

Pensions

Government Response to the Consultation
on a Draft European Directive -

The Draft Portability of Supplementary Pensions Directive 2005

July 2006

CONTENTS

Part one: Introduction (page 3)

Part two: Progress on the dossier (page 4)

Part three: Responses To Specific Questions

Article 1 – Objective (page 5)

Articles 2 and 3 – Scope and Definitions (page 7)

Article 4 – Conditions for Joining and Acquisition (page 10)

Article 5 – Preservation of rights (page 14)

Article 6 – Transferability (page 15)

Article 7 – Information Requirements (page 20)

Article 8 and 9 – Minimum Requirements and Non
Regression, and Implementation (page 21)

Part four: Additional Comments

Annex A: List of Respondent Organisations

*NEGOTIATION OF THE PORTABILITY OF SUPPLEMENTARY PENSION DIRECTIVE:
GOVERNMENT RESPONSE TO THE CONSULTATION ON THE POTENTIAL IMPACT ON
UK PENSION SCHEMES*

Part 1 - Introduction

1. On 12th January 2006 the Department for Work and Pensions issued a package of proposals for consultation on the draft Directive on the portability of supplementary pension rights. The consultation document was intended to summarise the draft Directive and to seek views on the potential impact of the Directive on UK pension schemes.
2. The consultation ended on 13th March, and was supplemented by a consultation event to which respondents were invited. The purpose of the event was to provide an update on the dossier, as well as to clarify some points raised in the consultation responses, and to seek further information on certain elements. The consultation document is available on the Department for Work and Pensions website at: http://www.dwp.gov.uk/publications/dwp/2006/pensions/draft_euro_directive.pdf
3. The Department for Work and Pensions would like to thank all parties who responded to the consultation. 17 written responses were received. A list of respondent organisations is included at Annex A. The information has fed into and will continue to feed into the UK's negotiating strategy on the dossier.
4. This paper summarises responses received (including those received informally). It also sets out the Government's response to the various issues raised, clarifying issues where necessary, and providing updates where the position has developed further.
5. The Regulatory Impact Assessment included in the consultation document will be revised on an ongoing basis as the text of the Directive and the impact of specific elements become clearer. To this end, the Department would welcome future comments on the impact of the Directive, and particularly costings that would add to our evidence base for negotiations. This document specifies areas where the Government would particularly welcome further information. Responses to these requests, and any further comments can be sent to Jacob Soper at the address in paragraph 6 below.
6. A paper copy of the documents can be obtained from:

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PART TWO – PROGRESS ON THE DOSSIER

7. The Portability Directive is subject to co-decision with the Council and European Parliament as co-legislators. In Council, the dossier is subject to voting by unanimity. The draft Directive is presently being studied and discussed by the Member States in the Council's preparatory Working Party on Social Questions. The Austrian Presidency gave a brief progress report on work so far to Ministers at the Employment, Social Policy, Health, and Consumer Affairs Council on 1st June. A number of Ministers reacted, including Anne McGuire for the United Kingdom, who spoke of the need to maintain the viability of pension provision while seeking to improve worker mobility. Discussion in the Working Party is expected to resume shortly under the Finnish Presidency.
8. The European Parliament Committee for Employment and Social Affairs has also begun its considerations of the text. The rapporteur, Ms Oomen Riutjen, gave a presentation at a recent public hearing of the Directive. She conceded that a balance needed to be struck between improving the rights of members of supplementary pension schemes, and ensuring the burden on schemes is not so heavy that employers cease to provide this type of voluntary provision. She also welcomed written comments that would assist the Parliament in their consideration of the Directive (particularly in terms of the potential impact). The first reading in European Parliament is scheduled for September/October this year.

Part Three – Responses to Specific questions in the consultation document

Article 1 – Objective

General observations

9. Some organisations supported measures to encourage pension portability, but did not consider this draft Directive would necessarily achieve that aim. Other respondents went further to suggest the Directive could actually hinder freedom of movement within the UK, and harm workplace pensions by adding to employer costs, thereby reducing the number of employers willing to provide an occupational pension.

Question 1: Do you think that the proposed Directive will better facilitate the free movement of workers within the EU?

10. Most respondents felt the proposed Directive would not better facilitate the free movement of workers in the EU. Reasons cited included that there were:
 - relatively few situations where the potential reduction in a mobile worker's supplementary pension rights has been a significant block to the movement of workers within the UK or the EU; and
 - other more significant issues not covered by the Directive (including tax, salary, etc).
11. Some respondents believed the Directive could have a marginally positive influence, but this would only be the case if:
 - the eventual requirements in the text and exemptions allowed the Directive to fulfil its function; and
 - pension schemes are not overburdened, and are retained as discretionary vehicles for employers.
12. Respondents believed it was necessary to:
 - limit any adverse cost effect of the Directive to UK business and UK supplementary schemes;
 - limit changes to UK's already highly developed framework; and
 - ensure the Directive is as clear as possible.

