

Pensions

Consultation on Draft Regulations

The Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.)(Amendment) Regulations 2006

December 2005

Contents

- **Part One – Foreword**
 - **Preface**
 - **Target audience**
 - **Website**
 - **How to respond**
 - **Summary of responses**
 - **Regulatory Impact Assessment**
- **Part Two – The Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.)(Amendment) Regulations 2006**
 - **Introduction**
 - **Background**
- **Part Three – Draft regulations**

Annex A – List of those consulted

Part One – Foreword

Preface

1. This consultation document seeks views on the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.)(Amendment) Regulations 2006. These regulations amend regulation 2 of the principal regulations to add to the list of circumstances when an occupational pension may be commuted. It enables scheme benefits that are payable under an occupational pension scheme to be commuted into lump sum payments if those payments satisfy requirements set out in the Finance Act 2004.

Target audience

2. This consultation is aimed at pension industry professionals.

DWP website

3. The consultation document is available on the Department's website at:

<http://www.dwp.gov.uk/consultations/2005/>

How to respond

The consultation period closes on 23 January 2006. We would be grateful for your comments on any of the points covered by the regulations. Please ensure that your response reaches us by that date. Please send consultation responses to:

Barry White
Department for Work and Pensions
Private Pensions Policy
3rd Floor
Adelphi
1-11 John Adam Street
London
WC2N 6HT

Tel: 020 7962 8563

or:

E-mail: Barry.White@dwp.gsi.gov.uk

Because of the highly specialised nature of this issue, Ministers have decided that it is not appropriate to publish it under the provisions of the Cabinet Office Code of Practice on consultation. It does, however, apply best practice from the Code.

4. In view of the brevity of the amending regulations and the specialised nature of the proposed amendments Ministers have decided that a six-week consultation period is appropriate.
5. According to the requirements of the Freedom of Information Act 2000, all information contained in the response, including personal information, may be subject to publication or disclosure. By providing personal information for the purposes of the public consultation exercise, it is understood that a Respondent consents to its disclosure and publication. If this is not the case, the Respondent should limit any personal information which is provided, or remove it completely. If a Respondent requests that the information given in response to the consultation be kept confidential, this will only be possible if it is consistent with Freedom of Information Act obligations and general law on this issue. The contact point to discuss is:

**Charles Cushing
Freedom of Information
2nd Floor
Adelphi
1-11 John Adam Street
London
WC2N 6HT**

6. More information about the Freedom of Information Act can be found on the website of the Department for Constitutional Affairs
<http://www.dca.gov.uk/foi/guidance/exguide/index.htm>.
7. When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of a larger organisation please make it clear who the organisation represents and, where applicable, how the views of members were assembled.
8. A list of those consulted is attached at Annex A. If you have any suggestions of others who may wish to be involved in this process please contact us.

Summary of responses

9. A summary of responses will be published following the consultation. The Government will aim to publish this summary within three months of the consultation closing. The summary of responses will be available on the Department's website at <http://www.dwp.gov.uk/consultations/2006/index.asp> and paper copies will be available on request.
10. DWP values feedback on how well it consults. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact the DWP Consultation co-ordinator or any suggestions as to how the process of consultation could be improved further. please contact:

Geoff Ashton
DWP Consultation Co-ordinator
5th Floor
South Trevelyan Square
Leeds
LS1 6EB

Tel: 0113 23 27 104

E-mail Geoff.Ashton@dwp.gsi.gov.uk

Regulatory impact assessment

11. A Regulatory Impact Assessment has not been completed for these regulations. The regulations complement provisions in the Finance Act 2004 for lump-sum payments of occupational pension scheme benefits and have no additional impact on business, charities or the voluntary sector.

Part Two – The Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.)(Amendment) Regulations 2006

Introduction

1. Section 91(1)(a) of the Pensions Act 1995 contains a general prohibition on the commutation of an occupational pension or the commutation of a right to a future occupational pension. Section 91(5)(c) of that Act provides for exceptions to that general provision in prescribed circumstances. Those circumstances are set out in The Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997.

Background

2. From 6 April 2006 pension tax provisions under s.168 and Schedule 29 of the Finance Act 2004 will provide for members and their dependants in both the timing and form of benefits that may be taken from their occupational pension scheme. The amending regulations which are the subject of this consultation aim to facilitate and complement those provisions.

3. Regulation 2(2) of these amending regulations prescribes various circumstances in which the general rule of the inalienability of an occupational pension does not apply. (The new paragraph inserted into regulation 2 of the principal regulations is numbered 1C as a new paragraph 1B is proposed for introduction into regulation 2 of the principal regulations by regulation 6 of the draft Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2005). The draft regulations which are the subject of this consultation may be merged with those regulations.

