THE SOCIETY OF PENSION PROFESSIONALS
making pensions work

The Society of Pension Professionals (SPP) response to the DWP consultation, "The Occupational Pension Schemes (Collective Money Purchase Schemes) (Extension to Unconnected Multiple Employer Schemes and Miscellaneous Provisions) Regulations 2025

1. Executive Summary

1.1. **The SPP is very supportive of the Government's efforts to legislate for the introduction of Collective Defined Contribution (CDC) legislation for multi-employer and master trust arrangements.**
We believe these regulations are essential to broaden the appeal of CDC to more employers, supporting the Pension Minister's aim *"…to ensure as many savers as possible can take advantage of the numerous benefits of CDC."*

1.2. **We believe the bulk of the proposed regulations, which we note mirror the existing single employer legislation in large parts, serve the intended purpose and capture the key differences between the two regimes.**
However, there are a few points of detail where the proposed regulations may be unduly onerous and could inadvertently constrain activity in this area, and which we therefore urge the Government to revisit. These include:

- The definition of '*promotion and marketing'* activities that trustees are prohibited from taking part in is very broad and could plausibly constrain communications with current or prospective employers that largely form part of good governance of the scheme by trustees.

- There is a potential risk that schemes could at some point in the future inadvertently transition between the connected and unconnected employer regimes, which would pose significant difficulties in practice (not least that the allowable scheme designs differ between the two regimes). Flexibility should be given to allow connected employers to set up a scheme under the unconnected employer regime should they wish (but not the other way round).

- The SPP questions whether the proposed constraints on changes in investment strategy, with the associated requirement to sectionalise, meet the desired legislative intention. In particular, while they would prohibit benefits underpinned by different investment strategies being provided from the same section, they would not prevent significant changes to the investment strategy for an existing section. Further, it is likely to be difficult for trustees to accurately set out in their viability report what changes to investment strategy may cause them to sectionalise the scheme in future when the future environment they may be operating in at that point could be markedly different to the current environment. This may result in trustees including relatively vague or qualitative commentary in this regard, which may serve little purpose.

2. Consultation Response

2.1. **Question 1: Do you think draft regulation 25 delivers the policy intent for the opening of a new section for unconnected multiple employer CDC schemes?**

2.2. We are supportive of the intended flexibility to allow the benefits of risk pooling across employers with different contribution and/or accrual rates. This is key to avoid excessive sectionalisation.

2.3. However, we have concerns with the requirement to specify what changes to the investment strategy would trigger sectionalisation (required to be documented in the Viability Report). We agree that it will be appropriate to sectionalise if there would be material change to qualifying benefits. However, specifying the requirement as "what changes to the investment strategy", rather than specifying what would be viewed as materially different benefits, will be difficult to agree in advance.

2.4. The long-term nature of CDC will mean that over time, the investment strategy will be expected to evolve e.g. reflecting changes in expected return on asset classes, market conditions and new investment opportunities. Following a change in view on long-term expected return on assets, it may be appropriate / necessary to change the asset allocation to maintain the same expected level of benefits / increases. In our view, this should not trigger sectionalisation.

2.5. Further, we would question whether the proposed regulation fully meets the desired legislative intention. In particular, although there would be a need to sectionalise if benefits with different underlying investment strategies were to be provided, the regulations do not seem to restrict the ability of a scheme to make significant changes to investment strategy relative to initial member or employer expectations for existing benefits.

Recommendation 1: This area needs to be revisited to ensure that the regulations meet the policy intent and that the viability report commentary is meaningful.

2.6. **Question 2: Do you think the definition of connected in draft regulation 22 can work effectively to establish whether a scheme is a single or connected employer CDC scheme or an unconnected multiple employer CDC scheme?**

2.7. A: Yes, for the most part, however, we have concerns regarding the practical application of regulation 22 (1) (a) and (3) and way in which the definition in regulation 22 and the new definitions of "single or connected employer scheme" and "unconnected multiple employer scheme" in section 1(3) work. Regulation 22 (1) (a) includes a test referring to two economic positions being the same "as far as practicable". It would be helpful if it specified who has to determine what is "as far as practicable" e.g. the trustee or scheme proprietor. Without a party responsible for determining that it is a question which, in theory, can be settled in any case only by a court.

