

# **THE OCCUPATIONAL PENSION SCHEMES (EARLY LEAVERS: CASH TRANSFER SUMS AND CONTRIBUTION REFUNDS) REGULATIONS 2006**

## **GOVERNMENT'S RESPONSE TO CONSULTATION**

### **Introduction**

1. In June 2005, the Department undertook a consultation on these regulations. The consultation ended on 26 August 2005.
2. 21 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 Pension Schemes (Early Leavers: Cash Transfer Sums and Contribution Refunds) Regulations 2006 were laid on 12 January 2006 (SI 2006/33).
4. The regulations are available on OPSI's website at <http://www.opsi.gov.uk/stat.htm>
5. This document is available on the Department's website at <http://www.dwp.gov.uk/consultations/2005/>
6. A paper copy of this document can be obtained from:

Department for Work and Pensions  
3<sup>rd</sup> Floor  
Adelphi  
1-11 John Adam Street  
London WC2N 6HT

Tel 020 7962 8969

### **Disclaimer**

7. This document describes the policy underpinning these regulations. The commentary on the regulations should not be taken as an authoritative interpretation of the law. Such an interpretation can only be provided by a court.

## Response to Consultation

Eight specific questions were posed. The responses on each are set out in the following paragraphs.

### **Q1: Do you agree that nothing needs to be included here about the calculation of contribution refunds? If you disagree, please say what you think should be included.**

1. A significant number of respondents were concerned that the regulations did not amplify the primary legislation which says that the contribution refund is the aggregate of the member's contributions. This would cause a lot of schemes problems if they had to refund this amount. This is because:
  - (a) in almost all money purchase schemes the member's contributions are invested immediately and, if the member leaves before their rights have vested, the contribution refund is the current value of their invested contributions – that is, it could be more or less than the amount of the member's contributions, depending on investment performance
  - (b) some schemes pay interest on the member's contributions when paying a refund.
2. The Government does not wish to create additional burdens on schemes in respect of what contribution refunds they pay. To avoid schemes having to change what they do (and also to avoid the difficult issue of who pays any difference if the member's contributions are now worth less because of poor investment performance), the Government has decided to include a regulation that will allow schemes to calculate contribution refunds taking account of investment returns and interest.

### **Q2: Do you agree that we should use the same method for calculating cash transfer sums as is used for the calculation of cash equivalent transfer values (CETVs)? If not, please give alternatives.**

3. The large majority of respondents who replied to this question agreed with the Government's approach, as it would achieve consistency between those who leave before 2 years and those who leave after 2 years. Also it was said that to do otherwise would lead to additional complexity and cost. A couple of respondents suggested an approach based in some way on a multiple of employee contributions. Given the clear majority in favour of the proposal the Government believes that this is the right approach.
4. A number of respondents commented on the fact that there is no provision in the regulations for amounts to be deducted in respect of administrative costs in calculating cash transfer sums. The same methodology will be used for calculating cash transfer sums as is used for calculating CETVs. There is no legislation on the deduction of administrative costs in the calculation of CETVs. Instead paragraph 3.7 of the actuarial guidance note GN11 allows account to be taken of reasonable administrative costs. As this guidance note will also be used when calculating cash transfer sums this will allow schemes to take account of reasonable costs, the

Government is of the view that there is no need to legislate for this at present. However the Government is aware of the ongoing review of GN11 and will consider this issue again if and when the GN11 is changed.

**Q3. Is it safe to reduce cash transfer sums (and CETVs) based solely on the latest actuarial report? If not, what safeguards should we build in?**

5. With one exception, all respondents who answered this question said that it is safe. It was suggested that anything else would be likely to involve a significant extra degree of complexity and cost.

6. It was suggested by one respondent that it would be better if schemes could use the last actuarial report GN11 before the member is notified of the amount of the cash transfer sum, rather than the last report before pensionable service ends. The Government agrees that it is sensible to allow schemes to reduce cash transfer sums based on the latest available information. However to avoid having to do a second calculation if a new report is received after the first calculation but before the notification is sent, and for consistency with CETVs, the regulations have been changed so that the last report before the cash transfer sum is calculated is used.

7. It was also pointed that, because regulation 5 of the Occupational Pension Schemes (Winding up etc.) Regulations 2005 means that members who become early leavers because their scheme has begun to wind-up are entitled to only a contribution refund, the regulations as drafted would not allow a reduction in cash transfer sums where the GN11 report showed a deficit. The Government has amended regulation 4(2) to (4) to overcome this.

