



Department
for Work &
Pensions

Occupational Pension Schemes – abolition of defined benefit contracting-out. A consultation on draft Regulations

Public consultation

May 2014

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Introduction

This consultation asks for views on proposed legislative changes which follow from the abolition of defined benefit contracting-out. Subject to Royal Assent to the Pensions Bill 2013-14, defined benefit contracting-out of the additional State Pension will end when the current two-tiered system of basic and additional State Pension is replaced by a single-tier pension in April 2016. Draft Regulations are attached as Annexes:

- Annex A contains the draft Occupational Pension Schemes (Power to amend Schemes to Reflect Abolition of Contracting-out) Regulations 2014 – referred to in this consultation as the “statutory override regulations”. Clause 24 and Schedule 14 of the Pensions Bill 2013-14 will enable employers to amend scheme rules without trustee approval in order to reduce scheme costs to reflect the increase in employer National Insurance costs when contracting-out ends. The regulations in Annex A set out the detail of how employers will be able to use this power.
- Annex B contains the Occupational Pension Schemes (Schemes that were Contracted-out) Regulations 2014. The draft regulations contain provisions which will replace the Occupational Pension Schemes (Contracting-out) Regulations 1996.

In preparing these draft regulations we have sought to reflect changes made by the Marriage (Same Sex Couples) Act 2013 and resulting regulations. However, as implementation of that Act is ongoing, we anticipate that further changes may need to be reflected in the final contracting-out regulations.

We are aware that other legislation will need amending to take account of the abolition of contracting-out. We will be working with stakeholders to develop the provisions in a consequential order for publication later in the year.

The majority of the provisions will come into force in April 2016. The statutory override regulations, however, are expected to come into force in autumn 2014.

About this consultation

Who this consultation is aimed at

We particularly welcome comments on the draft regulations from pension scheme trustees, their advisers, employers who sponsor contracted-out occupational pension schemes, pension scheme professionals, pension scheme members and member representative organisations, but we would be interested in views from any source.

Purpose of the consultation

The consultation seeks views on:

- The draft Occupational Pension Schemes (Power to amend Schemes to Reflect Abolition of Contracting-out) Regulations 2014

- The draft Occupational Pension Schemes (Schemes that were Contracted-out) Regulations 2014

Scope of consultation

This consultation applies to England, Wales and Scotland. Regulations 39 to 50 of Occupational Pension Schemes (Schemes that were Contracted-out) Regulations 2014 (Part 7) make provision for Northern Ireland as they refer to Contributions Equivalent Premiums which are excepted matters. It is expected that Northern Ireland will make corresponding changes for the remaining provisions under consultation.

Duration of the consultation

The consultation period begins on 8 May 2014 and runs until 2 July 2014.

How to respond to this consultation

Please send your consultation responses to:

Email: contracting.outteam@dwp.gsi.gov.uk

Please ensure your response reaches us by 2 July 2014.

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 large 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:

Department for Work and Pensions
Contracting-out Policy Team
Level 1, Caxton House,
Tothill St, London SW1H 9NA
Email: contracting.outteam@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:

Freedom of Information Team
Caxton House
6-12 Tothill Street
London
SW1H 9NA
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 Cabinet Office Consultation Principles published on 17 July 2012, and can be found here: <https://www.gov.uk/government/publications/consultation-principles-guidance>

The key principles are:

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before;
- departments will need to give more thought to how they engage with and consult with those who are affected;
- consultation should be “digital by default”, but other forms should be used where these are needed to reach the groups affected by a policy; and
- the principles of the Compact between government and the voluntary and community sector will continue to be respected.

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:

Elias Koufou
DWP Consultation Coordinator
2nd Floor
Caxton House
Tothill Street
London
SW1H 9NA
Phone 020 7449 7439
caxtonhouse.legislation@dwp.gsi.gov.uk

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 in autumn 2014 in a report on the GOV.UK website:

<https://www.gov.uk/government/consultations/occupational-pension-schemes-abolition-of-defined-benefit-contracting-out>

The report will summarise the responses and the action that we will take as a result of them.

Chapter 1: Background to the abolition of defined benefit contracting-out

Context

1. Some employers choose to set up company pension schemes to provide a pension which replaces all, or part, of the additional State Pension (also called the Additional State Pension), provided the scheme meets minimum standards known as the Reference Scheme Test. This is known as “contracting-out” of the additional State Pension. Company schemes are contracted-out on a defined benefit (DB) basis. Individuals who are members of a contracted-out scheme and their employers pay lower National Insurance contributions (NICs). This arrangement is known as the National Insurance rebate.
2. In April 2011, the Government published a Green Paper, *A state pension for the 21st century (Cm 8053)*¹, which consulted on two broad options for reforming the state pension system for future pensioners. The White Paper which followed in January 2013, *The single-tier pension: a simple foundation for saving (Cm 8528)*², outlined the Government’s proposals for replacing the current two-tiered system of basic and additional State Pension with a single-tier pension.
3. As a consequence of the Government’s State Pension reforms, contracting-out of the additional State Pension will cease as there will be no additional state pension from which to contract-out. This will have a range of implications for employers, employees and schemes.

Employer impacts

4. For employers, one of the most significant implications of abolition will be the need to start paying the standard rate of NICs. This will mean an increase in respect of each contracted-out employee of 3.4 per cent of relevant earnings³. The minimum standards for being a contracted-out scheme will no longer apply when contracting-out ends, helping some employers to agree with trustees changes to scheme rules to reduce scheme costs to offset this increase in National Insurance (NI), either by reducing future pension benefits or by increasing employee contribution rates. However, some private sector employers are limited in their ability to modify the scheme benefit structure by legislation or

¹ <http://webarchive.nationalarchives.gov.uk/20110708134535/http://dwp.gov.uk/docs/state-pension-21st-century.pdf>

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181229/single-tier-pension.pdf

³ Earnings between the Lower Earnings Limit (£5,772) and the Upper Accrual Point (£40,040) (2014/15 annualised figures)

by the scheme rules themselves. In many cases, scheme rules can only be changed by the trustees or with the trustees' consent.

5. As outlined in the White Paper, in order to help safeguard the viability of DB pension schemes, the Government will provide private sector employers limited powers, in the form of a statutory override, to change scheme rules to adjust for the additional NI cost without trustees' consent.

Employee impacts

6. As a result of abolition, contracted-out employees will cease to receive the "NI rebate" and start to pay full rate NICs. This will mean an increase equivalent to 1.4 per cent of relevant earnings, bringing them into line with the rate of National Insurance that is paid by other employees. In return, the formerly contracted-out employees' qualifying years after the reforms are implemented will count towards the new State Pension in the same way as others.
7. As the Government is legislating to help private sector employers make adjustments to their schemes to take account of the loss of the NI rebate, employees also potentially face a reduction in the value of their scheme benefits or an increase in pension contributions as well as an increase in the rate of National Insurance that they pay.
8. However, under the new State Pension, the vast majority of those who pay a higher rate of National Insurance as a result of the ending of contracting-out will be able get extra state pension for years worked or credited after the single-tier pension is implemented. Further, around 85 per cent of individuals who reach State Pension age in the first two decades of single tier will gain enough extra state pension to offset both the increase in the National Insurance contributions they will pay over the rest of their working lives and any potential adjustments to their occupational pension. For people working in the private sector from 2016, the proportion who recoup the additional contributions is around 75 per cent.⁴

Protected Persons

9. The White Paper outlined the issue of "protected persons" whereby some employers and trustees of formerly nationalised industries are limited in their ability to change scheme rules by legislation made at the time of privatisation. These employers would face the additional cost of paying full-rate NICs without being able to make a corresponding change to their occupational scheme benefits. A public consultation invited views on whether it would be fair and appropriate to override the protected persons regulations for employers who may wish to change future benefits. In February 2014, the Government announced

⁴ More detail is provided in the Single Tier Impact Assessment.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254151/a-pensions-bill-single-tier-ia-oct-2013.pdf

that these employers should not be allowed to use the statutory override to alter their pension schemes for members with protected person status⁵.