The Government supports the overarching principle behind the Directive (labour market flexibility), but has maintained the line that it is important to achieve a balance between improving rights for members of pension schemes, and any additional burden on schemes, remaining scheme members, and employers. The Government will continue to take a proactive approach in negotiations seeking a text that is clear and workable in the UK, and which minimises the cost on UK schemes (we believe the UK has already legislated to ensure pensions portability) – this consultation has been conducted to improve the Government's understanding of the potential impact of the Directive on UK schemes, and to feed into future lines to take into negotiations.

Question 2: Have you experienced reduced mobility of workers caused by the rules of supplementary pension schemes? If so, were the problems relating to worker in mobility within the UK or between the UK and another Member State?

13. Most respondents had not experienced reduced mobility of workers caused by the rules of supplementary pension schemes. They observed that the UK already has preservation requirements for deferred pensioners, and the right to a fair transfer value, so there did not seem to be any improvements required.
14. Some respondents believed there had been occasions when the rules of supplementary pension schemes had caused a reduction in mobility. They noted that the rules related to the Cross-border Regulations, implemented as a result of the IORP Directive¹. Others observed that restricted mobility was as a result of a general lack of mandatory or discretionary indexation on accrued benefits in the originator country. One respondent organisation noted that the restrictions resulted from problems in transferability between public and private sector schemes, arising from the rapid movement away from direct benefit in the private sector, which is not reflected in the public sector

The Government notes the importance of ensuring the Directive does not have unintended consequences in terms of reducing occupational mobility. The UK has already stressed the importance of the use of impact assessments and we continue to press for an ongoing consideration of the potential impacts during the negotiation process.

¹ Directive 2003/41/EC on the Activities and Supervision of Institutions for Occupational Retirement Provision

Articles 2 & 3 – Scope and Definitions

Question 3: What schemes do you think are included in the scope of the Directive? Does the current definition capture any non-occupational pension schemes?

15. There was a mixed reaction to this question, due mainly to the as yet unrefined definitions. Some respondents believed the wording of the Directive to include group personal pensions, stakeholder pensions, funded occupational pension schemes, unfunded pension schemes, public-sector schemes, and personal pensions linked to the employment relationship; and one respondent believed it might cover State Second Pension.
16. One respondent believed it did not appear to apply to group personal pension schemes or employer nominated stakeholder pensions, and some respondents expressed uncertainty over whether or not the Directive covered these categories of schemes.
17. Some respondents believed the Directive should apply to as few schemes as possible (or schemes currently categorised under UK legislation as occupational pension schemes only). Others, however, suggested that there seemed no reason to exclude Group Personal Pensions and Employer Nominated Stakeholder Pensions.
18. One respondent also commented that if the Directive were to cover a wide range of schemes, it would be important to distinguish between preservation and portability objectives. This would facilitate a more focused Directive.

The Government believes the current draft of the Directive is intended to cover all occupational pension schemes, but not personal pension schemes. However, we are still working towards clarifying the intention of the Directive in this respect, and also towards how it is reflected in the text.

Question 4: Are there any schemes you think are included in the definition of a supplementary pension schemes that should not be? Are there any schemes that are not included that you think should be?

19. One respondent commented that no supplementary schemes fell under the definition that should not. However, the broad range of responses to the previous question above, were also reflected here. Some respondents commented that the self-employed and schemes outside a Member State's regulatory system (e.g. UK unregistered schemes) should not be included. Others suggested that contract-based pension schemes should not be included.
20. Other respondents commented that any type of pension scheme that is related to an employment relationship should be included, and others still, that only schemes defined as occupational pension schemes in UK legislation should be included.

21. Some respondents also noted the Government would need to consider how the Directive would impact on any proposals to emerge from the White Paper, and that clarity over the scope would be preferable.

The Government believes it is vital that the scope of the Directive and the definitions are clear. The UK will seek amendments to the text to ensure correct coverage, and that the variety of forms of provision in the UK is recognised.

Question 5: Are there occasions when employment is terminated by either party when the Directive should not apply?

