



Department
for Work &
Pensions

Occupational Pensions: Miscellaneous Amendments

Public Consultation

November 2013

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Introduction

About this consultation

This consultation document seeks stakeholders' views on the Government's draft regulations on discharge of liability, scheme administration (auditor independence) and employer debt. The draft regulations are technical changes to private pensions regulations being brought in to simplify the administration of pension schemes.

This document is split into three short sections, each covering an area where we plan to change regulations. Each section introduces the regulations the Government proposes to change, and explains why the change is necessary.

Section one: Occupational Pension Schemes (Scheme Administration) Regulations 1996

This section discusses the issues that can be faced by large multi-employer schemes when they appoint auditors and suggests a solution to the problem.

Section two: Occupational Pension Schemes (Discharge of Liability) Regulations 1997

This section clarifies the circumstances in which trustees may obtain a discharge of their liability to provide pension benefits when those benefits have been secured by means of an insurance policy or annuity contract. It also clarifies, when the amounts secured may be commuted to provide a lump sum.

Section three: Occupational Pension Schemes (Employer Debt) Regulations 2005

This section discusses a correction to a reference in Regulation 10 of the Employer Debt Regulations, which set out what should be done when there has been criminal fraud. There is no change to the policy.

Who this consultation is aimed at

We welcome comments on the draft regulations from pensions industry professionals, pension schemes, trustees and scheme managers, pension scheme members, employers and representative organisations. We would also be interested in receiving comments from any other interested stakeholder groups.

Purpose of the consultation

The aim of the consultation is to draw stakeholders' attention to the proposed changes, and seek their views on the likely impact, including any potential unintended consequences that the proposed changes might have on specific groups.

Scope of consultation

This consultation applies to England, Wales and Scotland. It is anticipated that Northern Ireland will make corresponding regulations.

Duration of the consultation

The consultation period begins on 29 November 2013 and runs until 10 January 2014. Please ensure that your responses reach us by that date as any replies received after this may not be taken into account.

How to respond to this consultation

Please send your consultation responses to:

Ms Ruth Saunders
The Department for Work and Pensions
1st Floor, Zone C
Caxton House
6-12 Tothill Street
London
SW1H 9NA

Email: ruth.saunders@dwp.gsi.gov.uk

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.

Please do share this document with, or tell us about, anyone else 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:

Ms Ruth Saunders
The Department for Work and Pensions
1st Floor, Zone C
Caxton House
6-12 Tothill Street
London
SW1H 9NA

Email: ruth.saunders@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 the Department for Work and Pensions, please contact:

Central Freedom of Information Team
Caxton House
6-12 Tothill Street
London
SW1H 9NA

Email: 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

Consultation principles

This consultation is being conducted in line with the new Cabinet Office Consultation Principles. 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

Email: elias.koufou@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 aim to publish the Government response to the consultation on <http://www.dwp.gov.uk/consultations>

The report will summarise the responses.

Section one: Occupational Pension Schemes (Scheme Administration) Regulations 1996

Introduction

Occupational pension schemes are required to appoint auditors under section 47 of the Pensions Act 1995. There are, however, restrictions aimed at ensuring an appropriate degree of separation between the statutory auditor, the scheme and the sponsoring employer. This is to avoid the situation where an employer or auditor can have an influence on the activities of the scheme which would be to the detriment of scheme members.

Regulation 4(2) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (the Scheme Administration Regulations) specifically describes persons who are not eligible to be an auditor of the scheme. These are:

- A member of the scheme
- Scheme administrators
- The sponsoring employer
- Anyone prohibited from being a statutory auditor of the sponsoring employer under the independence conditions in section 1214 of the Companies Act 2006.

The above requirements are straightforward for schemes with a single sponsoring employer to comply with, and are manageable for most multi-employer schemes.

However, some stakeholders have stated that very large multi employer schemes are unable to comply with the independence requirements, because of their size, and have called for these schemes to be exempt from the requirement.

