

**Private Pensions Policy  
and Regulation Division**

**The Occupational And Personal Pension  
Schemes (Authorised Payments)  
Amendment Regulations 2009**

Government response  
to the consultation

December 2009

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## The Occupational And Personal Pension Schemes (Authorised Payments) Amendment Regulations 2009 (2009/2930)

- 1 The consultation on these regulations began on 19 August 2009 and ended on 29 September 2009.
- 2 Eleven responses to the consultation were received. A list of the respondents is at [Annex A](#). The Department is very grateful to all who contributed to the consultation.
- 3 The Occupational and Personal Pension Schemes (Authorised Payments) Amendment Regulations 2009 (the Amendment Regulations) come into effect on 1 December 2009.
- 4 The regulations are available on OPSI's website at – [http://www.opsi.gov.uk/si/si2009/uksi\\_20092930\\_en\\_1](http://www.opsi.gov.uk/si/si2009/uksi_20092930_en_1)
- 5 This document is available on the Department's website at – <http://www.dwp.gov.uk/consultations/2009>
- 6 A paper copy of this document can be obtained from:

Neil Vosper  
Department for Work and Pensions  
7<sup>th</sup> Floor, Caxton House  
Tothill Street  
London SW1H 9NA  
Email: [neil.vosper@dwp.gsi.gov.uk](mailto:neil.vosper@dwp.gsi.gov.uk)

- 7 This document describes the policy underpinning the changes being made. Comments on the legislation 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

This section summarises the main points made by respondents to the consultation and sets out the Government's response.

### Consultation question

We invited you to comment on whether you considered that the draft Regulations capture the relevant easements which HM Revenue & Customs (HMRC) permit in the Registered Pension Schemes (Authorised Payments) Regulations 2009 (RPS (AP) Regulations 2009).

#### **1 – Regulation 4 (amendment of the Occupational Pension Schemes (Contracting-out) Regulations 1996)**

##### **Your responses**

Five organisations commented on regulation 4(4)(c)<sup>1</sup> which inserts new regulation 60 (1)(b)(i)(cc) into regulation 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996. The intention of this new sub-paragraph is to allow a guaranteed minimum pension (GMP) to be taken as a lump sum, if it qualifies as an authorised payment, as set out in Part 2 of the RPS (AP) Regulations 2009. Respondents expressed concern that although the inserted sub-paragraph (cc) is correct to refer to payments under section 164(1)(f) of the Finance Act 2004, it does not allow for the lump sum to be taken as an authorised payment because the payment could not then qualify as a “trivial commutation” permitted under the lump sum rule in section 166 of the Finance Act 2004.

##### **The Government's response**

The Government agrees that the lump sums listed in the RPS (AP) Regulations 2009 are authorised payments under Section 164(1)(f) of the Finance Act 2004 but do not qualify as “trivial commutation” lump sums listed in the rules set out in Section 166. Unfortunately, due to an oversight, the wording of the regulation has not been amended prior to the regulations coming into force. The Government is grateful that this issue was highlighted and will consider correcting this provision by inserting an amendment into a package of miscellaneous amendment regulations planned for introduction in April 2010. The amendment would remove the reference to section 166, thus allowing for GMPs to commute any of the additional types of payments that fall under Part 2 of the RPS (AP) Regulations.

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<sup>1</sup> This provision was regulation 4(3)(c) in the draft Regulations attached to the Consultation Document.

## **Government response**

### **Your responses**

One respondent commented that there was a difference in draft regulation 4 between the ability to commute defined benefits accrued after 1997 when schemes had to meet the Reference Scheme Test and the ability to commute GMPs accrued prior to 1997. In particular, that draft regulation 4(3)<sup>2</sup> provided for the commutation of post-1997 benefits in the circumstances described in Part 4 of the RPS (AP) Regulations 2009, whereas this was not permitted for GMPs in draft regulation 4(3).

### **The Government's response**

In the draft regulations that were sent out for consultation, the amendments within regulation 4(3) did not make reference to Part 4 of the RPS (AP) Regulations 2009 because commencement lump sums are not permissible for GMPs.

However, after considering the consultation responses, the Government decided to remove the reference to Part 4 (regulations 17 - 19) of the RPS (AP) Regulations 2009 everywhere it appears in the amendment regulations. This is because Part 4 of the RPS (AP) Regulations 2009 focuses solely on how Pension Commencement Lump Sum (PCLS) amounts paid in error (where there is an excess) of the permissible amount should be treated for taxation purposes. The Amendment Regulations now only prescribe how contracted out rights can be given effect to as it is not appropriate to specify how payment errors are to be treated for tax purposes. This is the purpose of Part 4 the RPS (AP) Regulations 2009 which applies to all PCLS amounts made from any pension fund.

