

**PENSIONS AND
LIFETIME SAVINGS
ASSOCIATION**

**THE PENSIONS ACT 2014 (ABOLITION OF CONTRACTING OUT FOR SALARY
RELATED PENSION SCHEMES) (CONSEQUENTIAL AMENDMENTS) ORDER 2016:
CONSULTATION RESPONSE BY THE PENSIONS AND LIFETIME SAVINGS
ASSOCIATION**

16 NOVEMBER 2015

**“WE WELCOME THE CLARIFICATIONS...
HOWEVER THERE ARE A FEW AREAS
OF CONFUSION THAT NEED TO BE
CLEARED UP.”**

INTRODUCTION

We're the Pensions and Lifetime Savings Association; the national association with a ninety year history of helping pension professionals run better pension schemes. With the support of over 1,300 pension schemes and over 400 supporting businesses, we are the voice for pensions and lifetime savings in Westminster, Whitehall and Brussels.

Our purpose is simple: to help everyone to achieve a better income in retirement. We work to get more money into retirement savings, to get more value out of those savings and to build the confidence and understanding of savers.

GENERAL REMARKS

The Pensions and Lifetime Savings Association (the Association) welcomes the consultation on consequential amendments to the Pensions Act 2014. As the end of contracting out nears, schemes require certainty concerning the way that administration and payment of benefits are to proceed.

ANSWERS TO QUESTIONS

QUESTION 1: DO YOU AGREE THAT:

- A) THE AMENDMENTS IN THE 2016 ORDER ARE NECESSARY AS A CONSEQUENCE OF CONTRACTING-OUT ENDING ON 5 APRIL 2016?**
- B) THEY PROTECT MEMBERS' ACCRUED RIGHTS?**
- C) THEY ENSURE SCHEMES ARE ABLE, POST ABOLITION, TO CARRY OUT THEIR ADMINISTRATIVE FUNCTIONS?**

We agree that the regulations are necessary; that members' accrued rights are protected; and that they help ensure that schemes are able, post abolition, to carry out their administrative functions.

However, some questions remain to be addressed:

- a) Transfers without consent. We have a query regarding some of the language in the proposed new regulation 12(2A) of The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991. Under that new regulation the consent of the member will not be required for a transfer between occupational pension schemes where the employers are "(i) an employer who is the principal employer for the purposes of the scheme in accordance with the scheme rules or

who is the employer who has power to act on behalf of all employers in the scheme in relation to the scheme rules; and (ii) an employer subject to the rules of the scheme...” This language would appear to refer to a situation where both the employers participate in the same scheme. Normally in such circumstances such a move would not require a transfer of benefits to a new scheme even if the member changes employers. It may be that this is intended to cover a situation where the benefits are segregated under one scheme. However, if that is the case, we would question why one of the employers needs to be the principal employer.

- b) TUPE and the reference scheme test. The removal of the requirement that a scheme meet the reference scheme test in respect of the Transfer of Employment (Pension Protection) Regulations 2005 allows employers to put transferring employees into a defined benefit scheme, the quality of which is based solely on the contributions being made to that scheme. This seems inconsistent with broader government policy and opens the door to misunderstandings and even fraud. We would suggest that it would be more appropriate to require that defined benefit schemes to which employees are transferred in these circumstances be qualifying schemes under the auto-enrolment regime.
- c) Extensions of time for transfers. Schemes that have ceased contracting out in the 12 months prior to the abolition date are treated the same way as schemes ceasing contracting out “on” the abolition date and are given extra time to implement transfers, pension sharing and pension credit orders from 6 April 2016 – 5 April 2017. See Articles 7, 16 and 17 of the draft Order. We understand that this is in order to allow schemes to reconcile their records concerning guaranteed minimum pensions (“GMPs”) to those held by HMRC. However, after 5 April 2017, only schemes that have ceased contracted out service on the second abolition date (5 April 2016) will be eligible to request an extension of time. See Articles 28, 30 and 31. Reconciliation is expected to continue at least into 2018, and there is no reason to believe that schemes that ceased contracting out just before the second abolition date will be further along in the process than those who stopped on the second abolition date. We believe it would be more appropriate to grant all schemes that contracted back in in the twelve month running up to 5 April 2016 the ability to request an extension.

There are a few additional areas where more clarity would be helpful, which we discuss in our answer to Question 2.

QUESTION 2: IN ADDITION TO THE AMENDMENTS TO THE LEGISLATION SET OUT IN THIS CONSULTATION, IS THERE ANY FURTHER LEGISLATION THAT YOU CONSIDER SHOULD BE REVOKED, AMENDED OR SAVED AS A CONSEQUENCE OF THE ENDING OF CONTRACTING OUT?

Yes. We understand that additional amendments are expected in the following areas that have not yet been addressed in these regulations:

- a) Savings clause for revaluation. The new definition of “cessation date” in section 87 Pension Schemes Act 1993 (“PSA93) (which resulted from amendments to Pensions Act 2014) has the effect of re-setting the date that GMP revaluation as an early leaver begins for individuals who have ceased contracted out service while remaining in pensionable service. Whereas currently under section 87, revaluation on a deferred basis (under section 148 Social Security Administration Act 1992 or at a fixed rate) begins when contracted out service ceases and after 6 April 2016 it will begin on the later of the date that pensionable service ceases or at GMP pension age. We had understood that DWP agreed to insert a savings clause to section 87 to match the savings clause in relation to section 16 PSA93 in The Occupational Pension Schemes (Schemes that were Contracted-out) (No. 2) Regulations 2015 (“Contracted Out Regulations no 2”). Such a clause would spare schemes the considerable expense of recalculating revaluation for deferred members and we would encourage DWP to bring forward such a provision as soon as possible.
- b) Clarity around ceasing contracting out “on” the second abolition date. Section 16(2) PSA93 has been saved in respect of “earners whose service in contracted-out employment ended before the second abolition date”. The intention was to allow individuals who ceased contracted out service before 5 April 2016 but remained in pensionable service to retain fixed rate revaluation where that is the rate used by the employer. However, even those who cease contracted out service at 24:00 5 April 2016 technically end service “before” the second abolition date. It would be useful if this could be clarified to reflect the policy intention.
- c) Schemes entitled to hold contracted out benefits. We welcome the new language in the Order that will allow formerly contracted out schemes (and not just currently contracted out schemes) to transfer contracted out benefits. However, it would be helpful to extend this flexibility to allow new schemes to receive contracted out benefits in the context of scheme mergers and other transactions, so long as they follow all of the grandfathered rules in respect of such benefits. It is true that it would be possible to convert the benefits in order to transfer them, but in many circumstances it will make more sense to convert benefits after, rather than before transfer.
- d) Duty to consult. We had understood that there would be guidance regarding employers’ duties to consult, if any, concerning changes that come about purely as a result of the changes to law (as opposed to changes to benefits or contribution rates where the employer makes adjustments as a result of the abolition of

contracting out), and had understood that they might be forthcoming (see para 41, Government response to consultation, Contracted Out Regulations No 2). We believe that the removal of para 12, Schedule 2 does not appear to address this point and would welcome an update on whether any further changes to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 are planned.

CONCLUSION

We welcome the clarifications that the new regulations bring to the end of contracting out. However there remain a few areas of confusion that need to be cleared up prior to the abolition of contracting out on 6 April 2016.