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11 December 2013

Dear Alison

The Pensions Act 2011 (Transitional and Consequential Provisions) Regulations 2014

The Institute and Faculty of Actuaries (IFoA) welcomes the opportunity to respond to this consultation. The IFoA is the UK's professional body for actuaries with members working in a range of roles across the pensions industry. This response has been prepared by our Pensions Consultations Sub-Committee.

In order to ensure the final legislation is as workable as possible, we have addressed the practical application and interpretation of the proposals, even where we have outlined any reservations about the underlying policy intention. With this in mind, we would particularly like to draw the DWP's attention to our comments concerning section 75 employer debts, where we believe the proposals need to be reconsidered as the practical implications could be much greater than anticipated and potentially disproportionate to the benefits.

We note the assertion in paragraph 72 that trustees should have been aware of the intention to legislate and therefore that revisiting recent debts should not be necessary. We also note that the Impact Assessment says "no cost should arise" because "schemes should have taken the Government Announcement….into account". However, our understanding is that debts must be calculated in accordance with legislation, not in accordance with intentions, and, therefore, we do not believe a common approach will have been to include the previously defined money purchase and cash balance benefits in the calculations. Moreover, we would challenge the assertion that the new section 29 definition will necessarily increase debts and therefore that revisiting them will "benefit schemes". It is possible to construct scenarios where the new definition would reduce a debt, simply by considering cases where the remaining employer's liabilities are affected but where the exiting employer's liabilities are not. The difficulty will be that even these cases will require a significant amount of legal and actuarial advice, not to mention data requirements, in order to assess the position.

We would therefore urge the DWP to reconsider the backdating requirements in relation to section 75 debts and to consider whether any requirement is absolutely necessary and consistent with the desire to simplify and also preserve defined benefit (DB) provision. We would also draw the DWP's attention to the considerable complexity for trustees of the existing Employer Debt regulations.

We trust our comments in relation to the proposals in this area will also demonstrate that making changes is not straightforward and seems likely to introduce yet more complexity and cost for schemes, largely with little benefit for members. The small minority of affected schemes (already a very small percentage of the overall population of schemes) where a debt has been inappropriately dealt with and where the covenant no longer supports the funding of the scheme could presumably be identified in other ways and targeted through the valuation submissions process in due course.

Chapter 2: Context

Question 1: Is there a more cost effective way of implementing the transitional supplementary and consequential provisions that support the commencement of s29?

There is a distinct danger that complex legislative changes will counteract the Government's stated aim to try to protect remaining DB provision in the future, as demonstrated by the recent Defined Ambition consultation, and also outweigh the (limited) achievements to date as far as simplification is concerned.

As will be clear from our subsequent answers, we recommend that the legislation should be kept to an absolute minimum to achieve what DWP believes is necessary. Attempts to re-visit existing legislation in order to 'validate' previous decisions do not appear helpful and seem likely to introduce unintended consequences and errors.

Chapter 3: Types of benefits that may be affected by the clarified s29 definition

Question 2: Is your scheme split into sections that contain separately money purchase and non-money purchase benefits?

This question is not applicable to the IFoA.

Question 3: Is the scheme split into sections for other reasons?

This question is not applicable to the IFoA.

Question 4: Is there a cross subsidy between the different sections of the scheme?

This question is not applicable to the IFoA.

Question 5: What is the membership size of the scheme?

This question is not applicable to the IFoA.

Question 6: How many members are there in each section of the scheme?

This question is not applicable to the IFoA.

Question 7: Do you believe that splitting the regulations into two stages would be helpful to schemes and if so why would it be helpful?

The IFoA believes that it would be more straightforward to implement all of the regulations together in one stage. The only exception would be if there are areas where the DWP is still unsure as to what is legally required, in which case we would not support introducing legislation which is likely to be inadequate and require further change.

Question 8: If so, which regulations should we delay until the second stage?

This question is not applicable to the IFoA.

Question 9: Do the proposed changes give rise to particular difficulties?

Yes, our subsequent answers provide more detail.

Question 10: What are these difficulties and why do the proposals give rise to them?

In brief, our view is that difficulties are likely to arise as a result of:

- The sheer complexity of the proposed changes (and the existing complexity of the legislation they attempt to amend). The nature of the proposed changes is such that we doubt any trustee body with affected benefits will be able to negotiate the new regulations without considerable legal, actuarial and other professional advice.
- Re-visiting calculations for schemes, or employers, which no longer exist and/or have no trustees.
- Re-opening previous calculations and/or decisions as a result of any other retrospective action (even where the re-opening is only with a view to validating these decisions/calculations).

Our other answers provide additional detail on the difficulties.

