pensions and equality legislation is known.
- 4.4. Several respondents wanted an assurance that if they were to use this methodology, Government would confirm that this is a legally permissible way of equalising GMPs (preferably by providing for a *statutory safe harbour*). Otherwise, respondents thought the proposed methodology offers little protection to schemes even if they do choose to adopt it.
- 4.5. Some respondents suggested that there was no need to equalise GMPs because they are in place of social security benefit (so that there is no requirement to equalise)
- 4.6. Some more specific points were as follows:
- (i) **De-minimis for selecting members for conversion** -There should be some tolerance (*de-minimis*) levels adopted when deciding which members should be selected for full conversion.

(ii) Schemes that have already secured benefits - Where a scheme has secured some (or all) members' benefits through annuity policies there may be merit in equalising for the effect of GMPs by leaving the existing benefit structures intact and providing an additional free-standing pension or lump sum.

(iii) Other methodologies - Several other methodologies were put forward such as: Where the cost of equalisation outweighs benefits to the member, the scheme may pay discretionary increases of a fixed amount; lump sums (as a replacement for the increases resulting from conversion that an individual might see on a monthly basis over their lifetime); State Second Pension buyback; or use PPF methodology.

Government Response

Requirement to equalise pensions for the effect of inequalities caused by GMPs.

- 4.7. The Government set out its position in the consultation document. Following the EU referendum on 23 June where the people of the United Kingdom voted to leave, the Government's position is that, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.
- 4.8. Furthermore, this principle of equal pensions was established by the European Court of Justice, on 17 May 1990 (in the Barber judgment) - occupational pension benefits are now regarded legally as pay, and benefits and ancillary arrangements must be equal for men and women. The Government has reflected this requirement in domestic legislation, currently through the provisions of the Equality Act 2010.
- 4.9. The Government has not asserted that the proposed methodology is the only means by which schemes can equalise benefits for the effect of GMPs, and does not propose to do so. It is not placing any obligation on schemes to use this method and is not suggesting that other methods which schemes may have already used to equalise are unacceptable. It is for the trustees of a scheme to decide what if any action is needed for their scheme to provide equal pension benefits. Whilst the Government believes that the proposed method meets the equalisation obligation derived from EU law it does not intend to suggest that this is a definitive statement of how equalisation should be effected. The Government does not therefore consider it would be appropriate to provide a statutory safe harbour in respect of the proposed methodology.
- 4.10. Notwithstanding our opinion on equalisation, we will consider our position in the light of any action taken by Lloyds Trade Union and any legal decisions resulting from that action.

Replacement for a social security benefit

4.11. The GMP has never been a replacement or substitute for SERPS. Providing a pension scheme which offers benefits that are at least as good as the GMP rules is a condition that an employer would have had to meet before it would be allowed to pay lower National Insurance contributions (NICs). This is borne out by:

- the NICs rebate being paid to the employer and employee (not the scheme);
- the rebate being paid whether or not the employer and / or the employee are paying contributions into the scheme;
- a GMP in payment can be higher than SERPS;
- entitlement to state benefit is based on rules in place at the time a claim is made, but entitlement to a GMP is built up over time.

Specific points:

- (i) **De-minimis for selecting members for conversion** – we will explore the de-minimis idea with the working group⁵, but our current understanding is that the legal requirement to equalise benefits does not apply above such a level.
- (ii) **Schemes that have already secured benefits** - we will consider the merit of this approach with the working group
- (iii) **Other methodologies** - A range of other methodologies were proposed and the Government intend to consider them further with the working group.

Question 12: Is there anything about the proposed process that raises concerns or might not work – if so, what needs to be done?

Respondent's views

4.12. A number of challenging issues were raised in response to this question. Due to the variety and complexity of the issues we are not listing them all in this response but are focussing on the key comments. We will however share all the comments with the industry working group and consider what if any action is required with regard to each of them.

4.13. Key issues raised were as follows:

- (i) **Proposed methodology needs to consider other groups:** e.g. those in receipt of pension as a survivor (for pre and post 88 GMPs), pensioner

⁵ The industry working group was set up by DWP in 2013 to look at a more suitable method by which schemes could equalise benefits for the effect of inequalities caused by GMPs. It is made up of professionals from the pensions industry along with DWP policy officials.

members, defined contribution schemes with GMP underpins, divorce settlements, schemes that have wound up.

- (ii) **Transfers, buy-outs** - how do schemes deal with GMPs that have been transferred or bought out? Where does responsibility fall - on the transferring scheme, or the receiving scheme or annuity provider?
- (iii) **Backdating payments** - Government could help by confirming that backdating payments more than 6 years is unnecessary or advise what to do about back payments and whether interest should be added.
- (iv) **Cash equivalent transfer value (CETV) method for valuing benefits** - DWP mention CETV as a possible method of valuing benefits to be converted. Respondents wanted to know what other basis would be acceptable or for DWP to confirm that CETV should be the basis applied.
- (v) **Reconciliation and lack of data issues** - Schemes need sufficient time to complete their reconciliation of records. Where data is unavailable, respondents suggested that an approximate method or pragmatic approach could be used or some guidance on what schemes should do could be provided e.g. standardised factors or options.
- (vi) **Unisex valuation approach** - Why is unisex valuation approach correct? Why cannot gender specific assumptions be used?

