



**ASSOCIATION OF CONSULTING ACTUARIES**

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17 June 2016

**Message from David Everett, Chair of ACA Pension Schemes Committee**

**The Occupational Pension Schemes (Schemes that were Contracted-out) (No 2) Regulations 2015**

I have had correspondence about the “ceasing to contact out” regulations, specifically about some unexpected changes that were made in wording relating to small benefit cash-out (TCLS, WULS and under the 2009 regulations).

Members may find the response useful in their discussions with their clients and legal advisers in relation to transactions.

The official has recently confirmed to me that I can share that chain via the ACA website, with contact details removed, so please find below the duly redacted copy.

Regards

David Everett  
Chair, Pension Schemes Committee  
on behalf of the Association of Consulting Actuaries Limited  
[david.everett@lcp.uk.com](mailto:david.everett@lcp.uk.com)

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**From:** STRATEGY PRIVATE PENSIONS [Redacted contact]  
**Sent:** 11 May 2016 10:28  
**To:** David Everett (LCP)  
**Subject:** RE: The Occupational Pension Schemes (Schemes that were Contracted-out) (No 2) Regulations 2015

Dear David,

I am sorry it has taken me a while to come back to you with a response to this query but I can now provide you with an answer.

As far as the transference of regulation 60 of the OPS (Contracting-out Regulations 1996 into the new regulations is concerned, we've tidied up the drafting and changed the structure in regulation 25 to make it easier to read and understand, and in doing so we considered the words "for the purposes of (1)(b)" at the beginning of (4)(a) to be unnecessary to the construction of that provision. We have also changed the wording of the full out words at the end of (4)(a) so that the sentence reads properly. There is no intention in doing either of these things to change the policy intention of the provision.

I hope this helps to clarify the position as far as replicating regulation 60 in the new regulations is concerned.

Kind regards

**Private Pensions Policy & Analysis Division | Department for Work and Pensions [redacted contact]**

**From:** [David.Everett@lcp.uk.com](mailto:David.Everett@lcp.uk.com) [mailto:David.Everett@lcp.uk.com]  
**Sent:** 03 March 2016 08:58  
**To:** STRATEGY PRIVATE PENSIONS [Redacted contact]  
**Cc:** STRATEGY CONTRACTING OUT TEAM  
**Subject:** The Occupational Pension Schemes (Schemes that were Contracted-out) (No 2) Regulations 2015

Dear [Redacted contact]

I am sorry to have to raise an issue on the ending of contracting out, but at LCP we have discovered what we believe to be a flaw in Regulation 25 of the [Occupational Pension Schemes \(Schemes that were Contracted-out\) \(No 2\) Regulations 2015](#) (SI 2015/1677) which will, from 6 April 2016, arguably prevent schemes from allowing cash out of small benefits under HMRC's trivial commutation rules (and by extension under HMRC's "small lump sum" rules) for an individual with a GMP subject to fixed rate revaluation who is currently below GMP pensionable age. This flaw appears to have been introduced in Regulation 25 of the rescinded [Occupational Pension Schemes \(Schemes that were Contracted-out\) Regulations 2015](#) (SI 2015/1452) and then carried over to the No 2 regulations.

Currently the trivial commutation rule is provided for in Regulation 60 of the [Occupational Pension Schemes \(Contracting-out\) Regulations 1996](#) (SI 1996/1172). Amongst other things this sets out a requirement that the GMP must have become payable, but this condition is lifted in a number of circumstances, including where, but crucially only for the purposes of determining whether the lump sum is authorised under the Finance Act 2004, the GMP is revalued to GMP pensionable age.

The effect of this is that an individual with a GMP subject to fixed rate revaluation who is currently below GMP pensionable age can commute his GMP for a lump sum provided his GMP as revalued to GMP pensionable age along with any other scheme pension, when multiplied by 20, does not exceed £30,000.

This is a hurdle type test which doesn't impact the basis on which the actual lump sum is calculated. (The lump sum paid is determined in accordance with the scheme's own rules and typically would be the trustees' view (having taken actuarial advice) of a reasonable value to pay in lieu of the benefits they would otherwise have been due to pay.)

Regulation 25 replaces Regulation 60 of the [Occupational Pension Schemes \(Contracting-out\) Regulations 1996](#) (SI 1996/1172). Looking at the [response](#) to the consultation on the 2015 regulations it is apparent if you look at numbered page 15 that the DWP intended to make no change between old Regulation 60 and new Regulation 25. See in particular this statement "*we are at this point simply replicating regulation 60 without amendment in this new regulation. We will consider all the points raised and consult on appropriate changes to regulation 60 in due course.*"

However, in order for there to be no change, we believe that Regulation 25(4)(a) should have started with the phrase "For the purpose of paragraph (1)(b)".

As this proviso is not there, it is not clear what Regulation 25(4)(a) is saying. The linkage between the revaluation required by it and its purpose (the hurdle) is lost.

There is a slightly different but corresponding knock-on also for cash outs under the "worth less than £10,000" small lump sum facility in tax law.

One interpretation might be that this means an artificial extra amount has to be added to the sum paid out, but there seems to be little point in trying to ascribe a meaning to this part of Regulation 25 when it seems clear that this omission was not intended.

I would be grateful if you could consider this point ahead of when you come to consult on the appropriate changes that are promised in order to deal with limited revaluation of GMPs. There does seem to be some urgency to it as when we reach 6 April 2016 and Regulation 60 is switched off and Regulation 25 is switched on, it would seem that a tranche of planned trivial/small benefit cash out exercises that had previously been possible must be halted.

I am not aware that this issue is widely appreciated, but your in-box may prove otherwise. We have run it, informally, past a member of the APL and have highlighted the issue internally.

Kind regards

David

**David Everett**

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