22. Respondents commented that the directive should not apply:
- when employment is terminated for retirement, or once benefits are in payment;
 - when a member is convicted of a criminal or certain civil offences;
 - in the case of liens; and
 - employee resignation and compromise agreements.
23. Respondents noted that Termination of employment is defined in the Directive by reference to the point at which a decision is made to end the employment relationship, but it would be preferable to refer to the point when the relationship actually ceases. One respondent also suggested that it would be helpful to define retirement.
24. Some respondents also indicated their support for the maintenance of the right to transfer some products after retirement, notably between various drawdown products. Other respondents felt that the Directive should not apply once the scheme member has begun to receive benefits to avoid the problem of the right to a transfer applying during the decumulation period, and to circumvent the issue of what constitutes retirement when employees ‘downshift’ or move to part-time employment, etc.

The Government believes the Directive does not intend to require schemes to facilitate a transfer after payment of some benefits has commenced, but also that as the Directive is a minimum standards Directive, it does not aim to prevent schemes from doing this if they so wished. Although, the matter is not yet settled, the Government believes the Directive is likely to be intended to apply in the case of employee resignations, and compromise agreements.

The Government will seek to maintain current domestic rules allowing transfer values to be reduced if an individual is involved in criminal activity relating to the pension scheme.

The Government is also working towards refining the definition of “termination of employment”, so that it refers to the point at which employment actually ceases.

Question 6: Are there any other terms that should be defined in the Directive?

25. Some respondents commented that no additional terms required definitions. Others suggested that “retirement” and “occupational scheme” should also be defined.

26. There were various requests to refine existing definitions. These included:

- 'supplementary pension' - to clarify the interaction between the IORP Directive and this Directive
- "supplementary pension scheme" - to better illustrate types of schemes included
- "acquired" and "pension rights"

The Government is seeking greater clarity in how vested and unvested pension rights are expressed in the text, and has sought to use the defined term "vested rights" instead of "acquired rights" in the Directive. As mentioned elsewhere in the document, the Government is aiming for the definitions of "supplementary pension scheme" and "termination of employment" to be further refined.

The Government does not believe the overlap between the IORP and Portability Directives to be absolute in terms of scope. This is necessitated by the difference in objectives of the two Directives, the former being primarily an internal market measure which regulates schemes, and the latter, a free movement measure focussed on increasing the rights of workers.

Article 4 – Conditions governing Acquisition

Question 7: Since April 2006, in UK law it is not mandatory to return employee contributions if the employee leaves within three months of joining the scheme. What would the effect be on UK schemes if this was made mandatory?

27. Most respondents were of the opinion that this would impose negligible costs as it is already common practice. However, some respondents noted that it would constitute an additional administrative burden and be of questionable benefit. It might also have unintended consequences, such as employers increasing the length of probationary contracts, or investing in safe funds for the first two years, which would reduce yield.
28. Some respondents were unclear over whether the Directive required employer contributions to be refunded as well, and how this might work with defined benefit schemes, and where any shortfall was to come from in defined contribution schemes if investments reduced in value. Respondents who interpreted the Directive to mean that a refund of employer contributions was required, considered this to impose additional cost and inconvenience, as well as interfering with tax arrangements and automatic vesting.
29. Some respondents also noted that the Directive could be interpreted as requiring a refund in contributions towards life assurance, which would undermine the principle of life assurance cover.
30. Additionally, it was considered that this requirement would breach UK tax law if it were applied to personal pensions.
31. One respondent organisation commented that use of the word “acquired” was not clear in Article 4(a). Another respondent commented that it was important to clarify whether or not contributions paid via salary sacrifice would remain non refundable because of the type of contract changes agreed.

The Government believes the word “acquired” in the current draft of Article 4(a) is used to refer to unvested pension rights. The Directive’s intention here is to ensure that employees who leave before their rights vest do not simply lose them. The intention is for the value of an individual’s rights to be refunded or transferred, rather than the actual value of the contributions. The article does not envision requiring the employer’s contributions to be refunded. The Government also believes the Directive does not intend to require life assurance benefits to be refunded. The Government is working towards better reflecting these intentions in the wording (and terminology) of the Directive.

Question 8: Since April 2006 UK law allows a scheme to refund the value of contributions after investment rather than total contributions if a member leaves before their pension rights vest. What would be the cost to schemes if it was mandatory to return the contributions?

32. Some respondents considered that this would increase costs to the scheme through increased administration charges and investment loss for the pension fund (making occupational pensions less attractive for employers). Other respondents felt this would be particularly difficult for defined benefit schemes to put into practice. Others still, questioned how any shortfall would be made up in a defined contribution scheme, and noted that such a requirement would equally prevent members/employers from receiving the benefit if the value of contributions rose, or interest was payable.
33. Another respondent organisation highlighted that the interaction between such a requirement and contracting out rules was unclear, and further respondents highlighted the complexities that would arise with tax arrangements as a result of such a requirement.
34. Respondents made various suggestions including that there be a three month non-refund period, a more flexible approach to refunds, that the Directive should exclude life cover benefits, and that it should be clear whether or not employer contributions are required to be refunded.

