



Department
for Work &
Pensions

The Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015

Government response

September 2015

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Chapter One: Introduction

1. The current State Pension is being reformed from 6 April 2016. A new State Pension will be introduced for future pensioners. As a consequence, contracting-out from the additional State Pension will come to an end and no new contracted-out rights will accrue from 6 April 2016. Employers who sponsor a contracted-out defined benefit pension scheme and the scheme members will no longer receive a National Insurance rebate. From that date, employers and employees will pay the standard rate (Class 1) of National Insurance contributions.
2. Section 24 and Schedule 13 of the Pensions Act 2014 (“the 2014 Act”) make provision for the end of contracting-out. The Department for Work and Pensions (DWP) has made secondary legislation to support abolition. On the 8 May 2014 the DWP published a consultation on the following sets of draft Regulations:
 - The Occupational Pension Schemes (Schemes that were Contracted-out) Regulations; and
 - The Occupational Pension Schemes (Power to Amend Schemes to Reflect Abolition of Contracting-out) Regulations.
3. The consultation ended on 2 July 2014. A response to the feedback received on the Occupational Pension Schemes (Power to Amend Schemes to Reflect Abolition of Contracting-out) Regulations was published on 4 March 2015. We said we would publish separately a response to feedback on the Occupational Pension Schemes (Schemes that were Contracted-out) Regulations.
4. DWP received 20 written responses from pension industry bodies and pension professionals (actuaries, lawyers). We are grateful to everyone who replied. A list of the organisations that responded is at **Annex A**.
5. The Government published final regulations on 16 July 2015: The Occupational Pension Schemes (Schemes that were Contracted-out) Regulations 2015. We refer to these as “the 2015 Regulations”. The Government’s Response to the consultation was published on the same date. We also published the Pensions Act 2014 (Savings) Order 2015 (S.I. 2015/1502) (“the 2015 Order”). The 2015 Order contains a number of savings provisions including, for example, measures that will allow a three year transitional period, during which trustees and HMRC will be able to carry out any necessary activity relating to any period of contracted-out employment before 6 April 2016. The 2015 Order will also preserve certain provisions in the Pension Schemes Act 1993 (“the 1993 Act”) indefinitely where specific conditions are met.
6. Other consequential changes to legislation are needed to take account of the abolition of contracting-out – for example, the Contracting-out (Transfers and Transfer Payments) Regulations 1996 (S.I. 1996/1462). We will be undertaking a further consultation on these provisions later this year.

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7. Following publication of the 2015 Regulations, we discovered a procedural error in the regulations. Regulation 28¹ of the 2015 Regulations, and the provision in regulation 32 which revokes regulation 69B of the Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172) (“the 1996 Regulations”), which is made under section 24B(5) of the Pension Schemes Act 1993, can only be made after a draft of the regulation has been laid before, and approved by a resolution of, each House of Parliament (see s.186(3)(a) of that Act).
8. The 2015 Regulations re-make the 1996 Regulations to take account of the abolition of contracting-out on 6 April 2016; regulation 28 replaces regulation 69B² of those regulations, and is the only provision of those regulations subject to the affirmative Parliamentary procedure. Regulation 28 of the 2015 Regulations therefore has not been made according to the correct Parliamentary procedure.
9. We have taken action to remedy this. We revoked the 2015 Regulations and replaced them with **The Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015** (S.I. 2015/1677) – (“the 2015 No.2 Regulations”). The 2015 No 2 Regulations do not contain the provisions contained within regulation 28 and the relevant provision in regulation 32 of the 2015 Regulations. We will include the provisions contained within regulation 28 and the revocation provision in a future set of regulations which we intend to be debated before the end of the year. The 2015 No.2 Regulations will come into force as planned on 6 April 2016.
10. We revised the Government Response that was published in July in order to reflect this development. Apart from the changes outlined the Government Response is otherwise substantially the same.
11. The Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015 (S.I. 2015/1677), and the 2015 Order will be available on the UK Legislation website:

<http://www.legislation.gov.uk/>
12. This consultation document is available on the GOV.UK website:

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

Impact Assessment

¹ Regulation 28 provides for the conversion of survivors' benefits into benefits.

² Regulation 69B provides for the conversion of guaranteed minimum pension liabilities into ordinary scheme benefits as it affects survivor benefits.