4. Inserted paragraph 1C (a) allows the payment of a lump sum in the following circumstances:
- A pension commencement lump sum as permitted under section 166 and Schedule 29 paragraphs 1 to 3 of the Finance Act 2004 to be paid to an occupational pension scheme member aged under 75 where they have reached the minimum age at which retirement benefits are payable under the scheme but continue to work in the employment of the employer providing the scheme.
 - a payment of that part of a members' pension fund in excess of the lifetime allowance to be paid as a lifetime allowance excess lump sum as in paragraph 11 of Schedule 29 to the Finance Act 2004, where an occupational pension scheme member has not reached age 75 but is over normal minimum pension age (or the ill-health condition is met) and has no lifetime allowance available (for example has crystallised benefits with a capital value of £1.5 million in 2006/07).

5. Inserted paragraph 1C (b) allows the payment of a lump sum death benefit in the following circumstances:

- For the purpose of paragraph 13 of Schedule 29 to the Finance Act 2004, where a member of a defined benefits occupational pension arrangement dies before age 75.
- For the purpose of paragraph 14 of Schedule 29 of the Finance Act 2004, where a member of a defined benefits arrangement dies before age 75 without having crystallised benefits and the member has specified that the lump sum payment is to be treated as a pension protection lump sum death benefit instead of a defined benefits lump sum death benefit.
- For the purpose of paragraph 15 of Schedule 29 of the Finance Act 2004 where a member of a money purchase arrangement of an occupational pension scheme dies before age 75 with uncrystallised funds.
- For the purpose of paragraph 16 of the Finance Act 2004, up to an amount of the cost of the annuity less the annuity payments already made, where an occupational pension scheme member with an annuity in payment dies before age 75.
- For the purpose of paragraph 17 of the Finance Act 2004, in respect of undrawn funds in the unsecured pension fund at the date of the member's death provided that he was aged under 75 at that time.

6. We would welcome comments on these regulations.

S T A T U T O R Y I N S T R U M E N T S

2006 No. []

PENSIONS

**The Occupational Pension Schemes (Assignment, Forfeiture,
Bankruptcy etc.) (Amendment) Regulations 2006**

Made - - - - - []
Laid before Parliament []
Coming into force - - [6 April 2006]

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 91(5)(c)(ii) and (iii), 124(1) and 174(2) and (3) of the Pensions Act 1995⁽¹⁾.

In accordance with section 120(1) of that Act he has consulted with representatives of those whom he considers likely to be affected by the Regulations.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) (Amendment) Regulations 2006 and shall come into force on [6th April 2006].

(2) In these Regulations—

“the principal Regulations” means the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997⁽²⁾;

“lump sum rule” means the rule relating to the payment of lump sums by a registered scheme to a member of that scheme under section 166 of the Finance Act 2004⁽³⁾;

“lump sum death benefit rule” means the rule relating to the payment of lump sum death benefits by a registered scheme to a member of that scheme under section 168 of that Act.

⁽¹⁾ 1995 c.26. Section 91(5) is amended by paragraph 57(1) and 4 of Schedule 12 to the Welfare Reform and Pensions Act 1999 (c.30), section 266(1) and (2) of the Pensions Act 2004 (c.35) and S.I. 2005/2053; Section 124(1) is cited because of the meaning there given to “prescribed” and “regulations”.

⁽²⁾ S.I. 1997/785, amended by S.I. 1999/1849, 2002/681 and 2005/438, 706 and [].

⁽³⁾ 2004 c.12.

Amendment of regulation 2 of the principal Regulations

2.—(1) Regulation 2 of the principal Regulations (commutation of a pension under an occupational pension scheme) shall be amended as follows.

(2) After paragraph (1B) insert—

“(1C) For the purposes of section 91(5)(c)(ii) and (iii) of the 1995 Act the circumstances are where—

- (a) a member has reached normal pension age but has not retired from the employment of the employer in relation to the scheme, the payment of a lump sum to the member is permitted in accordance with paragraph (a) or (g) of the lump sum rule in section 166 of the 2004 Act (lump sum rule);
- (b) the payment of a lump sum in respect of the member is permitted in accordance with any of paragraphs (a) to (e) of the death benefit lump sum rule in section 168 of that Act (lump sum death benefit rule).”.

Signed by authority of the Secretary of State for Work and Pensions.

[...2006]

Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997 (S.I. 1997/785) (the principal Regulations) as a consequence of the Finance Act 2004 (c.12).

Regulation 2 amends regulation 2 of the principal Regulations to add to the list of circumstances when pension under an occupational pension scheme may be commuted. It enables scheme benefits that are payable under an occupational pension scheme to be commuted into lump sum payments if those payments satisfy requirements set out in certain provisions of the Finance Act 2004.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

Annex A - List of those consulted

Aquila

Association of British Insurers

Association of Consulting Actuaries

Association of Pension Lawyers

Confederation of British Industry

Construction Confederation

EEF

Faculty and Institute of Actuaries

HM Revenue and Customs

Institute of Chartered Accountants in England and Wales

Institute of Chartered Accountants in Scotland

Investment Managers' Association

National Association of Pension Funds

Pensions Management Institute

Policy Division DHSS Northern Ireland

Society of Pension Consultants

