ASSOCIATION OF CONSULTING ACTUARIES

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Sent by email to: pensions.policy@hmrc.gsi.gov.uk

Karen Bishop
Pensions Policy
HM Revenue & Customs
100 Parliament Street
London
SW1A 2BQ

Dear Ms Bishop

Draft legislation: the Registered Pension Schemes (Authorised Payments) (Amendment) Regulations 2017

released with **Explanatory memorandum to the Registered Pension Schemes (Authorised Payments) (Amendment) Regulations 2017** and Introducing a Pensions Advice Allowance: response to the consultation

I am writing on behalf of the Association of Consulting Actuaries to respond to the technical consultation on the above draft regulations published on 7 February 2017.

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. Members also advise thousands of smaller pension arrangements and individuals (many in self-employment) as well as advising life and general insurers.

We have the following comments to make:

- We note from the HM Treasury response to the consultation that the policy intention is that 'the allowance can be withdrawn from defined contribution pensions and hybrid pensions with a money purchase or cash balance element'. However, as drafted, the regulations do not explicitly restrict the payment of the advice allowance to such arrangements. Consequently, it would appear that an advice allowance payment could be made from defined benefits arrangements. If the intention is for advice allowance payments to be taken from any type of arrangement, please could HMRC explicitly confirm this in writing (e.g. via an update to the Pensions Tax Manual).

- Furthermore, we note that the policy intention implies that the member's funds/benefits are reduced (the HMT consultation response refers to "funds withdrawn from a registered pension scheme"). However the legislation does not explicitly require that such a reduction is made from the member's funds. Consequently, on the face of it, the trustees could make such a payment without reducing member's funds/benefits. As for the above point, if this is to be the case, please could HMRC explicitly confirm this in writing.

- As drafted the regulations suggest that the maximum pension commencement lump sum (PCLS) that a member whose benefits had been reduced by the payment of one or more advice allowance payments would be reduced (all other things being equal). For example if an advice allowance payment of £500 was made (shortly before retirement) for a member with a defined contribution pot (before the payment) of say £10,000 so that her actual pot at retirement was only £9,500 then the maximum PCLS would be £125 lower than if the advice allowance payment had not been made (i.e. £2,375 instead of £2,500).

  The original HMT consultation stated that '[i]ndividuals using the Pensions Advice Allowance would still be entitled to the same tax free lump sum as at present, when they ultimately come to take their pension benefits', which suggested that in the case of the above example, a PCLS of £2,500 could nevertheless be taken (possibly calculated as 9,500 x 0.25 + 500 x 0.25 i.e. the standard PCLS of the remaining funds plus the contribution to the PCLS that would have been made by the funds that were paid out as an advice allowance). The consultation response document did use different language that is more in line with the draft legislation. Would it be possible for HMRC to confirm the policy intention on this point?

- In connection with PCLSs, we assume that if an individual has a Scheme Specific Protection such as for scope for PCLS or a protected pension age, HMRC's policy is that using the Advice Allowance would not prejudice those (albeit that the scope for PCLS would reduce to reflect only the residual funds). – it would be helpful to have this confirmed in guidance.

- As drafted, the regulations require that only one pension advice allowance payment can be made in any one tax year. So two payments each of £250 would not be permissible in a tax year. We would be grateful for confirmation that this is the intention (we agree that it would be sensible to limit the administration involved in dealing with more than one payment in a tax year)

As the regulations as drafted are not overly detailed in their approach (in particular in relation to some of the key areas above), we have been unable to test our thoughts on the following points, however, in our opinion, they do need serious consideration:

- We note that the policy intent is that a pension advice allowance payment would be 'tax free' (which we assume includes national insurance contributions as well as income tax). We assume that HMRC will ensure there is appropriate provision, either in the draft regulations or elsewhere in legislation to prevent a tax charge arising (in particular that a pension advice allowance payment is not taxed as a benefit in kind).

- We note that the definition of 'beneficiary' includes a 'dependant, nominee or successor of a member'. We assume that the policy intent is that the member must have died (and the beneficiary has become the due recipient of benefit under the scheme) before a pension advice allowance payment can be made to such a beneficiary, however this is not explicitly required by the draft regulations. If this is indeed the case, we assume that HMRC will ensure there is appropriate provision, either in the draft regulations or elsewhere in legislation, to give effect to the policy intent.

- Trustees will be unable to check whether the advice that is being paid for by the Allowance is 'retirement financial advice' – or indeed "regulated advice". Given that if the advice covers other areas, the payment will count as unauthorised, would it be possible to amend the regulations to require explicitly that the member's declaration confirms this point to the trustees.

  We note that the limitation that the advice must be "regulated advice" according to "the meaning given under Article 53 of FCMA2000". We think consideration should be given as to whether this definition might be too tight to deliver the stated policy aim that the allowance enables an individual to take "holistic retirement advice on all the individual's pension products".

  If this tightness is indeed the intent, then we would suggest that HMRC give clear guidance to individuals on what the allowance cannot be used for. The consultation (after giving example scenarios in section 2.8 of what can be covered) in section 2.9 gives two areas that cannot be covered and then later refers to the FCA's Handbook/PERG (10.4) for more indication on this in particular in relation to OPSs- but reading that handbook as it currently stands (eg Q39) would suggest to a reader only very limited areas of advice on OPSs (whether in relation to DB savings or indeed DC savings there) could be covered – and possibly not as widely as listed in 2.8 of the consultation response.

- We note that the definition of pension advice allowance payment in new regulation 21(1)(a)(i) (to be inserted by the draft regulations) includes payments made 'in respect of…a person who is or has been a member…" (our emphasis). We were unsure why the words "..or has been…" have been included as beneficiaries are explicitly addressed by 21(1)(a)(ii) (assuming that this is intended to cover death cases) and as far as we can see in the remaining cases of former members (e.g. individuals who have transferred out, been bought out with an insurer or otherwise settled), there would not be any assets from which to make an advice allowance payment.

We would be happy to discuss this matter further . In the first instance, please contact Karen Goldschmidt, Chair of our ACA Pensions Taxation Committee, at karen.goldschmidt@lcp.uk.com, or her committee colleague William Fitchew (william.fitchew@puntersouthall.com)

Yours sincerely

Bob Scott
Chairman and Director
On behalf of the Association of Consulting Actuaries Limited