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13. An analysis of the impact of the legislation was made as part of the analysis of the Pension Act 2014. Full details of the potential impacts of the reforms are to be found in Chapter 5 of the Impact Assessment:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/310896/pensions-act-ia--summary-of-impacts.pdf

14. An update of the analysis for the new State Pension reforms was published in July 2014. This includes impacts on the ending of contracting out:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332996/single-tier-pension-impact-assessment-update-july-2014.pdf

Chapter Two: Government's response to the feedback received on the consultation questions

Introductions

15. The consultation posed three questions concerning the draft regulations. This Chapter summarises the feedback received and sets out the Government's response.

Question 27³: “Do you agree that the proposed changes will achieve the intended effect of preserving accrued contracted-out rights since 1978?”

Respondents' views

- i. Most respondents thought that the proposed changes would achieve the intended effect of preserving accrued contracted-out rights.
- ii. Some respondents were concerned about material changes in draft regulation 18 (alteration of scheme rules) which seemed, when compared with current regulation 42 of the Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172) (“the 1996 Regulations”), to provide scheme benefits more generous than the Reference Scheme Test.
- iii. Some respondents asked whether lifetime allowance excess lump sums could be added to the list of authorised payments to bring simplification to the administration of pension schemes.
- iv. A further concern was that the draft regulations would not preserve the “Reference Scheme Test” (RST)⁴ in any form for defined contributions schemes that operate what is commonly known as an “RST underpin” where such an underpin is defined by reference to sections 12A -12D of the 1993 Act only and not “written out” into the scheme rules. Under such an arrangement, salary-related benefits are provided as a minimum benefit, but the scheme benefits may be greater if the money purchase benefits would provide for a more generous pension than is required by the RST.

³ Questions 1-26 concerned the regulations relating to the employer power of amendment. The Government's Response to these questions was published on 4 March 2015

⁴ 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.

Government Response

- ii.&iii. Given the technical nature of the issues, we deal with them in Chapter Three – see the responses to regulations 17 and 18 in that Chapter.
- iv. We discussed how best to preserve RST underpin schemes with the respondents and other stakeholders. We thought, initially, that saving sections 12A to 12D would be sufficient. However the issue is more complex than we first thought and we need more time to develop a solution that will satisfy all parties. For now, and until we are able to resolve the matter, we have saved until April 2019 sections 12A to 12D in the saving provision in the 2015 Order (Articles 1(3) and 2(2)(d)). We will revisit this issue.

Question 28: “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?”

Respondents’ views

16. Respondents raised the following issues:

- i. Some respondents asked whether the HMRC’s guidance manuals for scheme administrators would be updated ahead of abolition of contracting-out.
- ii. Some respondents raised concerns about whether the Contracting-out (Transfer and Transfer Payment) Regulations 1996 (S.I. 1996/1462) would be amended so that all references to a “salary-related contracted-out scheme” are extended to include a scheme which was formerly a salary-related contracted-out scheme. Without this change, respondents thought it would not be possible for individual transfers which include guaranteed minimum pension (GMP) or section 9(2B) rights to be made between two former contracted-out salary-related (COSR) schemes.
- iii. Some respondents queried whether, for the purposes of determining the revaluation applicable to GMPs, DWP should clarify that all remaining defined benefit contracted-out employment will be treated as having terminated on 5 April 2016. The implication of this is that revaluation of contracted-out earnings in accordance with section 148 Orders will be replaced by whichever early leaver revaluation method the scheme has adopted (fixed rate, limited rate or Section 148).
- iv. Some respondents did not understand why the payment of GMPs and section 9(2B) rights were set out in two different regulations, nor why these rights needed to be treated differently to ordinary scheme rights. And why these regulations maintained the restriction that lifetime allowance excess lump sums cannot be paid from section 9(2B) rights.