## **2 – Part 3 of the Registered Pension Schemes (Authorised Payment) Regulations 2009**

### **Your responses**

One organisation considered that the draft regulations do not appear to mirror Part 3 of the RPS (AP) Regulations 2009 and so do not seem to allow for pensions paid in error, or pensions paid in the six months following the member's death.

### **The Government Response**

Pensions regulations do not prescribe how any sums paid in error should be treated for taxation purposes. This falls within the remit of the RPS (AP) Regulations 2009 which determine what payments, made in particular circumstances, should be treated as authorised payments. Part 3 of those Regulations applies if an error has been made where the payment is intended to represent a payment permitted by the pension rules or the pension death benefit rules that fall under 165 and section 167 of the Finance Act 2004.

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<sup>2</sup> This provision was regulation 4(2) in the draft Regulations attached to the Consultation Document.

### **3 – Part 4 of the Registered Pension Schemes (Authorised Payment) Regulations 2009**

#### **Your responses**

One respondent commented that the RPS (AP) Regulations 2009 apply retrospectively and from 6 April 2006 any pension payments made in error would be treated as being made under Part 4 of those Regulations. The respondent commented that the draft Amendment Regulations do not appear to have the same retrospective effect.

#### **The Government Response**

The Government has removed the reference to Part 4 of the RPS (AP) Regulations 2009 in the Amendment Regulations. This is because the purpose of the Amendment Regulations is to permit additional circumstances where lump sums can be taken, as set out in the RPS (AP) Regulations 2009. How payment errors made by scheme administrators are to be treated for taxation purposes is covered in HMRC legislation.

### **4 – Lifetime Allowance Excess Lump Sum**

#### **Your responses**

Three respondents suggested that the draft regulations be amended to allow the lifetime allowance tax charge and a lifetime allowance excess lump sum to be paid or taken from contracted-out funds held in schemes.

#### **The Government Response**

The comments received are outside the scope of the consultation on these regulations. A lifetime allowance excess lump sum and the subsequent lifetime allowance charges are not permitted under contracting out legislation and there are no plans to permit such lump sum payments. This is to prevent the contracting out rights from being eroded and to safeguard the benefits that they are intended to provide.

### **5 – Relationship with Scheme Rules**

#### **Your responses**

One respondent commented that some schemes' amendment powers to alter their rules would prevent them from taking advantage of the changes. It was suggested that the regulations could also be used to add a provision under section 68(2)(e) of the Pensions Act 1995 which would allow those schemes to be modified by resolution. This would help those schemes to pay lump sums in the circumstances described in Part 2 of the RPS (AP) Regulations 2009.

## **Government response**

### **The Government Response**

The Government will consider this issue and if a legislative solution is needed we will make the necessary change at the next available opportunity.

## **6 – Regulation 7 (amendment of the Occupational Pension Scheme (Assignment, Forfeiture, Bankruptcy etc) Regulations 1997)**

### **Your responses**

Three responses were received concerning the drafting of this regulation.

### **The Government Response**

These comments have been incorporated into the final wording of the regulation.

## **7 – Other Issues**

### **Your responses**

One respondent commented that the regulations do not amend regulation 12 of The Personal Pension Schemes (Appropriate Schemes) Regulations 1997 or regulation 37 of The Occupational Pension Schemes (Contracting Out) Regulations 1996. Those Regulations set out circumstances in which minimum contributions and age-related payments are not to be paid.

### **The Government Response**

Regulation 12 of the Personal Pension Schemes (Appropriate Schemes) Regulations 1997 and regulation 37 of the Occupational Pension Schemes (Contracting-Out) Regulations 1996) set out who the minimum contributions should be paid to. Our consultation was seeking views on whether the Pensions regulations permitted the additional types of payments that can now be commuted as authorised payments. Therefore we have not made any amendments to these regulations.

## **8 – Thanks**

The Government would once again like to thank everyone who took the time to comment on this consultation document. The views expressed have often helped to firm up solutions to issues and problems, or helped to highlight areas of potential difficulty.

## Annex A

### Respondents to the consultation

A.J. Bell Group  
Association of Consulting Actuaries  
Association of Pension Lawyers  
Aviva  
Elcena Jeffers Foundation  
Mercer  
Slaughter & May  
Society of Pensions Consultants  
Universities Superannuation Scheme  
Watson Wyatt  
Zurich