The Government believes the Directive intends the value of an individual's rights to be refunded or transferred, rather than the actual value of the contributions. The article does not envision requiring the employer's contributions being included in the transfer or refund. The Government has been working towards better reflecting this in the wording of the Directive.

Question 9: What would the cost be to UK schemes if a minimum entry age of 21 was imposed for all occupational pension schemes?

35. Some respondents commented that only a small number of schemes operate a minimum entry age of greater than 21, so impact would be minimal. Another respondent organisation provided an estimate putting the cost at potentially £32m per year.
36. However, it was also suggested that a requirement to restrict minimum entry ages to a maximum of 21 years would disproportionately affect certain industries with a high staff turnover, such as the leisure industry or supermarket trade. It was noted that potential impact could be a delay in employees commencing pension provision, or an additional burden on schemes.
37. There was some general concern expressed in relation to the minimum age requirement. Several respondents questioned the utility and relevance of the provision, and suggested that references to minimum ages in the Directive should be removed. For instance, it was suggested that the intention to improve portability was better dealt with restrictions to the vesting period, rather than the age.
38. There was some confusion as to how such a requirement would relate to:
 - the other requirements such as vesting;
 - age discrimination legislation (although another respondent noted age discrimination legislation seemed to allow an age restriction on access to pensions);

- current UK practice of providing different types of benefits at different ages; and
- closed schemes.

39. It was also noted that the wording relating to “acquisition of pension rights” in Article 4(b) and “join” in Article 4(c) which seemed to refer back to the “required minimum age”, which complicated matters.

40. A potential solution presented was that feeder schemes should be considered. It was also suggested that the definitions be clarified to avoid confusion.

The Government has clarified that the Directive does not set a minimum age for joining a scheme. If a scheme sets a minimum age for joining, it will therefore still be able to require that a new employee reaches that minimum age before they can join the scheme.

It appears that schemes are allowed to set a waiting period for new employees to join the scheme up to a maximum of 1 year, although new employees must reach any minimum age for joining set by the scheme before they can join, even if that means they will wait longer than the 1 year period.

The Government is working to ensure the text expresses the interrelationship between the vesting, waiting period, and minimum age for vesting requirements in a clearer manner. Our understanding of the European Commission’s intention is that where schemes set a minimum age for vesting, the Directive would require this to be no higher than 21. Our understanding is that if an employee joins a scheme when they are 21 or over, the waiting period of one year and the vesting period of up to two years allowed by the Directive would still apply to that individual.

The European Commission have been asked to consider the compatibility of the Directive with Directive 2000/78, and the response to date is that they do not believe the Directive to be in conflict with Age Discrimination legislation. The Government may consider this matter further, as appropriate.

The Government would welcome any further information on the impact of the minimum age for vesting requirement.

Question 10: What would be the cost to UK schemes if waiting times for all occupational schemes were limited to a maximum of one year?

41. Responses to this question varied. Ultimately, it was considered that it could have a significant impact on certain sectors, or specific schemes that had particularly long waiting periods, especially if ‘nursery’ schemes could not be considered. One estimate suggested an additional cost of £55m per year on the UK pensions industry if waiting periods were reduced to one year.

42. Some respondents also noted that it was common practice to admit employees to scheme membership on the next scheme anniversary following attainment of one year’s employment. Therefore, such a requirement could have a more minor impact on a larger number of schemes. Other respondents did not consider waiting periods of more than one year to be particularly prevalent.

43. Most respondents seemed in favour of retaining feeder schemes if possible.
44. One respondent organisation suggested that where a significant reduction in waiting periods was necessitated, employers might decide simply to withdraw the scheme.
45. Concern was expressed that there might be an implied requirement to allow new members into closed schemes. Several respondents also highlighted that it was an anomalous requirement in the context of voluntary pension provision. One respondent suggested that it might be affected by forthcoming age discrimination legislation. A different organisation queried whether the waiting period would apply in all circumstances.

The Government is working to ensure the text expresses the interrelationship between the vesting, waiting period and minimum vesting age requirements in a clearer manner. It has been indicated that the vesting and waiting period requirements apply even after the minimum age requirement, so that a new employee who is above the maximum minimum vesting age of 21 when they join a scheme could still be subjected to the waiting and vesting periods allowed by the Directive.

The Government does not believe the Directive intends to require closed schemes to reopen to new membership, but will explore further whether the text needs to be clearer in this respect in Article 4.