Government Response

- i. DWP and Her Majesty's Revenue & Customs (HMRC) are currently working closely on providing guidance for pension scheme administrators of salary related contracted-out occupational pension schemes. HMRC will be working with stakeholders to update this manual for publication early 2016.
- ii. We intend to make further consequential amendments to legislation including the contracting-out transfer provisions to take account of the ending of contracting-out and to publish a short consultation later this year.
- iii. Amendments made to sections 16 and 87 of the 1993 Act by Schedule 13 of the Pensions Act 2014 (the revaluation requirements for GMPs for early leavers and the anti-franking rules) will ensure that the abolition of contracting-out does not trigger the early leaver rules for those who cease contracted-out employment at the abolition date but remain in pensionable service. However, in looking at this issue we became aware that for some individuals whose contracted-out employment ended before 6 April 2016, but who remain active members of their scheme, the amendments to section 16 of the 1993 Act do not achieve the policy intention that such members should be entitled to fixed rate revaluation from the date contracted-out employment ended. To address this we have provided for section 16(2) of the 1993 Act, and the regulations made under it, to be saved in the 2015 Order, and in regulation 33 of these regulations, in order to avoid this unintended retrospective change to the member's rights.
- iv. As outlined in the consultation document, between 1978 and 1997, a GMP was intended to provide a minimum amount of weekly pension, broadly equivalent to the amount of additional State Pension that would have built up had the member not contracted-out of the State system. Although rights no longer accrued after 6 April 1997, those rights are protected and will remain so. From 6 April 1997, under section 9(2B) of the 1993 Act, schemes that were contracted-out had to meet a different test, called the Reference Scheme Test in relation to contracting-out. Rights accrued in such schemes are referred to as "section 9(2B) rights. Because GMPs and 9(2B) rights have different provisions it follows that these provisions have to be amended separately. The restriction about lifetime allowance excess lump sums in the case of section 9(2B) rights, is addressed in Chapter 3 paragraph 32.

Question 29: "What changes to scheme rules will trustees be obliged to make to ensure their scheme rules continue to have the same effect as a result of the abolition of contracting out and the introduction of the single-tier pension?"

Respondents' views

17. Generally, responses focussed around wanting a power to modify scheme rules which make reference to the Basic State Pension or integrated schemes (also known as "bridging pensions" or "clawback pensions"). Schemes that have

integrated their benefit structure with the State scheme wanted to ensure that members do not gain, or lose out, as a result of the changes to the introduction of the new State Pension. In most cases, schemes will be able to make changes under existing scheme rules, but some schemes consider they might need an amending power (exercisable by the trustees with the agreement of the employer) to enable amendment where the scheme rules do not allow.

Government Response

18. We are very grateful for the responses to this question and to those stakeholders from whom we sought further views. We have considered the matter further. The Basic State Pension will be replaced by the new State Pension for people reaching State Pension age on and after 6 April 2016. The value of the Basic State Pension, however, remains for people reaching State Pension age before 6 April 2016, and will be provided for in the annual Up-rating Order, published by DWP, as this will be required for pensioners who are entitled to a Basic State Pension under the old rules. Therefore, the amount taken into account is the amount of Basic State Pension which we will continue to publish each year after abolition. For these reasons we think a power to modify scheme rules to reflect the State Pension Reforms will not be needed.

Chapter Three: Detailed issues raised by respondents

19. This Chapter deals with detailed issues raised by respondents in relation to the draft regulations.

20. Please note the regulation numbers in the headings refer to the numbering of the final Regulations and, where appropriate, are followed by the draft regulation number in brackets.

21. Readers may find it helpful to refer to the original consultation for an explanation of the broader context.

Part 1 - General

Regulation 2: Interpretation

Respondents' views

22. Respondents commented:

- i. The Regulations should make clear that certain phrases such as 'principal appointed day' (i.e. 6 April 1997), "earner", "the second abolition date", etc. have the meanings set out in the 1993 Act.
- ii. Whilst the definition of section 9(2B) rights is essentially the same as that in the existing 1996 Regulations, it is not clear why a definition incorporating 'protected rights' needs to be retained following their abolition in 2012.

Government Response

- i. The Regulations are made using powers in the 1993 Act and, therefore, all definitions in that Act (as amended by Schedule 13 of the 2014 Act) apply to these Regulations.
- ii. What this definition ensures is that where, before the abolition of defined contribution contracting-out, any protected rights payment was transferred to a defined benefit (DB) contracting-out scheme and became categorised as a section 9(2B) right at that time, those rights continue to remain section 9(2B) rights after abolition of DC Contracting-out, rather than 'lose' their contracting-out status after 6 April 2012.

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

Regulation 5: Provision of information

Respondents' views

23. A few respondents queried the phrase “in such form as the Commissioners may approve” and wanted to know what form the consent would take in regulation 5(2); and raised a drafting issue in regulation 5(1).

