Comments from ACCA
November 2009

ACCA is pleased to comment on the consultation paper on the above. ACCA is a professional accountancy which represents over 130,000 qualified accountants based in the UK and around the world. Our members work in public practice, in business and commerce and in the public sector. In the UK the majority of our members either work in SMEs or provide professional services to SMEs, hence we are taking a keen interest in the development of the current pension reforms. The comments in this response have been put together with the input of ACCA's Pensions Committee, which is composed of members with long experience of pensions from the different perspectives of employer, trustee, investment manager and auditor.

General comments

Before responding on the specific contents of the paper and the consultation questions, we would like to register our disappointment that only six weeks was allowed for comment on it. The paper was very long and contained a great many policy proposals and much detailed drafting material. In both respects the paper dealt with matters which stand to have very significant and long-term implications for employers and individuals. It seems to us unsatisfactory to allow consultees, especially representative bodies like our own which have to consult their memberships, a maximum of six weeks to consider the paper and respond to it.

Our overall reaction to the paper can be summarised thus:

- while we recognise that some efforts have been made to reduce bureaucracy in specific respects, and welcome those initiatives, smaller firms in particular will still face substantial increases in cost and administration because of the new rules. The DWP should look again at ways of reducing these obligations. The rules on automatic re-enrolment and employer registration are among the areas where we believe there is scope for a further reduction of burdens.

- The proposal to stagger the introduction of the reforms between 2012 and 2016, so that smaller firms have more time to prepare, is sensible. Smaller firms will thereby be in a position to learn lessons from the prior

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experience of larger firms. But there should be no phasing in of the contribution levels. If the Government believes that its proposals on contributions are good for employees and are bearable by employers, the full scale of contributions should apply from the time that the business concerned is required to assume its responsibilities. Allowing employers to pay lower contributions on a transitional basis could provide the encouragement for some employers to downgrade their pension commitments and provide them with the opportunity to do this. This potential outcome should be actively pre-empted.

- With respect to the proposals on the self-certification by employers of compliance with their commitments, the rules should provide a reasonable balance between safeguarding the rights of scheme members and minimising the bureaucratic burden on the employer. While the aim should be to avoid individual shortfalls, and to ensure that wherever shortfalls are identified they are made up, employers should be entitled to adopt proportionate measures to carry out checks on whether the correct amount of contributions has been paid over to the scheme. The new regulations and the accompanying guidance need to be clear that employers are entitled, within reasonable limits, to adopt a sampling approach with regard to this process.

We comment below on aspects of the content of the paper which we consider to be of most relevance to us, and on specific consultation questions.

Part Two - Introduction

The Government's plans are founded on its estimate, reiterated in Part Two, that the new arrangements will lead to between 5 and 9 million people either newly participating, or saving more, in workplace pensions.

We appreciate that research has been carried out into the likely responses of those in the target market. Even on the strength of positive feedback, though, we still consider that it is considerably optimistic to assume that the new arrangements will persuade so many people who currently do not save for a supplementary pension to do so. The crucial limiting factor in people's investment plans (or lack of them) is and will remain disposable income. For anyone earning below the average wage (and the new arrangements will encompass those earning much less than that), 3% of their income is likely to represent a material amount of money, regardless of the economic conditions

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prevailing when the arrangements are brought into effect. In this respect we note that in paragraph 8 the document says that the Government wants to make it as simple as possible for individuals 'to enter pension saving when the time is right'. This statement does not seem to be consistent with the principle of automatic enrolment: while that principle has the entirely defensible aim of combating employee inertia, it is not true to say that the decision to enter pension saving is one which will be made by the individual employee.

The estimates of likely take-up are very significant given the extensive new responsibilities being imposed on employers. We suspect that the number of employees exercising their right to opt out of the new arrangements will be substantially in excess of the official estimates. We appreciate that the DWP, in these draft regulations, has taken some steps to try to minimise the inconvenience caused to employers, but if opt-outs turn out to be higher than officially forecast, many employers are likely to feel that their involvement has been an expensive waste of their time.