The Government believes the Directive may not permit stakeholder schemes to count against the waiting period. The Government would particularly welcome any further information on the impact of the requirement to restrict waiting periods to one year. We would also welcome information on any situations where it would be particularly problematic to apply the waiting period.

Article 5 – Preservation

Question 11: Do you think that the article as it stands will allow UK schemes to continue to uprate deferred pensions in line with price inflation up to a limit of 5%? If not, what amendments to the text would be required?

46. Most respondents were of the view that it would allow UK schemes to continue its current uprating requirements. However, several were concerned that the cap of 5% (and the use of price inflation, rather than general inflation as a measure) might be seen as penalising early leavers in times when price inflation exceeded that rate.

47. General concerns were expressed around:

- the need to ensure Direct Contribution arrangements were not similarly affected
- why deferred beneficiaries should automatically receive an increase, when there were no guarantees for an inflationary pay increase for employees.
- retrospective application of this provision
- the potential cost around any strengthening of UK uprating requirements
- the subjective nature of the words “penalise” and “fair”, and the fact that the article only requires outgoing members to be treated fairly, rather than all members, and the employer
- how this requirement interacts with existing UK requirements

48. It was generally considered that requirements in this area should not be prescriptive, and Member States should be able to set their own detailed rules. However, one respondent did comment that the Directive does not appear to specify the inflation measure to be used for this purpose.

The Government has received reassurance that the Recital referring to uprating merely does so to provide examples of what might be considered to be ‘fair’ treatment of dormant rights. The Government is working towards ensuring the interests of other parties are also reflected in Article 5, and also aiming to maintain authority at Member State level to establish precise requirements for the treatment of dormant rights in Article 5 and Recital 7.

Article 6 - Transferability

Question 12: What would the impact be on UK schemes if they were required to accept incoming transfers?

49. All respondents believed this would significantly increase costs on schemes and prove seriously disadvantageous to occupational pension provision. Some respondents noted that schemes frequently decline to accept transfers, highlighting that there are good reasons for this. However, other respondents did not believe the current wording of the Directive required schemes to accept transfers in.

50. Specific concerns mentioned:

- Such a requirement might force schemes to accept payments that do not match the liability created or to accept a transfer value that was insufficient to meet a GMP liability.
- It could create conflict with existing legislation e.g. on sex equality, contracting out, pensions in payment, and HMRC treatment of transfers from non-UK schemes.
- What benefit would there be for such a move?
- It would be inequitable to oblige the sponsoring employer to take on additional obligations or administrative costs relating to unconnected employments.
- If such a requirement were to be included in the directive, there would need to be some provision ensuring the adequacy of the transfer amount

51. The potential impact of such a requirement would be that schemes might only offer very basic defined contribution arrangements for transfers they were forced to accept, as they would not want to accept any further defined benefit risks.

52. It was suggested that the Directive should be clear that:

- It does not require schemes to accept all transfers in
- the receiving scheme would not be required to provide mirror image benefits. There was also uncertainty around how the directive would affect group transfers without consent where typically there is a business or a scheme restructuring.
- It permits schemes to place conditions on such transfers

The Government has received some reassurance that the Directive is not intended to require schemes to accept incoming transfers. The Government intends to continue to express why such a requirement would be particularly damaging to the Pensions Industry, has requested further clarification in the text, and is seeking amendments to the text to expressly exclude a requirement for schemes to accept transfers in.

Question 13: How long is required by a pension scheme to complete a transfer?

53. Various estimates were provided for the length of time transfers would generally take. Transfers between defined benefit schemes were considered to take longer than those between defined contribution schemes.

54. However, respondents suggested that 18 months seemed a sufficient period to allow for transfers, unless there were circumstances beyond the schemes' control. Transfers between Member States, and from schemes that were winding up were cited as two situations where transfers typically take longer. Respondents suggested that existing flexibilities around timings for transfers, where delays are created by circumstances outside schemes' control, should continue.

55. There were several issues raised around the wording of the Directive:

- The 18 months begins when employment terminated, but respondents suggested it would be more practical if it started from when the member requested a transfer.
- The text should make clear that a member loses the right to a transfer once they start to receive benefits.
- It is unclear to which scheme the penalty for non-compliance with this requirement would be administered (the transferring scheme, or the receiving scheme?)

The Government is grateful for the estimates on the length of time taken for transfers to take place, and will seek to ensure the time frame allowed for transfers allows for more complex situations.

The Government believes penalties for non-compliance would be administered to the scheme deemed to be more at fault. The Government will consider this matter further alongside other implementation issues.