Government Response

24. Under regulation 5(1) the Secretary of State or HMRC may give any information that they could give to the trustees of an occupational pension scheme (information for the purposes of contracting-out) to the persons listed. HMRC do not have standard “forms” for providing information in this context. They currently draft communications on a case by case basis which they will continue to do.

25. We agree that there is a problem with the wording in draft regulation 5(1): we have amended the introductory words and removed “or manager” after “trustees” because “trustees” are defined in regulation 2 (Interpretation).

Regulation 6: Overseas schemes

Respondents' views

26. A respondent asked whether regulation 6, (which sets out what an overseas contracted-out scheme needs to provide for in its scheme rules), can be binding on a scheme if it did not already contain the necessary provision.

Government Response

27. It is practically not possible to ensure this provision is binding on an overseas scheme if it is not in their rules. If a scheme did not already contain the necessary provision in its scheme rules it would be in breach of the contracting-out legislation and employers and employees would be receiving reduced rate National Insurance contributions unlawfully. In these circumstances, HMRC would have the power to cancel the contracted-out certificate.

Regulations 8 to 14: (draft regulations 9 to 15): Contribution equivalent premium

Respondents' views

- i. Some respondents queried the various references to sections of the 1993 Act (as amended by paragraph 37 to Schedule 13 of the 2014 Act), which are being repealed from 6 April 2016. They noted that paragraph 89 of the consultation document indicated the Government's intention to save certain sections by “Order”.
- ii. One respondent raised a concern that regulation 15(5) makes reference to section 41(1A) (reduced rates of Class 1 contributions) of the 1993 Act (by paragraph 29 of Schedule 13 to the 2014 Act) which is being repealed from 6 April 2016.

Government Response

- i. The Pensions Act 2014 (Savings) Order 2015 (S.I. 2015/1502) (“the 2015 Order”) provides for sections 55 to 68 of the 1993 Act to be saved for a three year transitional period (for all cases) during which trustees and HMRC will be able to pay a contributions equivalent premium relating to any period of contracted-out employment before 6 April 2016. The 2015 Order will also preserve these provisions indefinitely for cases where the Pension Protection Fund (PPF) is involved and the scheme is being wound up before the 6 April 2016 - for example, a scheme that enters the PPF assessment period before 6 April 2016 and whose assessment period continued beyond 6 April 2019. We are giving trustees of these schemes the ability to elect to pay the contribution equivalent premium where specific conditions are met.
- ii. As to the reference to section 41(1A) of the 1993 Act, we have added in a reference to that section “as it had effect before the second abolition date”.
- iii. We identified a drafting error in regulation 14(5) (draft regulation 15(5)) (Refund contribution equivalent premium). The provision should have contained a consequential amendment as a result of the amendment of section 31(1A) by the Welfare Reform and Pensions Act 1999. The regulation has been re-drafted to refer to provision in section (1B) as well as (1A).

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

Regulation 17 (draft regulation 18): Alteration of scheme rules

Respondents’ views

28. Many respondents were concerned about “significant” changes in the wording of draft regulation 18 (which replaces regulation 42(2ZA) and regulation 42(2ZB) of the 1996 Regulations). Their view is that draft regulation 18, as amended, provides more generous benefits, and a higher level of protection in respect of benefits accrued, while a scheme was contracted-out than is currently the case under the reference scheme test. A further issue was the reference to an “earner” in draft regulation 18, rather than “member” in regulation 42 of the 1996 Regulations and whether this change carried any significance, as the latter seemed to accommodate more easily people with accrued rights who are no longer “earning”.

Government Response

29. We recognise that we did not fully explain the changes made to draft regulation 18 and the policy reasons behind them. We have decided to replicate current regulation 42 of the 1996 Regulations without further amendment and will re-consult on the proposed amendments in due course.
30. On the “members” / “earner” issue, we prefer to use the term “earner” as it is consistent with the 1993 Act and the 1996 Regulations.

Regulation 18 (draft regulation 19): Payment of a lump sum instead of a pension

Respondents' views

31. Some respondents asked whether lifetime allowance excess lump sums could be added to the list of authorised payments to bring simplification to administering pension schemes; stated that not including them was inconsistent with the new flexibilities.

