Department for Work & Pensions

The Occupational and Stakeholder Pension Schemes (Miscellaneous Amendments) Regulations 2013

Government response to public consultations

March 2013

Contents

Introduction

Over the past year, the Government has consulted on two sets of miscellaneous amendments to Occupational Pensions Regulations. Changes are also needed to the Stakeholder Pensions Regulations following the removal of the requirement for most employers to designate a stakeholder pension. Since all these changes will come into force on 6 April 2013, we have merged all the amendments into one set of Occupational and Stakeholder Pension Schemes (Miscellaneous Amendments) Regulations 2013.

This response to the public consultation will therefore cover all the consultations on amendments included in this set of regulations.

To make it easier for those who responded to only one consultation, the response has been divided into three parts, each covering a separate consultation.

These are:

Part 1: Occupational Pensions Schemes (Miscellaneous Amendments) Regulations

Public consultation ran from 20 July to 13 September 2012 covering:

- bulk transfer without member consent to non-UK schemes within the European Economic Area (EEA)
- clarify the policy intention in relation to schemes that have ceased to contract out and wish to make a change to their scheme rules
- bulk transfers of contracted-out rights to formerly contracted-out schemes without member consent
- bulk transfers of scheme membership to schemes which did formerly apply to employment with the same employer but now no longer do so

Part 2: **Occupational Pensions Schemes (Miscellaneous Amendments No.2) Regulations**

Public consultation ran from 4 October to 14 November 2012 covering:

- changing a reference to RPI in transfer rights exclusions
- indexation of pension credit benefit (pensions shared on divorce)
- indexation of pension credit benefit held in cash balance schemes
- modification of bridging pensions as a result of State Pension Age changes

Part 3: The Stakeholder Pension Schemes Regulations 2000

Informal engagement with stakeholders who had indicated an interest ran from 21 December 2012 to 17 January 2013 covering:

- consequential amendments following the removal of the requirement for most employers to designate a stakeholder pension scheme

Part 1: Occupational Pensions Schemes (Miscellaneous Amendments) Regulations

What the consultation said

These draft regulations, a result of requests from stakeholders, were the subject of a public consultation from 20 July to 13 September 2012. An eight-week consultation was held as the Department had previously informally consulted with key stakeholders on the changes relating to contracting-out. In the public consultation, we asked for comments on draft regulations to:

- ensure that the bulk transfer of accrued rights without member consent can be made to non-UK schemes within the European Economic Area (EEA) as well as to UK and non-EEA schemes;
- clarify the policy intention in relation to schemes that have ceased to contract out and wish to make a change to their scheme rules**;**
- allow bulk transfers of contracted-out rights to formerly contracted-out schemes without member consent, and to allow both contracted-out and contracted-in schemes to make bulk transfers of scheme membership to schemes which did formerly apply to employment with the same employer, but now no longer do so.

There were 16 responses to the consultation. A list of all respondents is provided at Annex A. The Government is very grateful to all those who responded to the consultation. This part of the document outlines the main points made by respondents and provides the Government's response.

The regulations will be available on the UK Legislation website: http://www.legislation.gov.uk/uksi

This document is available on the Department's website: http://www.dwp.gov.uk/consultations/2012/

A paper copy of this document can be obtained from:

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SW1H 9NA
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Bulk transfers of accrued rights without individual consent for EEA-based members

We asked: Do you believe that the draft amendments would allow schemes to undertake bulk transfer of accrued rights without member consent to pensions institutions in EEA states outside of the UK in the same way and under the same conditions that these transfers can currently be made to pension schemes based either within the UK or outside of the EEA?

Respondents' comments

Of the 16 responses, nine either made no comment on the change to bulk transfers to EEA-based schemes without consent, or were in favour, without providing any detailed response.

The more detailed responses covered two main areas: the definition of receiving scheme, and whether the requirements of regulation 12(4), (4A), (4B) and (5) should be included in new regulation 11B. There was one query as to why a new regulation was to be inserted, rather than expand the existing regulation 12.

Definition of receiving scheme
Two responses pointed out that new regulation 11B will still require the conditions in regulation 12(2) and 12(3) to be satisfied but the definition of the "receiving scheme" cross-references back to the original definition of an occupational pension scheme based either in the UK or outside of the EEA.

