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16 February 2016

James Newman
Department for Work and Pensions
Automatic Enrolment Programme
1st Floor
Caxton House
London SW1H 9NA

Dear Mr Newman

Technical changes to Automatic Enrolment

I am writing on behalf of the Association of Consulting Actuaries in response to the above consultation document dated January 2016.

We are generally supportive of the proposals but we have some concerns over the detailed drafting, particularly in respect of the transitional easement for certain formerly contracted-out schemes – which will be of most interest to larger employers.

Our comments on the specific questions you raised are set out in the Appendix along with some additional comments on the tax protected status exemption, which the consultation document discusses without raising specific questions.

We hope that you find our comments 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 my colleague Peter Williams on 01372 733 763 (peter.williams@aonhewitt.com).

Yours faithfully

David Everett
Chairman
ACA Pension Schemes Committee

Sent by e-mail to: automaticenrolment.consultation@dwp.gsi.gov.uk

APPENDIX

Company Directors

1. Is the proposed exception welcomed and proportionate to the issue raised?

Yes.

2. Do you think the exemption should be this wide so as to include Directors of companies who employ workers where they may have a contract of employment with the company, in addition to Director only companies?

We are not overly concerned about the exemption being drafted in this way. Directors are likely to be in a position to ensure their pension savings needs are met and the underlying legislation was not intended to be targeted at them specifically.

3. Will the proposed exception as drafted help reduce the administrative burden and costs for employers by allowing Directors to be kept out of the automatic enrolment process altogether? If so, what is the average savings for an employer due to a reduction in the administrative burden?

The administrative savings are likely to be most significant for those small businesses that only employ Directors and who may not need to automatically enrol any of their Directors as a result of the proposed change. We are not able to provide estimates of the average savings for such small businesses but they would clearly benefit from a reduced administrative burden.

4. How many employers do you think will be in scope for this exception, and how many do you think would take advantage of it?

We are not able to provide estimates.

5. Can this exception be communicated to employees within existing material?

Some amendments to existing material may be required for those applying the exception. However, any additional costs would seem to be outweighed by the benefits of the proposed exception. Importantly, there would be no changes required for any employers not choosing to apply the exception.

6. Would this exception impose any additional costs on employers? If so, please provide a description of the likely cost.

There would be a small additional cost in deciding whether to apply the optional special treatment to Directors but this is not likely to be material.

7. Is it considered appropriate to keep the opt-in rights for those individuals who may take advantage of this proposed exemption?

The answer to this question is more finely balanced than the automatic enrolment question. It would be the employer (i.e. the Directors as a whole) that decides whether to "take advantage of this proposed exemption" by not automatically enrolling Directors. It is possible that some individual Directors might wish to be enrolled in a scheme. It might be viewed as inconsistent with the underlying principles of the legislation if individual Directors did not have access to a qualifying scheme, even if they wished to join one. However, forcing small companies that employ only Directors to offer opt-in rights may restrict the extent of the reduction in administrative burden. A compromise might be to

allow the employer (i.e the Directors as a whole) to decide whether individual Directors should be given the opportunity to opt-in – so that they can make a separate collective decision on automatic enrolment and opt-in rights.

Limited Liability Partnerships

8. Is the proposed exception welcomed and proportionate to the issue raised?

Yes.

9. Does the proposed exemption as drafted ensure it is only genuine partners of LLPs that may able to be excluded from the duties and not risk excluding those individuals from automatic enrolment who are actual employees?

Others are better placed to comment on whether the draft legislation defines the target group with sufficient accuracy.

10. How many employers do you think will take advantage of this exception?

We are not able to provide an estimate.

11. Can this exception be communicated to employees within existing material?

Some amendments to existing material may be required for those applying the exception.

12. Would this exception impose any additional costs on employers? If so, please provide a description of the likely cost.

There would be a small additional cost in deciding whether to apply the optional special treatment to LLP members but this is not likely to be material.

13. Will the proposed exception as drafted help reduce the administrative burden and costs for employers by allowing the LLP members to be kept out of the automatic enrolment process altogether? If so, what is the average saving for an employer due to a reduction in the administrative burden?

