

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

Part II – The Occupational Pension Schemes (Contracting- out) Regulations 2011

Government response to consultation on draft regulations

May 2011

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1 Introduction

The Occupational Pensions Schemes (Contracting-out) Amendment Regulations 2011

- 1.1 These draft regulations, which amend Regulation 23 of, and insert a new Schedule into, the Occupational Pension Schemes (Contracting-out) Regulations 1996 (the Contracting-out Regulations) - were previously included in the Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2011 consultation, which began on 18 October 2010 and ended on 10 January 2011.
- 1.2 Of the thirteen responses to that consultation, eight organisations provided 67 detailed and technical comments specifically on the amendments contained in these Regulations. A list of all respondents is provided at Annex A. The Government is very grateful to all those who responded to the consultation. This document outlines the main points made by respondents and provides the Government's response.
- 1.3 Many of the responses specific to the amendments contained in these Regulations were received on or after the closing date of the consultation. To ensure proper consideration of the issues which had been raised, these amendments were withdrawn from the Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2011, and were not included in the Government's response to that consultation, published on 21 February 2011.
- 1.4 The regulations will be available on the UK Legislation website at <http://www.legislation.gov.uk/uksi/2011>
- 1.5 This document is available on the Department's website at <http://www.dwp.gov.uk/consultations/2010/>
- 1.6 A paper copy of this document can be obtained from:

Richard Jordan
Department for Work and Pensions
7th Floor,
Caxton House
London SW1H 9NA
Email: Richard.jordan1@dwp.gsi.gov.uk

2 Responses to Consultation – General Points

- 2.1 This part of the document summarises the responses to the consultation and sets out the Government's response only in relation to the issues raised by respondents on the draft amendments to the Contracting-out Regulations. Responses to the remainder of the draft regulations contained in the Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2011 were addressed in the Government's response to that consultation, which was published on 21 February 2011.
- 2.2 The regulation and Schedule numbers used in the draft amendment included in the consultation document issued on 18 October 2010 have been retained throughout this document for ease of reference.

3 Responses to the Specific Consultation Question

- 3.1 In addition to asking for comments on the policy proposals and draft regulations in the consultation document, we asked a question specifically about what was Regulation 4 (Amendment to the Occupational Pension Schemes (Contracting-out) Regulations 1996):

We asked:

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. Please let us know if you think that may not be the case and why.

Comment

- 3.2 In response to this specific question, three respondents were of the opinion that the proposed amendments did not impose any additional burdens on pension schemes, nor required changes to scheme rules. The remaining respondents did not make any comment.

General responses to Regulation 4 and Schedule 2

4 Regulation 4 (Amendment of the Occupational Pension Schemes (Contracting-out Regulations) 1996)

Comment

- 4.1 Two respondents suggested that the wording should be altered to reflect the principles-based nature of the Technical Actuarial Standards issued by the Board for Actuarial Standards (BAS). One respondent proposed that the exclusion in relation to lump sum benefits on death should include deferred members.

Government response

- 4.2 We have sought opinion from BAS, and they are satisfied with the wording used in the draft regulation. We have altered the reference to lump sum benefits on death to include deferred members of a pension scheme, as this carries over the intention contained in BAS Guidance Note 28 (GN28), paragraph 4.13.3.

Schedule 2 – insertion of Schedule 3 (Further requirements for meeting the statutory standard) to the Occupational Pension Schemes (Contracting-out) Regulations 1996

5 Paragraphs 1- 6: general requirements of the actuary concerning certification

Comment

- 5.1 Along with general drafting comments on the Schedule, there were many comments on whether the first six paragraphs of the Schedule (including whose responsibility it was to send the Reference Scheme Test (RST) certificate, and where to send it) created unnecessary administrative rigidity. The inclusion of a requirement for the employer to keep a record of subsidiary and associated companies was questioned.
- 5.2 Some respondents believed that the term “benefit scale” should be used, rather than the phrase “by more than one method”; use of the term “pension”, rather than “benefit”, was questioned. Other phrases which respondents queried were: “normal pension age”; “expects will accrue”; and, “any statement of funding principles”.

Government response

- 5.3 The policy intention of this amendment is to include the essential components of GN28 which assist the actuary when undertaking the necessary work in relation to a RST certificate, following the withdrawal of GN28 (a reference to GN28 was previously contained in Regulation 23 of the Contracting-out Regulations). The RST certificate is not the same as the contracting-out certificate; direction for employers for completing the contracting out process is contained in guidance issued by Her Majesty’s Revenue and Customs.
- 5.4 If the requirements contained in GN28 are already included in contracting-out legislation, or are published in BAS Technical Actuarial Standards, they have not been carried over into the amendments made by these Regulations. Text which has been suggested by respondents to cover what is believed to be an omission of transfer between GN28 and the draft amendment has been considered in this context.