Administrative impacts

10. The Government is committed to making the administrative processes for ending contracting-out as straightforward as possible. The White Paper identified Government support around communications as an important factor in achieving this. Consequently, a key objective of the single-tier pension communication and stakeholder engagement strategy is to work with employer and pension industry representatives to support their preparations for the ending of contracting-out. This will include communication activities with scheme members about the changes.
11. The DWP and Her Majesty's Revenue & Customs(HMRC) will continue to work closely with the pensions industry and employer representatives, as well as those who represent employees, as implementation approaches. Specifically, the Government is setting up an Implementation Stakeholder Forum to share and refine plans for information products and communications ahead of the introduction of the reforms. Members of the Forum will be drawn from a number of organisations representing both consumers and employers at a national and regional level. A sub-group of this Forum will consider the technical issues and challenges faced by employers, scheme administrators and trustees through the abolition of contracting-out.
12. In parallel, HMRC are providing technical support to employers and scheme providers, for example through publicising the new procedures being put in place in preparation for ending contracting-out. The first in a series of "Countdown Bulletins" was published in March 2014 to give pension scheme administrators and providers information about changes to processes.
13. HMRC are also collecting Scheme Contracted-out Numbers (also known as "SCONs") from employers from April 2014 to enable the automatic closure of all contracted-out scheme memberships from December 2016. This means there will be no need for schemes to return their contracted-out certificates to HMRC.
14. Working with pension schemes, HMRC is developing a reconciliation service to ensure individual contracted-out records are correct once contracting-out ends and, from April 2016, employers and pension providers will be able to use a self-serve portal to obtain information about accrued Guaranteed Minimum Pensions (the rights arising from contracting-out between 1978-1997).

⁵ <https://www.gov.uk/government/consultations/possible-statutory-override-for-protected-persons-regulations>

Impact Assessment

15. The impacts of these changes are taken into account in Chapter 5 of the Impact Assessment which accompanied the Pensions Bill 2013-14. A further Impact Assessment is published alongside these regulations which focus on the statutory override – Annex C

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308821/annex-c-impact-assessment.pdf

Chapter 2: Commentary on the draft Occupational Pension Schemes (Power to Amend Schemes to Reflect Abolition of Contracting-out) Regulations 2014

Introduction

16. This chapter relates to draft regulations that set out in detail how the power given to employers under Clause 24(2) of the Pensions Bill 2013-14 – the “statutory override power” may be used by employers to recoup the employers’ increase in National Insurance Contributions (NICs). The regulations should be read with reference to the primary legislation, Clause 24 and Schedule 14 to Pensions Bill 2013-14.
17. Currently employers sponsoring defined benefit (DB) occupational pension schemes are able to contract-out of the additional State Pension in return for providing pension provision that meets the standard set out in the Reference Scheme Test. In simple terms this means the employers must provide a pension scheme of sufficient quality. Contracting-out of the additional State Pension means that the employer and their employees pay a lower rate of NICs – this is known as the NI rebate.
18. The introduction of a single-tier state pension in April 2016 means there will no longer be an additional State Pension to contract-out of therefore, the NI rebate will end. Sponsors of contracted-out DB occupational pension schemes will pay the same rate of NI as all other employers.
19. However, employers will still be sponsoring schemes that provide the same level of retirement benefits. Some employers are able to adjust their schemes to recover this additional cost. However some are prevented from doing so because of scheme rules and, or, the requirement for trustee consent.
20. The provision of a statutory override will help employers to continue supporting their defined benefit pension schemes after the abolition of contracting-out. Employers using the override are limited to recouping their increase in NICs only.
21. In general the statutory override can be used to override any scheme rule or regulation that prevents an employer from making changes to their scheme.
22. These regulations will require an actuary to estimate the value of the employer’s additional NI costs and the value of the amendments proposed to recoup that

cost. Before any amendments can be made they must be certified by the actuary as recouping no more than the increase in the employer's NICs.

23. The general calculation requirements in regulations 4, 5, 6 and 8, set out how the calculations are to be made, the calculation date and the assumptions which must be used in this process. We have used the set of assumptions in the Statement of Funding Principles⁶ (SoFP). However, these assumptions include an allowance for prudence. The extent of the allowance is determined by factors such as the scheme's funding objective and the sponsoring employer's covenant.
24. The purpose of the statutory override is to allow employers to recoup the cost of their increase in NICs. The allowance for prudence made for funding purposes is not directly relevant to the use of the override, which is a one-off calculation. By removing the margin for prudence employers are able to make scheme changes based on a best estimate of the future costs and would be expected to result in employers recouping the cost of this increase whereas using a prudent basis would be expected to result in employers recouping less than the cost of this increase. Therefore, regulation 8 also allows for actuaries to adjust the SoFP assumptions accordingly.
25. Draft regulations require the sponsoring employer to choose a calculation date from 31 December 2011. We have provided for a past date to be used so that the employer may use the scheme's last triennial valuation as the base for their proposed amendments. We believe this will reduce the administration process and therefore costs.
26. The calculation framework is based on the actuary looking at what the effect would be of the scheme being amended at the calculation date and looking over the period of one year from the calculation date using scheme data at that date. Therefore projecting what the employer's increase in NICs will be or would have been and the value of the amendments needed to recoup that increase in cost over that one year period.
27. The exception is the earnings data. Calculations relating to earnings are based on data one year or three years prior to the calculation date.
28. We want as many private sector employers as possible to be able to use of the statutory override and so the draft regulations accommodate many different scheme designs. For employers sponsoring multi-employer schemes, regulations 14, 15 and 16 modify Clause 24 and Schedule 14 in the Pensions Bill 2013-14 and these Regulations to facilitate this.

Commentary on the regulations

29. The draft regulations set out the detail of how the statutory override may be used and, in particular, the calculations actuaries will be required to make, how they should make these and what certification will be required.

⁶ a 'statement of funding principles' (Pensions Act 2004 s223) sets out the trustees' policy for meeting the statutory funding objective. In general, the SoFP, is agreed with the sponsoring employer.

Regulation 2: Interpretation

30. Regulation 2 provides definitions for the terms used in these regulations.

31. This includes the definition of “principal employer”. Our definition provides for two options; one, where a principal employer is appointed under the scheme rules and two, for an employer to “act” as the principal employer to take action on behalf of all sponsoring employers in relation to the scheme rules. So an employer may have been appointed separately from in the scheme rules.

This question relates to the interpretations

Q1 Is the “principal employer” definition clear in light of the explanation given above?

