The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2011

Government response to consultation on draft regulations

February 2011

DWP Department for Work and Pensions

Contents

Introduction

1 The consultation on these regulations began on 18 October 2010 and ended on 10 January 2011.

2 Thirteen responses to the consultation were received. A list of the respondents is in the next section. The Department is very grateful to those who responded to the consultation.

3 The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2011 will, in the main, come into force on 6 April 2011 unless Parliament annuls them.

4 The regulations will be available on the UK Legislation website at

http://www.legislation.gov.uk/uksi/2011

5 This document is available on the Department's website at

http://www.dwp.gov.uk/consultations/2010/

6 A paper copy of this document can be obtained from:

Michelle Boreland

Department for Work and Pensions

7 Floor

Caxton House

London SW1H 0NA

Email: michelle.boreland@dwp.gsi.gov.uk]

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

Responses to consultation

This section summarises the response to the consultation and sets out the Government's response.

The following organisations responded to the consultation:

Actuarial Profession

Aon Hewitt

Association of Consulting Actuaries

Association of Pension Lawyers

Confederation of British Industry

Eversheds LLP

Freshfields Bruckhaus Deringer LLP

Hymans Robertson LLP

Institute of Chartered Accountants of Scotland

Law Society of Scotland

Society of Pension Consultants

Towers Watson Ltd

Travers Smith LLP

Consultation questions

We invited comments on:

(a) the policy proposals

- in particular on the 3 months time limit in new regulation 12(3)(c) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 that requires the bulk transfer to take place within 3 months of the date the actuary signs the certificate;

(b) the draft regulations

- in particular whether respondents thought that the inserted Schedule 3 to the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 implements the relevant provisions from GN28;and

(c) our assessment of the impact of the regulations

- in particular the changes to legislation being suggested as a result of the replacement of GN28 are not intended to impose any additional burdens on pension schemes, nor are they intended to require changes to scheme rules. We asked whether respondents thought that may not be the case and why.

Responses

Regulation 2

Comment

Two respondents suggested the amendment to paragraph 15 of Schedule 1 to the Personal Pension Schemes (Disclosure of Information) Regulations 1987 (SI 1987/1110), to substitute “Pensions Advisory Service” for “Occupational Pensions Advisory Service Limited”, should use the current official name for this service, “The Pensions Advisory Service Limited”.

Government response

The Government acknowledges that this is the registered name of the Pensions Advisory Service (TPAS) but, as the name on their website and that used on their documentation does not include the word 'Limited' and other legislation such as the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (SI 1996/1655) adopts the same form of words, we do not believe an amendment is necessary.

Regulation 3 amends the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (SI 1991/167) (“the 1991 Regulations”) to reflect the replacement of guidance note GN16 by the Board for Actuarial Standards with principles-based guidance.

There were 13 responses relating to this amendment.

Comment

11 respondents commented on whether the bulk transfer should take place within 3 months of the certificate being signed by the actuary. 7 respondents said that within 3 months was adequate. 3 respondents felt that the actuary should have the flexibility to provide for a shorter period if necessary and one respondent thought the period should be 6 months.

Government response

The Government concludes that the bulk transfer should be made “within 3 months” of the date the actuary signs the certificate. This gives the trustees of the scheme the flexibility to make the transfer any time within the 3 month period.

Comment

The draft of the new regulation 12(3)(d) of the 1991 Regulations required that the certificate is only valid if there are “no changes to the benefits, data and documents used in making the certificate”. 8 respondents said this was more restrictive than GN16 which only required that the certificate is valid provided there is “no change in the benefits or other terms of the transfer”.

Government response

The Government agrees and has redrafted new regulation 12(3)(d) so the certificate is valid provided there are no significant changes to the benefits, data and documents used in making the certificate.

Comment

Two respondents pointed out that the GN16 “broadly, no less favourable” certificate is also required by legislation to be used when certifying bulk transfers of pension credit benefit (arising from a pension share on divorce) and protected rights.