The administrative savings are likely to be most significant for those LLPs that only employ genuine partners and who may not need to automatically enrol any of these partners as a result of the proposed change. We are not able to provide estimates of the average savings for such LLPs but they would clearly benefit from a reduced administrative burden.

14. Is it considered appropriate to keep the opt-in rights for those individuals who may take advantage of this proposed exemption?

The issues are similar to those outlined in our response to Q7.

Re-declaration of compliance

15. Is the proposed change to have one re-declaration deadline for all employers welcomed?

Yes.

16. Is the proposal to have the same +5 month deadline whether an employer has someone to re-enrol or not considered appropriate?

Yes, consistency is helpful here and the 5 month period seems reasonable.

17. Is it agreed that these changes will simplify the existing process?

Yes, particularly for employers who are not sure whether they will have any members to automatically re-enrol.

18. Can this change be communicated to employees within existing material?

Some changes may be needed but it should be much easier to explain than the current requirements.

19. Would employers have to do anything in addition to what they must do to meet their existing duties?

No, although actions may be required at different (more sensible) times.

Early automatic enrolment – bringing your staging date forward

20. Is it agreed that the proposal to remove the requirement to obtain agreement from pension schemes for those employers who have no-one to enrol is a sensible one and removes an unnecessary administrative step?

Yes.

21. How much administrative savings would this change bring?

This is difficult to estimate but giving employers more flexibility should help to reduce their costs.

22. Is the proposal to remove the condition to give TPR one month's notice when an employer wants to bring forward their staging date welcomed?

Yes.

23. Is the proposal to allow an employer who has no-one to enrol to bring forward their staging date to any date, not just the 1st of the month date as currently prescribed a welcome one and considered to be an administrative easement? If so, what is the likely associated saving?

Again, the likely savings are difficult to estimate but providing more flexibility should help some employers.

24. Is it considered appropriate to have two processes for employers wanting to bring their staging date forward depending on whether they have eligible or non-eligible jobholders?

We assume that you are referring to the option for an employer that reasonably believes that they will not have an (eligible) jobholder to auto-enrol to bring forward their staging date to any date rather than the 1st of a month. This flexibility may assist some employers, so it is welcome. For consistency, it would also seem helpful to allow all employers the flexibility to bring forward their staging dates to any date in a month.

25. What impact would this have on pension providers?

We do not see a significant impact. We would expect employers to liaise with their potential provider to ensure that a change in staging date can be accommodated.

26. Is it agreed that these changes will simplify the existing process?

Yes.

27. Can this change be communicated to employees within existing material?

Yes – although the new staging date will obviously need to be reflected in the material.

28. Would this change impose any additional costs on employers? If so, please provide a description and likely cost.

Bringing forward the staging date could increase employer costs, as they will then need to satisfy their employer duties from the earlier date. However, this will be one of the consequences an employer would take into account in deciding whether to bring forward their staging date.

Transitional easement for certain formerly contracted-out salary related schemes

29. We would welcome any general or specific comments on the easement. Have we captured the formerly contracted out schemes to which the proposed easement applies?

We very much welcome this transitional easement which will be of great assistance to good quality schemes seeking to use the cost of accruals test in the run up to 6 April 2016.

We have two comments on the drafting:

1. The phrase at the end of (5A) *"the employer of the jobholder may choose, notwithstanding paragraph (4), that the relevant members are the active members of the scheme who were in contracted out employment on 5th April 2016."*. We believe this to be too restrictive as it will not enable schemes to utilise the most recent report prepared before this date. We suggest that you should replace it with something like the following *"the employer of the jobholder may choose, not to apply paragraph (4)."*, or perhaps a simple *"paragraph (4) does not apply."*.

2. It is not clear to us what date is intended in the phrase at the start of (5B)(a) *"the date by reference to which the first written report signed by an actuary…"*. We suggest that it should say *"the date on which the first written report signed by an actuary… is signed"* in order that it becomes clear that it is the signature date of the report that potentially brings the transitional easement to an end and not the effective date of the calculations in that report. If you are intending to refer to effective date of the first actuarial report on or after 6 April 2016 we would be concerned that this would be too soon as there won't be any numbers available at that date to replace those from the earlier report.