Question 11: How do you think these difficulties could be addressed?

The difficulties could be addressed by paring down the retrospection to the absolute minimum required to meet legislative requirements. We note that the nature of the consultation questions suggests that the DWP is not yet certain what this legal minimum is. In our answers that follow, we have, commented on the proposals as they stand and therefore do not offer any legal views..

<u>Chapter 5, part 2: Winding-up</u>

General comments on winding-up section of the consultation document

It should be recognised that there will be significant practical difficulties with re-opening decisions for schemes that have completed winding up, not least because there may be no remaining assets and no trustees.

Question 12: Will the proposed wind-up regulations cause any difficulties?

Yes. We would prefer to see a specific exemption from retrospective application to the winding-up legislation, rather than attempt to exempt individual schemes which did not fall under s73, but which would under the new s29 definition. The latter approach appears more likely to create legislative uncertainty and complexity and also means that consideration is required for each scheme that commenced winding up in the past. This would not be straightforward, particularly where the scheme has since completed winding-up and there is no one remaining to consider whether the new regulations would have any effect.

As an example of the problems that could be introduced, we note that proposed regulation 6(2) appears not to exempt a scheme which provides scheme pensions derived from both cash balance benefits *and* money purchase benefits (by virtue of it separately excluding a 'cash balance scheme' and a 'money purchase scheme' but not a combination). The same appears to be true of proposed regulation 8(1). We do not believe this to be the intention.

We also foresee difficulties where it is anticipated that the 'former trustees' will make considerations about whether, or not, the previous discharge is valid. Our concerns are covered further in the section about employer debts, but can be summarised here as:

- Doubts about the practicality 'former trustees' (as yet undefined) becoming aware of the need, or available, to re-consider cases;
- The legality (and practicalities) of 'undoing' a previous statutory discharge; and
- Discharging further liabilities after the scheme has completed winding-up.

Question 13: At what stage would you consider a wind-up to be almost at the point of being completed?

Generally, we would reference the point at which there are no longer any assets or liabilities of the scheme. However, we question whether it would be reasonable to re-open any winding up after the point when all assets have been allocated and members have been informed of their final benefits.

Question 14: How can it be objectively determined that a wind-up has been completed?

Our understanding is that a legal deed of winding-up is signed to complete the wind-up.

Although we are not lawyers, it seems to us that many other legal requirements cease when a scheme completes winding-up and, therefore, this point should already be covered by existing legislation.

Chapter 6, Part 3: Deficiencies in assets – employer debt

Question 15: Will the proposals in the Regulations cause problems for schemes that are considering revisiting debt events following the coming into force of section 29?

We note the assertion in paragraph 72 that trustees should have been aware of the intention to legislate and, therefore, revisiting recent debts should not be necessary. However, we do not believe this to be a valid conclusion. Our understanding is that debts must be calculated in accordance with legislation, not in accordance with intentions, and, therefore, we do not believe a common approach would have been to include the previously defined money purchase and cash balance benefits in the calculations.

Leaving aside the question of whether backdating is desirable, or necessary, we note that the proposal appears to be something of a ‘one way street’ in that it anticipates that a higher debt will be due, but not a lower debt. However, in a case where the additional liabilities are attributable to a particular employer who is not the exiting employer, it is certainly possible that the debt (i.e. the exiting employer’s share of the total deficit) allowing for the additional liabilities could be lower than the debt calculated without them. We would ask for clarification as to whether the DWP has considered this possibility and whether the changes proposed could lead to previously exited employers seeking to claim that they have paid too much as their exit debt. Such a claim appears to be valid, but does not support the DWP’s aim in proposing these changes.

If backdating is necessary, then we would encourage the DWP to take into account that, where the scheme was treated as a money purchase scheme, no debt calculations will have been carried out and debt triggers may not even have been recorded, on account of no debt becoming payable in a money purchase scheme. Therefore, it would not be a case of ‘simply’ re-calculating and supplementing a debt, it would be a case of starting from scratch, which may be almost impossible if members have since transferred out and there is no data. Furthermore, the exited employer may also no longer be in existence.

We also note that the consultation document suggests that employer debt events occurring on, or before, 27 July 2011 will not have to be revisited. However, the regulations which aim to validate past decisions do not appear to cover all such decisions (because they focus on the current form and terminology of the debt regulations), they do not cover ‘decisions’ where no debt was payable (because they focus on debts *calculated*). Furthermore, there is an additional condition that the money purchase benefits are able to be met in full. This additional condition suggests that some past decisions may still need to be re-visited.