The Government believes the definition of 'outgoing worker' to exclude individuals to whom retirement benefits are in payment. As the Directive only requires outgoing workers to be provided with a transfer on request, the Government believes the Directive does not require a transfer to take place once the pensioner member starts to receive benefits.

Question 14: In what circumstances (if any) should schemes be able to reduce transfer values? What would be the impact on UK pension schemes if they could not reduce transfer values in any circumstances?

56. Respondents cited various circumstances in which schemes should be able to reduce transfer values:

- once a scheme enters the assessment period for the PPF
- schemes winding up
- underfunded schemes
- where necessary to protect the interests of remaining members and the employer
- where the real value of the fund reduces over the period during which the member paid into the scheme, or while a transfer was being calculated
- in the same circumstances as currently permitted under UK law including the UK regulator's discretions in relation to cash equivalents
- to pay for the cost of transferring benefits
- to recover up-front costs that would otherwise have been recovered over the period to retirement age

- when a transfer value would exceed the current past service reserve taking into account any current underfunding
- schemes that are invested in with-profits (smoothed) funds

57. The impact on UK pension schemes if these circumstances were not taken into account was considered generally to be significantly negative. It was also highlighted that it would mean outgoing workers would receive more favourable treatment than those who stayed (creating greater incentives for more members to transfer out). It could also potentially jeopardise the viability of the PPF.

58. It was suggested that the Article be amended to address these concerns.

The Government has requested exemptions for underfunded schemes from providing a full transfer value. Schemes in the PPF, those in the PPF assessment period, and schemes that are winding up, have been treated separately by the Government, and it is hoped that this requirement will not apply to them, or that they will fall outside the scope of the Directive. Administrative costs are also being treated as a separate issue, but again, one the Government is seeking to ensure is accorded sufficient prominence. The requirement to provide a full transfer value should not be an issue for schemes investing in with-profit funds if the Directive only covers occupational pension schemes. The Government is also aiming to ensure that the interests of other parties (other than the outgoing worker) are also taken into account in the Directive.

Question 15: What impact would there be on UK schemes if they were unable to subject incoming transfers to vesting conditions?

59. Responses to this question varied. All respondents considered there would be at least some minor impact from such a requirement. Most respondents felt such a requirement would have a significantly negative impact, particularly if it became mandatory for schemes to accept incoming transfers. There was also concern and uncertainty over how such a requirement would work in practice with different types of benefit. There would also be additional difficulties if the Directive were to require the transfer of specific rights rather than a transfer of the “value” of rights. It was also questioned how such a requirement would interact with contracting out and tax legislation (and if tax legislation conflicted with this requirement, the UK could be open to money laundering).

60. Respondents further highlighted that forcing a defined contribution scheme to accept defined benefits would fundamentally alter the nature of the scheme, adding to costs, and almost certainly discouraging employers from offering pensions.

61. Some respondents considered that the current wording of Article 6.3 could be interpreted to:

- mean that schemes would not be able to impose any conditions on the treatment of transfers-in.
- require the receiving scheme to guarantee to match the benefits of the ceding scheme, which would be unworkable

The Government will seek to ensure the text of the Directive clearly does not require schemes to accept incoming transfers, and to seek further clarifications in the text as to the meaning of Article 6.3, bearing in mind the concerns outlined by respondents.

Question 16: Is it appropriate to compare pension rights transferred in to a scheme to dormant rights in the same scheme?

62. Most respondents believed it would be appropriate (or at least would probably be appropriate) to compare pension rights transferred into a scheme to dormant rights in a scheme. The view of one respondent organisation ran contrary to this. Another respondent organisation suggested that a clear distinction needed to be made between defined benefit and defined contribution schemes.

The Government thanks respondents, and will consider whether further clarification of the differences between defined benefit and defined contribution schemes is required.

Question 17: What is the normal administrative charge for a transfer and is this usually borne by the scheme or the outgoing worker?

63. Responses on the normal administrative charge were varied. Most respondents stated that it was not normally borne by the outgoing worker. However, respondents did set out some circumstances in which the charges could be borne by the outgoing worker:

- in smaller schemes
- in transfers relating to divorce cases
- early termination charges in Defined Contribution schemes²
- in non-insured schemes

64. It was suggested that Article 6(4) should relate only to situations where the administration cost is met by the outgoing worker, and so that the cost was not disproportionate to the value of the rights of the outgoing worker, but rather reflected work undertaken.

65. Other respondents added further comments to be borne in mind:

- Schemes currently limit the frequency with which a worker can request a free transfer quote
- Transfers from With-Profits funds may be subject to a Market Value Reduction
- This condition would have a significant impact if it were imposed on personal pensions.