Part Three – Delivering the Reforms

The proposal to stagger the introduction of the new arrangements, starting with the largest employers and finishing with the smallest, is a sensible response to the concerns of the SME sector, which will be disproportionately affected in terms of administrative burdens. This approach will enable numbers to be more efficiently managed and allow small firms to learn and benefit from the experiences of their larger counterparts. We therefore support the staged approach.

However, the plan to phase in the minimum contribution rates for DC schemes is, in our view, misconceived and should be re-considered, for three reasons. Firstly, given that the Government's express objective is to get more people to save for their retirement, and at optimum levels, the sooner they should start doing both the better. Second, the Government needs to bear in mind one potentially negative consequence of introducing the minimum quality requirements in the first place, viz employers may be tempted to downgrade their current contribution practices to the minimum required by law. If employers are minded to do this at all, and we suspect many employers will be tempted to do so, especially in the current economic climate, then allowing them to pay contributions of as little as 1% in the first transitional period will no doubt be attractive to them. We believe it is crucial to avoid giving any additional encouragement to employers to downgrade the quality of their existing workplace schemes. Third, the sooner the DC arrangements can be fully implemented, the sooner DB schemes can be brought in. Accordingly, we believe that employers should be required to meet the quality test requirements set out in the Pensions Act 2008 from the date that they are required to assume their responsibilities.

Part Four – the draft Employers Duties (Implementation) Regulations

Q1 – Reg 2

It would be much easier to provide that auto-enrolment is to apply as from the first day of the month regardless of what day that falls on.

Q2 – Reg 3

Once an employer considers that it satisfies the conditions set out in reg 3(2), it should be required to set out details regarding the scheme that is to be used on a pro-forma form which should be designed and produced by TPR. We do not see the need for employers who voluntarily advance their 'staging date' to provide any declaration of fitness to comply with their duties which would be over and above what other employers would be expected to do. This being said, the pro-forma form we refer to, or a separate booklet, could summarise the obligations that the employer would assume from the chosen date.

One other, drafting point about these regulations concerns the definition of 'staging date'. This term is defined in reg 1 as being the date prescribed in Table 1 under reg 4. Given this, it is in our view incorrect as it stands for reg 3(1) to refer to the possibility of a different staging date. The problem could be averted if the definition in reg 1 added the words 'or any alternative date determined under reg 3'.

Part Five – Maximising individuals' opportunities to save

Voluntary Saving

The document discusses the statutory rights of jobholders outside the prescribed age bands to opt into a qualifying scheme and hence become eligible for an employer contribution, and suggests that employers should be required to write to such individuals and inform them of their rights, and the procedures that will apply to opting in. The statutory rights of such individuals can not be amended, but it would be a disproportionate burden to expect employers to take the lead on this matter. It should instead be left to the individuals concerned to approach the employer, at which stage it should be expected to fulfil its responsibilities and arrange for them to be opted in. The same applies to those who are earning less then the floor of the qualifying earnings band – currently £5,035. In both cases, we would say that the likelihood that any of the individuals affected will wish to exercise their rights is remote, meaning that the employers' efforts will be a waste of their time and effort.

Automatic re-enrolment

We acknowledge the statutory requirement for those who have previously opted out to be automatically re-enrolled but suggest that this should be required to take place less frequently than every three years – five years would be a more proportionate timescale for what could turn out to be a time-consuming exercise for employers and may be a more realistic time-frame for making the implicit assumption that individuals' financial circumstances may have changed sufficiently to make them feel able to save for a pension. Within that period, staff should still be entitled to exercise their rights to opt in on an ad hoc basis. Employers should be required to notify employees in advance so as to reduce the incidence and amount of refunds.

We support, however, the idea of fixing auto-enrolment dates so that employers are not obliged to carry out this process by reference to each individual employee's original opt-out date.

Part Seven (and Annex B) – the draft Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations

Regulation 22

As stated above, we consider that the proposals to oblige employers to approach those employees who are outside the statutory age bands and outside the qualifying earnings bands are burdensome and should be dropped.

Q6 - reg 29

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We agree that the appropriate age in the test scheme should follow any increases made to state pension age.

Q 8 - reg 38

We consider that the principles should be the same for non-UK schemes. Any differential treatment could lead to unequal treatment of employees, and some employers may find that different schemes are operating differently for employees in the same company.

Q11 – reg 38

Any loss of tax relief should be shared equally between the employer and the members.