2.8. Regulation 22 (3) states that a connection following a relevant transfer can exist for "no more than six months". The use of the phrase "no more than" is unhelpful as it does not say when the deemed connection comes to an end within those six months. By contrast in other parts of Regulation 22 (1) references are to a situation pertaining within the previous six months which therefore means the deemed connection ceases on the expiry of a fixed period of 6 months from when that situation ceased.

2.9. It may be possible for a scheme to switch between the new definitions of "single or connected employer scheme" and "unconnected multiple employer scheme" in section 1(3). The test in both definitions in section 1(3) is a factual one with two limbs. The first limb looks at the connection between those employers who "use" the scheme - this must be a test which applies from time to time. The second limb looks at the connection between those employers by whom it is "intended to be used". The test does not specify when this intention is set. Is it at the establishment of the scheme once and for all or is it also to be assessed from time to time? If the latter it would presumably allow for schemes to move between the regimes and / or fall outside them. Further, if the test in that second limb is set at establishment does it become immaterial, at least in the definition of "unconnected multiple employer scheme", whether the scheme is ever used by unconnected employers?

2.10. **Question 3: Do you have any comments on the draft regulations on the fit and proper person requirements?**

2.11. No.

2.12. **Question 4: Do you agree with the functions we have identified for the role of the Chief Investment Officer?**

2.13. No.

2.14. **Question 5: Does the drafting of the scheme design tests deliver the policy intention of providing a sensible measure of whether a scheme's design is sound, at initial application and on an ongoing basis?**

2.15. First gateway test

2.16. The definitions of "projected average annual increase" and the CPI inflation comparison are not very specific – they do not confirm if these should be term dependent or single assumptions (at a particular term), they do not require any stochastic analysis/modelling and don't quantify any level of confidence of achieving annual increases at least as good as the target increases (over a particular time period).

2.17. Further, this test only applies to the calculations done prior to authorisation, based on assumptions about the first 10 years beneficiaries, and therefore only really gives any comfort to the regulator and the employers joining from day one. For employers joining later, the funded increases will most likely in practice have deviated from CPI inflation and, even where an employer specifies that they wish for their members' benefits to target CPI inflation (by paying the equivalent contributions), there is no requirement to carry out any form of test similar to the first gateway test for those members.

2.18. Actuarial equivalence

2.19. The ability for a scheme to demonstrate actuarial equivalence at the employer level but not necessarily at the member level is helpful to facilitate simpler CDC designs, e.g. with fixed uniform accrual rates. Nevertheless, we assume it is understood / intended that the addition of the employer level actuarial equivalence test will require more complex designs than are permitted under the single / connected employer regime, i.e. a fixed uniform accrual design will likely require variable employer contributions. Therefore, it is perhaps more likely that fixed contribution designs with more complex variable accrual will be preferred.

2.20. We agree that it makes sense that, if there are two approaches to equivalence, schemes should not be able to switch between the two approaches, as this would change the exposure of members to systematic cross-subsidies after the starting approach has been communicated to them and they have joined the scheme on that basis.

Recommendation 2: The definitions of "projected average annual increase" need further refinement as set out above.

2.21. **Question 6: Do you have any comments on the drafting of the actuarial equivalence test? Is it clear that the scheme actuary must use the methods and assumptions used in the most recently completed valuation to satisfy the test?**

2.22. The drafting of the actuarial equivalence test makes it clear that the value of benefits accrued must be equal to the total contributions paid. A direct consequence of this is that accrual rate and contribution rate cannot both be fixed from year to year, as the relationship between these two variables will change depending on the assumptions (and underlying market conditions) used to value the accrued benefits.