Regulation 3: Protected Persons to whom the power does not apply

32. As outlined in Chapter One, the Government decided that the override should not apply to protected persons. Provisions that will exclude protected persons from the statutory override are included in these Regulations.

33. Regulation 3 defines the term protected persons by reference to the legislation that affords protected status.

Regulations 4, 5 and 6: Annual employee contributions, annual increase in employers’ NICs and scheme liabilities definitions and calculations

34. Regulations 4, 5 and 6 set out how the actuary shall calculate the increase in the amount of employee contributions; the increase in an employer’s NICs and reduction in scheme liabilities for the one year period from the calculation date, using the earnings data specified in regulation 7 and the calculation requirements in regulation 8.

35. They are required to work out what the effect would be, in the one year following the calculation date, if the proposed amendments were to take effect at that time. Even if the date is in the past, the actuary is to estimate what would happen, so not what actually happened.

36. These regulations provide the definitions for the three components above.

37. Regulation 6(3) sets out that Hybrid schemes (schemes that offer a mix of money purchase benefits and salary related benefits) cannot include money purchase benefits when estimating the amount of the liabilities likely to accrue over the one year period.

Regulation 7: Earnings data

38. This regulation requires calculations to be based on earnings data for the one year prior to the calculation date. If the employer and actuary agree that the data over this period is significantly abnormal, because of, for example, unusual bonus

payments that year or exceptional levels of overtime payments, we have allowed for use of earnings data over a three year period to provide a more typical picture.

Regulation 8: General calculation requirements

39. Regulation 8 provides the calculation framework and sets out technical details, such as the assumptions to be used.
40. Regulation 8(1) requires the actuary to calculate the increases in employee contributions; the reduction in benefits; and the annual increase in the employer's National Insurance contributions (NICs) in accordance with the requirements in regulations 8(2), 8(3), (4), (5) and (6).
41. Regulation 8(2) requires the actuary to calculate these amounts as if the proposed amendments took effect on the calculation date, taking account only of the affect of the proposed amendments, at present value at the calculation date, and using the same assumptions for all calculations.
42. Calculations must be consistent (meaning that the calculation of the employer's increase in NI costs must be consistent with the calculation of the effects of the scheme changes) and made using the same data. Regulation 8(3) requires the actuary to use relevant data as at the calculation date or for a period of one year up to the calculation date.
43. Regulation 8(4) requires the actuary to use the methods and assumptions used to calculate the scheme's technical provisions as found in the scheme's statement of funding principles (SoFP) in use at the calculation date.
44. Regulation 8(5) concerns the requirement for an actuary to take a best estimate approach to the assumptions needed to perform the calculations where the employer instructs the actuary to do so in writing (requirement set out regulation 8(6)). We have provided for this by setting out the assumptions to be used as those recorded in the SoFP and allowing the actuary to adjust these to remove any prudence. (Any other assumptions that the actuary considers necessary must be consistent with the SoFP and may also be adjusted to remove any prudence).
45. During the development of the calculation requirements we originally considered using the assumptions made to calculate the initial transfer value. However, after engagement with technical experts, we concluded that using this basis would mean having to work across this set of assumptions and those in the SoFP which would add more complexity and possibly higher costs, and so we rejected this option.
46. We also considered allowing employers to use a best estimate approach. Therefore, selecting assumptions purely for the purpose of the statutory override. We rejected this option because we wanted to link to an existing basis; first, to reduce the cost of using the override (employers would have had to take actuarial advice on what basis to use) and secondly, reduce any scope for criticism of manipulation by the employer for having to select assumptions purely for use of the statutory override.

47. Regulation 8(7): requires employers to choose a calculation date which may be any date after 31 December 2011 so they may use the scheme's last triennial valuation as the base for amendments if they wish to.

48. We are aware that some employers may want to take the opportunity to make other amendments that are over and above the minimum required to recoup their increase in National Insurance costs. However the member safeguard that restricts employers to recouping no more than their increase in NI costs prevents other amendments being made under the statutory override power.

The following questions relate to the calculation framework and the requirements in regulations 4 to 8.

Q2 What issues, if any, do you foresee with the framework?

Q3 Are there ways in which the draft calculation framework regulations could be clearer as to how the calculations are to be performed and the data to be used for this task?

Q4 Is there anything else that would assist the calculation process if provided for in regulations?

Q5 Recorded in the demographic assumptions in the SoFP is the assumption concerning when the member is expected to leave pensionable service that the actuary will refer to where needed in making calculations. Does this need be separated out and more clearly defined?

Q6 There are benefits that don't accrue for example, ill-health retirement benefits. We would not expect amendments to benefits that don't accrue. Do we need to specify this in regulations?

Q7 Do the regulations setting out the calculation requirements work for Hybrid schemes?

Q8 The employer may choose any calculation date after 31 December 2011. This is to allow the employer to use the scheme's last triennial valuation as a base for the required calculations. However there is some flexibility here because we have not required the employer to use the scheme's last valuation date. Do you foresee any issues with our approach to the calculation date?

Regulation 9: Additional calculation requirements where the power is used more than once

49. Employers may use the power to amend their scheme more than once. For example if the first set of amendments did not fully recoup their increase in NICs. Regulation 9 sets out how the power is to be used on the second or subsequent occasion: in these circumstances the calculation date must be the same calculation date used to make the previous amendments.

Regulation 10: Further restrictions on the use of the power by shared cost schemes

50. Schedule 14 2(5) and 2(6) provides for employers sponsoring schemes that have unconventional funding arrangements by allowing them to make further amendments so they can make use of the override as intended. A shared cost scheme is an example of such an arrangement.
51. Regulation 10 limits the scope of these other amendments to the minimum needed to achieve this.

Salary Sacrifice arrangements

52. Our understanding is that scheme contributions made via salary sacrifice is usually an arrangement between the employer and the employee and more likely to be a contractual agreement, which is why we have not provided for this type of arrangement in regulations.

These questions relate to unconventional funding arrangements

- Q9** Is our understanding of how salary sacrifice arrangements work correct? Is there a need to make provision in regulations for this arrangement?
- Q10** Our intention is for employers sponsoring shared cost schemes to be able to make use of the override to recoup their increase in NI costs due to abolition of contracting-out. Our expectation is that any amendments made would be proportionate and limited to the minimum needed to recoup the additional costs. For example it would not be appropriate for sponsors of these schemes to use the override power to make scheme rule changes that, in effect, convert a shared cost scheme into a scheme with a more conventional funding arrangement. Do we need to make further provision in regulations to prevent scheme amendments of this magnitude?
- Q11** Are there any other funding arrangements that may require specific provision in these regulations to allow employers to use the override as intended?

Regulation 12: Requirement for actuary's certificate

53. For changes to the scheme made using the power in Clause 24, Schedule 14 and these regulations to be valid, an actuary must certify that the proposed amendments comply with relevant requirements. This regulation provides that the actuary is required to supply the employer(s), and the trustees or scheme managers with the certificate before amendments are made. A template that actuaries are to use for this purpose is at Schedule 1 to these regulations.

Regulation 13: Information

54. Employers will need to access scheme data and individual membership data to be able to make scheme amendments. Regulation 13 places a duty on trustees and managers to provide information in connection with the use of the power.