**Q4. Do you agree with reductions in cash transfer sums and contribution refunds in the circumstances set out? Are there other circumstances where there should be reductions?**

8. There was general agreement that the circumstances set out were the right ones. A few respondents queried why the provisions relating to forfeiture and assignment were different from those that apply to existing transfer values. This is because sections 91-95 of the Pensions Act 1995 which deal with forfeiture etc, and associated regulations, apply to accrued pension rights and so do not cover cash transfer sums or contribution refunds. Uniformity could only be achieved by including in these regulations the equivalent of these sections of primary legislation and the associated regulations. Given both the small likelihood of these provisions being needed and the relatively small amounts of money involved this was felt to be disproportionate, and so the Government has opted for a more straightforward and limited approach.

**Q5. Are the circumstances in which cash transfer sums and contribution refunds can be increased reasonable?**

9. A couple of respondents suggested that the period over which interest should be calculated should be different (one suggested a longer period, the other a shorter one). All other respondents were content. The Government has considered the arguments made and concluded that no change is needed.

**Q6. Are there other types of pension scheme that should be allowed to accept cash transfer sums?**

10. No other schemes were identified.

**Q7. Is the information to be given to the member necessary and sufficient?**

11. There was agreement that the information was both necessary and sufficient.

**Q8: Do you agree that the MFR underpin should be retained for a transitional period?**

12. There was a narrow majority against this. On this basis the Government has decided that the underpin should be removed. This issue is covered more fully in the interim response that can be found at <http://www.dwp.gov.uk/consultations/2005/>.

**Other issues**

13. A number of other issues were raised by some respondents.

14. **Issue** Where the member applies for a cash transfer sum but the transfer falls through – e.g. because the member fails to complete the paperwork – will trustees be able to pay a contribution refund after a reasonable period?

15. **Response** In these circumstances the policy is that the member has not exercised his right in accordance with section 101AD and the trustees will be able to pay a contribution refund.

16. **Issue** Could there be a “guarantee period” similar to that used for CETVs?

17. **Response** The guarantee period for CETVs is provided for in primary legislation (sections 93A & 94 of Pension Schemes Act 1993). There is no equivalent legislation for cash transfer sums.

18. **Issue** Can contracted out rights be reduced by virtue of the requirements of regulation 3 (now 4)?

19. **Response** The policy is that section 101AA et seq applies to any scheme to which preservation applies. On that basis, contracted out rights and all other pension rights are covered by the early leaver provisions.

20. **Issue** In regulation 4 (now 5) how is interest to be calculated on late payments when the relevant time period is not set out in legislation. Should there be a reference to The Pension Regulator Code of Practice on reasonable periods in the regulations?

21. **Response** There is no power to include what is a reasonable period in the regulations. This will be covered by the Code of Practice and any associated guidance. The Government does not believe that there is anything to be gained by referring to the Code of Practice in these regulations.

22. **Issue** Regulation 4(1) (now 5(1)) refers to the calculation of the cash transfer sum being done "... on the date on which the trustees should have done what was needed to carry out the member's requirement ...". Is there a specific date on which the calculation should be done?
23. **Response** The policy is that the calculation must be done before the statement is sent out but it does not have to be done on a specific date.
24. **Issue** Regulation 5(a) (now 6(a)) concerns rights that accrue under section 9(2B) of the Pension Schemes Act (this deals with requirements for defined benefit schemes that want to contract-out of the State Additional Pension). However no rights accrue under section 9(2B) as this section is used for comparative purposes only.
25. **Response** This regulation has been re-drafted to take account of this point.
26. **Issue** Should regulation 5(c) (now 6(c)) refer to "registered or regarded as registered", to reflect the Finance Act 2004?
27. **Response** The Government believes that a reference to schemes registered under section 153 of the Finance Act 2004 is sufficient and will cover those regarded as registered.
28. **Issue** In regulation 6(1)(e) (now 7(1)(e)) it is the amount certified by the Secretary of State as being required to buy the member back into the State Additional Pension, not the contributions equivalent premium, that is deducted from the refund.
29. **Response** This has been re-drafted.
30. **Issue** In a non contributory scheme, the member will only be entitled to a cash transfer sum. Should this circumstance be catered for in regulation 6(1)(h) (now 7(1)(h))?
31. **Response** If the member has not paid any employee contributions he cannot be entitled to a contribution refund. Therefore this regulation can only operate in respect of a cash transfer sum. There is no need to change.

**Consultation responses**

Abbey National plc  
The Actuarial Profession  
AEGON UK  
Associated British Ports Holdings plc  
The Association of British Insurers  
The Association of Consulting Actuaries  
The Co-operative Group  
Electricity Supply Pension Scheme  
HBOS plc  
Hewitt, Bacon and Woodrow  
NHS Pension Scheme  
Norwich Union  
Pensions Management Institute  
The Pension Regulator  
Principal Civil Service Pension Scheme  
Pro Act Financial  
Punter Southall  
SBJ Benefit Consultants  
Society of Pension Consultants  
Standard Life  
Tesco