- 5.5 We have not been provided with any evidence to suggest that the opening paragraphs of the Schedule place any additional burdens on the actuary, although we agree with the necessity to change the provisions on where the RST certificate is being sent, and whose responsibility this should be.
- 5.6 Subsidiary or associated employers have been included in the Schedule as although an employer's contracting-out certificate is separate from the RST certificate, any changes to subsidiary or associated employers may affect the contracting-out certificate, which in turn may influence the ability of the scheme to satisfy the RST.
- 5.7 Where respondents questioned use of words and phrases, many of these already appear either in existing legislation or within paragraph 17 of the Schedule (definitions). For instance, we have used "pension" not "benefits" because this is the term used in section 12A of the Pension Schemes Act 1993 and Regulation 23 of the Contracting-out Regulations. We are concerned that using words or phrases from GN28 which do not appear in the existing legislation could cause uncertainty with the existing legislation.
- 5.8 With regard to the term "benefit scale" used in GN28, we have altered the text in the Schedule, taking into account suggestions made by respondents for wording which could be used as an alternative. We recognise that those within the pensions industry will fully understand what "benefit scales" means; to help those unfamiliar with this term, it normally means both a description of the calculation which produces a pension amount and the terms of payment of the pension.

6 Paragraph 9 – Employers who have two or more schemes

Comment

- 6.1 Doubts were raised as to whether the wording in the Schedule would allow the actuary to consider jointly the position of two (or more) schemes of an employer if on their own they would not be sufficient to qualify as contracted out. It was also suggested that there should be a more explicit reference to the "effective date" of the RST Certificate.

Government response

- 6.2 We believe that the Schedule fully deals with the position of two (or more) schemes of an employer if on their own they would not be sufficient to qualify as contracted out. However, we have altered the text to ensure that there can

be no misunderstanding. We have also made a more explicit reference to the effective date of the RST certificate within the Schedule to help the actuary reference the correct date.

7 Paragraph 12 – Anticipated membership where scheme not yet established

Comment

- 7.1 The requirement on the actuary to estimate the anticipated membership data when a scheme is being established was queried, and it was suggested that the wording of GN28 paragraph 4.7 should be followed more closely.

Government response

- 7.2 To cater for situations where a scheme is being established and there is no actual membership data available, the text has been amended so that the actuary should use estimated membership information. This will allow the actuary to consider relevant information with reference to the RST procedure, and will allow someone other than the actuary to estimate the membership data.

8 Paragraph 13: Inclusion of requirements of paragraph 4.1.13 of GN28 in the Schedule (service that does not qualify for future accrual of benefits)

Comment

- 8.1 A proposal was put forward to provide a specific reference to Regulation 28 of the Contracting-out Regulations (employee service in a contracted out salary-related scheme that does not qualify for any further accrual of benefits).

Government response

- 8.2 As a result of respondents' comments, we have included provision for the actuary to consider the situation where an employee's service in a contracted-out salary related scheme does not qualify for further accrual of benefits.

9 Paragraph 15 – payment of pensions to survivors

Comment

- 9.1 Several respondents expressed a view that some areas of GN28 had been omitted from or not fully reflected in the Schedule (for instance, payment of pensions to widows, widowers and civil partners; death in service pensions and prospective service pensions; death in retirement pensions where a lump sum can be taken).

Government response

- 9.2 We have considered all the comments made by respondents. Regarding paragraph 4.11 of GN28 (quantities of benefit and who is entitled to receive the benefit), we agree that this should be reflected to a greater degree in the Schedule, as this imposes a duty on the actuary to consider the payment of pensions to widows, widowers and surviving civil partners. We have also re-drafted the paragraphs dealing with prospective service pensions, service-related pensions, and death in retirement pensions.

10 Paragraph 16 - Ongoing supervision of schemes (GN28 paragraphs 5.1, 5.2)

Comment

- 10.1 Respondents questioned whether the text in the Schedule retained (or expanded upon) the requirements currently contained in paragraphs 5.1 and 5.2 of GN28 (ongoing supervision of schemes).

Government response

- 10.2 Paragraph 16, dealing with changes notified to the actuary, has been adjusted to reflect other amendments made during the re-drafting of the Schedule. The intention is not to expand upon any requirements which are currently placed on the actuary by paragraphs 5.1 and 5.2 in GN28.

11 Next Steps

The Government plans to make amending regulations entitled “The Occupational Pensions (Contracting-out) Amendment Regulations 2011”, which will come into force on 1 October 2011.

Annex A

The following organisations responded to the consultation on the Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2011:

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 response – Department for Work and Pensions

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