2.23. We expect that to ensure certainty of cost for employers and members, it will be the contribution rate that will be set. The assumptions used for valuing benefits will then determine the amount of benefit accrued in respect of that year – i.e. the accrual rate. Therefore the accrual rate will naturally have to vary from year to year. Communication to members of the variable nature of benefit accrual will need to be done with care and accuracy to ensure this is fully understood.

2.24. The wording of regulation 32(10)(a) is that value of benefits for this purpose "is to be calculated using the methods and assumptions that would be expected to be used for an actuarial valuation". From this wording it is clear that the method and assumptions used should be suitable for carrying out a valuation (if one were needed at the same date). We note that this is not the same as mandating that the scheme actuary must use "the method and assumptions used in the most recently completed valuation", as stated in question 6 above, although we welcome the use of the more relaxed wording in the regulation to allow for some amount of judgement by the actuary – for example, if there have been material changes that would mean the assumptions used in the last valuation are not appropriate, or in the specific case of an authorisation application where no valuation has yet been completed.

2.25. **Question 7: Do you have any comments on the draft regulations on financial sustainability?**

2.26. The draft regulations update the existing requirements to reflect the different operating structure and additional considerations required by multi-employer CDC arrangements. This includes additional information requirements to set out the soundness of the scheme proprietor and the strategy that would underpin the set-up, ongoing operation and approach to dealing with a triggering event. The requirements of the information and evidence that must be submitted, at the outset and on an ongoing basis, and what The Pensions Regulator will have to consider appear sensible. We note that much of the detail on the specific requirements will be set out in the updated CDC code which the SPP looks forward to reviewing.

2.27. **Question 8: Do you have any comments on the draft regulations on promotion or marketing?**

2.28. Firstly, it should be noted that the promotion and marketing of these new arrangements will be to the employers / companies who will decide which scheme to select and put in place for their employees. Employees do not, at present, have the right to choose their own scheme. That may change if decumulation only CDC schemes are introduced, but that is not what we are considering here.

2.29. In many cases, employers will be supported by specialist benefit consultants in selecting an appropriate CDC scheme, and that expert assistance should be able to help the employer make the right choice for its employees, based on the criteria that are most important for the employer in delivering the scheme to its employees. Therefore, whilst the accuracy and clarity of the promotional and marketing material is important, the institutional buyer should have a higher level of knowledge to challenge the assumptions and claims made.

2.30. However, when considering the promotion and marketing of CDC schemes to individuals, it is likely that more stringent legislation will be needed.

2.31. There is a suggestion that trustees should not be involved in the promotion or marketing of the scheme. Such promotion or marketing activity is broadly defined as "any communication about the scheme for the purpose of inducing an employer to use, or continue to use, the scheme". If an employer is looking to select a CDC scheme, it is not unreasonable for them to want to understand how the trustee of the scheme performs their role to hold the scheme proprietor to account. As drafted, we suspect that trustees of CDC schemes would not want to engage in such a process, as it could be construed as promotion. We suspect that the quality of governance and how the trustee holds the scheme proprietor to account will be a differentiator between some CDC schemes over time, as it has come to be in the DC master trust market. Therefore, as drafted, we think that the restriction on trustees is too broad. Trustees should be able to communicate how they undertake their role, hold the scheme proprietor and the scheme advisers to account, and seek to ensure the good outcome for members, without fear of being penalised for promoting or marketing on behalf of the scheme.

2.32. One thing that is not mentioned is that it will be important to ensure that there are no inducements at play, and that an employer selecting a CDC arrangement is not making the choice because it is being offered beneficial terms on other products as part of a package (e.g. offering preferential life cover benefits alongside CDC scheme membership).

2.33. The regulations set out that any promotion or marketing of the scheme needs to be accurate and consistent with information contained within the viability report. One of the key challenges with CDC schemes will be how the complex information that is produced by the scheme actuary in relation to the soundness of the scheme design and by the trustee in relation to the investment strategy is turned into promotional or marketing material. Any simplification of that information might fall foul of the new regulations if it is decided that by simplifying the message, the scheme has over-promised the potential benefits. However, the expectation is that the material needs to be clear and not misleading.