Including requirements of Reg 12(4), (4A), (4B) and (5) in new Regulation 11B
Four responses suggested that some or all of the requirements of regulation 12(4), (4A), (4B) and (5) should also apply to new regulation 11B.

Why a new regulation?
One respondent queried why new regulation 11B was made rather than incorporating the requirement into regulation 12.

Government response

Definition of receiving scheme
We agree with the comment and regulation 11B has been amended to reflect this. Two further minor amendments, consequential on the insertion of new regulation 11B, have also been made (regulations 5 and 9).

Including requirements of Reg 12(4), (4A), (4B) and (5) in new Regulation 11B
New regulation 11B requires that the conditions in regulation 12(2) and 12(3) are met. Regulation 12(3) requires the relevant actuary to complete the certificate in schedule 3. Paragraphs (4) and (4A) indicate how the certificate should be completed. Likewise, paragraph (5) defines the term "relevant actuary" for the

purpose of the certification. We do not believe a specific reference to any of these is needed in new regulation 11B.

However, regulation 12(4B) requires that the member is informed of the proposed transfer at least one month before it takes place. We agree that this requirement should also apply to bulk transfers to EEA countries under new regulation 11B and the regulation has been amended to reflect this.

Why a new regulation?
A new regulation will clearly provide that a transfer to an EEA scheme is an alternative to a short service benefit (under s.73(2)(b) Pension Schemes Act 1993) as well as provide that it is possible to do so without consent (s.73(4)(b)). Inserting the new provisions within regulation 12 may not have been so clear.

Schemes that have ceased to contract-out and wish to change their scheme rules

We asked: Do you consider that the proposed changes to regulation 42(2) will correctly reflect the policy intention, and do the changes make the regulation workable in practice? If you do not believe that this has been achieved, please set out detailed reasons.

Respondents' comments

Six respondents either agreed with the draft amendment or made no detailed comment. One respondent provided typographical corrections. For the remainder of respondents, a range of issues were commented on, but broadly there were four main areas which generated comments, and these are dealt with in the following paragraphs.

Clear definitions of "accrued section 9(2B) rights" and "rights which are to accrue in the future under a contracted-out scheme"
Four respondents questioned the use of the terms "section 9(2B) rights under the scheme" and "rights which are to accrue under the scheme". They did not think that the terms were clear enough and wanted clarification as to which term applied to accrued section 9(2B) rights so there was no confusion when actuaries came to put the regulation into practice. Some respondents put forward alternative forms of words for draft regulation 42(2AA).

Related to clarity of definitions, one respondent thought that there was a possibility that any changes to future accruals would have to meet both tests in draft regulation 42(2) and 42(2AA) because of the way the regulation was worded.

Restriction of changes to section 9(2B) rights (protected and detrimental modifications)
Three respondents did not agree with the proposed restrictions placed on changes to section 9(B) rights. One respondent thought protected modifications should be allowed where legislation relating to authorised payments is satisfied, and one remarked that detrimental modifications should be allowed if the actuarial

equivalence requirements of section 67 have been met and the informed consent of the member to those changes has been obtained.

Use of the actuarial equivalence provisions in section 67 of the Pensions Act 1995

Some respondents queried why the provisions in section 67 of the Pensions Act 1995 alone could not be used with no additional restrictions. One respondent asked about the two actuarial equivalence tests – one for accrued section 9(2B) rights and one for other rights accrued – and whether separate actuarial equivalence certificates are required.

One respondent pointed out that the way draft regulation 42(2AA)(a) was drafted could require contracted-out and former contracted-out schemes to fulfil the requirements of section 67 regardless of whether or not the section 67 requirements actually apply in the first place. Another asked whether it was the policy intention to make schemes use the actuarial equivalence provisions for any rule changes which were outside its scope.

The provision of survivor benefits under a scheme / broad equivalence

The majority of comments from respondents related to the paragraph following draft regulation 42(2AA)(b), relaying that they did not think that the paragraph reflected the policy intention. Respondents expressed concern as it seemed that the amended regulation now required schemes to provide a 50 per cent survivor pension where they may not have previously done so (some respondents noted that survivor benefits are known to be more generous than the minimum required by the statutory standard). It was also pointed out that as drafted, the regulation would require schemes to have a more generous survivor benefit than that which was available to members.

