When do exit terms become fixed ("crystallise")?

Cabinet Office's view of the position is set out below. Departments may, however, wish to take their own legal advice if they believe that there are specific issues which apply only in their own case.

1 In cases **other than genuine compulsory redundancy** – for instance, where an employer asks for volunteers:

- the issuing to the employee, by the Department, of an estimate constitutes an "invitation to treat"
- the Department's response, confirming that they would be happy to be considered for exit on the terms shown, constitutes the "offer"
- the Department's confirmation, that the specific employee will depart, constitutes the "acceptance" and the terms offered become binding, or crystallise.

If the terms change between offer and acceptance, the Department must start the process again on the new terms (unless the departure will be before April 2011 and the Department can persuade the Cabinet Office that there is a good business case for continuing the voluntary scheme on the old terms).

2 In cases of **compulsory redundancy**, terms will crystallise only when the Department announces that compulsory redundancies are to take place. Linking to the Protocol* processes, this will only be after the Cabinet Office has agreed that compulsory redundancies are inevitable.

** - see scenario 10*

HANDLING EXISTING EXIT SCHEMES AND EXITS AFTER DECEMBER 2009

SCENARIOS

Scenario	**Action**
1. You have already agreed exit terms with a specific individual with a last day of service no later than 31 December 2009	Carry on as planned
2. You have already agreed exit terms with a specific individual with a last day of service on or after 1 January 2010 but before 31 March 2011.	You should confirm with your legal adviser that a contract exists between you and the individual *(see also the guidance at the beginning of this document).* On the assumption that neither you nor the individual wishes to vary the contract by moving to the new terms, you will need to refer cases to Cabinet Office, asking them to exercise their discretion under the new CSCS rules. Note: if the agreed terms fall within your discretions under the new terms you do not need to make a referral to Cabinet Office.
3. You have already agreed exit terms with a specific individual with a last day of service after 31 March 2011.	If the agreed exit terms will cost more than 2 years' pay, then they will not come within the scope of the new CSCS rules. You should seek to renegotiate onto new terms which fall within the new CSCS rules. Depending on the outcome you may need to apply to the Cabinet Office and Treasury for approval. Any agreement based on the old terms will almost certainly be refused if the agreement was reached after the date when the proposed new terms were put to the trade unions (ie 31 July 2009).

SCENARIOS

Scenario	Action
4. You have agreed exit terms with a specific individual but you have not yet agreed their last day of service. You expect that their last day of service will be between 1 Jan 2010 and 31 March 2011.	If you wish to honour these terms, you will need to refer cases to Cabinet Office, asking them to exercise their discretion under the new CSCS rules. Note: if the agreed terms fall within your discretions under the new terms you do not need to make a referral to Cabinet Office.
5. You have agreed exit terms with a specific individual and you expect that their last day of service will be after 31 March 2011	See scenario 3
6. You have announced an exit scheme and provided estimate letters to staff for departures after 1 January 2010. Individuals have offered to go. But you have not yet agreed that specific individuals can go.	You need to decide what approach you want to take. If you decide that you want to carry on with the scheme terms as advertised (and these terms are outwith your discretions under the new terms) rather than moving to the new terms, you will need to make a business case to Cabinet Office to continue on these terms rather than moving to the new terms. Cabinet Office will take the planned exit dates into account when considering business cases and would not expect to agree cases where departures are expected to take place after 31 March 2011. Cabinet Office will not agree proposals which have the effect of allowing people the better of the new and old terms.

SCENARIOS

Scenario	Action
7. You are planning to run a voluntary exit scheme which will have departures both before and after December 2009	You should consider how best to handle matters. Options could include: • Separate schemes for exits before and after December 2009 • Single scheme with terms consistent with both the CSCS's old terms and the new discretionary terms (for instance, FES and AER) • Making a case to Cabinet Office, exceptionally to exercise discretion so that all departures can take place on the same (old) terms. Cabinet Office would not expect to look favourably on such a suggestion unless most departures were taking place before the end of December and there was clear evidence that you were seeking to keep exit costs to a minimum. Whatever approach you take, you will be fully accountable for the terms you use.
8. You are planning to run a voluntary exit scheme with departures before December 2009, but you have not yet issued estimates	You have the powers to carry on under the current CSCS terms. However, you need to consider the propriety of using the most expensive terms once new terms have been announced.

SCENARIOS

Scenario	Action
9. You are planning to run a voluntary exit scheme for departures after December 2009	You should design a scheme consistent with the new discretionary terms. Cabinet Office will be issuing guidance covering the issues you need to consider and the approvals that you may need to secure.
10. You expect to close an establishment in summer 2010 and expect that this will result in some redundancies. You have not yet issued estimates to staff (and so are not covered by any of the scenarios above).	You must follow the processes set out in the Protocol so as to minimise the risk of compulsory redundancies. If you are planning to ask for volunteers, you must design a scheme under the new discretionary terms. If, the processes of the Protocol[1] having been followed, Cabinet Office agrees that some individuals will need to be made compulsorily redundant, then you must pay them the new Compulsory Redundancy terms. Any individual whose current period of continuous service began before 30 July 2007 must be offered the transitional terms (ie the current Compulsory terms) as an option.

[1] The Protocol can be found at www.civilservice.gov.uk/Assets/strengthening_protocols_tcm6-2846.doc

SCENARIOS

Scenario	Action
11. You have had people leave on Compulsory Early Retirement (CER) terms since 16 July 2008.	You need to work with your APAC to identify CER departures of • anyone aged between 57 and 60 with a leaving date on or after 16 July 2008 and • anyone aged over 60 with a leaving date on or after 1 April 2009. Once the CSCS rules have been amended (target – December 2009), your APAC will need to revise these CER awards so that the element of the compensation based on 6 months' pay is paid in full rather than being tapered (or, as in the case of those over 60, restricted to a payment calculated on the statutory basis). When you make the additional payments, you should add interest for late payment. Your APAC will know when the rule amendments have been made. Make sure your APAC is aware of anyone who has had an *ex-gratia* payment following a grievance, an IDR determination or the lodging of a claim to an Employment Tribunal – so as to avoid making a double payment.