Q15 – regs 47-51

We believe that making the certification process simple and straightforward to administer will help materially to ensure that larger employers feel able to continue to operate good quality occupational schemes to their workforces. If the process becomes unwieldy and expensive to conduct this commitment will be tested.

We are encouraged that the current version of the draft regulations has transferred some content to the supporting guidance. Provided adequate safeguards are applied this is in the interests of administrative convenience.

The main issue to be resolved, though, is still the extent to which employers will be entitled to use a process of sampling when carrying out their end-year determinations.

Reg 49(4)(d) says that an employer may undertake the required determination by reference to a sample of jobholders within each category of jobholder (with employers having some discretion to decide on the parameters of those categories). In our view, a sample check, carried out on a suitably robust basis, should be appropriate for the conduct of the end-year determination of compliance. The planned supporting guidance will need to be based sufficiently broadly to be applicable to the wide range of schemes for which it will be appropriate.

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For this to be possible, though, we believe the wording of reg 50 needs to be looked at. At sub-paragraph (1), there are clear inferences that the end-year determination must be able to identify shortfalls in the case of any individual jobholders (this impression is repeated in paragraph 23 of the draft guidance). This appears to conflict with reg 48(4)(d) and also with the statement in paragraph 18 of the draft guidance to the effect that the extent to which the checking of individual records is a matter of judgement for the employer. If the intention is to allow employers to check on a sample basis, then the references in regulation 50 need to be revised so as not to appear to mandate individual checking.

Guidance on certifying money purchase schemes

Consultation question 1 (after paragraph 20)

We endorse the view set out in the draft guidance that employers wish to avoid having to carry out detailed checks of individual contribution levels. As stated above, we consider that a workable approach needs to be achieved for the carrying out of sampling as part of the end-year determination. The question suggests that risk-focused sample checks could be the answer. That might not be appropriate given that reg 50 of the draft regulations appears to suggest that any shortfall in any individual's contribution record must trigger remedial action. Hence, if such provisions remain, it may not be appropriate to concentrate sampling solely on particular areas of the scheme membership where it is considered that errors or other forms of non-compliance are most likely to occur.

We would still suggest that it is possible for a representative sample of scheme members to be put together. This could involve dividing the scheme membership into a restricted number of earnings bands, in accordance with the definition of jobholder 'categories' in reg 47, the specific parameters of which would depend on the spread of qualifying earnings within the membership of the scheme concerned over the year. The guidance might propose a minimum and maximum figure for the number of bands that employers should use. Where there was a significant spread of earnings within the scheme membership this number might be between three and five; where earnings were at more concentrated levels, there might be just one or two bands. It would be helpful for guidance to be given on how employers might go about determining how many bands to use. For example, such a system could be framed thus:

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Band 1 Members with qualifying earnings (QE) of up to, say 15k (x)

Band 2 Members with QE of < 2X (x)

Band 3 Members with QE of > 2 and < 6X (x)

Band 4 Members with QE of > 6 and < 10X (x)

Band 5 Members with QE of > 10X (x)

However such a band-based system were devised it would need to be straightforward to understand and implement and clear in its application.

Then, a prescribed, representative number of checks could be carried out on the contributions paid by and in respect of individuals within each band. The object of this exercise would be to assess whether the correct amount of contributions have been paid at all levels within the scheme, not just at levels which are considered to be most at risk of non-compliance. For example, on the basis of the band-based system outlined above, where the membership could be divided into five earnings bands, the details of a suitable proportion of members, say 20%, in each band would be checked. The same would happen where members were grouped into three or four bands. Where a scheme grouped members into only one or two bands, we would suggest that a higher sample than 20% should be checked – perhaps 40% in both cases.

Other points on the draft Guidance on the certification process

(i) Consultation question on para 8 - persons who may certify under section 28

We appreciate that the bullet point list is meant as an illustration, but suggest the following matters should be addressed:

In the first bullet point, we suggest the reference be to a director or other officer of the company (directors are, of course, officers themselves). Including officers within this formula would allow the company secretary to sign the document – is this the Department's intention?