The Government is seeking amendments to the text that would permit charges, where borne by the outgoing worker, to reflect the work undertaken. The Government is also seeking to include some form of limit on the scheme's obligation to respond to requests, although it is possible that the final text may differ from current UK policy in this respect.

² Such charges represent the recovery of up-front costs that would otherwise have been recovered over the lifetime of the contract.

Article 7 – Information Requirements

Question 18: Will the current draft of the Directive increase the obligations of Pension Schemes to provide information?

66. Several respondents were of the opinion that the Directive would not increase the obligations of pension schemes to provide further information if the requirement could be restricted to members, or potential members. One respondent organisation highlighted that it would increase the obligations if applied to personal pensions (especially as it is not clear how a personal pension could provide such information in practice).
67. Some respondents expressed concern that there was no restriction on the frequency with which information had to be provided. Another respondent noted that Article 7 requires estimates of preserved rights on request and not only when members have left pensionable service (the current UK requirement). One respondent organisation queried whether providing access to the rules of the scheme would be sufficient to comply with Article 7 requirements.
68. Other respondents suggested that existing UK requirements should be retained, and that Member States should have clear permission to impose reasonable restrictions on the frequency or the nature of the information provided. One respondent organisation also suggested that ‘in writing’ should be stated to cover by electronic means (e.g. email or a link to a website containing the information).

The Government is seeking to ensure the requirements are as close to existing UK information requirements (which we consider to be adequate) as possible. The Department is also currently finalising its domestic policy regarding information provision via electronic means, but may also seek further clarification as to the intentions of the Directive in this respect. However, we would very much welcome additional information on the potential cost to schemes if there were no restriction on the frequency with which the information had to be provided.

The Government believes the Directive to require the specified information to be made available on request. Furnishing a member with a copy of the scheme rules would not necessarily be sufficient to comply with the Directive. However, it may be possible to fulfil the requirements with a standard document, especially if such a document could incorporate information specific to the individual, such as an estimated transfer value.

Articles 8 and 9 - Minimum Requirements and Non Regression, and Implementation

Question 19: How long would it take schemes to make the changes necessary to implement the Directive?

69. Although some respondents believed the proposed timescale to be reasonable, others commented that it was too short for schemes to change administrative systems, and domestically for the Government to iron out legislative difficulties. This was felt to be particularly the case if the Directive extended beyond occupational pensions. It would obviously depend on the changes required, although one respondent organisation believed ideally the longer the implementation time, the better.

70. The suggested minimum implementation time necessary cited also varied accordingly.

The implementation timescales have not yet been agreed. The Government agrees that the timeframe proposed by the UK should depend on the changes required (and allow sufficient time both for any legislative changes and process changes).

Question 20: Are there any circumstances in which you can conceive the UK wishing to use these exemptions?

71. Again, some respondents highlighted that this would depend on the Directive's requirements. One respondent organisation requested that the Directive allow existing exemptions under UK law in respect of single member schemes and death-in-service only schemes to remain.

72. Other respondents suggested that the following schemes should be exempted:

- non-registered unfunded schemes (such as executive top up schemes) should be exempted in particular from the transfer requirement
- underfunded UK schemes should be exempt from the requirement to offer full transfer values
- schemes within the PPF

73. Some respondents requested that no schemes be exempted. Another organisation cited Public-sector unfunded schemes, as examples of schemes that should not be exempted.

The Government has requested that underfunded schemes be exempted from the Directive, and is dealing separately with the PPF, but would have to consider the case for exempting non-registered unfunded schemes carefully in the light of the wider European context.

Question 21: Should schemes in wind-up be exempt from the Directive? What would be the impact if they are not?

74. Most respondent organisations were of the opinion that schemes in wind-up should be exempt from the Directive. Several respondents believed they should only be exempt from the requirement to provide full transfer values, that they should be allowed additional time to carry out a transfer, and that there would be little impact if they were not excluded.

75. There was uncertainty over what steps could be taken to ensure against an inappropriate run on assets during a winding up period and whether the Directive would apply to schemes which triggered wind-up before it was implemented, if it were to apply.

The Government has requested that schemes in wind-up be exempted from the Directive because most of the provisions in the Directive would be irrelevant. Those provisions of the Directive that are not irrelevant, would be inappropriate if applied to schemes in wind-up. The Government believes schemes in wind-up are better governed by legislation specific to that stage of a scheme's life-cycle.

ADDITIONAL COMMENTS

Application

76. Most respondents alluded to a balance that needs to be achieved between providing affordable (and adequate) occupational pensions and increasing the flexibility of labour markets. Some respondents were particularly concerned about the potential for retrospective application of the Directive, believing it should only apply to pension accrual after the date it comes into force.