Respondents observed that the principle of broad equivalence as set out in regulation 23 of, and Schedule 3 to the Occupational Pension Schemes (Contracting-out) Regulations 1996 in relation to meeting the statutory standard seemed to no longer apply and that would mean schemes would have to alter the shape of the benefits provided in order to meet the new requirement. Additionally, as drafted, the wording could lead to misinterpretation and could mean that any rule alterations that were improvements would possibly not be made due to the restrictive nature of the survivor benefit provisions.

Some respondents asked why survivors' benefits seemed to have more protection than the benefits of scheme members, and whether the test should apply to rule changes which would clearly result in improvements to benefits, rather than to all rule changes.

Several respondents offered alternative forms of wording for this paragraph.

Monetised and non-monetised benefits of the amendment

To obtain more detailed data for the Impact Assessment that accompanies the amending regulations, the consultation document asked if respondents could identify both monetised and non-monetised benefits of the proposed amendments. For this amendment, one observation was received: the main benefit of the change is not

directly financial, and should save some money in adviser fees, but it is not possible to estimate the amount of saving.

No respondents provided data relating to monetised benefits.

Government response

Clear definitions of "accrued section 9(2B) rights" and "rights which are to accrue in the future under a contracted-out scheme"

The definition of section 9(2B) rights within the Occupational Pension Schemes (Contracting-out) Regulations 1996 refers to accrued rights. To ensure there is no confusion, the amending regulations have been altered to reflect respondents' comments about "rights which are to accrue" under the scheme.

Restriction of changes to section 9(2B) rights (protected and detrimental modifications)

It is important that all accrued section 9(2B) rights are fully protected. This is because members of contracted-out schemes have given up the right to the state additional pension in return for scheme benefits that are broadly equivalent to, or better than, those specified in the Reference Scheme Test for at least 90% of the scheme membership.

To protect members' accrued rights, the changes that are being made to regulation 42 will ensure that former contracted-out schemes must provide benefits that are actuarially equivalent to, or better than, benefits currently provided when making a rule change which affects section 9(2B) rights. A "protected modification" – replacement of accrued rights by money purchase benefits which could result in a reduction of benefit – would not meet this intention. Neither would it be reasonable to make a "detrimental modification", which might adversely affect accrued section 9(2B) rights with the members' consent rather than meeting the actuarial equivalence test.

The Government believes that it is appropriate to apply an equivalent safeguard to the quality and size of member benefits that have already accrued, in line with the Reference Scheme Test which is applied to future accruals over the forthcoming three years.

The proposed changes mean that there will be consistency with regulation 45(3)(a) of the Occupational Pension Schemes (Contracting-out) Regulations 1996 because the legislation is no longer saying that schemes which cease to be contracted-out and make retrospective changes to their rules have to continue to meet the Reference Scheme Test.

Use of the actuarial equivalence provisions in section 67 of the Pensions Act 1995

Regarding the requests to use section 67 provisions alone, the policy intention is that changes to section 9(2B) rights cannot be made by member consent. This is in line with legislation that governs Guaranteed Minimum Pension conversion. Contracting-out provisions mirror, to a great extent, the legislation governing state additional pension, which contracted-out benefits replace.

Schemes will need to satisfy the test in regulation 42(2ZA), which clarifies the requirement for any retrospective rule changes affecting section 9(2B) rights. This is separate to the section 67 requirements. The provisions in section 67 apply to retrospective changes to all subsisting rights – both contracted-out and non contracted-out. Any non contracted-out rights in the scheme would have been accrued either before or after the scheme was contracted-out and therefore should be easy to identify.

Following comments from respondents, the amendment has been changed to make it clear that the restrictions on alterations do not apply where the provisions of section 67 do not apply to the changes in the first place, or where the alteration provides benefits for all potential beneficiaries that are at least equal to those provided by a reference scheme.

The provision of survivor benefits under a scheme / broad equivalence
The policy intention is that members with contracted-out rights should retain a right to a benefit for their survivor in the same circumstances and of at least the same amount to which they were entitled when the scheme met the Reference Scheme Test (the time of accrual). This will maintain equivalence with the provisions relating to survivors in state additional pension legislation.