2.34. Many assumptions and different scenarios will be modelled to support the viability report. As with all modelling, the actual outcome is likely to be different to that modelled. So, whilst it would be "accurate and consistent" to share outcomes from this modelling, how many data points across the range of possible outcomes would be expected to be shared. Giving a single outcome at any point on the range is likely to be misleading, as it might imply some certainty of outcome, which does not exist. Giving a range of outcomes (for example, showing good, average and bad outcomes) would provide a range, but will be more challenging to communicate, and could lead to different schemes using different points on the range of outcomes and therefore one scheme's average outcome might not be comparable to another scheme's average outcome, just because they have used different assumptions.

2.35. Will it also be necessary to share the assumptions that have been made to support the information contained within the promotion and marketing information. There is a risk that a simple promotional brochure ends up being several pages long to include all the necessary small print!

2.36. The intention appears to be that if the information in the viability report changes, the promotion and marketing material will need to be updated. Whilst it should be possible to ensure that any publicly available information is updated within an agreed period of time (what is the expectation, as this is silent at the moment), is there an expectation that anyone who has been provided with promotional or marketing material is sent updated information, given that the information they were sent would now be considered inaccurate or misleading?

2.37. There is a lot of the detail which appears to be left to be expanded upon within a supporting code, and it is important that as much of that detail is provided alongside the regulations, such that the practical impact of the regulations and code together can be considered. Without the detail in the code, there may be areas of concern that are unnecessary, but other innocuous comments in the regulations might take on much greater significance.

Recommendation 3: The restriction on trustees needs to be refined to ensure they can communicate how they undertake their role, hold the scheme proprietor and the scheme advisers to account, and seek to ensure the good outcome for members, without fear of being penalised for promoting or marketing on behalf of the scheme.

Recommendation 4: Greater clarity is needed on the various points above e.g. in relation to inducements, on the calculation and communication of assumptions, on viability report changes and so on.

2.38. **Question 9: Are the draft regulations clear that a trustee's ability to pursue continuity option 3 must not be unduly constrained or fettered and how this would be evidenced to the Regulator?**

2.39. The consultation document clearly sets out the principle that running an unconnected multiple employer CDC scheme as a closed scheme should always be an option if permitted by the legislation. We are concerned that this principle is not clearly reflected in the draft legislation. This is because section 34(5) of the Pension Schemes Act 2021 is not amended and appears to contradict this principle. Section 34(5) applies to all CDC schemes and states that continuity option 3 (running as a closed scheme) can only be pursued by the trustees where the scheme rules allow them to do so. It is not clear whether the requirements of section 9(3)(g) are subject to section 34(5).

2.40. It would be preferable to amend section 34(5) to state that it only applies to CDC schemes with a single or connected employers. Alternatively, section 9(3)(g) could expressly provide that an unconnected multiple employer CDC scheme must contain a rule giving the trustees an unfettered power to pursue continuity option 3 if permitted by legislation. This would remove the potential conflict with section 34(5) because section 9(3)(g) would then expressly require all unconnected multiple employer CDC schemes to contain the relevant power for the purposes of section 34(5). We note that section 17A seems to be predicated on the trustees having such an unfettered power.

2.41. As to the evidential requirements for a trustee's ability to pursue continuity option 3 without any undue constraint or fetter, section 17A provides a non-exhaustive list of circumstances that could be considered a constraint on the trustees when deciding whether to use continuity option.

2.42. We would suggest that restricting the trustees from being required to "follow any other process" is too broad. The trustees will inevitably want to follow a process in order to make a valid decision. However, we think that the legislation should make the point that any process should be determined by the trustees from time to time, with no external influence.