77. It was also suggested that a greater degree of clarity in that the Directive does not extend to members receiving pensions is required in the text.

The Government has maintained a clear line that a balance is required between protecting member's rights, and enabling/encouraging the provision of occupational pensions to continue.

There has been some clarification in that the Directive will not apply retroactively, meaning that it will not seek to reverse circumstances that have already been permanently fixed. However, it will have immediate effect.

The Government is seeking to ensure that the text reflects more clearly that it is not intended to apply to members receiving retirement benefits.

Subsidiarity

78. One respondent organisation commented that the portability of pensions should be governed by the principle of subsidiarity, so as not to disrupt the widely differing pension systems that exist across the EU. Other respondents did not go that far, but did consider that Member States should determine their own detailed rules on the issues, and occupational pension schemes should set their own scheme rules within this legal framework.

The Government accepts that the differing pension systems make it more challenging to create legislation workable in all Member States. However, the Government has explored the concept of subsidiarity, and does not wish to construct a case around it. Nevertheless, the Government will seek to ensure Member States continue to be permitted to determine their own detailed rules where appropriate.

Cost

79. One respondent organisation highlighted that the current proposals would potentially impose unacceptable cost burdens on schemes, at an already difficult time.

The Government does not wish to increase the financial burden on schemes, and it takes respondents' concerns seriously in this respect; particularly in the light of its deregulation agenda

Preservation

80. One respondent noted that there was a contradiction in the Directive. The Consultation document stated the UK is not intending to use the option under Article 5.2 to give schemes the right to transfer vested rights as an alternative to leaving them in the scheme. Yet Recital 8 of the Directive states “pension schemes must be given the option not to preserve acquired rights but to use a transfer or payment of a capital sum ... when these do not exceed a threshold established by the Member State...”.
81. Some respondents noted that trivial commutation of benefits should continue, particularly where a scheme winds up.
82. One respondent organisation queried whether an exemption for unfunded schemes from the preservation was envisaged.

The Government will consider further the implications of the potential conflict between Recital 8 and the permissive tone of Article 5.2.

The Government does not consider unfunded schemes to require an exemption from the preservation requirements, but would welcome further information to support the case for exempting them.

The Government does not intend to use the option under Article 5.2 to give schemes the right to transfer vested rights as an alternative to leaving them in the scheme, as there is no such provision under current domestic legislation. We do not consider that trivial commutation would be affected by the Directive, as the principle only applies at the point of retirement, when the Directive no longer applies.

Transfers

Article 6.1

83. Respondents concerns over Article 6.1 included that:
- the wording could prevent the practice of discounting and remove trustees’ and actuaries’ discretion; and
 - the wording in the Directive needs clearly to permit restrictions on the availability of a transfer close to retirement, or once benefits are in payment

The Government will consider further the potential impact of the Directive on these practices.

The Government is seeking to ensure the Directive allows adequate time for transfers, and anticipates that this may mitigate the negative impact of schemes being required to provide transfers up until retirement. However, the Government would be grateful for any information on the impact the Directive would have if schemes were required to provide transfers until retirement (financial, rather than administrative, if possible).

Article 6.2

84. One respondent organisation highlighted that there was a danger that Article 6 may be interpreted as meaning that all transfer values must always be the same as those for rights preserved in the scheme.

The Government does not believe this to be the intention of the Directive, and will consider further whether amendments are required to ensure this is clear.

Transfers – general

85. One respondent organisation noted that it was unclear how transfer requirements would interact with any potential Turner outcome of requiring membership of pension saving schemes. It also commented that it was unclear how the scheme would cope with a very large number of low value transfers both in and out which it might attract and may provide a disincentive for schemes in industries where turnover is high to question their participation in a scheme beyond the legal requirement to offer a stakeholder pension.

The Government is grateful for this comment, and will ensure consideration of the potential impact of the Directive when exploring any new proposals.

Implementation

86. Some respondents highlighted the risk of gold-plating in implementation.

The Government is mindful of this risk, and is seeking to mitigate against it by seeking sufficient clarity in the text. The Government also intends to consult on implementing legislation as is normal practice.

ANNEX A

List Respondent Organisations

The Actuarial Profession
Association of British Insurers
Association of Consulting Actuaries
Association of Pensions Lawyers
Barnett Waddingham
Financial Services Authority
Freshfields Beckinger
Friends Provident
Her Majesty's Treasury
HBOS
The National Association of Pension Funds
Qinetiq
The Pensions Ombudsman
The Pensions Regulator
Prudential PLC
Society of Pensions Consultants
Watson Wyatt