In line with the legislation governing Guaranteed Minimum Pension conversion, a survivor's pension should be provided by the scheme on broadly the same basis as required under the relevant contracting-out legislation. An actuarial equivalence test alone would not guarantee that a survivor's pension would be payable in the same circumstances and at the same rate as it would have been before any alterations to accrued rights.

The amending regulation has been altered to reflect the concerns of respondents, and the application of section 67 on changes that are not detrimental has been clarified. This rewording also addresses the concerns raised regarding the principle of broad equivalence.

Bulk transfers of contracted-out rights without member consent

We asked: Do you believe that the draft amendments would allow schemes to undertake bulk transfer of contracted-out rights without member consent in a way which protects the membership's accrued rights and alleviates burdens for pension schemes? If you disagree, please give detailed reasons.

Respondents' comments

Of those who provided comments, 13 organisations supported the proposed amendment. Where comments were made, respondents:

- queried why the draft amendment did not also cover a transfer or transfer payment with member consent as set out in regulations 3 and 8 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996;

- wanted to know how the regulation would work for a transfer between two multi-employer schemes which did not have an identical match (or no match) of participating employers;
- enquired about the definition of the relationship between employers, as set out in different regulations; and
- asked about the extent of the new definition of "connected employer transfer" and "connected employer payment".

Monetised and non-monetised benefits of the amendments

To obtain more detailed data for the Impact Assessment that accompanies the amending Regulations, the consultation document asked if respondents could identify both monetised and non-monetised benefits of the proposed amendments. For this amendment, two respondents gave their opinion about the potential benefits.

One respondent stated that it would give greater flexibility for employers and trustees in consolidating pension arrangements to achieve administrative savings, and that there would be an overall saving as a result of changes, but was not able to make an informed estimate of amount.

The other respondent thought the changes would result in reduced costs being incurred by the pension schemes in aggregate (in actuarial / legal /audit /investment fees); an improved governance of members' benefits (e.g. larger schemes tend to have more frequent trustee meetings and have the resources to set a higher level of governance); and an improved relationship between employers and trustees (e.g. valuation negotiations are likely to be more in-depth and lead to a greater level of mutual understanding if a Finance Director has fewer trustee boards to consult).

No respondents provided data relating to monetised benefits.

Government response

These changes have been made because the Government was approached by stakeholders who advised that the issue of bulk transfer of scheme membership without member consent was causing administrative burdens and additional cost for pension schemes wishing to rationalise their pension provision.

Changes to the Contracting-out (Transfer and Transfer Payment) Regulations 1996 to take account of the abolition of defined contribution contracting-out now allow individual members to request a transfer (that is, with consent) from a salary-related contracted-out scheme to a non-contracted-out scheme with certain safeguards. These changes replaced the regulations which dealt with transfers from defined benefit contracted-out scheme to defined contribution contracted-out schemes (contracting-out on a defined contribution basis was abolished from 6 April 2012).

In relation to multiple employer schemes, there is no policy intention in making changes to regulations 12(2) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (and provisions broadly equivalent to that regulation) which would affect the application of the interpretation that the courts have given in respect those regulations when applied to multi-employer schemes.

The different wording used for the relationship between “connected employers” in Regulation 12(2)(b)(ii) of the Occupational Pension Schemes (Preservation of Benefits) Regulations 1991 (which in turn refers to regulation 64 and regulation 12 of the Occupational Pension Schemes (Contracting-out) Regulations), and the wording in regulation 1(2) of the Contracting-out (Transfer and Transfer Payment) Regulations 1996 are worded slightly differently but do have an equivalent effect. They allow connected employers, as described in the regulations, to make transfer or transfer payments. The Government will give further consideration to the issue raised regarding the connected employer test where partnerships have half their partners in common.

Changes have been made to the regulation which will clarify both the definitions used and their extent.

Part 2: Occupational Pensions Schemes (Miscellaneous Amendments No.2) Regulations

These draft regulations, all consequential on earlier Government decisions and legislative changes, were the subject of a public consultation from 4 October to 14 November 2012. A six-week consultation was held as most of the changes were minor, technical amendments, or issues on which the Department had previously consulted.