The proposed regulation (5A)(b)(i) says that the scheme-level easement cannot be used where the statutory override has been exercised. This is surely intended to cover reductions in the level of accrual but would also capture contribution increases (which are irrelevant to a cost of accrual test). Furthermore, provided the amended benefits would still pass the reference scheme test we do not see why an employer should not be able to use the scheme-level easement. In most cases a reference scheme test-complying

recently contracted-out scheme would still be far more generous than the test scheme standard required to qualify under the auto-enrolment provisions, despite any use of the statutory override. We suggest removing the whole of the proposed regulation (5A)(b)(i) and adjusting (5A)(b)(ii) so that (5A)(b) would read *"the rules of the scheme of which the jobholder is a member have not been amended in any way which would mean that the rules of the scheme would not satisfy the contracting-out requirements as if those requirements were still in force"*.

Separately we understand that you may be slightly re-wording the definition in regulation 32M9(e) to read *"at least basic pay above the single person's basic pension or the Lower Earning Limit"*. This would be most helpful. Could you also consider introducing a new class (f) to cover *"pensionable earnings where those earnings are equal to or more than that member's qualifying earnings"*. This would be very helpful to schemes with a high salary cap. The prescribed percentage should be as in (a) – 10%.

An alternative approach to Regulation 32M(9) would be to recast it so that it reads as follows:

> *"Relevant earnings are the earnings which the scheme uses to determine pensionable earnings provided that they are at least the relevant member's-*
>
> *(a) qualifying earnings;*
>
> *(b) basic pay;*
>
> *(c) basic pay and, taking all the relevant members together, the pensionable earnings of those members constitute at least 85 per cent of the earnings of those members in the relevant period;*
>
> *(d) earnings; or*
>
> *(e) basic pay above -*
>
> *(i) the amount of the lower earnings limit specified for the purposes of section 5(1)(a)(i) of the Social Security Contributions and Benefits Act 1992 (earnings limits and thresholds for Class 1 contributions); or*
>
> *(ii) the amount of the basic state pension specified in the first figure in section 44(4) of that Act (category A retirement pension)."*

This would simplify the regulation and remove the need for your proposed amendment and our suggested class (f). It would also be consistent with the *"equal to or more than"* wording used in the alternative money purchase requirements in Regulation 32E.

30. Will this change bring about any administrative savings?

We believe that it will bring significant administrative savings as it will facilitate good quality schemes using the cost of accruals test rather than having to carry out potentially extensive calculations under the test scheme standard.

Tax protected status changes

The consultation document also outlines future changes relating to the automatic enrolment requirements for individuals with tax protected status, which will be the subject of additional provision in the Finance Act 2016 (so in place from July but operating retrospectively to April 2016). We have set out below some comments that may be helpful in drafting the related legislation.

We welcome the addition of Fixed Protection 2016 and Individual Protection 2016 – once an employer has reason to believe an individual holds one or both – to be added to the list of protections that gives the employer power not to auto enrol or re enrol.

Unlike Fixed Protection 2014 and Enhanced Protection, the deadline to apply for Fixed Protection 2016 (FP16) will not be the date from which "benefit accrual" (ie potential disqualifying benefit) will be measured – 6 April 2016. Indeed, there will be no deadline to apply for FP16 and it will not even be possible to obtain the protection until several months after 6 April 2016 (even the interim process will involve some delay whilst members obtain their temporary reference numbers and it is not totally clear what the status of such members will be in law).

This has implications for the exception from the automatic enrolment provisions:

- Firstly, for the first few months following April 2016, individuals will not be able to obtain FP16 – they could therefore be automatically enrolled (if there is no workable exception) even though they fully intend to obtain FP16 when it becomes available. If they take no action (ie if they do not opt out within a month), such individuals will be prevented from obtaining FP16 because they have accrued benefits after April 2016 as a result of automatic enrolment.

- Secondly, even when FP16 is available, individuals will only need to obtain FP16 at some point prior to benefit crystallisation – there could be a significant number of people who intend to apply for FP16. Ideally the legislation would not require such individuals to be automatically enrolled.

A solution might be to allow an exemption from the requirement to automatically enrol where the employer has reasonable grounds to believe that the individual intends to apply for FP16.

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