

**Pensions: Contracted-out Benefits and Miscellaneous  
Amendments**

**The Personal Pension Schemes (Appropriate  
Schemes)(Amendment) Regulations 2005**

**Government response to the consultation**

December 2005

**DWP** Department for  
Work and Pensions

## INTRODUCTION

1. In March 2005 the Government carried out a consultation exercise covering two sets of proposed draft amending regulations. This document sets out a summary of the main points made in the consultation concerning the Personal Pension Schemes (Appropriate Schemes) (Amendment) Regulations 2005. A separate document will be published in due course dealing with the other set of regulations - the Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2005.
2. The consultation period lasted for 8 weeks, finishing on 5 May 2005. Eighteen responses were received. A list of respondents is set out at Annex A. The Government is grateful to those who have contributed their views, which have been helpful in considering the best way forward. The Government's response to the views expressed in the consultation exercise are set out in this paper, and a revised draft of the proposed amending regulations is also attached.
3. This document is available on the Department for Work and Pensions website at <http://www.dwp.gov.uk/consultations/2005/index.asp>.
4. A hard copy of this document can be obtained from:  
  
Tim Found  
Department for Work and Pensions  
The Adelphi (3/F)  
1-11 John Adam Street  
London WC2N 6HT  
  
Telephone: 020 7712 2409
5. This paper explains the policy intention upon which the proposed amending regulations are based. Comments on the effect of the regulations should not, however, be taken as an authoritative interpretation of the law. Such an interpretation can only be provided by a Court.

## RESPONSES TO CONSULTATION

### Overview

1. This document summarises the main points made by respondents to the consultation exercise. Most comments concerned the proposal to replace references to tax legislation (which would no longer be valid from April 2006) with a specific restriction preventing Self Invested Personal Pension Schemes (SIPPS) from holding contracted-out pension rights ("protected rights"). There were also some comments concerning the proposal to allow an authorised corporate director of an open-ended investment company to establish a scheme into which protected rights could be invested.

2. The Government's response to the consultation exercise is set out below under headings summarising the main issues raised and views expressed by respondents.

### **SIPPS are no longer necessarily high-charge and high-risk investment vehicles, and there should be no restrictions on SIPPS holding protected rights**

3. The Government accepts that developments in the SIPPS industry in recent years make this form of pension provision more suitable for a wider range of people than had previously been the case. However, protected rights accruing in a private pension result from contracting out of - and thereby giving up rights in - the state second pension. It is therefore appropriate, in the Government's view, that a higher standard of prudential regulation should apply to contracted-out personal pension schemes.

4. The regulatory framework for private pension providers is currently under review. HM Treasury recently issued a consultation document ("Proposed changes to the eligibility rules for establishing a pension scheme: a consultation document" - September 2005) which invites comments on options for the future regulation of providers. Subject to consultation responses, the Government's preferred option is to introduce a new regulated activity specifically relating to personal pension schemes, so that the operation of all personal pension schemes, including SIPPS, would come within the scope of the Financial Services Authority (FSA). This would take effect from 6 April 2007, with the existing regulatory framework continuing until that time.

5. Taking account of the comments received from respondents to the consultation exercise, the Government has decided not to proceed with the proposed blanket prohibition preventing all SIPPS schemes from holding protected rights. Rather, from April 2006, this aspect of the legislation will simply be updated to reflect changes in tax legislation to which the current

regulations cross-refer<sup>1</sup>. Some further changes will also be made as described in subsequent sections, below.

6. Furthermore, the Government will review the position again, once the current consultation on regulatory arrangements has concluded and the new arrangements are in place.

**Even if the Government decides not to allow protected rights to be held within SIPP plans, an easement should be introduced to allow a SIPP arrangement *holding non-protected rights only* to form part of an "appropriate scheme", avoiding the extra administrative costs arising from the establishment of two separate schemes**

7. A number of respondents to the consultation exercise made representations on this point. At present, where an individual wishes to invest both protected rights and non-protected rights (for example following a transfer out of another pension scheme) and wishes to open a SIPP plan, the effect of the current legislation is that two entirely separate personal pension schemes must be established. This causes extra administrative costs which, in turn, means that less money is available to build up in the fund to purchase a pension in retirement.

8. The Government accepts this point. Revised amending regulations will be introduced so that from April 2006 an arrangement such as a SIPP plan can be held within the 'wrapper' of an "appropriate scheme" without invalidating that scheme's contracting-out certificate. Naturally, the protected rights within the appropriate scheme must continue to be kept quite separate and all the relevant requirements must continue to be met for the contracted-out part of the scheme.

**The amendment which is intended to allow the authorised corporate director of an open-ended investment company (OEIC) to establish an "appropriate scheme" is technically deficient as it requires the establishment of an authorised unit trust scheme**

9. The draft amending regulations have been re-cast to take account of the technical considerations which have been identified by respondents.

**The position relating to OEICs should be liberalised further, to allow "appropriate schemes" established on an OEIC basis also to offer the possibility of investment in authorised unit trusts**

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<sup>1</sup> The effect of the current regulations is that stakeholder pension schemes cannot hold protected rights if they take the form of a SIPP, and the only type of contracted-out personal pension scheme which can offer SIPP-style choices for protected rights is an insured product offered by an insurance company. (Such products are however subject to additional regulatory provisions by the FSA.) This position in respect of protected rights will continue unchanged from April 2006 under the appropriate schemes regulations as amended by the proposed (revised) draft statutory instrument.

10. For similar reasons to those explained above in relation to SIPPS, the Government will review the position again in due course, when the regulatory arrangements for private pension providers have been finalised.

11. Meanwhile, the revised regulations will from April 2006 allow the authorised corporate director of an OEIC to establish an "appropriate scheme" for the investment of protected rights in an OEIC, as well as offering other arrangements (within the same scheme) in which non-protected rights can be held.

## Annex A

### LIST OF RESPONDENTS

AXA Sun Life plc  
Central Tax & Trustee Planning LLP  
Robert Chappell  
Nick Dobson  
Dundas & Wilson CS LLP  
Hargreaves Lansdown  
Investment & Life Assurance Group  
Investors' Association  
Barry McIntosh  
Merchant Investors  
Millfield Partnership Limited  
MLC Savings Limited  
Norwich Union  
Pensionfinder.com Ltd  
Alan Shilling  
SIPP Provider Group  
Standard Life Assurance Company  
Suffolk Life