55. Trustees or managers of the employer's pension scheme must provide the employer with the necessary information, as requested by the employer, to enable them to amend the scheme rules and value those amendments. The data must be supplied within four weeks. The timely provision of this information is vital to the employer's ability to make scheme changes in good time for implementation in April 2016.

56. There will be civil penalties where reasonable steps are not taken to meet the employer's request.

The following questions are about the actuary, the actuary's certificate and Information requirements

Q12 It is for the employer to appoint an actuary. The actuary may be employed by the employer already or an independent or, with the approval of the trustee, the scheme actuary. Are regulations clear that it is for the employer to appoint the actuary or do we need to clarify this?

Q13 Is four weeks an achievable and reasonable timeframe for trustees to provide the information or is longer needed – if longer needed, how much longer?

Q14 By "information" we mean individual membership data as well as scheme data, such as the scheme's benefit structure. Is this clear in draft regulations or do we need to be more specific about the type of data trustees will be obliged to provide? If so, what data should be specified?

Q15 Is there any scheme information that trustees do not have access to and that the employer is likely to need to be able to make amendments to scheme rules?

Q16 Can you foresee any problems with providing information to the principal employer for associated employer schemes?

Q17 Can you foresee any problems with providing information to the principal employer for non-associated multi-employer schemes?

Q18 Are all the things we require the actuary to certify correct? For example can the actuary certify that the amendments comply with Schedule 14 paragraph 3?

Regulations 14, 15 and 16: Multi-employer schemes

57. We want private sector employers to be able to use the override if they wish to. To facilitate this for employers sponsoring multi-employer schemes, regulations 14, 15 and 16 modify various definitions used in the primary legislation and these regulations.

Regulation 14: Multi-employer segregated schemes with single employer sections

58. Regulation 14 applies to multi-employer scheme sections where only one employer sponsors each section. Regulation 14 modifies the primary legislation (section 24 and Schedule 14 Pensions Bill 2013-14) as it applies to multi-

employer segregated schemes with single employer sections. The modifications in sub-paragraphs (3) and (4) provide that each employer may amend the rules for their section. In effect each section is dealt with as if it were a separate scheme.

Regulation 15: Non-segregated multi-employer schemes

59. Regulation 15 applies to schemes where there is more than one employer sponsoring the scheme - the employers may, or may not, be associated. As with regulation 14, regulation 15 modifies the primary powers in Clause 24 and Schedule 14 of the Pensions Bill 2013-14 so that references to ‘an employer’, ‘an occupational scheme’ etc may be applied to non-segregated multi-employer schemes. The modifications will ensure that it is the principal employer who can use the statutory override.
60. We recognise employers sponsoring a non associated multi employer scheme (NAMES) may not have a principal employer in place to act on behalf of all employers sponsoring the scheme and lead on these changes.
61. To assist these employers we worked closely with forums representing these schemes and considered two options that may facilitate use of the statutory override:
- provide for “an employer” sponsoring the scheme to be nominated as principal employer for the purpose of using the statutory override only;
 - provide the power to the scheme trustee and place a duty on that trustee to use the power on behalf of employers.
62. Both options provide a number of challenges, for example, in the first option if sponsoring employers nominated a principal employer for the purpose of the override, they may need to consider issues, such as level of consent required (of all other sponsoring employers) to any proposed amendments, and how to proceed when not all employers are in agreement. This could be a complex issue, especially where there is not an existing consent rule that can be deployed when following the usual procedure for scheme amendments.
63. The second option does not meet policy intent to provide the employer with a statutory override power that they may use if they wish to. Placing an obligation on the trustee would remove the employers’ choice of whether or not to apply the override.
64. However, we have not provided for either option in regulations because, as far as we are aware, there is nothing preventing sponsors of these schemes from appointing a principal employer for this purpose.
65. Neither is there anything preventing the scheme trustee from providing employers with a proposal on how best to amend the scheme as a result of the ending of contracting-out.
66. To be clear, our view is that employers sponsoring these scheme types are able to make use of the statutory override power but may need to reach an agreement

with other sponsors of the scheme and work closely with the scheme's trustee on how to do this. Of course, if during this process employers reach agreement with the trustee they may not need to make use of the statutory override.

Regulation 16: Segregated schemes with multi-employer sections

67. Regulation 16 applies to multi-employer segregated scheme sections with more than one employer. This regulation modifies the primary powers in section 24 and Schedule 14 of the Pensions Bill 2013-14 so that it is the principal employer in relation to each section that can use the statutory override.

68. Non associated employers sponsoring these scheme sections share the same or similar design features as non associated employers sponsoring non segregated schemes and experience the same challenges as mentioned under Regulation 15. Therefore the options we considered and our response, as laid out in paragraphs 59 to 66, apply here.

The following questions concern multi-employer schemes and refer to regulations 14 to 16

Q19 Do the changes in the definitions work effectively for:

- a. Employers sponsoring a single employer section of a segregated multi-Employer Scheme (MES)?
- b. Employers sponsoring a multi-employer section of a segregated MES where the employers are associated?
- c. Employers sponsoring a multi-employer section of a segregated MES where the employers are not associated?
- d. Employers sponsoring a non-segregated scheme where the employers are associated?
- e. Employers sponsoring a non-segregated scheme where the employers are non-associated?

Q20 Do you agree that employers sponsoring non-associated multi-employer schemes are able to use the statutory override as we have suggested

Q21 Are there other options you would like us to consider for non associated multi employer schemes?

Q22 Are there any situations where there would be more than one principal employer in relation to a scheme or a section of a scheme?

Regulation 17: Schemes with different rules for different members

69. Some schemes have different levels of benefits or different rates of contributions for different groups of members (referred to as different sections). Regulation 17 modifies Schedule 14 of the Pensions Bill 2013-14 so that references to "the relevant members" can be read as "the relevant members in that section". These

modifications will ensure that the amendments may be made and certified at “section” level.

70. Where schemes calculate different pensions for different groups of members, we want the override to be applied to each group as if that group was a separate scheme. This is to prevent cross-subsidy between these groups. Inevitably, there will be some cross-subsidy between scheme members. Our aim is to reduce this where possible.

Cross-subsidy questions

Q23 Will this regulation help prevent significant cross-subsidy between these member groups?

Q24 Is there any other provision that would help prevent deliberate cross-subsidy?

Schedule 1: Actuary’s Certificate

71. This is the template for certifying that the amendments comply with legislation and must be used by an actuary for this purpose. The certificate must be issued before any amendment may be implemented.

Q25 Is there any other information that should be included in the actuary’s certificate?

Costs and benefits of the statutory override

72. Paragraph 27 of the accompanying impact assessment (Annex C) explains that the costs around use of the statutory override are uncertain because we have no indication at present as to how many employers will use this provision and to what extent. We are seeking to obtain firmer details of cost to business, such as professional fees (legal and actuarial costs), administration and consultation costs. We will use this information to update the impact assessment and provide a more accurate view of the impact of this voluntary measure on business.

Q26 We would be grateful if respondents could include estimates of costs, by scheme size, including a breakdown of professional fees where possible.

