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

1 June 2009

Lillian Coulson
Enabling Retirement Savings Programme
Department for Work and Pensions
4th Floor
Adelphi
1-11 John Adam Street
London WC2N 6HT
Employer.duty-consultation@dwp.gsi.gov.uk

Dear Lillian

Consultation on *The Pensions (Automatic Enrolment) Regulations 2009* and *The Pensions Regulator (Delegation of Powers) Regulations 2009*

I am writing on behalf of the Association of Consulting Actuaries, in response to your consultation on the above dated 12 March 2009.

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.

We hope you find the responses to the consultation helpful in finalising policy.

Yours sincerely,

Charles Young
Chairman
ACA Pension Schemes Committee

Response by the Association of Consulting Actuaries to *The Pensions (Automatic Enrolment) Regulations 2009* and *The Pensions Regulator (Delegation of Powers) Regulations 2009*

Consultation Questions

Regulation 3 Automatic enrolment into a personal pension scheme

Q.1: To what extent would the terms and condition proposed for deeming the contract differ from the current joining processes and what impact is this likely to have?

We do not have any specific comments on this question. Our general comments about the timescale for opting out also applies here, although we appreciate the situation might be more complicated.

Regulations 4 and 5 Information provided by the employer to the scheme

Q.2: Is there other essential information that should be included, or moved into regulation 4?

We don't think so – not as a compulsory requirement

Q.3: Is there further information that is likely to be needed or should be moved into regulation 5?

The purpose of the regulation is to permit employers to pass on information without facing data protection issues. Since the information here is to be provided on a voluntary basis and to some extent therefore non essential, this should be kept to the minimum required. In particular:

- We don't agree that the trustees need the member's work telephone number, and in many cases a direct phone number won't exist.
- There is no need for the employer to notify the trustees of the amount of the contribution. The trustees have the salary information and the rules of the scheme so should be able to work it out. In any case, the amount is likely to change from time to time and as there is no requirement to update this information its value to the trustees is limited.

Other:

- We don't like the use of the word 'value' – we would suggest using amount or rate.
- There needs to be some 'reasonable time' requirement for employers to provide information under regulation 5 to trustees.

Regulation 7 Enrolment information

There is no formal question, but we have the following comments:

- the statement required under 7(a) is quite unfriendly – people might be confused by the term 'jobholders'. A more direct and less impersonal statement would be: 'you have been automatically opted in to the pension scheme to encourage you to make pension savings'. More preferable would be to require the sentiment to be included in any communication, but to permit employers to determine the appropriate way to address their employees.
- it is unclear what is meant by 'value' (in 7(d) and 7(e)). In particular, the 'value' of the contribution to each individual could be different. The word 'amount' would be clearer.
- The information should include a statement about sources of help if they are uncertain about whether to remain in the scheme or opt-out – for example, links to the FSA site, or TPR. This has a different emphasis to the information required under 7(p).

Regulation 8 Key Features Information

Q.4: Will the key features information requirements proposed allow people to make an informed decision about whether to remain within the personal pension contract?

The key information requirements proposed should be sufficient to allow those people with a reasonable level of financial awareness to make an informed decision on what to do.

It is disingenuous to suppose that those who do not normally have to take material financial or investment decisions can reach an 'informed' decision about whether to remain opted in, based on the information provided here. For example:

- Studies suggest that only a minority of people understand the difference between different forms of investment (for example, equities vs. bonds)
- the use of 'generic projections' under 8(d) could prove misleading, without supporting information such as illustrations showing the likely volatility in outcomes (which could themselves be difficult for all jobholders to understand)
- many of those being auto-enrolled will have state (or 'normal') pension ages different from 65, so projections to age 65 could be inappropriate

We understand the regulatory need to provide this additional information in the case of personal pension contracts. However, the DWP seems to consider that jobholders being auto enrolled into occupational schemes do not need to make informed decisions. Is this the case?

Q.5: To what extent would modifications need to be made to existing information provision processes?

We do not have any specific comments on this question.