2.43. Finally, it does not appear to be the legislative intent, but we do have some concern that the current drafting of section 17A could give rise to future legislative creep as to what is deemed to be a constraint on the trustee decision to pursue continuity option 3. Paragraph 109 of the consultation document suggests that the scenario envisaged is one in which "a CDC scheme is expected to remain viable and sustainable based on its current asset holdings". Nevertheless the commercial provider may wish to wind it up. Furthermore, section 17A(3) implies that the focus of constraints is largely on the decision making process.

2.44. However, the list in 17A(3) is not framed as being exhaustive of the issues the Pensions Regulator may take into account. There is therefore a risk that in future the Pensions Regulator could take into account other factors, including whether or not the commercial provider has sufficiently funded the CDC scheme to remain viable and sustainable indefinitely based on its current asset holdings. This could require upfront funding of all future scheme expenses by the commercial provider, which would seem to go beyond the formal obligations set out in the Pension Schemes Act 2021. That may create some regulatory uncertainty, which could limit the commercial attractiveness of setting up a CDC scheme. We suggest that the legislation is made clearer as to whether this is a factor the Pensions Regulator could or should take into account (and suggest that it is not).

Recommendation 5: The legislation must make clear that running an unconnected multiple employer CDC scheme as a closed scheme should always be an option if permitted by the legislation.

Recommendation 6: Given restricting the trustees from being required to "follow any other process" is too broad, the legislation should be amended to highlight that any process should be determined by the trustees from time to time, with no external influence.

Recommendation 7: The SPP is concerned that the current drafting of section 17A could give rise to future legislative creep with regards to the need to fund a scheme to be in a position at all times to pursue continuity option 3, and so we suggest that the legislation is made clearer as to whether this is a factor the Pensions Regulator could or should take into account (and suggest that it is not).

2.45. **Question 10: Are the draft regulations clear on how valuation and benefit adjustments should happen?**

2.46. In general, the draft regulations are clear on how valuation and benefit adjustments should happen. We are supportive of the flexibility introduced for different members in the same section to have different annual increase levels, based on the performance of the scheme since their employer joined. However, there are a few places where further clarity would be useful:

- Is the intention of the draft regulations that creating a new tranche at a time of the scheme or an employer's choosing would be allowed? Should a scheme or an employer have the ability to elect to rebase its increases for future accrual and effectively create a new tranche of benefits at any point, without creating a new section? If so, this should be made clear.
- There are circumstances where the requirement that "any change to such adjustment must be applied to all the members of the scheme without variation" will not be possible to comply with. The requirement may not be complied with when the change to the adjustment would result in some (but not all) members' benefits either breaching an upper threshold or resulting in a reduction in benefits in nominal terms. For members receiving a reduction or a one-off increase, their adjustment needs to be different to any members with different levels of increase. Different levels of increase will apply to members in schemes where new employers join at the original pension increase level or where new accrual occurs while there are planned cuts for past accrual.

2.47. **Question 11: Do you think that the significant events listed in draft regulation 44 will provide the information the Regulator needs or are there other significant events that should be added?**

2.48. No suggestion of further events to add.

2.49. **Question 12: Do you have any comments on the draft regulations that provide for ongoing supervision of unconnected multiple employer CDC schemes?**

2.50. No.

2.51. **Question 13: Do you agree with the changes in Part 6 of the draft regulations?**

2.52. Yes.

2.53. **Question 14: Do you agree with the changes in the Miscellaneous Amendment CDC Regulations 2025?**

2.54. Yes.

2.55. **Question 15: What are the financial costs required to establish and run an unconnected multiple employer CDC pension scheme? Please outline any one-off and ongoing costs.**

2.56. We have not considered the costs required to establish and run such a scheme.

2.57. **Question 16: Considering the draft regulations and criteria for authorisation, could you estimate the costs of preparing the information required for authorisation? Please outline the extent and cost of external contractors where they may be required.**

2.58. We have not considered the costs required to establish and run such a scheme.

2.59. **Question 17: How many members do you consider to be a viable minimum in an unconnected multiple employer CDC scheme? Please also include any information you have on target scheme size and source of members.**

