



The Actuarial Profession

making financial sense of the future

Consultation response from the Institute and Faculty of Actuaries

Department for Work and Pensions

Employer Debt (s75 of the Pensions Act 1995)

August 2011

About the Institute and Faculty of Actuaries

The Institute and Faculty of Actuaries is the chartered professional body for actuaries in the United Kingdom. A rigorous examination system is supported by a programme of continuous professional development and a professional code of conduct supports high standards, reflecting the significant role of the Profession in society.

Actuaries' training is founded on mathematical and statistical techniques used in insurance, pension fund management and investment and then builds the management skills associated with the application of these techniques. The training includes the derivation and application of 'mortality tables' used to assess probabilities of death or survival. It also includes the financial mathematics of interest and risk associated with different investment vehicles – from simple deposits through to complex stock market derivatives.

Actuaries provide commercial, financial and prudential advice on the management of a business' assets and liabilities, especially where long term management and planning are critical to the success of any business venture. A majority of actuaries work for insurance companies or pension funds – either as their direct employees or in firms which undertake work on a consultancy basis – but they also advise individuals and offer comment on social and public interest issues. Members of the profession have a statutory role in the supervision of pension funds and life insurance companies as well as a statutory role to provide actuarial opinions for managing agents at Lloyd's.

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8 August 2011

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Dear Mike

Employer Debt (Section 75 of the Pensions Act 1995) – consultation on the draft regulations

Thank you for the opportunity to respond on Employer Debt (Section 75 of the Pensions Act 1995) – consultation on the draft regulations.

The proposed Flexible Apportionment Arrangement (FAA) would be a welcome addition to the options available to employers and trustees when an employer ceases to participate in a multi-employer scheme.

You ask in question 2 whether the proposals include sufficient protection for members. However, we note that the proposed funding test for the FAA is the same as that currently used for Scheme Apportionment Arrangements (SAAs) so, assuming it is already considered by Government to provide adequate security for an SAA, we do not see why it would not also be adequate for an FAA. We note, however, that the FAA provisions would provide additional flexibility to re-use a funding test relating to a previous FAA and we think, for consistency, a similar option should be extended to SAAs. Provided trustees apply the funding test appropriately, as we would expect, this should ensure adequate security for members. Of course, it may be that there is good reason for requiring the FAA to have some slightly different security requirements, If this is the case, it would help our members if you are able to provide the rationale at a suitable opportunity.

With the addition of the FAA, there would be a large number of options available on ceasing to participate. We suggest that the DWP reviews whether all of the other options remain necessary once the FAA option is in force.

Department for Work and Pensions
8 August 2011

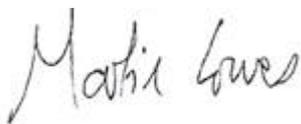
We are not convinced that a period of grace of up to 36 months is needed in the vast majority of circumstances and we are concerned that this could give employers a mechanism to delay payment of their debt, during which time the financial position of the employer might deteriorate (and during which time no interest is added to the debt). However, the requirement for trustees to consent to any extension beyond 12 months should provide adequate protection where trustees carry out their duties diligently. The extension to the period of grace notice period, to two months, appears to be reasonable.

We are very disappointed with the lack of any additional clarity on the outstanding issues with regard to the Debt Regulations. This is a missed opportunity to remove several significant grey areas in the legislation. In addition to the outstanding issues discussed in the consultation document there are various other issues which require action. We attach a link to our letter of 9 August 2010 setting out our comments on a wider range of outstanding issues:

<http://www.actuaries.org.uk/sites/all/files/documents/pdf/employer-debt-letter-dwp.pdf>. In particular, points 2 (in relation to whether an apportioned debt may be fixed or floating), 3 and 4 (except for the transfer-in point) still need addressing and currently present opportunities for various legal interpretations, some of which may not be consistent with your policy intention. In practice, consideration of all these grey areas (and indeed the general complexity of these regulations) often involves significant legal expense for trustees and employers, which could be reduced through amendments to legislation.

We hope the above will be helpful, but if you have any questions or would like to discuss any of these matters further please do not hesitate to contact us. Please contact Kirstin Lambert (0207 632 2168 or via Kirstin.Lambert@actuaries.org.uk) in the first instance.

Yours sincerely



Martin Lowes
On behalf of the Consultations Group, Pensions Practice Executive Committee