The Actuarial Profession
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Consultation Response
Department for Work and Pensions

The Transfer of Employment (Pension Protection) (Amendment) Regulations 2013

5 April 2013

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.

Jerry King
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5 April 2013

Dear Jerry

The Transfer of Employment (Pension Protection) (Amendment) Regulations 2013

The Institute and Faculty of Actuaries (IFoA) welcomes the opportunity to respond to this consultation. The Pensions Consultations Sub-Committee has considered the consultation document before providing this response. We provide answers below to specific questions posed in the consultation document.

Question 1

Do you consider that the proposed changes to regulation 3 will correctly reflect the original policy intention as set out in the Explanatory Memorandum attached to the 2005 Regulations, and do the changes make the regulations workable in practice? If you do not believe that this has been achieved, please set out the detailed reasons.

Paragraph 7.6 of the 2005 Explanatory Memorandum includes the following:*'...Where the scheme offered is an occupational money purchase (DC) or stakeholder arrangement it will be up to the employee to decide on the amount of contributions which the employer will then be required to match, up to a 6 per cent prescribed maximum'.*

We do not believe that this extract provides sufficient clarity around transferring employees' choice of contribution rate. The narrowest interpretation would suggest that employees would make a one-off choice about contribution rates, with the employer matching those contributions (up to 6%) during each subsequent pay period. However, the widest interpretation would suggest that employees could change their selected contribution rate for each separate pay period, with employers altering their payments as necessary. We note that the widest interpretation would cause administrative complexity.

While the Explanatory Document did not provide a definitive interpretation about employee choice of contribution rate, we believe that the proposed amendments to the Regulations do not offer any further clarity about the choice of contribution rate. The proposed amendments are in respect of transferees' obligations, rather than setting out any options available to employees. The proposed Regulations would require an additional paragraph to make the original policy intention clear.

Question 2

Do you consider that the proposed introduction of an alternative method of satisfying the 'relevant contributions' will remove the risk that transferee employers might face substantially higher pension contributions than the transferor employer whilst maintaining the principle of adequate pension protection for transferring employees?

The consultation document suggests that where automatically-enrolled members transfer to a new employer's scheme, they should not have an entitlement to higher contributions post-transfer. Our view is that the proposed amendments should probably include reference to the auto-enrolment legislation in order to ensure the aim of the changes is achieved.

We do not believe that the proposed amendments adequately remove the risks for employers of transferees, nor is there adequate protection for transferring members. In particular, we wish to highlight a number of specific points concerning Regulation 3(1C):

- It does not provide protection for employees who were not scheme members at the point of transfer, either because they had decided not to join the scheme, or because their period of employment did not make them eligible to join. For such members, the proposed amendment would be satisfied by a nil contribution, as that is the rate of contribution immediately before transfer.

- The previous point would also apply to members for whom no employer contribution was due at transfer (e.g. extended maternity leave or sabbatical). Similarly, if an employer were on a contribution holiday at the point of transfer, the proposed amendment would be satisfied by a nil contribution from the transferee post-transfer.

- In respect of Defined Benefit (DB) schemes, this proposed amendment would not work. In DB schemes, employer contributions are not calculated for, or attributable to, individual members. Consequently, the employer's contribution in respect of a particular member immediately before transfer would be unknown or not relevant to the member's level of benefit.

- The proposed amendment appears to suggest that the transferee should match a fixed monetary amount rather than a percentage of earnings. We assume that this is not the intention, as the amount may not bear any resemblance to future earnings. This could be due to fluctuations in future earnings (increasing or decreasing). Alternatively, the last contribution immediately before transfer could be based on abnormal earnings (e.g. bonus payment or part month payment for a new joiner).

- For transferor schemes which offered matching employer contributions, some employees may have elected to pay less than the maximum permissible. Post-transfer, the proposed amendment would mean that employees would lose the right to increase their contributions and benefit from an increase in the matched employer contributions.

The IFoA also offers comment on the following amendments to the Regulations:

- In Regulation 3(1A), it appears that "section 258(2)(h)" should be "section 258(2)(b)".

- The current Regulation 3(1) specifies the purpose for which "relevant contributions" are defined. We would question whether the same purpose should be specified in the new Regulation 3(1).

- The requirement that employee contributions must be permitted under scheme rules in Regulation 3(1D) is new. Protection for employees could be undermined if the transferee scheme required a much higher employee contribution than the transferor scheme if the employee were to benefit from the matching employer contribution.

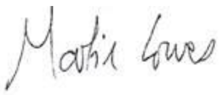
- The requirement that the amount of the employee contributions must be permitted under the scheme rules could appear to restrict the employee’s free choice of contribution rate (which is stated to be the policy intention).

- A non-money purchase scheme, as covered by section 258(2)(c) of the Act, could include a hybrid scheme with a money purchase section receiving the transferring members. It is unclear why the relevant contributions for such schemes, as covered by Regulation 3(1B), should be different to those specified in Regulation 3(1A) for money purchase and stakeholder schemes.

- It appears unclear that under Regulation 3(1E) an employee could choose to pay more than a 6% contribution and, if so, in such cases the employer would still have to pay 6%.

If you wish to discuss further any of the points made here, please contact Philip Doggart, Policy Manager at the IFoA (philip.doggart@actuaries.org.uk; or 0131 240 1319).

Yours sincerely



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