Although the issue was first raised in the context of NEST, a number of large non-associated multi-employer schemes have been set up in recent years. Given the limited number of audit firms able to audit schemes of this size, it is likely to become increasingly difficult for an audit firm to meet the independence requirement as these schemes grow.

We also understand that some auditors, as well as being partners of audit firms, are also officers of charities or not for profit organisations, as part of their firm's corporate social responsibility commitment. If an auditor is an officer of a charity or not for profit organisations which is (1) a company and (2) an employer within the pension scheme

in question, the auditor's firm cannot audit the scheme. This makes it harder for audit firms to meet the independence requirements.

Proposed Solution

We explored a number of potential ways of exempting very large multi employer schemes with stakeholders, seeking their views on the benefits and risks of each option. The solution to this problem is not straightforward. Following these discussions it was decided that a criteria based approach was the best way to exempt very large non-associated multi employer schemes.

We therefore propose to amend regulation 4 of the Scheme Administration Regulations to disapply regulation 4(2)(d) in respect of, trust-based, multi-employer, occupational pension schemes where at least two thirds of the employers are not associated or connected and there are at least 500 employers in the scheme.

Scheme Administration consultation questions

(1.1) Do you think the proposed solution is sufficient to address this problem? If you do not think it would be sufficient please state why not.

(1.2) Are there any other types of scheme affected that we have not considered?

(1.3) As a minimum, how many employers should be involved in a scheme before this disapplication should apply, and why?

The draft regulations propose that it should be 500. We would welcome any evidence that you can provide us with to justify why the level should be set below 500.

Section two: Occupational Pension Schemes (Discharge of Liability) Regulations 1997

Background

Regulation 3 of the draft Occupational Pension Schemes (Miscellaneous Amendments) Regulations will amend the Occupational Pension Schemes (Discharge of Liability) Regulations 1997 (SI 1997/ 784) (“the Discharge Regulations”). The intention is to meet stakeholders requests that we clarify the circumstances in which trustees may obtain a discharge of their liability to provide pension benefits when those benefits have been secured by means of an insurance policy or annuity contract. The amendment also clarifies when a proportion of pension benefits may be 'commuted' to provide a lump sum on retirement.

Under section 19 of the Pension Schemes Act 1993 (the PSA), trustees or managers of an occupational pension scheme may, in certain circumstances, meet their liability to provide guaranteed minimum pensions for members by buying annuities or insurance policies on their behalf. Members are then paid by the insurance company, rather than the scheme, when they come to receive their pension. Section 81 of the PSA states that in certain circumstances, transactions to which section 19 applies may discharge trustees of their liability to provide short service benefit or alternatives to short service benefits. A common use of this provision is for schemes to bulk buy annuities or insurance policies on behalf of short-service (deferred) members in order to reduce their overall liabilities.

Where trustees choose to buy an insurance policy or annuity in order to pay benefits, they may in certain circumstances choose to include an option for members to take a proportion of those benefits as a lump sum. This is known as 'commutation'. Where a commutation option is provided, trustees or managers will only be discharged of their liability to provide pension benefits if certain requirements are satisfied. These requirements were prescribed in regulation 4 of the Discharge Regulations. The current version of regulation 4 does not have these provisions; it appears that the original provisions were omitted in 2006 following amendments to reflect changes to the tax treatment of pensions.

Options for lump sums include payments that qualify as trivial commutation or serious ill-health lump sums under the Finance Act 2004. The most common option is a tax-free cash lump sum worth up to 25 per cent of the member's pension benefits.

It has always been the policy that trustees can purchase annuities that include an option for a tax-free pension commencement lump sum, and the amendment intends

to put beyond doubt the options available in the context of securing short service benefits (or alternatives to short service benefits).