Government Response

32. Regulation 18 provides for the treatment of benefits payable under the reference scheme test and allows payment of a lump sum, instead of a pension, where that lump sum payment meets the requirements of sections 164 and 166 of the Finance Act 2004. The policy intention is simply to replicate the current position. There are no plans to make changes to regulation 18 in order to add lifetime allowance excess lump sums. This is because from the beginning of defined benefit contracting-out, it has always been the case that pension contributions for all members are “pooled” and used for the benefit of all. To allow the payment of a lifetime allowance excess lump sums, as suggested, could, potentially, erode the overall funding position of the scheme, to the potential detriment of other scheme members whose rights do not exceed the lifetime allowance limit (currently £1.25 million).
33. We will consult on changes to the Contracting-out (Transfer and Transfer Payments) Regulations 1996 (S.I. 1996/1462) regarding transfers from salary related contracted-out schemes to allow members to take advantage of the new flexibilities.

Regulation 19 (draft regulation 20): Forfeiture of accrued rights

Respondents' views

34. A respondent asked why it was necessary to have two separate provisions for guaranteed minimum pensions and section 9(2B) rights.

Government Response

35. The provisions relating to forfeiture of section 9(2B) benefits, (regulation 19), and the suspension and forfeiture of GMP benefits (regulation 26) are separately provided for because they are made under separate powers, and provide for forfeiture in different ways. Regulation 19 describes an exception to the general rule in section 92(1) Pensions Act 1995 relating to forfeiture of accrued rights. Section 92(1) and the general regulations made under that power also apply to section 9(2B) rights (see regulation 6(1)(a) of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy, etc.) Regulations 1997 (S.I. 1997/785) (“the Forfeiture Regs 1997”). Regulation 26 provides for a comprehensive set of circumstances in which a GMP can be forfeited in accordance with section 21(2)

of the 1993 Act. The existing GMP provision (regulation 61 of the 1996 Regulations), does not allow forfeiture of an occupational pension for murder or manslaughter of the earner by the survivor, as is the case for other accrued rights. We have therefore taken the opportunity presented by these Regulations to update the legislation to reflect forfeiture of a GMP for murder and manslaughter in regulation 26(2)(e).

Part 4 – Additional requirements in relation to guaranteed minimum pensions

Regulation 21 (draft regulation 22): Circumstances for the purposes of section 17(6) of the 1993 Act in which widower's widow's or surviving civil partner's guaranteed minimum pension is payable

Respondents' views

36. A respondent raised the following issues:

- i. The draft provision may have misinterpreted existing regulation 57(b) of the 1996 Regulations.
- ii. Why was it necessary to keep this draft provision when section 67 of the Pensions Act 1995 (the 1995 Act") should be sufficient?

Government Response

- i. We agree that there is a drafting error in the re-structured provision (which was meant to replicate regulation 57 of the 1996 Regulation). It does not adequately deal with the situation where an individual is residing with a child under age 16 for whom they would have been entitled to child benefit, had the child not been absent from Great Britain. We have, therefore, decided to go back to the original structure in regulation 57(b) of the 1996 Regulations.
- ii. The aim of section 67 of the 1995 Act, which governs how schemes may amend their rules in relation to accrued rights, is to protect the value of accrued rights. However, where a scheme may not have written the requirements of contracting-out into their scheme rules, but simply cross-referred to the legislation, it is arguable that section 67 would not apply if the rules changed only because the legislation referred to in them was repealed. To protect accrued rights, paragraph 13 of Schedule 13 to the 2014 Act inserts new section 12E into the 1993 Act. Section 12E requires former salary-related contracted-out schemes to meet the requirements in the 1993 Act in relation to GMPs, which are sections 13 to 24E of the 1993 Act. Section 12E deems scheme rules to comply with all the requirements, overriding the rules if necessary. This regulation is therefore also kept as it is made under those provisions.