In terms of the treatment of previous debts which have been dealt with via an FAA, SAA or withdrawal arrangement, we note that the default intention appears to be to reallocate the new liabilities using the method of dealing with the previous debt. Our concerns with this approach are:

- It appears to be based on a new up to date funding test, whereas a more logical approach would look at the funding test as at the applicable time and consider whether the new s29 definition would have changed the trustees' opinion as to whether it was met (anything else would be inequitable compared to a scheme where no debt events have occurred since 28 July 2011);
- It appears that *all* new liabilities are being allocated/apportioned, not just the exiting/exited employer's share of the additional debt. This appears wrong in that it overrides the appropriate allocation of the additional liabilities and it also allocates liabilities which have not been subject to a debt event, which is surely not the DWP's intention. Again, this results in inequitable treatment compared with a scheme where no debt has arisen since 28 July 2011 and it may even lead to double counting where more than one debt has arisen since 28 July 2011;
- The approach also automatically allocates all the new liabilities to all the remaining employers, which will not necessarily be how the original debt was allocated;
- It envisages increasing guarantors' liabilities automatically, which may not be practical (nor indeed legally binding); and
- It overlooks the fact that a debt may not actually have been calculated under some methods (e.g. an FAA).

We believe it may be preferable to legislate for a 'top-up' debt to apply, but to allow trustees and employers to follow their own preferred process for dealing with it, in the same way they do for any other debt arising.

In terms of the draft regulations, we would comment in detail as follows:

- Terms such as 'relevant event' and 'employment cessation event' were not universally in use throughout the period covered and, indeed, neither were the Employer Debt regulations (before 6 April 2005 the 1996 Deficiency on Winding Up regulations applied). We would suggest that this section, if retained in its current form, should be revised to ensure it covers all debts occurring during the period, not just those falling under the current version of the legislation.
- In draft regulation 13(1)(f), it is suggested that liabilities for money purchase benefits must be able to be met in full. Not only does this appear to require that all money purchase benefits must be able to be met in full *now*, but it also appears to cover genuine money purchase benefits too. We believe that if this test is to be retained, it should be applied at the effective date of the debt calculation (the 'applicable time') and that it should only cover those money purchase benefits which are no longer termed money purchase after the commencement of s29. In other words, would the new s29 definition have caused the debt to be different? Ideally we would also like to see some scope for judgment as to whether the difference is (a) materially significant and (b) able to be recovered, before any recalculation is required. Finally, there may also be issues with regulation 13(1)(e) if a debt was not actually calculated on the grounds that it was thought there was no deficit.
- In regulation 14 the DWP refers to the 'former trustees' making decisions. This term is not defined and it is not clear whether the DWP means the trustees at a particular time (e.g. when the debt became due) or just any trustees who were associated with the scheme at any point. Either way, we foresee significant practical difficulties with this suggestion, for example where the former trustees are not available and willing to assist, or where the data is no longer available. We also question who would pay the former trustees and, in any case, whether the DWP can legally undo a statutory discharge that trustees have already obtained.

- If the proposal in regulation 14(2)(a) is to backdate s75 debts proceeds (and please note that we do not support this), then it appears illogical to provide for an exemption if the debt would not fully cover the benefits that were not discharged, since this could lead to a 'cliff-edge' situation for schemes where the new debt is very close to meeting the non-discharged liabilities. A fairer approach might be to require the debt to be enforced if it would meet a significant proportion of the non-discharged benefits, in the trustees' opinion (and at a not disproportionate cost). However, we also note that the date at which the non-discharged liabilities are calculated would then need to be clarified.
- The above comment is also applicable to other areas of the proposed regulations which reference regulation 14(2), for example regulation 8(2).
- In regulation 16(1)(a)(iii) – 'employer cessation event' should read 'employ*ment* cessation event'.
- Regulation 16(3) does not consider the possibility that the scheme and/or the trustees may no longer exist (to reach the necessary level of satisfaction), or that there may be no money to pay for the necessary considerations. The condition that members should be 'not more likely to receive their full entitlement' appears to be a definitive one and a more practical approach might be to permit some trustee, or scheme actuary, judgment on this point. In addition, there could be interpretation issues if it is known that full entitlements will *not* be met, but nevertheless an additional enforced debt would still give a significant improvement. In such a case, it is not clear to us whether the exemption is intended to apply. Finally, we also note that the consultation document says that the exemption would apply if the full entitlement were 'less likely' to be received.
- Regulation 18(1)(d) may need amending to deal with the possibility that no debt calculations were performed, for example under a flexible apportionment arrangement or a scheme apportionment arrangement.
- Regulation 18(3) should in our view specify that the revised funding test should be carried out at the same effective date as the original one (and not at the current time).
- Regulation 18(6) assumes that the scheme apportionment arrangement apportioned liabilities, not debt amounts, but this may not have been the case (and indeed we believe that the DWP's intention was for an SAA to apportion debt amounts not liabilities). In addition, the terminology needs amending because the 'scheme apportionment arrangement share' referred to is actually the share of liabilities (or debt) attributed to the exited employer as part of the arrangement (typically this is a nominal amount, say £1); the term is not used in relation to the liabilities of the remaining employers. We assume the intention is to allocate the additional liabilities (or more likely the additional debt in relation to the additional liabilities) of the now exited employer to the remaining employers in accordance with the proportions prescribed by the previous arrangement. Replacing the reference to 'scheme apportionment arrangement share' with 'liability share' would partly achieve this, although it does not deal with cases where the debt, rather than the liabilities, was apportioned.
- Regulation 18(7) assumes that the cessation employer is still in existence and that guarantors would be willing to increase their guarantee.
- Regulation 18(11) refers to an 'amended withdrawal event' and an 'employer cessation event'. We assume these are typographical errors and that it should refer to an 'approved withdrawal arrangement' and an 'employment cessation event'.
- Regulation 18(11)(b) appears to anticipate a debt being paid before it is triggered. We assume the intention here is that the trustees should have secured the payment of any increases to amounts which were agreed to be paid immediately as part of one of the original arrangements referred to in (6), (7) or (8) (for example any partial debts, a scheme apportionment arrangement share or withdrawal arrangement share), not that the full additional debt should be paid. This needs to be clarified and should allow for the fact that no additional payment may be required (as will often be the case if all but a nominal amount was apportioned).

