

# Automatic enrolment: career average schemes as qualifying schemes

Consultation on proposals to amend Regulation 36 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010

30 April 2012

# Contents

- Consultation arrangements..... 3
  - Duration of the consultation ..... 3
  - Freedom of information..... 4
  - Feedback on this consultation..... 4
  - Impact assessment ..... 5
- Introduction..... 6
- Policy Background..... 7
- Commentary on the draft Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) (no.2) Regulations 2012 ..... 8
- Annex A: List of organisations consulted..... 9
- Annex B: Glossary of terms..... 12

## Consultation arrangements

This consultation is aimed at employers, employee representatives and pension industry professionals, including scheme administrators, payroll administrators, accountants, payroll bureaux, Independent Financial Advisors and employee benefit consultants. Comments from workers and the general public are also welcome.

The document sets out proposals to revise Regulation 36 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010.

We invite comments on these proposals.

This consultation applies to England, Wales and Scotland. It is anticipated that Northern Ireland will make corresponding legislation.

## Duration of the consultation

The consultation period began on 30 April 2012 and runs until 11 June 2012.

This document is available on the Department's website at:

<http://www.dwp.gov.uk/consultations/2012/>

Please send your response, preferably by e-mail to:

[workplacepensionreform.consultation@dwp.gsi.gov.uk](mailto:workplacepensionreform.consultation@dwp.gsi.gov.uk)

Or by post to:

Jeremy Over

Department for Work and Pensions

Enabling Retirement Savings Programme

1st Floor

Caxton House

London SW1H 9NA

Please ensure your response reaches us by **11 June 2012**

When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

Any queries about the subject matter of this consultation should be addressed to Jeremy Over at [Jeremy.over@dwp.gsi.gov.uk](mailto:Jeremy.over@dwp.gsi.gov.uk).

Automatic enrolment: career average schemes as qualifying schemes

We have sent this consultation document to those people and organisations who have already expressed interest in this work. Please do share this document with, or tell us about, anyone you think will want to be involved in this consultation.

## **Freedom of information**

The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purpose of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information which is provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this. We cannot guarantee confidentiality of electronic responses even if your IT system claims it automatically. If you want to find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact:

Central Freedom of Information Team

Department for Work and Pensions,

The Adelphi

1-11 John Adam Street,

London,

WC2N 6HT

Email: [freedom-of-information-request@dwp.gsi.gov.uk](mailto:freedom-of-information-request@dwp.gsi.gov.uk)

More information about the Freedom of Information Act can be found on the website of the Ministry of Justice, Freedom of Information pages.

## **Feedback on this consultation**

We value your feedback on how well we consult. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact our Consultation Coordinator:

Automatic enrolment: career average schemes as qualifying schemes

Elias Koufou

Department for Work and Pensions' Consultation Coordinator:

Second Floor, Caxton House

Tothill Street,

London,

SW1H 9NA

Phone: 020 7449 7439

Fax: 020 7449 5089

Email: [Elias.Koufou@dwp.gsi.gov.uk](mailto:Elias.Koufou@dwp.gsi.gov.uk)

Please also make any suggestions as to how the process of consultation could be improved further.

If you have any requirements that we need to meet to enable you to comment, please let us know.

The responses to the consultation will be published in a report on the DWP website that will summarise the responses and the action that we will take as a result of them.

## **Impact assessment**

A full impact assessment has not been published for this instrument. However, an assessment of the impact of the provisions in these regulations is included in the impact assessment that accompanied the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010. Copies of the impact assessment may be obtained from the Department for Work and Pensions, Caxton House, Tothill Street, London SW1H 9NA, or from the DWP website:

[Explanatory Memorandum and Impact Assessment of Workplace Pension Reform \(Completing the Picture\) Regulations 2010](#)