Regulation 25 (draft regulation 31): Payment of a lump sum instead of a pension

Respondents' views

37. Respondents raised the following issues:

- i. Draft regulations 31(3) and (4)(a), replicate the current provisions of regulation 60(2)(a) of the 1996 Regulations. The measure of whether a pension is trivial for the purposes of the Finance Act 2004 and Part 2 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 is no longer based on the amount of annual pension otherwise payable - for example, the latter Regulations base the measure of triviality solely on whether the lump sum payable does not exceed £2,000 (now £10,000 as a result of Budget changes). It is therefore unclear as to how, precisely, regulation 60(2)(a) is to be interpreted. This aspect appears not to have been considered when regulation 60 was amended in 2006 by HM Treasury.
- ii. Many respondents wanted to add "lifetime allowance excess lump sum" to the list of prescribed circumstances for authorised lump sum payment.
- iii. Some respondents queried a drafting error in regulation 26(4)(a), which was carried forward, unchanged, from regulation 60(2)(a) of the 1996 Regulations.

Government Response

- i. We understand the point that the HMRC rules on trivial commutation now use a threshold based on the value of the lump sum payable, rather than the annual rate of pension. And that this is now slightly out of kilter with the provision in regulation 25(4)(a), which refers to the "amount that would be payable at pensionable age" i.e. the annual rate of pension. In addition, we have, since the consultation last summer, received additional comments on this provision that question how the provision is meant to work for schemes which carry out Limited Rate Revaluation. Because of these technical points, we are at this point simply replicating regulation 60 without amendment in this new regulation. We will consider all the points raised and consult on appropriate changes to regulation 60 in due course.
- ii. The issue of lifetime allowance excess lump sum is addressed in our response to regulation 18 in paragraph 32 on page 13.
- iii. We agree there is a drafting issue in regulation 26(4)(a), and have re-drafted the provision.

Regulation 27 (draft regulation 33): Conversion into other benefits: actuarial equivalence

Respondents' views

38. A couple of respondents wanted the Department to take the opportunity to address some of the GMP conversion issues in regulation 69A and 69B of the 1996 Regulations.

Government Response

39. We have considered the responses carefully, but concluded that this issue cannot be addressed in this set of Regulations. Conversion and equalisation issues are being explored separately.

Part 6 – Amendment of the Contracting-out (Transfer and Transfer Payment) Regulation 1996

Regulation 30 (draft regulation 27): Revaluation after transfers from another scheme

40. We received a number of comments about regulation 31:

Respondents' views

- i. Some respondents raised concerns that the revaluation of GMPs on transfer and covers the ability to use different revaluation methods for transferred GMP. As worded, the regulation appears to relate only to cases where the transfer took place before 6 April 2016.
- ii. Some respondents queried whether allowance should be made for the fact that since 6 April 2012 GMPs could be transferred to *former* contracted-out schemes under the connected employer transfer provisions, under regulation 4 of the Contracting-out (Transfer and Transfer Payment) Regulation 1996 (SI 1996/1462).
- iii. Respondents asked if there were any reasons why regulations 28 - 30 do not apply to a scheme that ceases to be contracted-out on the second abolition date.
- iv. Respondents also asked if we can confirm that no "protection rule" is needed for schemes that cease to contract-out on the second abolition date.

Government Response

- i. We agree that the regulation relates only to cases where the transfer took place before 6 April 2016. Because we will have to save section 16(2) of the 1993 Act in cases where a member's contracted-out employment ended before the second abolition date, we are also saving regulations 65 and 66 of the 1996 regulations for the same purpose. This means that the new regulation 31 (which was to replace regulations 65 and 66), will now only apply in cases where the member's contracted-out employment ended on the second abolition date. We have therefore amended the provision to make it clear that it relates to the end of the member's pensionable service under the scheme, in line with new section 16(2).

- ii. We are not proposing to amend the requirements of regulation 31 so that it applies to transfers between former contracted-out schemes. This is because we propose to amend the Contracting-out (Transfers and Transfer Payments) Regs 1996 (S.I. 1996/1462) to take account of transfers between former contracted-out schemes (we will consult on these changes separately). The regulations will require schemes to follow the revaluation provisions set out in the Schedule 1. If regulation 31 also applied, schemes would be required to follow two similar, but not identical, approaches.
- iii. We have removed draft regulations 28 - 30 because section 51(1) of the 1993 Act will be repealed by paragraph 34 to Schedule 13 of the Pensions Act 2014. Section 51 will not have been operational since the amendments to section 51(1) were made by the 1995 Act. No conditions have been prescribed for sub-paragraph (1). Since this has not applied to anyone since 1996, we decided not to carry forward these draft regulations.
- iv. Section 50 and regulation 45 will not have effect in relation to schemes which cease to contract-out on the second abolition date, and as a result schemes will not be required to have a 'protection rule' because no scheme ceasing to contract-out on that date will be subject to approval arrangements by HMRC. Section 50 and regulation 45 are to be saved for 3 years to allow for approval arrangements in relation to a scheme which ceased to contract-out before the second abolition date to be finalised.