Regulation 10 Jobholders affected by postponement of automatic enrolment

Q.6: Is there any other information to jobholders affected by postponement of automatic enrolment that is missing and needs to be included?

No.

Regulation 11 and 12

No formal question but …
We are uncomfortable with the presumption that jobholders must remain enrolled in a scheme, even if they have made it clear they want to opt out, just because they have not filled in a form correctly. Although there is attraction in the simplicity of the approach adopted, we believe there are risks to the employer and trustees or provider, if they deduct and retain contributions made without the jobholder's implicit authorisation.

Members will be able to leave a pension scheme and accept a refund of contributions up to three months after joining (after then, although they can accept the refund they are also entitled to a transfer value, so the position is more complicated). We suggest that the opt out window is extended from 30 days to three months, to enable employers to collect the correct information in the correct format from the employee.

Regulations 13 and 14 Process of opting out

Q.7: Regulation 13 - We would welcome views on the 5 day time limit within which the employer is obliged to tell the jobholder if an opt out notice is not properly given, completed or signed.

A 5 calendar day time limit seems unreasonable and should be increased to at least 5 working days, but note that if our suggestion above is accepted a more manageable time limit could be adopted.

Q.8: Regulation 13 - We would welcome views on whether the scheme or the employer should hold the original opt out notice.

From the employer and trustee perspective, the best solutions would be for the jobholder to be required to provide two copies of the opt-out notice, one to the employer and the other to the scheme. This means the opt out process is more likely to fail, but provided the longer period we suggest is implemented this might be acceptable.

If this is not a possibility, then we agree that the employer should receive the opt out notice.

Q.9: Regulation 14 - We propose that opt out forms should be sourced from pension schemes. We consider that a requirement to obtain the opt out notice from the scheme balances the need to protect jobholders from outside influences without establishing so rigid an opt out process that the ability of the jobholder to opt out is undermined. We would welcome your views on whether we have struck the right balance or whether we should relax our approach.

It is reasonable to suggest that the opt out form is provided by the trustees, but less reasonable to suggest that it is only provided on request. A possible compromise, if the opt out window is extended, would be for the trustees to provide the form automatically once they receive information on the jobholder from the employer.

Q.10: Regulation 14 - Schemes are required to provide an opt out form on request. Should we prescribe a time limit for schemes to do this?

Yes, otherwise there is a danger that contributions continue to be deducted for longer than necessary. Suggest 5 working days as a reasonable timescale.

Regulation 15 (and Schedule) Content of opt out notice

Q.11: Do schemes welcome a standard mandatory opt out form, or would prescribed minimum wording suffice?

A standard form is welcome.

Q.12: Should prescribed wording be a minimum or a maximum?

Prescribed wording should be a minimum.

Regulation 16 Opt out refunds

Q.13: Is 21 days a sufficient period for schemes to refund monies to employers and a fair period for employers?

We do not have any specific comments about the logistics, except that the regulation is prescriptive. It might be preferable to make the requirement into a 'reasonable time' rather than a fixed period, in which case if the scheme or the employer found the period unmanageable an acceptable compromise could be determined.

Other Comments on the Draft Auto-Enrolment Regulations

1. Section 3(4) of the Pensions Act 2008 states that the prescribed automatic enrolment regulations do not apply if "within the prescribed period before the automatic enrolment date, the jobholder ceased to be an active member of a qualifying scheme because of any action or omission by the jobholder." The draft regulations contain no reference to this scenario.

2. The automatic enrolment process for defined contribution schemes or personal pension plans will require that an individual account be established for each employee being automatically enrolled, regardless of whether or not they subsequently opt-out. It would be helpful if the regulations could clarify that contributions need only be invested once the opt-out period has passed, and provide over riding regulations to this effect, in order to reduce any unnecessary administrative burden and associated costs for schemes.

3. Regulation 7 – Enrolment Information – The consultation on the Disclosure of Information Requirements proposes a requirement for schemes to provide basic scheme information within 14 days when a new employee commences pensionable service, to ensure that employees have adequate information on which to base their decisions on scheme membership, within the auto-enrolment timeframe. Taking the timescales subject to the two consultations to the extreme, there will be instances where an employee will receive the scheme information 28 days after their automatic enrolment date i.e. 14 days for the employer to provide

the required information to the scheme and 14 days for the scheme to provide the required information to the employee).