## Introduction

1. In the run up to the start of automatic enrolment in October 2012, DWP and the Pensions Regulator (TPR) are engaging closely with employers to help them prepare for the onset of their new duties under the reforms. In the course of this, it has emerged that the way that the quality requirements for Career Average Revalued Earnings (CARE) pension schemes are currently specified in The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 interacts in an unintended way with the scheme rules for some (CARE) pension schemes.
2. To address this, the Government is proposing to amend Regulation 36 of the Occupational and Personal Pension Schemes (Automatic) Regulations 2010. This short consultation paper describes the proposed changes and what they are intended to achieve and provides commentary on a draft amending Regulation. We are keen to receive views on whether the proposals will achieve the intended effect, particularly from employers with CARE schemes that they are intending to use as qualifying schemes.
3. Subject to the findings of the consultation and the Parliamentary timetable, the Government is proposing to amend the regulations as quickly as possible and before the onset of the employer duties for those organisations that are likely to be affected. The Government is not proposing to amend or revisit wider aspects of the automatic enrolment scheme quality requirements.

## Policy Background

4. The Pensions Act 2008 introduces new duties for employers: principally to enrol automatically eligible jobholders into a qualifying workplace pension scheme and to maintain active scheme membership for those already enrolled into qualifying provision.<sup>1</sup> A qualifying scheme is one that meets:
  - the basic requirements set out in the Pensions Act 2008 (the Act) and the supporting regulations<sup>2</sup>; and
  - other specified quality requirements, in accordance with scheme type in sections 20-27 of the Pensions Act 2008 and the supporting regulations.
5. The Government's intended policy on CARE pension schemes is to allow them to be used as qualifying schemes and for the purposes of automatic enrolment so long as they provide for the accrued rights to benefits under the scheme to be revalued at, or above, a prescribed minimum rate (as set out in regulation 36) at any time when the jobholder's pensionable service is continuing. (Section 72 of the Pension Schemes Act 1993 would prevent a jobholder being treated less favourably once the jobholder has left pensionable service).
6. Revaluation can be achieved either by the scheme providing for guaranteed revaluation or providing for funded discretionary revaluation. The minimum set out in Regulations (as amended) is the increase in CPI or 2.5 per cent, whichever is lower. The policy intent is to ensure that individuals' pensions keep pace with inflation so it is important that benefits accruing in a career average scheme are increased in line with inflation in service as well as in deferral.
7. As currently drafted, regulation 36 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 does not allow a CARE scheme that has a mix of guaranteed revaluation below the minimum rate and a discretionary power to revalue at a higher rate to meet the minimum to qualify. We are now proposing to revise the Regulation to allow schemes which provide for a mix of guaranteed and discretionary increases to qualify, provided that the revaluation is funded for and included in the statement of funding principles.
8. These minor technical amendments will reduce the level of prescription about how revaluation in CARE schemes is achieved while ensuring that the members of these types of schemes remain protected.
9. In amending Regulation 36, we propose to set out the minimum required outcome and to provide appropriate flexibility for schemes and employers providing CARE schemes so that these can be used for the purposes of automatic enrolment.

---

<sup>1</sup> See Chapter 1 of Part 1 of the Act

<sup>2</sup> See parts 9-13 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010

# Commentary on the draft Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) (no.2) Regulations 2012

These Regulations amend the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010.

**Regulation 2** amends regulation 36 (**Certain schemes providing average salary benefits excluded from being qualifying schemes**) of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010.

Paragraph 2(2) amends paragraphs 2(b) and (c) to provide that an average salary scheme is excluded from being a qualifying scheme if it requires benefits to be revalued at a rate below the minimum rate specified in regulation 36(4), i.e. by 2.5 per cent or the increase in the Consumer Price Index whichever is the lesser, where there is also a discretionary power to revalue at or above that rate.

Paragraph 2(3) amends paragraph 3 to provide for an exception to this exclusion by allowing such schemes to qualify where both the scheme's funding and statement of funding principles, or the equivalent, take account of the exercise of the discretionary power in providing for revaluation at or above the statutory minimum.

