



ASSOCIATION OF CONSULTING ACTUARIES

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29 November 2017

Liz Roebuck
Department for Work and Pensions
Private Pensions
1st Floor
Caxton House
Tothill Street
London SW1H 9NA

Dear Liz

The Occupational Pension Schemes (Preservation of Benefits and Charges and Governance) (Amendment) Regulations 2018

I am writing on behalf of the Association of Consulting Actuaries in response to the above consultation issued on 26 October 2017.

Our comments on the specific questions raised in the consultation are set out in the Appendix.

We hope that you find these of assistance and would be happy to discuss them further if that is helpful. Please contact either me on 020 7432 6635 (david.everett@lcp.uk.com), or either of my colleagues Jane Beverley on 0203 327 5314 (jane.beverley@puntersouthall.com) and Spencer Bowman on 0207 170 2729 (Spencer.Bowman@willistowerswatson.com).

Yours sincerely

A handwritten signature in black ink that reads 'David Everett'.

David Everett
Chairman, Pension Schemes Committee
On behalf of the Association of Consulting Actuaries Limited

Sent by e-mail to: PENSIONS.BULKTRANSFERS@DWP.GSI.GOV.UK

The Occupational Pension Schemes (Preservation of Benefits and Charges and Governance) (Amendment) Regulations 2018

Actuarial certificate questions

Q1: We propose to remove the actuarial certificate for 'pure' DC-DC transfers, and instead rely on trustees' fiduciary duties to their members. In addition when the transfer is to a scheme which is not authorised under the master trust regime, the trustees must seek the advice of a suitable independent, unconflicted person. Do you agree with the policy proposal?

We welcome the removal of the actuarial certificate and the fact that reliance is to be placed on trustees' fiduciary duties.

We support the requirement to seek the advice of a "suitably qualified professional", but question why this should also not apply when the destination is an authorised master trust. As you say in your consultation response at paragraph 15 of the Executive Summary, in such situations the trustees will still need to consider whether the scheme is appropriate for its members, given aspects such as the levels of charges, investment strategy and customer services. Advice on these aspects could be provided by such a professional. The authorised master trust destination only gives comfort that the scheme is subject to certain minimum standards.

We note your definition of "suitably qualified professional" in Regulation 12(8)(b), which is to all intents and purposes identical to that set out in section 36(6)(b) of the Pensions Act 1995 ("Choosing investments"). Although the Pensions Act 1995 is a useful starting point, it may not adequately cover the full range of skills that the individual will need, but perhaps this is a point that the non-statutory guidance could cover? We also note that the regulations are silent on what sort of advice this person is to give. Again, this may be something best left to the guidance. A further issue is that the regulations make clear that the advice is being given by a person, whereas it is likely that advisory firms will want to give the advice (who in turn may call upon a multi-disciplinary advisory team). Finally, it is not clear how this role meshes with the professional advisor requirements set out in section 47 of the Pensions Act 1995 and the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (SI 1996/1715). In particular, is such an advisor exercising a prescribed function in relation to the scheme (section 47(3)(a))? It would seem not from a reading of Scheme Administration Regulation 2.

We have some concerns about the independence requirements, which appear to have been constructed from Regulation 28(3)(a) and (b) of the Scheme Administration Regulations ("non-affiliation of the chair of a multi-employer relevant multi-employer scheme"):

- First, it is left to the trustees to determine whether or not the individual is independent, having taken account of certain matters set out in the regulations. We suspect that the trustees will seek a written assurance from the proposed advisor in relation to these matters, but trustees may rightly be concerned that, should it later be held that the individual did not meet these requirements, the whole premise on which they transferred the members' DC benefits without

their consent was flawed, despite the trustees being entirely comfortable with the advice they received and the decision they took.

- Secondly, the scope of the independence requirement is very wide. For example, a consulting firm could easily have provided some of the services mentioned to the receiving scheme over the past five years, but that does not necessarily mean that one of its employees etc was conflicted when advising his or her client (ie the trustees). As presented, the regulations may rule out many advisory firms from providing the “suitably qualified professional”. This could be of material detriment to the trustees.
- On a point of detail, the “payment or other benefit” condition in Regulation 12(8)(c)(ii) is not explicitly time-limited.