- Regulation 18(12) refers to the entire additional liability as a result of s29 coming into force, but we believe this should just refer to the exiting employer's share of the difference, since only the exiting employer's share will have been subject to one of the arrangements in question. If the legislation attempts to apportion the entire additional liability, this would result in inconsistent treatment between schemes that have and have not experienced a recent employment cessation event.
- Regulation 19 suggests that trustees' determinations of a fair debt can be subject to retrospective action. This is inconsistent with the approach taken to determinations by the Regulator. We recognise the legislation will accept decisions by the Regulator; it would be more consistent if similar (if not identical) determinations by trustees could be accepted in the same manner.

Question 16: If so, what alternative would you suggest that will mitigate problems and also address risks to employers and scheme members remaining in a scheme following a debt event?

Firstly, if the DWP's intention is that debts that arose before 27 July 2011 do not need to be revisited, then we believe it should be possible to deal with this by ensuring that the new regulations only cover post 27 July 2011 debts. Attempts to legislate in detail to try to validate previous debts appear difficult because of the current complexity of the existing regulations.

In terms of post 27 July 2011 debts, we assume for the remainder of our answer that the DWP has legal advice that such debts must be revisited. We do not believe it would be appropriate to legislate for this if there is no underlying legal requirement.

Notwithstanding the above comment, for post 27 July 2011 debts, although we are not lawyers, we wonder if it would be possible to adopt a more simple approach, by requiring trustees to:

- Estimate whether a debt would have been materially higher had it been calculated based on the s29 definition of money purchase benefits;
- If so, then assess whether the estimated increase would now be recoverable, within a proportionate time and cost;
- If so, calculate the actual increase (as at the original applicable time) and instruct the actuary to certify it; and
- Allow the trustees and employers to decide how to deal with that new debt in the usual way, whether that is through a SAA, FAA, WA or straightforward collection. This last step should not require additional legislation if the process is exactly as it is for any other debt arising.

Where a scheme has since wound up and has no trustees or members, we do not see that any generic approach would be proportionate.

Question 17: What impact will the requirement for the actuary to issue a fresh valuation certificate have on scheme and employers?

We assume that regulation 16(2) is intended to recalculate at the original applicable time, but this is not specified. We would also point out that changing one debt will potentially have knock-on effects on all debts and other calculations that follow it, which could have significant implications for multi-employer schemes where there has been considerable merger/acquisition/restructuring activity.

Regulation 18(10) envisages a replacement certificate, but does not allow for the fact that the original debt may have been paid or otherwise dealt with. This could lead to double counting and, therefore, we would ask whether a separate 'top up' certificate would be a better solution, or alternatively, a provision to cancel a previous certificate, particularly where that debt has not been paid or dealt with.

The additional impact is, of course, the cost of carrying out the calculations and the accompanying professional and legal advice required, neither of which is likely to be insignificant.

Question 18: Are there alternative ways to deal with this issue?

We refer to our answer to question 17.