The maximum time limit for opting-out is 44 days from the automatic enrolment date, so some employees will have only16 days to review scheme benefits and decide whether to opt-out. This is not very long; extending the opt out period would ease this problem.

4. Auto enrolment, particularly in the context of the strict time limits set out under the draft regulations, will impose considerable additional administration requirements for the employer. The impact assessment suggests an ongoing administrative charge of £2 per annum, for large employers, and more for smaller employers. This seems an underestimate. We list some of the new resource costs that will be incurred:

   A. Employers need to prepare and provide information to each eligible new joiner
   B. Trustees need to prepare and provide scheme information to all employees, rather than to the subset that might normally have joined the scheme (noting that employers normally meet trustee costs)
   C. Trustees will have to provide opt out information to eligible jobholders
   D. Employers will need to:
      i. track employees through the auto-enrolment process,
      ii. ensure that eligible jobholders complete the process properly and
      iii. manage the opt out process.
   E. Employers need to prepare and provide information to trustees, for each eligible employee
   F. Employers will need to set up payroll deductions for each eligible employee (and in some cases undo those arrangements)
   G. Employers will need to engage with personal pension providers or trustees to ensure they are providing the correct information, at the correct time, to eligible employees
   H. Trustees will have to organise to refund contributions to employers and employees following opt out.
   I. Employers will need to track each employee who is currently not eligible for automatic enrolment, in order to pin-point the exact day on which they do become eligible.
   J. From time to time, employers will have to review the arrangements they have with personal pension providers, or with trustees

   We do not believe this can be carried out effectively for the costs suggested in the impact assessment.

5. It is not clear what happens in respect of employees who become eligible jobholders for one specific pay period (e.g. due to receiving additional earnings through bonus or overtime). This would trigger the automatic enrolment process, but if the employee does not subsequently opt-out, do they remain a member of the scheme even though no contributions are payable?

6. So that contributions paid in do not fall in value between the scheme receiving them and the date that they are refunded, we expect that schemes will want to establish a “holding” deposit account to hold contributions for 2-3 months before investment into the default fund takes place. The regulations do not provide for this.

7. Currently, a payment from a pension scheme to an employer is classed as "authorised" under very specific circumstances. We assume that a refund to an employer, following a member opt-out, would fall under the "genuine error" category or will become authorised; this needs to be confirmed by HMRC.

Comments on the Draft Delegation of Power Regulations

The potential impact of the draft Pensions Regulator (Delegation of Powers) Regulations 2009 is very wide. The consultation document implies that the delegation powers are only intended to enable TPR to delegate some of the new responsibilities conferred to it under the Pensions Act 2008, but the effect of the draft regulations is that it can delegate many of its powers in respect to any breach of pensions legislation.

In addition, the safeguards to ensure 'appropriate delegation' mentioned in paragraph 7 of Part Four of the consultation document do not currently exist – we are being asked to agree that these powers are provided without any comfort that safeguards will be proportionate or appropriate.

We believe the scope of the regulations needs to be considerably constrained, as seems to have been provided for in paragraph 21(1)(e) of Schedule 1 of the Pensions Act 2004. In particular:

- It should not be possible to delegate all these powers to a single body
- In any case, for the purposes discussed the delegation powers need extend no further than the powers given to TPR under the Pensions Act 2008, listed in regulation 2(g)-2(l)
- TPR's ability to delegate the power to review a notice under section 43 of the Pensions Act 2008 should be restricted to exclude bodies to whom powers listed in regulation 2(g)-2(l) are delegated
- There should be some restrictions to the types of 'persons' TPR's powers can be delegated to.

Response by:
The Association of Consulting Actuaries
St Clement's House
27-28 Clement's Lane
London EC4N 7AE
T: 020 3207 9380

Contact: **Deborah.R.Cooper@mercer.com**