In the public consultation, we asked for comments on draft regulations to:

- ensure that the index preferred by the Government for statutory minimum indexation rather than the RPI is used to determine whether pre-1986 leavers should be able to transfer their preserved pension
- ensure that the statutory minimum indexation requirements for certain defined benefit pensions arising from pension sharing on divorce (pension credit benefits) reflects those for defined benefits pensions generally
- remove the requirement for pension credit benefits (arising from pension sharing) held in cash balance schemes to be indexed
- allow trustees to alter scheme rules so bridging pensions can be paid past 65 to new increased State Pension Age.

There were 20 responses to the consultation. A list of all respondents is provided at Annex B. The Government is very grateful to all those who responded to the consultation. This part of the document outlines the main points made by respondents and provides the Government's response.

Consultation Questions and Responses

Transfer regulations

The proposed amendment will change the reference to RPI to a reference to a rise the general level of prices, in line with changes to other references to RPI in legislation. It will prevent some former members of a non-public service pension scheme, which provides for uncapped revaluation of deferred benefits but has switched from using RPI to CPI because of a link to the Government's preferred index, gaining the right to request a transfer because they are no longer receiving RPI-based revaluation.

Consultation question 1

We asked: Do respondents agree that the number of schemes and, hence, members affected by this are small? Can any respondents provide an indication of numbers and costs?

Response to question

Ten respondents answered this question. All agreed that the number of schemes and members affected would be low, since it was unusual for non-public service schemes to offer uncapped revaluation. Only one attempted to provide anything more specific which was a belief that the number of scheme affected would "be in the tens…..". Three respondents suggested that the trustees of any such scheme were likely to have been permitting affected members to transfer their rights on a voluntary basis, so the number of scheme facing unexpected costs would be even lower than initially anticipated.

Government response

The responses confirm the Government's understanding that the change may cause a small but unquantifiable saving for a minority of schemes and this has been reflected in the validation Impact Assessment.

Other responses/comments

Three respondents queried why, if the numbers and amount involved were so low, particularly if schemes were providing such transfers on a voluntary basis any way, it was necessary to change the legislation at all.

A similar number expressed concern that by changing the regulation to read "a rate that in the opinion of the Secretary of State maintains the value of pensions or other benefits by reference to the rise in the general level of prices in Great Britain", this would always be read to be the rate the Secretary of State had chosen to use – which at the moment is CPI – and that this would mean that those schemes still using RPI would gain new transfer rights because RPI was neither CPI nor could not be guaranteed to be above CPI, or else new rights in any year CPI exceeded RPI. Suggested solutions included retaining a reference to RPI as well as inserting the new text.

One respondent was concerned about additional work for schemes in dealing with transfer requests.

Government response

The Government agrees the number of people potentially gaining new transfer rights is very small but considers that it would be inconsistent to leave a reference to RPI when other similar references have been amended.

The Government appreciates concerns that the revised wording could create a new excluded group where a scheme continued to revalue by uncapped RPI but does not think that this will occur. The full revised wording will be “be revalued at a rate equal to **or exceeding** a rate that in the opinion of the Secretary of State maintains the value of pension or other benefits by reference to the rise in the general level of prices in Great Britain”. When RPI is higher than CPI, the test will remain having been met.

It must also be remembered that revaluation is calculated over the whole of the period of deferment, not on a year by year basis. Therefore, even if RPI is lower than CPI in a particular year, the cumulative RPI revaluation is still likely to exceed the cumulative CPI figure.

Since the rationale behind the amendment is to reinstate the exemption from the right to a transfer, schemes are unlikely to have to process transfer requests that they would otherwise not have done. Other responses confirmed that the number of schemes involved is extremely low.

Indexation of pension credit benefit

Pension credit benefit is the pension rights that a former spouse receives from a scheme member if the member's pension is shared as part of a divorce settlement. The intention has always been that it is increased in a similar way to main scheme benefits. The amendments are intended to clarify how the increases are calculated and to ensure the regulations reflect changes which have already been made for main scheme benefits.

Consultation Question 2a

We asked: Do the changes make it clear how the minimum statutory indexation requirements should be calculated for pension credit benefit held in defined benefit schemes?

Response to question

All fourteen responses to this question were supportive of the changes. Two respondents suggested that the definition of "appropriate percentage" should read "when entitlement to relevant pension **credit** arose". One also queried whether the calculation needs to retain "maximum percentage" since the correct result is achieved without this layer of calculation.