2.60. We have not considered this question.

2.61. **Question 18: Considering potential numbers of schemes, employers and members, do you have any information on the likely size and shape of the unconnected multiple employer market once established?**

2.62. We do not.

2.63. **Question 19: Do you have: a) any comments on the impact of our draft regulations on protected groups and/or how any negative effects may be mitigated? b) any other comments about any of our draft regulations?**

2.64. Protected Groups

2.65. It is evident that trustees/providers of CDC schemes will want to take Shariah law into consideration as far as investment strategy is concerned. This may give rise to a sub-optimal investment solution for the membership as a whole (if investment freedom is constrained by Shariah principles) or alternatively may give rise to two or more investment options being facilitated within a single CDC structure. In the latter case, there could be significant operational issues involved in splitting membership to reflect different investment philosophies, including potential GDPR issues when recording religious identity.

2.66. We have not considered whether the inherent uncertainty within CDC decumulation satisfies Shariah law relating to employment contracts. Nor have we considered whether it may be possible to conclude that it is objectively justifiable to operate a non-Sharia compliant CDC scheme if an alternative Sharia compliant DC scheme is available. We believe that it will be necessary for DWP/TPR, CDC providers and employers alike to be able to satisfy themselves that this is the case. Sensibly, a single source of confirmation that can be relied upon by all future parties would avoid the time and unnecessary costs of taking advice separately.

2.67. ONS mortality data demonstrate that both different genders and different ethnicities within the UK population have different mortality rates. We believe that confidence in the CDC model is critical: providers and employers must be satisfied that over or under representation of any gender or ethnicity within the mortality pool will not give rise to standing claims of indirect discrimination under the Equality Act 2010.

2.68. It is widely acknowledged that different age demographics may experience different levels of value from a CDC scheme, irrespective of proposed regulatory interventions to reduce the risk. As above, provider, employer and trustee confidence in CDC can be assured only if they are protected from standing claims on the grounds of age discrimination.

2.69. Any other comments about any of our draft regulations

2.70. Unlike DC Master Trusts, CDC Master Trusts cannot rely on pre-existing assets from a DC scheme unless the ceding trustees, when agreeing their default non-consented transfer, can be confident that the value of benefits transferred-in will never be less than the transfer value plus benchmarked investment growth (which could be either positive or negative). This reality may need to be reflected in providers' Business Plans, and implies that it may be necessary for providers to either include a ringfenced DC sub-section for each new section or to maintain a shadow record.

2.71. There remains some uncertainty as to whether full commutation, for example on the grounds of serious ill health or triviality, is permissible within CDC schemes. We would request that it is clarified within these regulations if that is possible, for both the single / connected employer and the multiple unconnected employer regimes.

Recommendation 8: Further work on Sharia compliance, mortality rates and the impact of age demographics is needed to ensure provider, employer and trustee confidence in CDC can be assured.

Recommendation 9: Clarification is required as to whether or not full commutation, for example on the grounds of serious ill health or triviality, is permissible within CDC schemes.

3. About The Society of Pension Professionals

3.1. Founded in 1958 as the Society of Pension Consultants, today SPP is the representative body for a wide range of providers of pensions advice and services to schemes, trustees and employers. These include actuaries, accountants, lawyers, investment managers, administrators, professional trustees, covenant assessors, consultants and pension specialists.

3.2. Thousands of individuals and pension funds use the services of one or more of the SPP's members, including the overwhelming majority of the 500 largest UK pension funds.

3.3. The SPP seeks to harness the expertise of its 85 corporate members - who collectively employ over 15,000 pension professionals - to deliver a positive impact for savers, the pensions industry and its stakeholders including policymakers and regulators.

4. Further information

4.1. For more information about this consultation response please contact SPP Head of Public Policy & PR at: phil.hall@the-spp.co.uk or telephone the SPP on 0207 353 1688.

4.2. To find out more about the SPP please visit the SPP web site: https://the-spp.co.uk/

4.3. Connect with us on LinkedIn at: https://www.linkedin.com/company/the-society-of-pension-professionals/

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