Question 19: Do you think the proposals in the regulations for a multi-employer scheme with a SAA, WA or FAA would cause particular difficulties for the following:

- **The PPF if the scheme has entered an assessment period after 27 July 2011?**
- **Members?**
- **Employers?**
- **Trustees and scheme managers?**

We do not believe the current draft regulations treat debts that have been dealt with via an alternative method appropriately. Our answer to question 15 provides more detail.

Given the complexity of the existing debt regulations (and also the complexity and variety of ways in which they have been interpreted for the purpose of implementing arrangements), we believe the amendments should be kept as simple as possible. Assuming the DWP is certain that retrospective action is legally required, it would be more straightforward to legislate for a new 'top-up' debt to be triggered and to then allow trustees and employers to deal with this in whichever way they choose (as they would for any other debt). For a scheme which has entered an assessment period, this may mean that the options for dealing with the debt are more limited.

The difficulties with the above approach will include:

- Undoing the legal discharge that an exited employer has been afforded;
- Schemes where the exited employer no longer exists; and
- Cases where the scheme also no longer exists.

These same difficulties would still apply with the more complicated drafting that is currently being proposed.

Chapter 7: Revaluation, indexation and preservation

Question 20: Do you agree that schemes should not have to revisit benefits already in payment?

Yes.

Question 21: If schemes did have to revisit benefits already in payment, what are the likely costs and practical issues involved?

In line with our response to question 20 we do not agree that schemes should have to revisit benefits already in payment. However, if the DWP did pursue this option we would point out that it would mean members' benefits, which have been calculated using investment return figures, would now need to be recalculated using revaluation factors. This calculation will be either higher or lower than the existing benefits. Increasing benefits will increase costs and lowering benefits will be an unacceptable outcome for consumers, both outcomes are undesirable.

Question 22: Do you see any risk that the value of benefits accrued in relation to past periods of service will be adversely affected?

This depends on what kind of retrospective action is envisaged, but we would not support taking action that has an adverse effect.

Question 23: Do you see any problems with this approach that only applies the new method to future accruals?

Notwithstanding the complexity, we believe this is the only practical approach.

Question 24: Do you know of any cash balance type schemes which did not provide for indexation on annuities/scheme pensions put into payment prior to January 2012?

The IFoA has no data to provide an answer to this question.

Question 25: If so, how many schemes and members are involved?

The IFoA has no data to provide an answer to this question.

Question 26: Will the arrangements made for these schemes cover all methods of indexation used by these schemes?

The IFoA has no data to provide an answer to this question.

Question 27: Do you agree that schemes should not have to revisit (indexation for) benefits already in payment?

The benefits that might theoretically need to be revisited are internally annuitised pensions which are derived from money purchase or cash balance benefits. Given that these members would not have been required to receive indexation had their benefits been secured with an insurance company, there does not appear to be any moral need to grant them additional indexation as a result of s29 somewhat arbitrarily reclassifying their money purchase benefits as DB. Equally, it does not feel appropriate to insist that these benefits be reduced so as to allow for future indexation.

In relation to the detail of the proposed legislation, we do not believe the proposals 'switch off' the requirement for LPI for benefits, which were previously deemed money purchase and which will not be deemed money purchase after the appointed day, in spite of this being (we believe) the intention. For example, new scheme pensions derived from money purchase benefits coming into payment after the appointed day appear to become subject to LPI requirements, which would be in contrast to the requirements for an annuitised benefit. In addition, the retrospective changes only apply to schemes which have not been giving increases and where the scheme rules do not require this. We believe this to be inequitable and that s51 should not apply to any benefits which have not been subject to s51 and which would, but for the new regulations, become subject to it from the appointed day, regardless of whether the scheme rules provide for increases and/or whether any discretionary increases happen to have been given in the past.

Question 28: If schemes did have to do so, what are the likely costs and practical issues involved?

We are not placed to comment on costs, but they could be significant. One practical issue will be the unequal treatment between members whose benefits are secured with an insurance company and those whose benefits are internally annuitised. Any action to forcibly convert annuities to indexed ones whilst in payment would have significant and costly consequences for members (and potentially scheme sponsors) and would be extremely difficult to explain. Some members may have taken decisions at retirement to select certain options based on their individual circumstances.

Chapter 8, part 5 & 6: Early leavers: Transfers, cash transfer sums and contribution refunds

Question 29: Do you agree that schemes should not have to revisit transfers which have already taken place?

Yes. There are questions about whether trustees should re-visit transfers that have already taken place, for example, where it is known that a revised insufficiency report would result in lower cash equivalents for an underfunded scheme. This is a legal question, but one which the DWP may wish to consider.