We do wonder whether “independence” is the right concept, when the real issue is that the trustees need to have regard to potential conflicts and ensure they have an appropriate conflict management plan in place if necessary. “Independence” will likely exclude any master trusts offered by a suitably qualified professional’s employer from consideration in a consolidation exercise – which seems inappropriate if that master trust meets the same standards as the others under consideration, and may work against the overall objective of encouraging consolidation and improving governance and member outcomes etc. But we appreciate that the test, however constructed, must be seen to meet the public interest, especially when one of the likely effects of these regulations will be to drive consolidation in the DC market, primarily to the benefit of master trusts. Returning to the regulations from which you appear to have constructed the independence requirements, perhaps it is the last aspect **alone** that should form the test – ie a reworking of Regulation 28(3)(c) which says:

“whether or not, in the person's relationship with a service provider, the person's obligations to the service provider conflict with their obligations as a trustee of the relevant multi-employer scheme and whether their obligations as a trustee will take priority in the case of a conflict.”

Q2: Do you believe that the regulations achieve the policy proposal?

Yes, but we question aspects of the policy as per our response to Question 1. We also suggest that the disclosure requirements, which were designed for DB to DB transfers, should be revisited, so that members are given sufficient notice of the transfer that is to take place without their consent and therefore can move their DC funds elsewhere if that is something they wish to do.

A further issue is that the regulations as drafted, whilst covering pure DC benefits, are silent on the nature of the receiving scheme. It seems possible for the receiving scheme to be DB with a DC section, in which case, there could be concerns that the DC benefits will not be adequately ring-fenced should the scheme be forced to wind up.

Scheme relationship test questions

Q3: We propose to remove the scheme relationship condition for all ‘pure’ DC-DC transfers. Do you agree with the policy proposal?

Yes.

Q4: Do you believe that the regulations removing the scheme relationship condition achieve the policy proposal?

Yes, given that the proposed Regulation 12(1B), along with the proposed Regulations 12(7)-(9) appear to create a new legislative pathway for certain DC to DC transfers which bypass the scheme relationship condition set out in Regulations 12(2)-(2A).

Charge cap protection questions

Q5: We propose that members who are transferred without consent from a scheme, or within a scheme, where they were protected by the charge cap, all funds in the arrangements into which they are transferred without making an active choice are protected by the charge cap. Do you agree with the policy proposal?

Yes, given that the charge cap applies only to the default arrangements of a “relevant scheme”.

Q6: Do you believe that the regulations achieve the policy proposal?

We leave it to others to comment given the construction that has been employed. As our understanding is that the Charges Regulations only apply to trustees of a “relevant scheme”, it is not immediately clear to us whether the same Regulations can also be made to apply to any other occupational pension scheme that receives the transfer.

Business Impact Questions

Q7

a. How many bulk transfers without member consent did you perform in 2015, 2016 and 2017 respectively? For administrators, how many bulk transfers did you administer in 2015, 2016 and 2017 respectively?

As we are responding for the ACA, we have chosen not to answer this question. However, we suspect that there is much pent up demand for DC to DC transfers and so the recent past will be little guide to the near future.

b. How much does having to join a member or an employer to a scheme to meet the relationship condition impact on the transfer process in terms of time/cost?

We have chosen not to respond to this question.

c. Whilst we acknowledge that the range of costs can be significant, do you agree that £15,000 is a suitable estimate for the current average cost of an actuary to obtain an actuarial certificate? If not, can you supply evidence that it should be different from this?

We have chosen not to respond to this question.

d. Do you agree that the cost of an independent investment consultant would be the same, if not lower than that of an actuary following a regulation change?

We have chosen not to respond to this question.

**e. Do you agree that more than 50% of bulk transfers are transferred into a master trust?
Could you provide an estimate of what % you think are transferred into a master trust?**

We suspect that you are right and that the actual percentage is much higher than 50% but we have no evidence to give to back up our assertion.

General

Q8: Do you have any further comments to add?

Yes. Whilst we are pleased to see that you have referred questions raised on tax issues to HMRC, we do hope that HMRC is able to address them before too long. We note in particular that a lot of transfers of DC sections of hybrid trusts/DC AVCs in DB schemes can be frustrated from consolidating because of partial transfers losing tax-protections despite the rest of the process now being simpler for DC to DC transfers.

We also note that the non-statutory guidance will be an important aspect of this reform as it can be used to send out clear messages to trustees and their advisers, such as the likely need for trustees to seek legal advice. Alongside other industry bodies we look forward to working with you on this guidance.

About the Association of Consulting Actuaries (ACA)

Members of the ACA provide advice to thousands of pension schemes, including most of the country's largest schemes. Members of the Association are all qualified actuaries and all actuarial advice given is subject to the Actuaries' Code. Advice given to clients is independent and impartial. ACA members include the scheme actuaries to schemes covering the majority of members of private sector defined benefit pension schemes.

The ACA is the representative body for UK consulting actuaries, whilst the Institute and Faculty of Actuaries is the professional body.

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