Chapter 3: Commentary on the draft Occupational Pension Schemes (Schemes that were Contracted-out) Regulations 2014

Introduction

73. These regulations set out the rules which schemes that were contracted-out will need to comply with following the abolition of DB contracting-out in April 2016. The regulations aim to ensure that member's entitlements derived from contracted-out employment continue to be preserved, and make other provisions to ensure the appropriate operation of formally contracted-out DB schemes. The following regulations are intended to replace the provisions of the Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172) ("the 1996 Regulations").

Part 1: Overview

74. The Pensions Bill 2013-14 makes provision in Clause 24 and Schedule 13 for the abolition of contracting-out for employers who sponsor DB schemes to coincide with the start of the new State Pension in April 2016.

75. The main contracting-out legislation is set out in Part 3 of the Pension Schemes Act 1993 ("the 1993 Act") and in secondary legislation made under it ("the 1996 Regulations"). The proposed draft regulations, "The Occupational Pension Schemes (Schemes that were Contracted-out) Regulations 2014" have been structured so that different sections provide for:

- General provisions that need to be retained for schemes that were salary-related contracted-out schemes.
- Requirements in relation to rights attributable to contracted-out employment on and after 6 April 1997.
- Requirements in relation to guaranteed minimum pensions.
- Amendment of the Occupational Pension Schemes (Contracting-out) Regulations 1996 relating to certification and ending periods of contracted out employment before 6 April 2016.
- Revocation of the Occupational Pension Schemes (Contracting-out) Regulations 1996.
- Provision for Northern Ireland relating to restoration of state scheme rights (contributions equivalent premiums).

Commentary on regulations

Part 1: General

76. **Regulation 1** provides the citation, commencement and application of the regulations. The new regulations come into force from 6th April 2016, apart from regulation 38, which comes into force from 6th April 2019. The regulations apply to England, Wales and Scotland, with part 7 applying to Northern Ireland (we anticipate that the Department for Social Development in Northern Ireland will make provisions which reflect parts 1 – 6 of these regulations in respect of Northern Ireland).
77. **Regulation 2** sets out the interpretations for the regulations and provides definitions of the words and terms used. Throughout, definitions are unchanged from the definitions used in the 1996 Regulations except that the definition of “holding company” in regulation 30 has been updated to reflect changes to relevant legislation.

Part 2: General provisions relating to schemes that were salary-related contracted-out schemes

78. This part contains common provisions relating to all pension schemes that were salary-related contracted-out schemes at any time since 1978. Where a scheme was contracted-out, both the employer and employee paid a lower rate of National Insurance.
79. From 1978 occupational DB pension schemes were able to leave the state earnings related pension scheme and provide a “guaranteed minimum pension” (“GMP”) in return. These provisions were widely used. The GMP was intended to provide a minimum amount of weekly pension, broadly equivalent to the amount of state scheme pension that would have built up had the member not been contracted-out. The GMP is payable for life at age 60 for a woman or 65 for a man, and a survivor benefit is payable to a widow, widower or civil partner. This system was in operation until 5 April 1997; although rights no longer accrue, those rights are, and will continue to be, protected.
80. From 6 April 1997, a different test, referred to in legislation as the statutory standard, is applied to schemes that contract-out of the state system. This is still in operation, and commonly known as the Reference Scheme Test. This requires a scheme to provide a pension at age 65; to have an accrual rate of 1/80th of qualifying earnings in the last three years before the end of contracted-out employment; and pay a survivor’s pension to a widow, widower or civil partner of 50 per cent of benefits that the member was being paid before death.

Regulation 3: Alteration of scheme rules

81. Regulation 3 provides that alterations to scheme rules may only take place if they are not prohibited by regulation 18 (relating to section 9(2B) rights) or regulation 21 (relating to guaranteed minimum pensions). These two regulations replace regulation 42 of the 1996 regulations.

Regulation 4: Determination that an earner was in contracted-out employment

82. Regulation 4 replaces Regulation 11 of the 1996 Regulations (special circumstances in which the Secretary of State may determine earners to have been in contracted-out employment). This regulation has been retained to ensure that where a member should have been recorded as being in contracted-out employment before abolition, but was not, the member's record can be corrected.

Regulation 5: Provision of information

83. This regulation takes the place of regulation 63 in the 1996 Regulations relating to the provision of information by the Secretary of State to enable various parties to enable them to carry out their obligations in connection with contracting-out. There is no change to this provision.

Regulation 6: Overseas schemes

84. This regulation is intended to protect accrued rights in an overseas scheme, and replaces regulation 48 of the 1996 Regulations (special provisions for overseas schemes). An Overseas scheme is an occupational pension scheme that was a salary related contracted-out scheme and that has its main administration outside the EEA states, but does not include a scheme that was contracted-out in the Isle of Man. The regulation provides for the inclusion of certain requirements as to scheme wind-up, investment, and revaluation.

Regulation 7: restoration of state scheme rights

85. This regulation protects the position of scheme members who have had their state additional pension scheme rights restored on a scheme wind up where the scheme was insufficiently funded, commonly known as deemed buyback. The member is treated as if they had never been contracted-out so sections 46 to 48(1) did not apply, or apply to a limited extent (if the cash equivalent of the member's rights is less than the amount required to restore the member's state scheme rights in full). This regulation applies where a scheme was being wound up before 6 April 2016, deemed buyback will not be available after the abolition of contracting-out. (regulation 49 of the 1996 regulations)

Regulations 8 to 15: Restoration of state scheme rights (Contributions Equivalent Premiums)

Overview: Contributions Equivalent Premiums (CEP)

86. Where an employee has more than three months but less than two years qualifying pension service, they will be entitled to either a cash transfer sum or to a contribution refund of their employee pension contributions. Anyone with less than three months pensionable services is usually only entitled to a refund of contributions. In some circumstances it is possible to reinstate the rights of these early leavers into the state scheme so that they are treated as if they had never been contracted-out.
87. Sections 55 to 68 of the 1993 Act provide for those with less than 2 years service to be bought back into the State Pension through the purchase of a CEP. Payment of a CEP extinguishes the liability of the scheme to pay pension in respect of the GMP entitlement or section 9(2B) rights for the member or their surviving spouse by restoring the members' entitlement to Additional Pension that would have accrued if the member had not been contracted-out under the scheme.
88. The consequence of paying such a premium is that the member is treated as if he had not contracted-out for the period in respect of which the premium was paid, and section 46 of the 1993 Act – the contracted-out deduction - is not applied for any period of contracted-out employment where a GMP would have accrued.
89. The Pensions Bill 2013-14 makes provision for sections 55 to 68 to be repealed but we intend to save these provisions by order so that schemes and the PPF can continue to make use of the option to pay a CEP.

Commentary on regulations

90. The provisions relating to CEPS have been retained unchanged, but have been re-ordered. They include the provisions in regulations 51-54 of the 1996 Regulations.

Regulation 8: Contributions equivalent premiums: application of regulations

91. This regulation sets out the application of regulations 9 – 15. These regulations will apply until April 2019 except in respect of schemes which were in wind up by 6 April 2016.

Regulation 9: Contribution equivalent premiums: prescribed persons

92. Regulation 9 sets out who is to be considered a “prescribed person” responsible for paying the CEP (which is either the Pension Protection Fund – PPF - or trustee of the scheme). It also provides some modifications to regulations 10-15 where the PPF is the “prescribed person”.