## Consultation question:

**Do you agree that the proposed changes will achieve the intended effect?**

## Annex A: List of organisations consulted

Adecco  
Aegon  
Age UK  
Allen & Overy LLP  
Aon Consulting UK  
Arc Benefits Limited  
Association of British Insurers  
Association of Chartered Certified Accountants  
Association of Consulting Actuaries  
Association of Corporate Trustees  
Association of Independent Financial Advisors  
Association of Members-Directed Pension Schemes  
Association of Pension Lawyers  
Aviva  
Barclays Bank  
Bluefin  
British Broadcasting Company  
British Chambers of Commerce  
BT  
Building and Civil Engineering Benefits Scheme  
Buck Consultants Ltd  
Business and Sports Leisure  
Capital Hartshead  
Chartered Institute of Personnel Development  
Clarks International  
Clifford Chance  
Confederation of British Industry  
Department of Business Innovation and Skills  
Department for Social Development Northern Ireland  
Engineering Employers Federation  
Evershed LLP  
Federation of Small Businesses  
Fidelity  
First Actuarial  
Financial Services Authority  
Foreign and Commonwealth Office  
Friends Provident  
Gissings Consultancy Services  
GMB  
Hamish Wilson  
Hewitt Associates Limited  
HM Revenue & Customs  
HM Treasury

## Automatic enrolment: career average schemes as qualifying schemes

Hyman Robertson  
Institute of Chartered Accountants in England and Wales  
Institute of Chartered Accountants of Scotland  
Institute of Directors  
Investment and Life Assurance Group  
Investment Managers Association  
JLT Benefit Solutions  
Law Debenture  
Law Society of England and Wales  
Law Society of Scotland  
Legal & General  
Lloyds Group  
Local Government Employers  
Logica  
Lovells LLP  
Marks and Spencers plc  
Mayer Brown International  
Mercer Limited  
Ministry of Justice  
Navy, Army and Air Force Institutes  
National Association of Pension Funds  
National Farmers Union  
National Union of Rail, Maritime and Transport Workers  
Nautilus  
Northern Rock plc  
Office of Fair Trading  
Office to the Solicitor to the Advocate General  
Offshore Contractors Association  
Pension Protection Fund  
Pensions Management Institute  
Pensions Ombudsman  
Pensions Policy Institute  
Personal Accounts Delivery Authority  
PriceWaterhouseCoopers LLP  
Professional Contractors Group  
Prudential  
Punter Southall  
Recruitment and Employment Confederation  
Resolution  
Royal Opera House  
Sainsburys  
Saul Trustee Company  
Scottish Police Services Authority  
Scottish Public Pension Agency  
Scottish Office  
Society of Pension Consultants  
Standard Life  
Tax Incentivised Savings Association  
Tesco

## Automatic enrolment: career average schemes as qualifying schemes

The Actuarial Profession  
The Co-operative Group  
The Institute of Payroll Professionals  
The Pensions Advisory Service  
The Pensions Regulator  
The Scottish Government  
The Society of Pension Consultants  
The Welsh Assembly Government  
Trades Union Congress  
Universities Superannuation Scheme  
Wales Office  
Watson Wyatt  
Whitbread Group  
Which?  
Zurich

## Annex B: Glossary of terms

### **Automatic enrolment**

The process set out in the Regulations by which employers make arrangements for eligible jobholders to become active members of a qualifying workplace pension scheme without the need for any form of action on the part of the jobholder

### **CARE Scheme**

A career average revalued earnings scheme is a type of defined benefit pension scheme that uses the average of pensionable earnings over the whole period of scheme membership to determine the final level of benefit

### **Consumer Price Index (CPI)**

CPI measures price inflation with reference to the changing cost of a basket of goods and services

### **Indexation**

The way in which pensions in payment are adjusted to take into account the effect of inflation

### **Quality Requirement**

The minimum requirements (set out in sections 20 to 28 of the Pensions Act 2008 and associated regulations) that a scheme must satisfy in order to be a qualifying scheme

### **Qualifying scheme**

A pension scheme that can be used to satisfy an employer's duties because it satisfies at least the minimum requirements in the Act

### **Revaluation**

The way in which benefits, or earnings on which benefits are calculated, in a CARE scheme are adjusted to take into account the effect of inflation

### **Statement of Funding Principles**

A written statement prepared by trustees or managers of a defined benefit pension scheme that must set out their policy for meeting the statutory funding objective and contain other prescribed information