



The Hundred Group
of Finance Directors

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Michelle Boreland
Department for Work and Pensions
7th Floor
Caxton House
Tothill Street
London.
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Dear Ms Boreland,

The impact of using CPI as the measure of price increases on private sector occupational pension schemes.

I am writing on behalf of the Hundred Group of Finance Directors with regard to the DWP's above-named consultation paper.

Who we are

The Hundred Group represents the views of the finance directors of the UK's largest companies drawn largely, but not entirely, from the constituents of the FTSE100 Index. Our members are the finance directors of companies whose market capitalisation collectively represents over 80% of that of companies listed on the London Stock Exchange. While this letter expresses the views of The Hundred Group of Finance Directors as a whole, they are not necessarily those of our individual members or their respective employers, who may be making their own submissions.

Introduction

The Hundred Group has some serious concerns about the way in which this policy is being implemented and, in particular, by the perception that policy appears to be being made 'on the hoof'. Allowing pension schemes to switch their pension increases and revaluation to CPI could have been a welcome easement to many schemes and their sponsoring employers facing funding pressures. However, the way in which the policy has been implemented means that schemes effectively face a lottery based on the initial drafting preferences of their scheme lawyer.

As we set out in more detail in our answer to Question 8, we believe that the consultation dismisses too readily the idea of a modification power to enable schemes with RPI written into their rules to switch to CPI. We do not think that trustees would take the decision to use such a power lightly but believe that, without it, the proposal creates an arbitrary distinction between, on the one hand, public sector schemes and those private sector schemes with the luck to have had a lawyer with a particular drafting preference and on the other, the rest of the universe of private sector schemes.

We would also note that the figures outlined in the Regulatory Impact Assessment seem to overstate the likely savings for pension schemes. Overall, the policy is unlikely to achieve the savings suggested and, for those schemes unable to take advantage of the change, it will lead to no savings at all.

Q1: The Government welcomes views on whether the impact of using CPI has been correctly summarised

Although the broad description is correct, the Government's analysis does not fully capture the complexity of the issue and the large number of different variants. This has meant that many schemes have had to take legal advice in order to understand whether the policy impacts on increases under their pension scheme or not.

In particular, it does not take account of the fact that many schemes will have different rules on revaluation and indexation for particular sections of the scheme depending on the historic circumstances of the scheme.

Q2: The Government welcomes views on whether it is right to apply the employer consultation requirements in respect of changes to scheme rules on indexation and revaluation

We accept that it is reasonable that employers should be required to consult where they wish to make changes to future indexation and revaluation.

However, we note that no such requirement applies to those schemes where the change has applied automatically. It would be helpful if the DWP could clarify its view as to whether schemes where the rate of increase has now switched automatically to CPI are required to communicate this to members as a material change under the Disclosure Regulations.

Q3: The Government welcomes views on the draft Occupational Pension Schemes (Consultation by Employers) Amendment Regulations 2011

We have no comments on the legislation.

Q4: The Government welcomes views on whether there are any issues that should be considered in respect of career average arrangements

We have no comments.

Q5: The Government welcomes views on whether there are any issues that should be considered in respect of GMPs

We have no comments.

Q6: The Government welcomes views on whether there is any justification for overriding the rules of private sector occupational pension schemes to impose CPI as the measure of increase in prices

We understand the arguments for not imposing a statutory override on all pension schemes.

Q7: The Government welcomes views on whether there are other reasons why a scheme whose rules do contain a modification power would nonetheless be unable to, or find it difficult to, use CPI for indexation and revaluation.

The Government's description of section 67 is unhelpful. The common legal view appears to be that indexation and revaluation are indeed subsisting rights, and therefore it is misleading

to suggest that section 67 does not, in effect, block any exercise of a modification power contained within scheme rules.

We agree that there is a more difficult legal question over where there is a discretion over the method of indexation and whether the exercise of such a discretion could constitute a modification under section 67.

Q8: The Government welcomes views on whether it is right to rule out granting modification powers

We strongly disagree with the Government's position on this and are disappointed that the Government appears to have effectively ruled this option out before it consulted on it.

The majority of scheme rules on indexation and revaluation reflect the individual drafting practices of the lawyers involved or the need to reflect a particular reference period for the increase for ease of calculation and administration. In some cases, the same set of scheme rules may reflect different practices for different sections arising from the historic development of the scheme. We accept that, in some cases, the precise indexation or revaluation increase may have arisen as a result of some negotiation or agreement between trustees, employers and members, but believe that this was not the usual practice.

Our firm belief is that all schemes should be granted the right to modify their rules to incorporate the switch to CPI if they wish to do so. This is the only way to create a level playing field between all schemes, public and private sector. Otherwise, there will be an arbitrary divide between schemes in the public sector and those private sector schemes whose lawyer's drafting preferences have given them a CPI windfall, and those private sector schemes where such a windfall does not exist.

Switching to CPI is not a step that trustees should take lightly and one of the issues that the trustees should take into account is how the existing revaluation or indexation method was decided upon. Any previous negotiations or commitments on the nature of those increases should certainly be taken into account. Nor would we expect trustees simply to agree to such a change on the employer's first asking, but rather that it could be one of the many negotiating points as part of a funding discussion between the trustees and the employer. If a switch to CPI can ensure a speedier repair of a deficit and the return of the scheme to a healthy funding position, then the trustees may well feel able to decide that such a move is indeed in the best interests of the pension scheme members.

The Secretary of State has commented that the reason for not allowing a modification power is the need "to ensure that people can have confidence in their pensions". However, the way in which this policy is being implemented appears to be aimed at ensuring that employers sponsoring pension schemes can have no confidence that pension policy will be implemented fairly.

Q9: The Government welcomes views on whether there would be a way to restrict any modification power to those schemes which had previously adopted RPI solely in order to match the statutory minima.

We believe that the schemes that adopted RPI simply by reason of drafting preference or in order to take advantage of a different reference period are likely to constitute the majority of schemes with RPI in their rules. Our view is that a modification power should be made available to all schemes and that trustees should consider any previous negotiations or commitments on the level of indexation before agreeing to use their modification powers.

Q10: The Government welcomes views on whether you agree the issue of CPI underpins should be addressed

We agree that the legislation should remove the possibility of schemes being required to pay the better of CPI and RPI and welcome the measures contained in the Pensions Bill 2010/11.

However, we are unclear as to why the consultation does not also address the issue of CPI underpins in the context of revaluation in deferment.

Q11: The Government welcomes views on whether there are any other options to address the CPI underpin issue

We have no comments.

Q12: The Government welcomes views on whether the proposed amendments to remove references to RPI from primary legislation are satisfactory.

We have no comments.

Please let me know if I can be of further assistance to you in formulating your proposals in this area.

Yours sincerely,

Eddie Weiss

E L S Weiss

Chairman

The Hundred Group – Pensions Committee