Government response

Regulation 10 of the Pension Sharing (Pension Credit Benefit) Regulations 2000 (SI 2000/1054) and regulation 3C of the Protected Rights (Transfer Payment) Regulations 1996 (SI 1996/ 1461) have been amended to place the actuarial certificate into regulations (regulations 6 and 4 respectively of the final version of the Regulations).

Comment

Some of the respondents suggested transposing further provisions in the GN16 to either the 1991 Regulations or the certificate.

Government response

Once the GN16 is withdrawn, actuaries will use the Board for Actuarial Standards' principles-based guidance and it is not appropriate to include additional guidance in regulations.

Regulation 4 of the consultation draft of the Regulations amended regulation 23 of the Occupational Pension Schemes (Contracting-out) Regulations 1996 (SI 1996/1172) ("the 1996 Regulations") to reflect the replacement of guidance note GN28 with principles-based guidance.

Comment

Eight organisations provided 67 detailed, technical responses on the draft amendments in draft regulation 4. Many of these were received on or after the closing date of the consultation. Respondents also offered alternative wording to the draft amendments. Some of the issues raised were:

- Suggested changes to the requirements placed on the actuary in paragraphs 3-6 of the new schedule to be inserted by draft regulation 4;
- Clarification of the phrase "by more than one method" in paragraph 6 of that schedule (how schemes calculate pensions);
- Concerns related to how the actuary must estimate the anticipated membership of a scheme in paragraph 12 of that schedule;
- Concerns related to the meaning of the phrases "normal pension age", and "expects to accrue" in paragraph 13;
- A suggested link to regulation 28 of the 1996 Regulations in paragraph 13 (where service over 40 years will not accrue further benefits in the scheme).

Government response

To ensure all these responses are given proper consideration, and that the amending regulation and schedule meet the policy intended as a result of that consideration, regulation 4 and Schedule 2 from the consultation draft of the Regulations are being withdrawn from this package of Miscellaneous Amendment Regulations. We intend to bring forward the amendment later in the year in a separate set of Regulations. When all of the comments have been analysed, we will publish a full response.

Regulation 5 amends the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (SI 1996/1715)

There were no substantive comments on this amendment.

Regulation 6 of the consultation draft (regulation 7 of the final draft) amends the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (SI 2006/349)

There were no substantive comments on this amendment.

Regulation 7 of the consultation draft of the Regulations (regulation 8 of the final draft) amends regulation 3(3)(b) of the Occupational Pension Schemes (Fraud Compensation Levy) Regulations 2006 (SI 2006/558) to increase the maximum fraud compensation levy on occupational pension schemes that can be raised by the Board of the Pension Protection Fund in respect of each financial year from 23p to 75p per scheme member.

Comment

There were 3 responses to this amendment. These acknowledged that the increase was primarily a matter for Government to decide and would not have a dramatic commercial or practical impact on schemes. However there was concern that the scale of the increase had not been fully explained and that if the levy was collected more frequently this would present scope for an increasing burden to be placed on pension schemes.

One respondent took the opportunity to suggest further changes to Pension Protection Fund legislation to be included in this package of Miscellaneous Amendments Regulations.

Government response

Our view is that this scale of increase in the maximum limit will allow the Board of the Pension Protection Fund greater flexibility to continue to manage the Fraud Compensation Fund effectively and raise sufficient funds to meet the volume of fraud compensation claims from eligible schemes. The current maximum limit is 23p per scheme member and was set in 1997 in advance of the former Pensions Compensation Board opening for business and has only been collected on three occasions since. Future decisions about whether to raise a levy in any one financial year will be taken by the Board of the Pension Protection Fund based on the demand placed on the Fund, and the nature of the Fund makes this difficult to predict.

Other

Some responses were received that were outside the scope of this consultation and will be dealt with separately.

This package of Miscellaneous Amendments Regulations will be laid before Parliament without delay with minor drafting changes from the consultation version of regulation 3 and the addition of two consequential amendments but without the original regulation 4. Unless Parliament annuls the Regulations, the amendments will come into force on 6 April 2011 with the exception of the amendments made by regulation 8 which will come into force on 31 March 2011.

Consultation response – Department for Work and Pensions

February 2011

ISBN 978-1-84947-516-7