

**The
Occupational Pension Schemes (Payments
to Employer) Regulations 2006**

Government response to consultation

March 2006

DWP Department for
Work and Pensions

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INTRODUCTION

On 5 January 2006, the Department for Work and Pensions (DWP) issued a draft of the Occupational Pension Schemes (Payments to Employer) Regulations 2006 for a four week consultation. The consultation ended on the 1 February 2006.

There were seventeen written responses to the consultation. A list of respondents is in Annex A. DWP would like to thank all those who took time to contribute to the consultation process.

This paper summarises the key issues (including those raised in responses received after the consultation period ended on 1 February 2006 and those from subsequent informal consultation).

The Occupational Pension Schemes (Payments to Employer) Regulations 2006 will come into force on 6 April 2006. They were laid before Parliament on 16 March 2006 and will be available on OPSI's website:

<http://www.opsi.gov.uk/stat.htm>

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Disclaimer

This document summarises the main comments received and the policy underpinning the Occupational Pension Schemes (Payments to Employer) Regulations 2006. The commentary on the regulations is not an authoritative statement of the law. Such an interpretation can only be provided by a court.

RESPONSE TO CONSULTATION

Background

Provisions in the Finance Act 2004, which take effect from 6 April 2006, remove the requirement for trustees to take action to reduce an actuarial funding surplus where this exceeds a limit prescribed in tax legislation. Section 250 of the Pensions Act 2004 replaces section 37 of the Pensions Act 1995 (payment of surplus to employer) with new requirements governing payments to the employer from the funds of a pension scheme, taking account of the changes introduced by the Finance Act 2004. In turn the existing Occupational Pension Schemes (Payments to Employer) Regulations 1996 (S.I. 1996/2156) will be revoked and replaced by new Regulations setting out the detailed procedures that trustees must follow before making a payment to the employer.

This document sets out the main issues raised in the consultation on the draft Regulations and the response of the Government.

1. Schemes not in wind up - defined benefit schemes

1.1 Full buy-out requirement

The regulations provide that trustees can only authorise a payment to the employer from an ongoing defined benefit scheme which is subject to Part 3 of the Pensions Act 2004 (the new scheme funding requirements) if the scheme is funded to a "full buy-out level". Full buy-out level is the estimated amount which would be needed to secure members' accrued benefits fully by the purchase of annuities or deferred annuities.

Of the seven responses received on the provisions for defined benefit schemes, six respondents considered that the full buy-out threshold was too high. They felt that employers would find it difficult to obtain payments from any excess funds in their pension scheme, and that this could result in some employers being reluctant to agree stronger funding targets.

It was made clear by Ministers during the passage of the Pensions Act 2004 that a payment from the funds of an ongoing defined benefit scheme would only be permitted if the value of the assets of the scheme was greater than the estimated 'full buy-out cost'. The Government takes the view that the "full buy-out" requirement provides a safeguard against the inappropriate reduction of scheme funds and takes account of possible future fluctuations in the value of the scheme's assets.

Following HM Revenue & Customs' changes to the taxation regime from 6 April 2006, there will no longer be a statutory

requirement to reduce an assessed actuarial surplus. However, where a scheme is sufficiently well funded employers will retain the option of adjusting their future contributions rather than receiving a payment (which will be subject to tax), although the Government recognises that this may not be an option for schemes which are closed to future accrual.

The Government does not consider that it is appropriate to adopt a different approach at this stage. It does, however, intend to keep the situation under review as the new requirements for the funding of defined benefit schemes¹ are put into practice. It will consult with the Pensions Regulator, who will have first hand experience of the practical application of the new funding requirements, and it will consider the need for further consultation at a later stage.

1.2 Actuarial Certificate

The actuarial profession suggested that the drafted certificate issued for consultation should be amended to mirror the provisions of the Debt Certificate in schedule 1 of the Occupational Pension Schemes (Employer Debt) Regulations 2005 (S.I. 2005/678).

The Government has accepted this proposal, and the Certificate has been modified in so far as is possible given the differences between the two sets of regulations.

2. Schemes not in wind up - money purchase schemes

2.1 Definition of ear-marked money purchase schemes

Ten respondents felt that the money purchase provisions were too restrictive, and some wanted them extended to cover all money purchase schemes. Further informal consultation was conducted with those who had made representations about the money purchase provisions.

The policy intention is to cover only those schemes where assets are specifically earmarked for the benefit of individual members, and excess assets remain after the discharge of all relevant liabilities in respect of an individual member. This situation is expected to arise only in limited circumstances, for example: where a member dies with no nominated beneficiaries; where a scheme decides to retain a scheme rule which limits the amount of benefits payable to a member; where a member receives a refund of contribution or has left pensionable service without entitlement to preserved benefits.

¹ Part 3 of the Pensions Act 2004, the Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377), the Pensions Regulator's Code of practice 03: Funding defined benefits.

In light of the consultation responses the Regulations have been modified in order to reflect more clearly the policy intention. The definition of an ear-marked scheme now explicitly covers those schemes where assets in respect of each member's benefits are held separately.

2.2 Administrative requirements

Several respondents considered that the administrative requirements for money purchase schemes were too burdensome for what would be relatively small amounts of payments to the employer.

In the light of the consultation responses, the regulations have been modified to remove a number of the administrative requirements which will apply to defined benefit schemes. These include the need for trustees to notify members and the Regulator, and to produce a certificate for each payment to the employer, since the payments are likely to be relatively small amounts.

3. Schemes in wind up

3.1 Notification requirements

One respondent suggested that the notice requirements were over-burdensome in the case of schemes which are winding up where the only members are also trustees of the scheme.

The Government proposes to monitor the impact of these requirements, liaising with the Pensions Regulator.

Annex A

List of organisations or individuals who responded

Association of British Insurers
Association of Consulting Actuaries
Association of Pension Lawyers
Barclays PLC
BT Pension Scheme
Department of Social Development (Northern Ireland)
Institute and Faculty of Actuaries
John Page
Law Society of Scotland
N G Bailey Organisation Ltd
National Association of Pension Funds
Nestle UK Pension Fund
Nick White
Scottish Widows
Society of Pension Consultants
Standard Life
The Pensions Regulator