Government response

Both suggestions avoid potential ambiguity and the wording in the regulations has been changed to reflect this. Further revisions to the definitions of "appropriate percentage" and "relevant percentage", and the introduction of the "default percentage" (also used in section 51 of the Pensions Act 1995) means that the "maximum percentage" is no longer needed to achieve the correct calculation.

Consultation Questions 2b

We asked: Do the changes preventing an underpin where a scheme continues to pay RPI-based increases provide the same easement as in section 51 of the Pensions Act 1995?

Response to question

Fourteen responses were supportive of the change. However, two expressed concern as to whether the wording used actually permitted the draft legislation to fully meet the policy intention. The suggested solution was to use a similar approach to that used in section 51(4ZA-ZB) Pensions Act 1995 to avoid the underpin in main scheme benefits.

Government response

The regulation has been reworded.

Other responses/comments

One reply suggested that the definition of default percentage made it clear that the relevant figure was per annum

Government response
"Per annum" has been inserted in the definition of default percentage

Indexation of pension credit benefit held within a cash balance scheme

A cash balance scheme is one which provide a lump sum with which the member can purchase an annuity, there being some form of promise or guarantee as to how the lump sum is calculated. Annuities bought with cash balance benefits from 3 January 2012 onwards do not have to be indexed. A similar easement needs to apply to annuities bought with pension credit benefit rights held within a cash balance scheme.

Consultation Question 3

We asked: Does the proposed amendment give the same easement to a pension credit benefit held within a cash balance scheme regarding the requirement for annuities to provide for LPI?

Response to question
Thirteen respondents replied to this question. All were supportive and all felt that the draft amendment reflected the policy intention.

Other responses/comments
Two were concerned that the provisions would not be back-dated and, therefore, would come into force at a later date for cash balance schemes generally. One respondent was concerned as to the position of any scheme which had followed the legislation for main scheme benefits, not realising that provisions for pension credit benefits had not been changed.

Government response
Changes to pension legislation are not normally backdated, since that would add complexity and possible extra costs. However, the number of shared pensions held in cash balance schemes and which annuitised between the commencement of the Pensions Act 2011 and the coming into force of these regulations is believed to be very low. Should a scheme have permitted a member to take an un-indexed annuity, neither scheme nor member will have lost out since the loss of indexation would have been compensated for by the higher starting rate.

Bridging pensions

Some pension schemes pay bridging pensions up to State Pension Age (SPA) but trustees, without legislation, may not have power under their scheme's rules to change the bridging pensions to take account of the SPA changes.

The proposed power was intended to allow trustees to modify the terms of any bridging pension offered to people who have not yet retired, but there would be no obligation on them to do so. It was also intended to be limited, so that trustees would only be able to use it to make changes which they consider to be necessary or desirable to take account of the changes to SPA and the Finance Act 2004 (for example, to allow bridging pensions to be reduced at SPA instead of age 65). It was not intended that the power should allow trustees to make wider or more general changes.

Consultation Question 4

We asked: Is the new power sufficient to allow trustees of schemes providing bridging pensions to modify their scheme to take account of changes to SPA, without allowing them to make wider or more general changes?

Response to question

Twenty respondents submitted representations on this proposal. Responses were largely supportive of the proposal, and felt that it did allow trustees to modify their scheme to take account of changes to SPA, without allowing them to make wider or more general changes. None of the responses opposed the measure, although a number suggested modifications to the detail of the draft regulations issued for consultation.

Government response

The Government is still considering the issues raised in the responses. The Government has therefore decided to remove these provisions from the Miscellaneous Amendments Regulations to allow for a further informal consultation. The aim will be to introduce an amended version of the draft regulations, taking account of the points raised in the consultation, at a later date.

Part 3: The Stakeholder Pension Schemes Regulations 2000

The removal of the stakeholder designation requirements from Part I of the Welfare Reform and Pensions Act 1999 means that consequential amendments are needed to the Stakeholder Pension Scheme Regulations (SI 2000/1403).

The Welfare Reform and Pensions Act 1999 does not impose a requirement on the Secretary of State to consult on these changes. However, key stakeholders were given the opportunity to comment on a draft of these regulations before they were included in the final package. This short informal consultation with key stakeholders, representative bodies and companies who responded to an earlier consultation about removing employer designation in 2007 or have contacted DWP recently about the changes ran from 21 December 2012 to 17 January 2013. A list of those who responded is at Annex C.