There is also a supplementary question concerning members who are in receipt of a valid transfer value quotation (i.e. they have received a statement of entitlement for a non-money purchase scheme or made a relevant application for a money purchase scheme) when the regulations come into force, but who have yet to accept it. It appears the intention here is to validate the existing treatment as a money purchase benefit, although it is not entirely clear whether this is intended to be a temporary transitional provision, lapsing when the right to a cash equivalent lapses, or whether this is permanent. We suspect it may be permanent, so lasting through to a subsequent request for a cash equivalent, by virtue of the '(at any time)' in regulation 25(4)(b), although this may not match the policy intention. A similar comment applies to the Cash Transfer Sum provisions (regulation 29(3)(c)).

There is also an issue relating to disclosure requirements, in that trustees of schemes may wish to delay transfer value quotations until after the coming into force of s29, so that they are able to value cash balance benefits properly and potentially reduce them in line with an insufficiency report. Given that such a delay would potentially avoid trustees paying out cash equivalents that are too high, we wonder if the Pensions Regulator (tPR) might consider giving blanket approval for a delay in certain cases where it would be in the scheme's interest to delay quotations.

Question 30: If schemes did have to do so, can you give any indication of the costs and practical issues involved?

Practical issues will include all those associated with undoing payments that have already been made, where often the implementation costs will outweigh the gain to the scheme (as well as causing member distrust). In addition, there will be practical issues with providing an additional insufficiency report (which will be required in order to change reductions). For a scheme which was previously treated as money purchase, there will be no existing insufficiency report and no data or actuarial assumptions to start from. There may also be complications stemming from the requirement that an insufficiency report used for cash equivalent reductions must have an effective date no earlier than the effective date of the most recently received s224 scheme funding valuation. This valuation will also not exist for a scheme which was previously considered to be money purchase.

Chapter 11, part 8: Scheme administration

Although there are no questions relating to this section, we note that there appears to be no exemption from appointing a scheme actuary for a scheme which had affected benefits before the appointed day, but which no longer has them by 6 July 2014 (and such a scheme is not difficult to envisage if the only non-money purchase benefits are scheme pensions and the trustees decide to secure them with an insurance company). Similarly, the other exemptions set out in regulation 3(2) of the Scheme Administration regulations should also apply in the same way that they do for any other scheme (e.g. if there are less than 2 members).

Chapter 11, part 9: Pension Protection Fund

We note that 'actuarial valuation' needs to be defined for the purpose of this section as an actuarial valuation under s179.

Question 31: Do you consider that the transitional arrangements for valuations and levies will work in practice for any scheme that is newly eligible or for existing schemes that include benefits that can no longer be considered money purchase?

We would note that the requirement for newly eligible schemes to have their first s179 valuation with an effective date between 31 December 2014 and 31 March 2015 is very restrictive and will preclude the majority of schemes from using an effective date equal to their scheme year end (the most common being 5/6 April). Moreover, the requirement to submit the valuation by 31 March 2015 will be almost impossible to achieve and we wonder whether this is a typographical error.

We would also question whether regulations 40(4) to 40(6) are necessary given that these requirements follow on from the need to obtain a s179 valuation.

Regulation 42(1)(b) refers to a 'valuation in respect of any period before 1 April 2015', but we believe this should refer to the valuation's effective date, since valuations do not cover a particular period. It is not entirely clear what latest effective date is intended.

Question 32: Do you know of any schemes where money purchase contributions have been made other than from AVCs to increase pension entitlement and paid from scheme funds on retirement?

We are aware that it is common for schemes to have DB and DC sections and for members to receive a scheme pension incorporating both elements at retirement. We believe it would be less common (but not impossible) for a 'pure' money purchase scheme to provide scheme pensions. Sometimes augmentations, or redundancy arrangements, are provided on a money purchase basis.

Question 33: Will the draft regulations for the conversion of lump sum work in the case of all relevant benefits?

Yes.

Question 34: Do you know of any schemes which would have been considered money purchase before the coming into force of s29 and which will not be money purchase after, where the employer had suffered an insolvency event before the commencement of s29?

The IFoA has no information to provide an answer to this question.

<u>Chapter 12, part 10: Scheme Funding</u>

General comments on the scheme funding section of the consultation document

It is suggested in the consultation document that the aim is to give schemes a reasonable time to comply with scheme funding requirements and to ensure past decisions do not have to be revisited. However, we foresee some issues arising, such as:

- Where schemes that already have a schedule of contributions (and are therefore treated as DB) wish to revise their schedule of contributions before a new valuation is prepared following the appointed day. In this situation, the new definition of money purchase benefits will apply and it may be difficult to recertify a schedule of contributions without taking into account (or at least considering) new levels of DB and DC benefits. Regulatory guidance also directs the trustees towards carrying out some assessment of changes in covenant and other circumstances before revising a schedule of contributions and there is a risk that forthcoming regulatory guidance will deter trustees and employers from 'taking a reasonable time to comply with scheme funding requirements'. Some may opt to have an early valuation as a result of s29 changes.