Part 7 – Revocation and Savings of the Occupational Pension Schemes (Contracting-out) Regulations 1996

Regulation 33 (draft regulation 38): Revocation taking effect on 6th April 2019

Respondents' views

41. We received a number of comments about draft regulation 38:

- i. Some respondents asked whether there would be a requirement for employers to notify and consult with members in advance of the ending of contracting-out.
- ii. Respondents raised concerns about why the Government is proposing to keep certain provisions in force for three years until 6 April 2019?
- iii. Respondents also asked if regulation 23 and Schedule 3 of the 1996 Regulations would be amended to recognise that contracting-out will cease on 6 April 2016.

Government Response

- i. The issue will be addressed in the further consultation which deals with required changes to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (S.I. 2013/2734).

- ii. These provisions contains a number of measures that will allow a three year transitional period, during which trustees and HMRC will be able to make changes after 6 April 2016 relating to any period of contracted-out employment before 6 April 2016. We have also redrafted regulations 31 - 33 (draft regulations 37 and 38) by specifying which regulations will be revoked from 6 April 2016 (regulation 31). This is because we have saved many of the primary powers, but only for three years. These regulations will continue and automatically fall after three years, and do not need to be revoked separately on 6 April 2019.
- iii. Regulation 28(9) of this Regulation amends regulation 23(g) of the 1996 Regulations to take account of the abolition of contracting-out. Regulation 23 and Schedule 3 will remain in place for the three years transitional period.

Regulations removed post consultation

42. During the consideration of consultation comments received, we reviewed the provisions contained within the draft regulations and concluded that some will not be needed. This section explains why we have removed those provisions.

Regulation 8 and 41 of the consultation draft: Contributions equivalent premiums: application of regulations

43. We removed consultation draft regulation 8 (Contributions equivalent premium: application of regulations), and also draft regulation 41 which is the corresponding provision for Northern Ireland. The regulations set out the application of consultation draft regulations 9 – 15 as they apply to schemes which were being wound up before 6 April 2016. The regulations are not needed because we have provided that the primary provisions and powers under which they are made will be saved in certain circumstances, so we do not need to set out in what circumstances these regulations apply in the regulations themselves; they will apply in the circumstances specified in the 2015 Order.

Regulation 24 of the consultation draft: statutory reference to persons entitled to guaranteed minimum pensions – applications to widowers, widows of female earners and surviving civil partners

44. We have removed consultation draft regulation 24 because we cannot use the power to modify the scope of section 50(1) of the 1993 Act in the way currently provided for under regulation 59 of the 1996 Regulations (to modify section 50 itself). We do not have (and never did have) a power to make consultation draft regulation 24(1). In these circumstances, the provisions set out in draft regulation 24(2) are not deemed necessary by HMRC.

Consultation draft regulations 28 – 30

45. We have removed the consultation draft regulations 28 - 30. This is because section 51 of the 1993 Act will not have been operational since the amendment to section 51(1) was made by the 1995 Act to replace the words “are subject to

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approved arrangements” with “satisfy prescribed conditions” (brought into force in 1997). No conditions have been prescribed for subsection (1) since that amendment, therefore section 51 will not have applied in any circumstances since that date, and neither will the purported modifications in the 1996 Regulations

Annex A: Consultation respondents

Aon Hewitt
Associated Society of Locomotive Engineers and Firemen (ASLEF)
Association of Consulting Actuaries (ACA)
Association of Pension Lawyers (APL)
Aviva
BP UK Pensions & Benefits
Capita Employee Benefits
Eversheds LLP
First Actuarial LLP
Hogan Lovell International LLP
Hymans Robertson LLP
Institute and Faculty of Actuaries (IFoA)
KPMG LLP
Mercer UK (a subsidiary of Marsh & McLennan)
National Association of Pension Funds
Royal Bank of Scotland Group
Sackers & Partners LLP
Society of Pension Professionals (SPP, formerly the Society of Pension Consultants)
Squire Patton Boggs (UK) LLP
Towers Watson