No Impact Assessment was prepared for these amendments since the effect on business was captured in the impact assessment prepared when the changes to the Act were commenced. This can be found at http://www.dwp.gov.uk/docs/stakeholder-pension-designation-reqts-ia.pdf

The removal of the requirements means that there is no longer any need to exempt certain categories of employer or employee from the requirements. Employers are still required to continue deducting contributions in respect of employees who had already made a request before 1 October 2012, until the employee leaves or ceases contributing and existing employees are permitted to vary the amount of the deduction.

Consultation Question

We asked: Whether respondents had any comments on the draft regulations.

Responses

Responses were received from four organisations, two of which made substantive comments. Several points raised were technical drafting comments (capitalisation, cross-references, wording, consistency etc) and many of these have been reflected in the final regulations.

One response suggested that the drafting did not continue an employer's right to refuse of request to vary contributions within six months of commencement.

Government response

These amendments will come into force on 6 April 2013. The cessation of the employer's duty on the 1 October 2012 is more than six months earlier so no provision is necessary.

Response

Concern was also expressed that the provision to permit an employer to cease deducting contributions if the employer had withdrawn designation of a scheme “for reasons beyond the employer’s control”, whilst flexible and used elsewhere in regulations, could lead to uncertainty.

Government response

This will provide protection for the employer and employee in the event of unforeseen problems with the stakeholder scheme: the employer will not be obliged to continue deducting contributions until the employee formally withdraws the request to make deductions.

Response

One response felt that the draft regulations did not make it absolutely clear that the employer’s duty to existing contributors ceased if the employee wished to contribute to a different designated stakeholder scheme.

Government response

The matter is dealt with in the primary legislation. An employee who withdraws a request to contribute to one scheme would not be a "relevant employee” as defined by section 3(1A) for the purposes of section 3 of the Welfare Reform and Pensions Act 1999 in respect of the other scheme. The employer duties would come to an end in respect of that employee who could not require the employer to pay over contributions deducted from remuneration to another designated scheme.

Response

One response also queried why the requirement for the employer to tell an employee for whom contributions would no longer be deducted that the employee may be able to pay contributions direct to the stakeholder scheme was not included in all cases.

Government response

The amended regulation 23(3) can not require the employer to give the information as the vires to make regulation 24(3)(b) has been removed by the amendments to section 3 of the Welfare Reform and Pensions Act made by section 87 of the Pensions Act 2008. However, the Order commencing section 87 makes supplemental provision and obliges the employer to inform the employee of the consequences of withdrawing a request to make deductions to contribute to the employer's designated pension schemes, so the employee will be given some information on ceasing to be a relevant employee.

Next Steps

The Government would like to thank all the organisations who have offered their views and advice in response to this consultation. We have noted the comments and queries raised and have made changes to the draft regulations where appropriate. The Government plans to make amending regulations which will come into force in April 2013.

Annex A: Respondents to the Miscellaneous Amendments consultation

AonHewitt

Association of Consulting Actuaries

Association of Pension Lawyers

Cobbetts LLP

Eversheds LLP

Freshfields Bruckhaus Deringer LLP

Hanson UK

Institute and Faculty of Actuaries

Mayer Brown

Mercer

Partnership

Pensions Management Institute

Smiths Pensions Ltd

Society of Pension Consultants

The Law Society of Scotland

Towers Watson

Annex B: Respondents to the Miscellaneous Amendments (No.2) consultation

Actuarial Profession (Institute and Faculty of Actuaries)

Aon Hewitt

Association of Consulting Actuaries

Association of Pension Lawyers

British Steel

Capita

Friends Life

Hogan Lovells

Hymans Robertson

JLT

Linklaters

Mercer

National Association of Pension Funds

Pensions Management Institute

Prudential

RBS

Sackers

Society of Pension Consultants

Towers Watson

Travers Smith

Annex C: Respondents to the Stakeholder Pensions Amendments engagement

Association of Pensions Lawyers

Ian Neale/Aries Pension & Insurance Systems Ltd

Mercer

The Pension Regulator

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