ASSOCIATION OF ACA CONSULTING ACTUARIES

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Mr D Nicks
Department for Work and Pensions
Private Pensions Policy
3rd Floor
Adelphi
1-11 John Adam Street
LONDON   WC2N 6HT

Dear Mr Nicks

Consultation on the draft Pension Sharing (Pension Credit Benefit) (Amendment) Regulations 2008

I am writing on behalf of the Association of Consulting Actuaries, in response to the DWP's consultation on the above draft regulations.

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 are subject to the code of professional conduct of the Faculty and the Institute of Actuaries. Advice given to clients is independent and impartial. ACA members include the scheme actuaries to schemes covering the majority of members of defined benefit pension schemes.

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

Our comments on the specific questions asked by the consultation are attached to this letter.

We hope that you find our comments of assistance.

Yours sincerely

Charles Young
Chairman
Pension Schemes Committee

The consultation invited comments on four questions:

(a) the policy proposals;

(b) the draft regulations;

(c) whether implementing the regulations from October 2008 will create any difficulties and if this is not possible when would implementation be possible?

and

(d) whether the regulations will impose any additional costs or provide savings for pension schemes or employers. If so, an indication of those costs or savings would be welcome?

Our comments on each of these questions follow below.

Question (a) – the policy proposals

We welcome the policy of aligning the payment rules for Pension Credit members with those for other members of occupational pension schemes. It has always been our view that the differential rules introduced by the original regulations (SI 2000/1054) were unnecessarily complex.

This alignment will also make the position more intuitive, and hence easier for scheme administrators. (Pension Credit cases are relatively rare and having different rules for them increases the likelihood of administrative errors.)

One caveat to this is that some Pension Credit cases will presumably continue to be subject to the old regulations:

- those which are already in payment
- those which are not yet in payment, but where the old regulations have been "hard-coded" into scheme rules and may be difficult or time-consuming to change.

Hence it may be necessary for some scheme administrators to understand both old and new regulations going forward. This is a pity, but it is hard to see how it could be avoided unless the amended regulations were somehow to be made to override scheme rules.

Question (b) – the draft regulations

Regulation 3

The regulation makes reference to "normal benefit age". Section 101C(1) of the 1993 Act says that this "must be between 60 and 65"; our impression is that in practice most pension schemes have adopted age 60 as their "normal benefit age" for Pension Credit rights.

If the policy intention is to allow payment before age 60 it might be clearer if the regulation were to state this explicitly. If, on the other hand, the intention is to allow payment before the age hitherto chosen by the scheme as its normal benefit age there should also be a cross-reference to section 101B of the 1993 Act, since that is where the term is defined.

Regulation 4

The drafting of paragraph (a) could, we believe, be simplified along the following lines without any change of its meaning:

(a) for paragraph (3), substitute -

> *"(3) The benefit referred to in paragraph (2) must not be payable before the person entitled to that benefit has attained normal minimum pension age as defined in section 279 of the Finance Act 2004 (other definitions) except where that person has met the ill-health condition specified in paragraph 1 of Schedule 28 to that Act (registered pension schemes – defined benefits and money purchase arrangements – ill-health condition) immediately before becoming entitled to that benefit."*

In practice, trustees may have some difficulty in deciding whether the Ill-health Condition has been met. Unlike a typical ill-health retiree, in most cases the Pension Credit member will never have been employed by the sponsoring company of the pension scheme concerned; the Trustees are likely to be unfamiliar with the nature of his or her work. As a result they could well find it harder to evaluate the medical evidence they receive. For similar reasons they may find it less than straightforward to verify that the Pension Credit member has indeed ceased to carry out his or her occupation.

Question (c) – implementation date

In principle we do not see any problem in implementing the amending regulations as early as 1 October 2008.

However, this is subject to an important caveat. The date of change should be aligned, if at all possible, with the date from which safeguarded rights are abolished. Similarly, if it is the Department's intention to make changes to any of the other 'Pensions and Divorce' regulations – whether in response to the Simplification Review or otherwise – all those changes should be effected at the same time as the present proposals. Making piecemeal changes to the existing structure would be seen as unhelpful and confusing.

Question (d) – additional costs or savings

Unless they decide to ignore these new easements, the Trustees of every scheme will need to review their current Divorce rules and assess how best to alter them in order to take advantage of the amending regulations. That review is likely to involve taking legal advice.

Depending on the outcome of that review, schemes may then need to take some or all of the following steps:

- Adopt an amending deed
- Announce to scheme members the changes in treatment of Pension Credit rights
- Liaise with their administrators to ensure that the changes will be correctly recorded for future Pension Credit cases
- Notify existing Pension Credit members of the easements

It is difficult to quantify the cost of the above but a range of £2,000 to £5,000 per scheme might be reasonable.

Produced by:
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