- Schemes that currently have a schedule of payments (and are therefore treated as money purchase) may wish to make a revision. The proposed regulations preserve the schedule of payments in force immediately before the appointed day, but they do not allow for subsequent changes to that schedule, nor is there any provision for a new schedule of contributions before the completion of a new actuarial valuation. This could mean schedules of payments remaining unaltered and/or s29 changes having to be factored in much more quickly than might be expected.

Detailed comments on scheme funding section of the regulations

Given that the intention in regulation 57 is to avoid retrospective application for a newly affected scheme, a neater alternative to s57 could be to provide that schemes, which were treated as exempt from part 3 before the appointed day, will not become subject to part 3 retrospectively as a result of s29 coming into force.

The intention for regulation 57(2)(c) appears to be that the trustees had previously treated the scheme as if it was a money purchase scheme using the *old definition* of 'money purchase scheme'. It may be helpful to specify this.

There is a 'benefits' missing after 'money purchase' in regulation 58(2)(b) (this is a frequent, but not consistent, feature of the draft regulations)

Regulation 59 – part (b) is not necessary as this just repeats what is already in the Pensions Act 2004.

Regulation 60(2) does not appear to be necessary since the type of scheme covered is one for which the first valuation will automatically be the one following commencement of s29. However, if regulation 60(2) is retained, it would be more logical for it to say "on or after" the day appointed for the coming into force of s29, since there seems no obvious reason why the first valuation should not have an effective date of 6 April 2014. Unless, of course, this is intentional so as to allow the first valuation on 6 April 2015 (which might not otherwise be possible if the 12 month period commences on 6 April 2014).

The requirements being amended in regulations 60(3) to (5) are all linked to a valuation of the scheme, so should automatically follow on from the first valuation being triggered within 12 months of 6 April 2014.

The purpose of (and need for) regulation 61 is not entirely clear, given that the disclosure regulations already require an SFS to be issued where an actuarial valuation or report has been obtained (so another trigger shouldn't be necessary). It is also noticeable that the definition of who must receive an SFS is different to the existing regulations in that the draft appears to require provision of an SFS to pure money purchase members and excluded members, although this may not be intentional.

In regulation 62 it would be preferable for the actuary's certification of the schedule of contributions under s227(5) to be a trigger for the schedule of payments to cease to be valid, rather than the *preparation* of a schedule of contributions under regulation 9(1). This is because the schedule of contributions is not effective until certified by the scheme actuary, even if it is prepared and agreed by the trustees and employer some time before that. We are also concerned that this regulation, as currently drafted, would not permit any change to the schedule of payments on or after the appointed day, but before the schedule of contributions becomes effective. Given that preparing and certifying a schedule of contributions is not a trivial task, we believe that subsequent changes to the schedule of payments in the meantime (for example due to changes to employer details) need to be permitted.

The purpose of regulation 63(1) is also unclear, as is whether the regulation is intended to apply to a scheme where all benefits are cash balance, or a scheme with at least some cash balance benefits. A literal interpretation suggests that a scheme with any cash balance benefits must obtain a valuation not more than 3 years after the previous valuation and that an actuarial report must be not more than a year after the last valuation or actuarial report's effective date. However, this does not seem to differ from existing requirements for valuations and reports for non-money purchase schemes. It is also unclear why this regulation is needed specifically for schemes with some cash balance benefits, but not for schemes with some other benefit which was, but is no longer, money-purchase. This latter point also applies to regulation 63(2)

In regulation 63(2) it is not clear why having some element of cash balance benefits should invalidate any of the documents mentioned. However, if this regulation is retained then the following comments will also apply:

- Regulation 63(2)(a) – the statement of funding principles falls under s223, not s224
- Regulation 63(2)(b) – the actuarial valuation under s224 is not certified by the actuary. It is signed (per s224(2)) by the actuary and the calculation of the technical provisions is certified under s225(1) by the actuary.
- Regulation 63(2)(c) – the actuarial report is signed by the actuary under s224(2)(c). It is not "assessed by the actuary under regulation 7(5)".
- Regulation 63(2)(d) – the significance of the word 'immediately' is not clear in conjunction with the preparation of the recovery plan. We believe any recovery plan in force immediately before the appointed day should not be invalidated.
- Regulation 63(2)(e) – it is the schedule of contributions, certified by the actuary under s227, which is in force immediately before the appointed day which should not be invalidated (not the schedule certified immediately before the appointed day).

