ASSOCIATION OF
aca
CONSULTING ACTUARIES

St Clement's House, 27-28 Clement's Lane, London EC4N 7AE
Tel: +44(0)20 3207 9380 Fax: +44 (0)20 3207 9134 EMail: acahelp@aca.org.uk
Web: www.aca.org.uk

30 August 2012

Clare Yiannakou
Contracting-out regulations consultation
1st floor Caxton House
6-12 Tothill Street
London SW1H 9NA

Dear Claire

THE OCCUPATIONAL PENSION SCHEMES (MISCELLANEOUS AMENDMENT) REGULATIONS 2013

I am writing on behalf of the Association of Consulting Actuaries in response to the consultation paper and above draft regulations issued on 20 July 2012.

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 Actuaries' Code of the Institute and Faculty 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 Institute and Faculty of Actuaries is the professional body.

We support the proposals regarding bulk transfers, but wish to raise some concerns regarding the proposed changes to the Occupational Pension Schemes (Contracting-out) Regulations 1996.

Our responses to the questions are set out in the appendix to this letter.

We hope that you find our comments of assistance and would be happy to discuss them further if that is helpful. You can contact me on 020 7432 6635 (david.everett@lcp.uk.com), or Charles Young on 020 7082 6228 (Charles.Young@hymans.co.uk).

Yours sincerely

David Everett
Deputy Chairman
ACA Pension Schemes Committee

APPENDIX: ACA RESPONSES TO SPECIFIC QUESTIONS

> ***Question 1**: Do you consider that the proposed changes to regulation 42(2) will correctly reflect the policy intention, and do the changes make the regulation workable in practice? If you do not believe that this has been achieved please set out detailed reasons.*

We do not understand the title of Chapter 1. It is said to relate to schemes that have ceased to contract out and wish to change their scheme rules. The proposed amendments relate, in the case of Regulation 42(2), to schemes that remain contracted out and in the case of the new Regulation 42(2AA) to schemes that are contracted out or have ceased to contract out.

We now comment on each in turn.

Regulation 42(2)

We welcome the amendment to Regulation 42(2) which seems to have the effect of making it clear that the test under this route is to be in relation to section 9(2B) rights that are to accrue. But there is a missed opportunity given that Schedule 3, which sets out the test, is by reference to benefits that the actuary expects will accrue over three years.

What happens if the rule change is designed to enable benefit accrual to cease in less than three years' time? For example, suppose a scheme is closing to future accrual at the end of year two, due to a decision having been made in advance to close. It is not clear whether the comparison at the end of year three should allow for three years' accrual of reference scheme benefits. It may seem more logical to compare two years' worth of reference scheme benefits, assuming leaving service at the end of the third year, with two year's accrual of scheme benefits with whatever treatment is applied by the scheme after accrual ceases at this point (and assuming that the contracting-out certificate is surrendered at the point accrual ceases as required). Although the Schedule could be read to mean that this approach is not permitted and that three years' worth of reference scheme benefits should be compared with two years' accrual of scheme benefits etc, this seems to be at odds with policy.

We ask that you make amendments to Schedule so that where a rule change is proposed the effect of which is that benefits will cease to accrue in less than three years' time the benefits that will accrue over this lesser period are tested against the reference scheme test benefits that will accrue over the same period.

Regulation 42(2AA)

We are not sure what the precise policy intention is so cannot comment on whether it has been achieved. It seems, from examining the draft regulations that actuarial equivalence has to be maintained for Section 9(2B) rights paid to and in respect of the member and spouse benefits have to equal those that would have accrued under the reference scheme.

We are concerned with the latter as it has the following implications:

- A scheme cannot provide more generous spouse's benefits;
- A scheme cannot provide a spouse's benefit which is on an actuarial equivalence basis of equal value to that being provided to the spouse before the alteration; and
- A scheme cannot provide a spouse's benefit that is least equal to that under the reference scheme, but only in 90% of cases.

As proposed there appears to be a risk of levelling down in some cases and in others a risk of bringing in an explicit reference scheme test underpin when there was none before (with the associated costs and administration requirements).

If you wish to retain an actuarial equivalence approach we propose that the regulation is amended so that an approach consistent with GMP conversion is taken – actuarial equivalence is maintained in respect of Section 9(2B) rights paid to and in respect of the member and spouse benefits cannot be less than those that would have accrued under the reference scheme. Alternatively you could consider putting forward that actuarial equivalence is maintained separately in respect of the member's and the contingent spouse's Section 9(2B) rights.

We also suggest that you put beyond doubt that Regulation 42(2AA) is concerned only with accrued section 9(2B) rights. This is because Regulation 42 is structured in such a way that one must not fail either of Regulation 42(2) and 42(2AA). As presently worded, there is a risk that a change to future accrual could have to be tested under both routes when we believe that it should only be tested under regulation 42(2).

Finally, are you happy with the interactions with Section 67 of the Pensions Act 1995 and its associated regulations? If under this the consent route is taken, there is still an actuarial equivalence test on the accrued section 9(2B) rights which looks somewhat odd. If instead the actuarial equivalence route is taken, there are two similar actuarial equivalence tests – one on all the accrued benefits and another on the accrued section 9(2B) rights. Is it your intention that in the latter case the actuary will give a Section 67 certificate and separately a certificate under Section 37(1) of the Pension Schemes Act 1993?

***Question 2**: Do you believe that the draft amendments would allow schemes to undertake bulk transfer of scheme membership without member consent in a way which protects the membership's accrued rights and alleviates burdens for pension schemes? If you disagree, please give detailed reasons.*

We welcome, from a burden alleviation point of view, the intention that it will be possible for bulk transfers without member consent to be made:

- from contracted-out schemes to formerly contracted-out schemes – at present the destination scheme must be an active contracted-out scheme;
- to schemes which did formerly apply to employment with the same employer, but now no longer do so – because one of the schemes no longer has any active members.

It is not obvious to us that there is any reduction in the member protections that are currently available given that in either situation the actuarial safeguard remains in place.

We have looked briefly at the regulations and have no comments to make on them.

***Question 3**: Do you believe that the draft amendments would allow schemes to undertake bulk transfer of accrued rights without member consent to pension institutions in EEA states outside of the UK in the same way and under the same conditions that these transfers can currently be made to pension schemes based either within the UK or outside of the EEA?*

We welcome the intention to return to the position that existed seven years ago as we understand that this will be of particular benefit to restructurings involving schemes based in certain EEA states outside the UK.

On the regulations themselves we are not sure why you propose a new Regulation 11B when it would have seemed possible to have expanded Regulation 12(1). As drafted, we are not sure whether the references from Regulation 11B to regulations 12(2) and 12(3) also pick up the provisions of regulations 12(4), 12(4A), 12(4B) and 12(5). We think that they should.

Response by:

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