In the second point, partnerships may or may not have a position of 'senior partner'. There thus needs to be provision for firms that do not have one. All partners are of course agents of the partnership and are technically able to bind

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the firm. But the Department may wish to ask for the involvement of a partner who is a member of the firm's management board or equivalent.

The list should make additional provision for limited liability partnerships (LLPs). As with partnerships, the guidance could ask for the involvement of a member who is also a member of the LLP's management board or equivalent; alternatively, it could refer to a 'designated member' of the LLP, i.e. a member who is legally authorised to sign statutory documents on behalf of the LLP.

(ii) Para 17 Review and Determination at the end of the certification period

The passage refers to what happens when a certificate expires, and talks about what should be the responsibility of the employer when this happens. But a certificate can also expire when a scheme is wound up. With regard to that latter scenario, the guidance might refer additionally to who assumes responsibility for reviewing the scheme's compliance in that case.

(iii) Para 29 Employer's right to ask employer to make up contributions

The heading suggests that individual employees are to have a right to ask an employer to make up missing contributions. It would be helpful if the guidance elaborated on the legal basis of this right. Also, the passage suggests that any shortfalls in excess of those covered by reg 50 should be put right immediately: this appears to conflict with reg 51(2), which gives employers up to 3 months from the end of the certification period.

Part Nine - Employer Compliance

In paragraph 11, it is proposed that all employers be required to register every 3 years. This seems to be excessive and contrary to the principle of proportionality identified in paragraph 3 as being one of the foundations of the approach to employer compliance. We suspect that this requirement would be seen as a material additional burden on the employer. If it is deemed vital to go through such a procedure, a simple report, on the lines of the company annual return, should be used as a basis for providing confirmation that nothing has changed, or details of changes where they have occurred.

We support the proposal set out in paragraph 15 that records should be retained for a period of 6 years; this fits with most document retention requirements that employers will have in place.

Paragraph 40 proposes a flat-rate fixed penalty for non-compliance of £500. The adoption of a flat rate basis is justified on the ground that determining the size of penalty by reference to the number of jobholders in the scheme would add complexity to the system and be difficult to communicate. However, paragraph 42 proposes escalating penalties, in cases of on-going non-compliance, based on the number of workers in a scheme. There is an obvious lack of consistency and logic in the arguments used here..

Part Ten – Commentary on draft Employers' Duties (Registration and Compliance) Regulations

Q17 – Reg 3

How well this process works will depend on the format used for collecting the information and how detailed it is. It will be necessary to take into account, for example, whether information will be required on individual cases of employees who have decided to opt out; also, whether there will be a standard template for registration?

Q19 – Reg 3

The proposed period for registration, of 9 weeks after the auto-enrolment date, should be acceptable in the majority of cases.

Q21 - Reg 4

As stated above, we do not understand the need for all employers to re-register every 3 years. This appears to be excessive bureaucracy. If it is deemed essential for regulatory purposes for such a procedure to be followed, a simple return on the lines of the company annual return should be devised and used

Q24 – Reg 7

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The proposal to ask schemes to keep records of opt-outs is a sensible approach and will assist in any requirement to prove that the rules have been followed correctly.

Q27 – Reg 11

In the current economic climate an interest rate of 4.9% plus RPI appears to be excessive and takes no account of ongoing market conditions. We appreciate the desire to keep the calculation simple and clear but last year equities fell significantly; this year there has been a surge. If this rule had been in place scheme members whose contributions were paid late would have fared much better, or much worse depending upon the timing, than those whose contributions were paid on time. There should be some attempt to tie the interest rate closer to market conditions, possibly looking at the change in markets retrospectively.

Q28 - Reg 13

A fixed penalty of £500 is unlikely to have an impact on medium – large companies but would have a disproportionate effect on small companies. Some form of scaling is preferable.

Q29 – Reg 29

With a low fixed penalty of £500 we do not see the need to offer a discount for early payment.

Part Thirteen – Commentary on the Occupational and Personal Pension schemes (19 Day Rule) (Amendment) Regulations

Q31 – Reg 2

Having different due dates for contributions for existing members and those deducted during the joining window and opt-out period will require employers to keep two sets of records for payments. This will create the risk that some contributions may be overlooked and paid at the wrong time. We do not consider that the risk is justifiable on a cost/burden saving basis.

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