Question 35: What, if any, transitional measures do you think are required for schemes that began to wind up on or after 28 July 2011 and are still winding up on the appointed day in terms of scheme funding?

We note that a scheme is already exempt from part 3 if it has formally commenced winding up before the deadline for obtaining an actuarial valuation, although this is subject to providing annual solvency estimates.

Question 36: Are there problems with the requirement for the scheme actuary to provide an estimate as to the solvency of the scheme under reg 18 of the Occupational Pension Schemes (Scheme Funding) regulations 2005?

If the DWP wishes to require annual solvency estimates to be provided in the transitional period, it would be helpful to legislate for when they should commence. By the end of the scheme year following the scheme year in which s29 commenced is a possible starting point.

<u>Chapter 12, part 10: Schedules of payment</u>

Question 37: Have you experienced administrative difficulties in moving from schedules of payments to a schedule of contributions?

The consultation paper suggests that there are 'no administrative difficulties' for schemes moving from a schedule of payments to a schedule of contributions but this overlooks the statutory appointment of a scheme actuary, to prepare data, and to prepare and agree an actuarial valuation and a statement of funding principles before the schedule of contributions can be certified. This can take a very significant amount of time (and cost).

Chapter 15, part 13: Pension sharing on divorce

Question 38: If schemes did have to revisit past valuations, can you give any indication of the costs and practical issues involved?

Practical issues will include the tight timescales often associated with divorce calculations. Clearly there has to be a cut off point and if the DWP believes it is reasonable to only apply the new s29 definition to new divorce requests on or after the appointed day, we would not disagree with this. There is also some welcome consistency with the view that (non-divorce) cash equivalent quotations not yet paid by the appointed day should not be required to be recalculated based on the new definition.

Chapter 16, part 14: Cross border schemes

Question 39: Will these proposed changes give rise to any difficulties for your scheme in terms of the clarity of the requirements in the legislation?

We suggest that the new requirements should be subject to the scheme providing non-money purchase benefits at the date of the new application for authorisation.

Question 40: Are specific transitional measures required for schemes affected by s29 in respect of the existing modifications for cross-border schemes in the Occupational Pension Schemes (Scheme Funding) regulations 2005?

We do not believe so.

Chapter 17, part 15: Disclosure

Question 41: Do you agree that schemes should not have to revisit actions taken in respect of disclosure requirements and that the transitional provision captures all relevant areas?

We agree with the proposal not to revisit past actions (but we will leave legal commentators to comment on whether everything has been captured).

Question 42: If you are a trustee or manager of a scheme with cash balance benefits do you agree with the proposed amendments to the disclosure regulations and would this mean you need to revisit your disclosure requirements?

This question is not applicable to the IFoA.

Question 43: If so, can you give an indication of the costs and practical issues involved?

This question is not applicable to the IFoA.

Question 44: We would be particularly interested to hear about the benefit information you have been issuing to scheme members and whether this is provided automatically to the member on a regular basis?

This question is not applicable to the IFoA.

Question 45: What are your views on the suggested proposal for a pension illustration?

In new regulation 6A (schedule 6), we suggest adding ‘capable of being’ before the word ‘secured’, to be consistent with the existing requirements. In addition, it needs to be made clear that paragraph 16A of schedule 6 should only be required in conjunction with a statement relating to cash balance benefits, and equally that the statement required by paragraph 16 of schedule 6 is only required in relation to money purchase benefits.

Question 46: Can you suggest an alternative to ensure the member receives this information?

The IFoA has no answer to this question.

Question 47: What types of information have you been issuing to scheme members who are approaching retirement?

This question is not applicable to the IFoA.

Chapter 18, part 16: Underpin and top-up benefits

Question 48: Are there any alternative approaches to the treatment of members whose money purchase amount exceeds compensation levels?

The IFoA has no answer to this question as it is a policy matter for the DWP to consider.

Chapter 19: Scheme modification

Question 49: What action by the Government do you believe is necessary in respect of this issue?

There may be some logic to specifying that s29 has no retrospective effect as far as s67 is concerned, if that is considered possible from a legal perspective.

Chapter 20: Automatic enrolment

Question 50: Do you think that the commencement of s29 will impact on Automatic Enrolment requirements in a way not covered by the Regulations?

The IFoA has no answer to this question.

Question 51: If so, what changes do you think need to be considered in the Regulations to address that impact?

The IFoA has no answer to this question.

If you wish to discuss any of the specific points raised in the consultation response, you should contact our Policy Manager, Philip Doggart, in the first instance. You may contact him at Philip.Doggart@actuaries.org.uk, or on 0131 240 1319.

Yours sincerely

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