Proposed Amendment

The proposed amendments to regulation 4 of the Discharge Regulations inserts a new paragraph 1(c), which allows members to take a proportion of their pension benefits as a lump sum, where those benefits are secured by an insurance policy or annuity, provided that benefits have become payable, the member is aged 55 or over and has requested or consented to the lump sum payment and the payment qualifies as a pension commencement lump sum under the Finance Act 2004.

This provision is subject to new regulation 4(2A), which excludes guaranteed minimum pensions of the earner and their surviving spouse or civil partner from being taken as a pension commencement lump sum. As these benefits have already been tax-exempt, they cannot qualify as part of a further tax-free lump-sum.

The amendments do not affect the existing paragraphs (1)(a) and (b), which set out the terms of commutation that can be secured for guaranteed minimum pensions. Under paragraph (1)(a), the amount taken as a lump sum may not exceed the amount permitted as a trivial commutation lump sum under the Finance Act 2004. Similarly, any death benefits payable to an earner's widow, widower or surviving civil partner may be commuted if the payment qualifies as a death benefit under the Finance Act 2004.

Paragraph (1)(b) permits a lump sum to be paid in circumstances of serious ill-health, where the earner requests or consents to the payment.

Cost and Benefits of the amendment

There are no direct costs associated with this amendment. Its purpose is to make clear the commutation options available to trustees and advisers when they use section 19 of the PSA to discharge their pension liabilities through purchase of an annuity or insurance policy on a member's behalf.

There may be some unquantifiable benefits to schemes and members as they will be able to act with greater efficiency, certainty and confidence that their decisions are fully supported by clearer provision within the Discharge of Liability Regulations 1997.

Discharge Regulations consultation questions

(2.1) Do you think the proposed changes will clarify the circumstances in which trustees can obtain a discharge of their liability to provide pensions for members by buying annuity or insurance policy? If you do not think it would be sufficient please state why not.

(2.2) Will there be any undesirable consequences of implementing the proposed changes?

Section three: Occupational Pension Schemes (Employer Debt) Regulations 2005

Introduction

Most of the regulations relating to Employer Debt can be found in the Occupational Pension Schemes (Employer Debt) Regulations 2005 (SI 2005/678).

When an employer's relationship with its defined benefit pension scheme ends (e.g. because the employer becomes insolvent), an "Employer Debt" may be payable. The amount of the Employer Debt is based on the difference between the value of the assets of the scheme and the amount of its liabilities, calculated on a "full buy out" basis.

The Employer Debt requirements were introduced to prevent employers from abandoning responsibility for their occupational pension schemes, and to protect pension scheme members when the relationship with their employer comes to an end. This is a safeguard that pensions members expect to receive.

Criminal deficit in money purchase schemes

The proposed changes relate to a cross referencing error in relation to Regulation 10, where the underpinning legislation was repealed in 2005 but the reference was not updated to ensure that people were signposted to the correct reference.

Regulation 10 of the Employer Debt Regulations deals with the liability of employers to pay amounts to money purchase schemes, under section 75 of the Pensions Act 1995. The obligation covers levy deficits and, if the "criminal reduction conditions" are satisfied, the amount of a "criminal deficit".

This was an obligation under Section 81 of the 1995 Act; however this was repealed by the Pensions Act 2004 (see section 320 and Schedule 13, Part 1) in September 2005.

The criminal fraud provisions are now in sections 182 to 189 of the Pensions Act 2004 and so the reference should be to a prescribed offence under sections 182(1)(b) of the Pensions Act 2004. This now refers to "any offence involving dishonesty" covered by Regulation 3 of the Occupational Pension Schemes (Fraud Compensation Payments and Miscellaneous Amendments) Regulations 2005 (SI 2005/2184). This is the same definition as under the 1995 provisions – the policy here has not changed.

The amendment therefore corrects this cross referencing error in the Employer Debt Regulations so that people are signposted to sections 182 to 189 of the Pensions Act 2004.

Employer Debt consultation question

(3.1) Do you think the solution sufficient? If you do not think it would be sufficient please state why not.