Regulation 10: Notification of requirement to pay a contribution equivalent premium

93. Regulation 10 sets out the requirement for the Commissioners of HMRC to be notified of the CEP by the “prescribed person” and sets out time limits for such notification. It also allows for the Commissioners to extend the time period for notification.

Regulation 11: Cases where payment of a contribution equivalent premium is not required

94. This regulation explains the circumstances where a CEP is not payable in respect of the earner.

Regulation 12: Elections to pay a contribution equivalent premium

95. This regulation includes the provision that an employer must not discriminate between different earners during the process of making a CEP, but provides particular circumstances where that rule may be disapplied. The regulation also sets out timescales for the “prescribed person” to notify the Commissioners of HMRC of the payment of a CEP, and allows the Commissioners to extend the time periods.

Regulation 13: Payment of a contributions equivalent premium

96. This regulation describes the timescales in which the trustees or the Board of the PPF can make a CEP, and the minimum amount of a CEP.

Regulation 14: Payment in lieu of benefit

97. This regulation sets out the circumstances where the earner becomes entitled to any payment in lieu of benefit, in relation to a refund out of the resources of the scheme. It also deals with delays that may occur and how these should be notified to the Commissioners of HMRC.

Regulation 15: Refund of a contributions equivalent premium

98. This regulation sets out the circumstances in which the Commissioners of HMRC are to refund a CEP.

Regulation 16: Continuation of transitional arrangements for schemes that began winding up before 6th April 1997

99. Regulation 16 provides details of transitional arrangements for schemes that began winding up before 6 April 1997. This carries forwards the requirements of regulation 73 of the 1996 Regulations: that regulation 40 of the Occupational Pension Schemes (Contracting-out) Regulations 1984 (priorities on the winding

up of a scheme) still applies and there are sufficient resources to meet the liabilities relating to immediate wind up.

Regulation 17: Continuation of savings in respect of state scheme premiums

100. Regulation 17 provides for selected provisions to continue to have effect.

Part 3: Additional requirements in relation to rights attributable to contracted-out employment on and after 6 April 1997

Overview

101. This part of the regulations deals with the requirements for schemes that were contracted-out on or after 6 April 1997 under section 9(2B) of the Pension Schemes Act and met the Reference Scheme Test in relation to contracting-out. Rights accrued in such a scheme are referred to as “section 9(2B) rights” (for a fuller explanation of the RST, see paragraph 80).

Regulation 18: alteration of scheme rules

102. This regulation, together with regulation 3, sets out the circumstances in which schemes that were contracted-out under the RST may change their rules in respect of section 9(2B) rights. The intention is that accrued contracted-out rights are protected

Regulation 19: payment of a lump sum instead of a pension

103. Following abolition of DB contracting-out, formerly contracted-out schemes will be able to continue to provide lump sum payments in certain circumstances. This regulation carries forward those circumstances that are set out in regulation 20 of the 1996 regulations. Among other criteria, it disallows a lump sum payment being made to a member unless it meets requirements relating to authorised member payments contained in section 164 of the Finance Act 2004 and is either a lump sum payment (section 166 of the same Act); a lump sum death benefit (section 168 of that Act), and where requirements are met, the scheme must pay a survivor benefit after paying a lump sum.

Regulation 20: forfeiture of accrued rights

104. Regulation 20 describes the situation in which section 9(2B) rights may be forfeited (regulation 20A of the 1996 Regulations), where a person is unable to act on their own behalf, the scheme rules must provide for these circumstances.

105. In addition, Section 92 of the Pensions Act 1995 does not allow a pension under an occupational pension scheme to be forfeited, but there are some exceptions to this in regulations resulting in an occupational pension being

forfeited. One such exception is where the offence of murder or manslaughter of a member by the widow, widower or surviving civil partner or any other offence of which unlawful killing of a member is an element (regulation 6(1)(a) of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy, etc) Regulation 1997 (SI 1997 No. 785)). Following abolition of contracting-out, this regulation will still apply to formerly contracted-out schemes where section 9(2B) rights have accrued, meaning that the occupational pension can be forfeited in these circumstances.

Part 4: additional requirements in relation to Guaranteed Minimum Pensions

Overview

106. This part of the regulations specifically applies to rights accrued between April 1978 - 5 April 1997 as a condition of being contracted-out and receiving the NI rebate.

Regulation 21: alteration of scheme rules

107. This regulation, in conjunction with regulation 3, carries forward the circumstances in which schemes that were contracted-out and required to provide a GMP may change their rules. The current policy – that accrued contracted-out rights are protected - is replicated from the present regulation 42(2B) of the 1996 Regulations, and alterations to scheme rules that would adversely affect accrued GMP rights are prohibited.

Regulation 22: Circumstances for the purposes of section 17(6) of the 1993 Act in which widower's, widow's or surviving civil partners guaranteed minimum pension is payable

108. As well as providing an earner's minimum pension, section 17(6) of the 1993 Act states that the scheme must also make provision for the widower's, widow's or surviving civil partner's pension to be payable in the prescribed circumstances and for the prescribed period. This regulation prescribes those circumstances (regulation 57 of the 1996 Regulations).

Regulation 23: Period for the purposes of section 17(6) of the 1993 Act for which widower's, widow's or surviving civil partner's guaranteed minimum pension is payable.

109. Where a survivor's pension is payable, this regulation prescribes the periods for which the GMP is payable to a widower, widow or surviving civil partner (regulation 58 of the 1996 regulations).

Regulation 24: Statutory references to person entitled to guaranteed minimum pensions – application to widows, widows of female earners and surviving civil partners

110. This regulation provides for HMRC to include, in reference to the earner's rights to a GMP, a widower, widow or surviving civil partner of the earner, and prescribes the description of those categories of survivor.

Regulation 25: Fixed rate revaluation of guaranteed minimum pensions secured by insurance policies or annuity contracts

111. This regulation continues to allow an exception to the rule that a scheme must provide the same method of revaluation of GMPs for all early leavers. Where a scheme chooses to use section 148 Orders (revaluation by earnings factors) to revalue GMPs, it can still use fixed rate revaluation where an insurance policy has been purchased to discharge its liability to pay the GMP (regulation 56 of the 1996 Regulations).

Regulation 26: fixed rate revaluation of guaranteed minimum pensions for early leavers

112. This regulation sets out the percentage rate by which schemes revalue the GMPs of early leavers (that is, where a member leaves the scheme before pensionable age) when using the fixed rate method (regulation 62 of the 1996 Regulations). Although GMPs have ceased to accrue, the requirement to revalue them until GMP pensionable age remains.

Regulation 27: Revaluation after transfer from another scheme

113. This regulation deals with revaluation of transfers of GMPs arising from linked qualifying service. The existing provision is retained to cater for where a transfer is made in the future after the abolition of contracting-out because revaluation will not take place until GMP pensionable age. (previously provided for in regulations 65 and 66 of the 1996 Regulations).