Government Response

- (i) **Proposed methodology needs to consider other groups:** We will discuss with the working group what other groups might also be put forward as examples. We recognise that the key groups - pensioners and survivors probably should be included, however, we think that situations such as divorce settlements and defined contribution schemes with GMP underpins will depend on the rules of the scheme.
- (ii) **Transfers, buy-outs** - This is an issue we will consider with the working group. Any advice would be provided in the form of guidance for schemes.
- (iii) **Backdating payments** - we will give this issue further consideration with the working group.
- (iv) **Cash equivalent transfer value (CETV) method for valuing benefits** - We will work with the working group to look at what methods would be suitable for schemes to value benefits.
- (v) **Reconciliation and lack of data issues** - Where data is unavailable we would expect schemes in the first instance to rely on HMRC records. For situations where HMRC records are inconclusive, we will need to consider suitable approaches with the working group.

- (vi) **Unisex valuation approach** - Our view remains that the unisex approach is correct as gender specific calculations could introduce inequality.

Question 13: What are the potential administration costs from using the proposed methodology? How might these costs be reduced?

Respondents' views

4.14. Respondents acknowledged that overall, the proposed methodology would provide lower administration costs than the 2012 proposal. They provided a number of potential administration costs that would result from using the proposed methodology. Some of these are listed below:

- (i) **Communications challenges** - Guidance was requested, for example where deferred members and other members have made plans based on benefit quotes or members cannot be traced. There were also concerns about information HMRC may supply in letters concerning contracting-out where a scheme has equalised. The messages could be conflicting.
- (ii) **Tax implications** - need to consider tax implications for example any impact on lifetime allowance requirements.
- (iii) **Data collection/audit** - schemes may have difficulties in tracing all members records. To overcome this problem respondents suggested providing a one-off set uplift. For example, where expectation is 2-5% increase, provide 5%. This would be based on analysis of scheme benefits and records.
- (iv) **Actuarial costs/ Legal advice** - schemes would need to build an actuarial model for conversion and seek advice from lawyers on the proposed changes to the scheme.

Government Response

- (i) **Communications challenges** - We will work with the working group to consider what advice might be put in guidance to assist schemes with communications messages. We will continue to work with HMRC to ensure any future communications regarding contracting-out take into account the fact that some schemes may have undertaken GMP conversions.
- (ii) **Tax implications** - we are already working with HMRC to consider how GMP conversion may impact on an individual's tax arrangements.
- (iii) **Data collection/audit - (where records not available - one-off set uplift)** - we will consider this suggestion further with the working group.
- (iv) **Actuarial costs/ Legal advice** - We will consider this further with the working group.

Question 14: What do you think of the proposed changes to the GMP conversion legislation? (We would be particularly interested to hear from schemes that have already converted GMPs using the current legislation).

Respondents' views

4.15. Whilst there was broad support for the suggested changes to legislation, respondents did however provide some suggestions for how the legislation might be improved. The following provides some detail on some of the more significant changes they thought were necessary. Again, the intention is that we will consider all the suggested changes with the industry working group.

- (i) Requirement to notify HMRC and to notify members of conversion -** Respondents noted that we were intending to remove the requirement to notify HMRC but questioned whether the proposed change to only notify members before and after conversion could be dealt with in a single notice. This would be ahead of conversion and announce the date from which the change will be made.
- (ii) Definition of GMP conversion -** respondents suggested this needs to include survivors.
- (iii) Employer consent -** Legislation should set out that employer consent must be given to specify which individuals are to be included in conversion.
- (iv) Regulation 27 of the Occupational Pension Schemes (Schemes that were Contracted-out) (No 2) Regulations 2015 (Actuarial equivalence requirement).** Respondents asked whether where full member data is not available, it might be more efficient for actuaries to supply a pro-forma/model/tool for calculating the value of benefits.
- (v) Timeline for DWP to change legislation or produce guidance -** Respondents noted that there has been no indication from DWP when legislation will be simplified or guidance published.

Government Response

- (i) Requirement to notify HMRC and to notify members of conversion -** We will consider with the working group whether one notification by the employer would be sufficient.
- (ii) Definition of GMP conversion -** we agree that the definition should include survivors.
- (iii) Employer consent -** The legislation effectively already provides for the employer to specify which individuals are to be included in conversion. We will consider whether to provide guidance on this issue.

(iv) Regulation 27 of the Occupational Pension Schemes (Schemes that were Contracted-out) (No 2) Regulations 2015 (Actuarial equivalence requirement) - We will need to consider this issue further with the working group.

(v) Timeline for DWP to change legislation or produce guidance - DWP are grateful to respondents for their feedback on the proposed methodology. As mentioned before, we will be taking all comments away and discussing them further with the working group. Part of our further work will be to decide what further changes might be necessary to the methodology and what further changes might be required to legislation to enable schemes to convert benefits more easily.

As soon as we are in a position to set out a more definite timeline for publishing guidance and potentially amending legislation, we will notify interested parties within the pensions industry.

Annex A: Consultation respondents

Allied Domecq Pension Fund
Aon Hewitt
Arc Pension Law
Association of Consulting Actuaries
Association of Pension Lawyers
Barnett Waddingham
BT Pension Scheme
Capita
Chris Sampson
Confederation of British Industry
Equiniti
Eversheds
First Actuarial
Gowling WLG
Hymans Robertson
Institute & Faculty of Actuaries
ITM Limited
JLT Benefit Solutions
Kevin Kelleher
Lane Clark & Peacock
Lloyds Banking – Pension Trustees
Lloyds Banking Group
Mayer Brown
Mercer Ltd
National Grid
NHS Pensions
Pension Protection Fund
Pensions and Lifetime Savings Association
Pensions Management Institute
PricewaterhouseCoopers
Punter Southall and PS Administration Limited's
Sackers
Siemens
Slaughter & May
Squire Patton Boggs
Superannuation Arrangements of the University of London
The 100 Group Pension Committee
The Association of Pension Professional Pension Trustees
The Pensions Administration Standards Association
The Pensions Advisory Service
Trafalgar House Pension Trust
Travers Smith
Willis Towers Watson