Regulation 28: Revaluation after contracting-out has ended before the second abolition date

114. This regulation relates to revaluation of GMPs, and is to be read in conjunction with regulations 29 and 30, which contain further provisions relating to revaluation in these circumstances. Regulation 28 applies to a scheme that has ceased to contract-out before 6 April 2016. In these circumstances, the accrued GMP rights of early leavers have to be revalued in a particular manner, as set out in section 51 of the 1993 Act. This provision, currently set out in regulation 67 of the 1996 Regulations, disapplies section 51(2)(b) of the 1993 Act where earner ceased to be contracted-out before they reached

pensionable age and there was more than 5 years between the scheme ceasing to be contracted-out and the earner's pensionable age. The provision allows alternative revaluation methods to be used by the scheme. But where the gap between the scheme ceasing to be contracted-out and the earner's pensionable age is less than 5 years, section 51(2)(b) of the 1993 Act applies.

Regulation 29: Revaluation after contracting-out has ended: further provision

115. This regulation provides further conditions relating to revaluation of accrued GMP rights set out in regulation 28. In this instance, where a transfer of accrued rights has occurred before 6 April 2016, revaluation under section 51(2)(b) of the 1993 Act applies only to the rights accrued during contracted-out employment. Linked qualifying service can only be included if the accrued rights are revalued by earnings ("Section 148 Order revaluation").

Regulation 30: Exceptions to provisions about revaluation after contracting-out has ended

116. This regulation makes further provision and an exception to regulation 28, relating to revaluation of accrued GMP rights where the scheme ceased to contract-out before 6 April 2016. This exception applies where accrued GMP rights have been transferred from one scheme to another, and the employer is the same for both schemes.
117. This regulation also provides definitions of "connected employers", "holding company" and "subsidiary", the latter two falling within the meaning of section 1159 of the Companies Act 2006.

Regulation 31: Payment of a lump sum instead of a pension

118. Schemes can continue to provide lump sum payments, but only in certain circumstances. Regulation 31 carries forward those circumstances that are set out on regulation 60 of the 1996 Regulations. It disallows a lump sum payment being made to a member unless it meets requirements relating to authorised member payments contained in section 164 of the Finance Act 2004 and is either a lump sum payment (section 166 of the same Act); a lump sum death benefit (section 168 of that Act), and where requirements are met, the scheme must pay a survivor benefit after paying a lump sum.

Regulation 32: suspension and forfeiture of guaranteed minimum pension

119. This regulation sets out the circumstances under which a GMP may be forfeited or suspended. It replaces the provisions contained in regulation 61 of the 1996 Regulations, where a scheme must provide in the rules for cases where a person is unable to act on their own behalf, with the addition that a widow's, widower's or surviving civil partner's GMP is to be forfeit if that person is convicted of murder or manslaughter of the earner (this reflects the provisions relating to forfeiture in relation to section 9(2B) rights in regulation 20 above). Also, there is a change from 6 to 8 years for GMP forfeiture where

a claim for a GMP has not been made. This is to take account of the possibility that a scheme member may postpone claiming their GMP for a longer period as a result of the increase in state pension age.

Regulation 33: Conversion into other benefits: actuarial equivalence

120. This regulation provides the actuarial equivalence rules where a scheme wishes to convert its GMP liabilities into ordinary scheme benefits. There is no change to the existing provision (regulation 69A of the 1996 Regulations).

Regulation 34: Conversion into other benefits: survivors' benefits

121. The further provisions relating to conversion of GMP liabilities into ordinary scheme benefits as it affects survivors' benefits are set out in this regulation. There is no change to the existing provision (69B of the 1996 Regulations).

Part 5: Amendment of the Occupational Pension Schemes (Contracting-out) Regulations 1996

Overview

122. Part 5 makes amendments to the 1996 Regulations. There are changes to some definitions: the term "the second abolition date" is included to reflect the end of contracting-out on 6 April 2016 (the "first abolition date", refers to the abolition of defined contribution contracting-out on 6 April 2012); verbs are changed from present to past tense.

Commentary on regulations

Regulation 35: amendments relating to certification of employments for a period before the second abolition date

123. The 1996 Regulations are amended by this regulation. There are changes to some definitions in regulation 1(2) of the 1996 Regulations, which inserts the phrase "second abolition date"; substitutes "was contracted-out" for "is contracted-out"; and inserts "first" before the existing use of "abolition date". In other regulations, the phrase "second abolition date" is inserted, and omissions are introduced relating contracting-out certificates. This regulation amends regulations 3, 6, 8, 9, 10, 15 and 23 of the 1996 Regulations; these all relate to certification arrangements which take place before 6 April 2016.

Regulation 36: amendments relating to cessation of contracting-out before the second abolition date

124. This regulation details the amendments to the provisions in regulations 43, 44, 45, 46, 47, and 76(1) of the 1996 Regulations, and deal with the termination of contracted-out status before 6 April 2016. It inserts text which reflects the end of contracting-out (for example, inserting the phrase “the second abolition date” in several places), and changes some wording from present to past tense (e.g. “relates” becomes “related”, “applies” becomes “applied”).

Part 6: Revocation of the Occupational Pension Schemes (Contracting-out) Regulations 1996

Overview

125. Part 6 sets out revocation dates for the 1996 Regulations which will take effect on 6 April 2016, except where provisions are subject to savings, or certain provisions allow for a three year transitional period. The regulations subject to a three year transitional period will be revoked on 6 April 2019, unless they have already been revoked from 6 April 2015 by S.I. 2011/1245⁷ and 2011/1246⁸ (relating to the abolition of defined contribution contracting-out).

Commentary on regulations

Regulation 37: Revocations taking effect on second abolition date

126. This regulation revokes the 1996 Regulations (S.I. 1996/1172) on 6 April 2016, except those listed in regulation 38.

Regulation 38: Revocation taking effect on 6 April 2019

127. This regulation lists the provisions of the 1996 Regulations that will remain in force until 5 April 2019: regulations 1-10; 12-15; 22-29; 44-47; 48(1)-(4); 64; 76; Schedule 3.

Part 7: Provision for Northern Ireland

Overview

128. Part 7 of these Regulations relate to Northern Ireland and replicate the provisions for England, Wales and Scotland contained in Part 2 of these

⁷ The Pensions Act 2007 (Abolition of Contracting-out for Defined Contribution Pension Schemes)(Consequential Amendments) Regulations 2011

⁸ The Pensions Act 2008 (Abolition of Protected Rights)(Consequential Amendments) Order 2011

Regulations relating to CEPs. In respect of active members with less than two years qualifying service only, the trustees could pay CEPs to restore these members rights under AP. CEPs and the right to return to the state pension scheme are excepted matters under the Northern Ireland Act 1998 (c.47).

Commentary on regulations

Regulations 39 to 50

- 129. As this Part replicates the provisions relating to CEPs and restoration of state scheme rights as they apply in Great Britain to Northern Ireland, commentary on these regulations appears earlier in this document.
- 130. For commentary on regulation 40, see commentary on regulation 7 (paragraph 85);
- 131. For commentary on regulation 41, see commentary on regulation 8 (paragraph 91);
- 132. For commentary on regulation 42, see commentary on regulation 9 (paragraph 92);
- 133. For commentary on regulation 43, see commentary on regulation 10 (paragraph 93);
- 134. For commentary on regulation 44, see commentary on regulation 11 (paragraph 94);
- 135. For commentary on regulation 45, see commentary on regulation 12 (paragraph 95);
- 136. For commentary on regulation 46, see commentary on regulation 13 (paragraph 96);
- 137. For commentary on regulation 47, see commentary on regulation 14 (paragraph 97);
- 138. For commentary on regulation 48, see commentary on regulation 15 (paragraph 98).

Regulation 49: Continuation of savings in respect of state scheme premiums: Northern Ireland (s.177(4)1993 (NI))

- 139. Regulation 49 lists the contracting-out regulations made in Northern Ireland in 1985 and 1987 that continue to apply in relation to any state scheme premium which was paid before 6 April 1997.

Regulation 50: Revocations of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996 taking effect on the second abolition date

- 140. This regulation lists the regulations noted in the heading that are revoked from 6 April 2016.

Schedule

- 141. The Schedule to the regulations lists the sections in the 1993 Act which confer powers to make these regulations.

Consultation Question 27

Q27 Do you agree that the proposed changes will achieve the intended effect of preserving accrued contracted-out rights since 1978?

Consultation Question 28

Q28 In addition to the amendments to the legislation set out in this document, is there any further legislation that you believe should be revoked or amended in order to meet the intention of preservation of accrued contracted-out rights?

General power for trustees to modify scheme rules for abolition of contracting-out

142. As mentioned in the Introduction to this consultation we are proposing to make further consequential changes as a result of the abolition of contracting-out. Section 68(2) of the Pensions Act 1995 provides for certain purposes for which trustees are empowered to modify scheme rules. With the introduction of single tier pension, and the abolition of contracting-out, it is very likely that many schemes will have to make changes to their scheme rules to take account of legislative changes. The Government is considering whether regulations under section 68(2)(e) should be made so that trustees can make the necessary changes or ensure scheme rules will continue to have the same effect, notwithstanding changes to contracting-out and state pension legislation following the passage of the Pensions Bill 2013-14. We welcome your views on the nature of the changes trustees might need to make.

Consultation Question 29

Q29 What changes to scheme rules will trustees be obliged to make to ensure their scheme rules continues to have the same effect as a result of the abolition of contracting-out and the introduction of the single-tier pension?

Chapter 4: Next Steps

143. We welcome your detailed comments on the draft regulations by 2 July 2014. If you send your comments after this date, we cannot guarantee that they will be included for consideration.
144. The outcome of this consultation will be published on the GOV.UK website

Chapter 5: List of consultation questions

Questions related to the statutory override regulations

Interpretation

Q1 Is the “principal employer” definition clear in light of the explanation given above?

Calculation framework

Q2 What issues, if any, do you foresee with the framework?

Q3 Are there ways in which the draft calculation framework regulations could be clearer as to how the calculations are to be performed and the data to be used for this task?

Q4 Is there anything else that would assist the calculation process if provided for in regulations?

Q5 Recorded in the demographic assumptions in the SoFP is the assumption concerning when the member is expected to leave pensionable service that the actuary will refer to where needed in making calculations. Does this need be separated out and more clearly defined?

Q6 There are benefits that don't accrue for example, ill-health retirement benefits. We would not expect amendments to benefits that don't accrue. Do we need to specify this in regulations?

Q7 Do the regulations setting out the calculation requirements work for Hybrid schemes?

Q8 The employer may choose any calculation date after 31 December 2011. This is to allow the employer to use the scheme's last triennial valuation as a base for the required calculations. However there is some flexibility here because we have not required the employer to use the scheme's last valuation date. Do you foresee any issues with our approach to the calculation date?

Unconventional funding arrangements

Q9 Is our understanding of how salary sacrifice arrangements work correct? Is there a need to make provision in regulations for this arrangement?

Q10 Our intention is for employers sponsoring shared cost schemes to be able to make use of the override to recoup their increase in NI costs due to abolition of contracting-out. Our expectation is that any amendments made would be

proportionate and limited to the minimum needed to recoup the additional costs. For example it would not be appropriate for sponsors of these schemes to use the override power to make scheme rule changes that, in effect, convert a shared cost scheme into a scheme with a more conventional funding arrangement. Do we need to make further provision in regulations to prevent scheme amendments of this magnitude?

Q11 Are there any other funding arrangements that may require specific provision in these regulations to allow employers to use the override as intended?

The role of the actuary

Q12 It is for the employer to appoint an actuary. The actuary may be employed by the employer already or an independent or, with the approval of the trustee, the scheme actuary. Are regulations clear that it is for the employer to appoint the actuary or do we need to clarify this?

Q13 Is four weeks an achievable and reasonable timeframe for trustees to provide the information or is longer needed – if longer needed, how much longer?

Q14 By “information” we mean individual membership data as well as scheme data, such as the scheme’s benefit structure. Is this clear in draft regulations or do we need to be more specific about the type of data trustees will be obliged to provide? If so, what data should be specified?

Q15 Is there any scheme information that trustees do not have access to and that the employer is likely to need to be able to make amendments to scheme rules?

Q16 Can you foresee any problems with providing information to the principal employer for associated employer schemes?

Q17 Can you foresee any problems with providing information to the principal employer for non-associated multi-employer schemes?

Q18 Are all the things we require the actuary to certify correct? For example can the actuary certify that the amendments comply with Schedule 14 paragraph 3?

Multi-employer schemes

Q19 Do the changes in the definitions work effectively for:

- a. Employers sponsoring a single employer section of a segregated multi-Employer Scheme (MES)?
- b. Employers sponsoring a multi-employer section of a segregated MES where the employers are associated?
- c. Employers sponsoring a multi-employer section of a segregated MES where the employers are not associated?
- d. Employers sponsoring a non-segregated scheme where the employers are associated?
- e. Employers sponsoring a non-segregated scheme where the employers are non-associated?

Q20 Do you agree that employers sponsoring non-associated multi-employer schemes are able to use the statutory override as we have suggested?

Q21 Are there other options you would like us to consider for non associated multi-employer schemes?

Q22 Are there any situations where there would be more than one principal employer in relation to a scheme or a section of a scheme?

Cross-subsidy

Q23 Will this regulation help prevent significant cross-subsidy between these member groups?

Q24 Is there any other provision that would help prevent deliberate cross-subsidy?

Actuary's certificate

Q25 Is there any other information that should be included in the actuary's certificate?

Costs and benefits

Q26 We would be grateful if respondents could include estimates of costs, by scheme sizes, including a breakdown of professional fees where possible.

Questions related to the Contracted-out Regulations

Q27 Do you agree that the proposed changes will achieve the intended effect of preserving accrued contracted-out rights since 1978?

Q28 In addition to the amendments to the legislation set out in this document, is there any further legislation that you believe should be revoked or amended in order to meet the intention of preservation of accrued contracted-out rights?

Q29 What changes to scheme rules will trustees be obliged to make to ensure their scheme rules continues to have the same effect as a result of the abolition of contracting-out and the introduction of the single-tier pension?

Annex A: The draft Occupational Pension Schemes (Power to Amend Schemes to Reflect Abolition of Contracting-out) Regulations 2014

- Draft Statutory Override Regulations
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308819/annex-a-draft-statutory-override-regulations.pdf

Annex B: The draft Occupational Pension Schemes (Schemes that were Contracted-out) Regulations 2014

- Draft Contracting-out Regulations
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308820/annex-b-draft-schemes-that-were-contracted-out-regulations.pdf

Annex C: Impact Assessment

- Consultation Impact assessment
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308821/annex-c-impact-assessment.pdf

