



THE SOCIETY OF PENSION
PROFESSIONALS

making pensions work

By email only: caxtonhouse.automaticenrolmentconsultation@dw.gov.uk

Dear Department for Work and Pensions
Automatic Enrolment Policy Team
2nd Floor, Zone A
Caxton House
6-12 Tothill Street
London SW1H 9NA

16 June 2023

Dear Department for Work and Pensions- Automatic Enrolment Policy Team

SPP response to DWP Call for Evidence - Automatic enrolment: Alternative quality requirements for defined benefits and hybrid schemes being used as a workplace pension.

We welcome the opportunity to respond to this consultation.

Key Points

The industry continues to use the alternative quality requirement for defined benefit schemes set out in Pensions Act 2008 Section 23A(1)(b) and Regulation 32M of SI2010/772¹. For some employers, this is the most straightforward way to demonstrate that their scheme is of the required standard and we are strongly in favour of retaining this option.

However, there are good quality schemes that cannot use the alternative quality requirement, so further easements, as set out below, would be welcomed.

We also believe that the current alternative CDC test is appropriate for single/connected employer CDC schemes, but a different approach might be appropriate for multi-employer schemes.

¹ <https://www.legislation.gov.uk/uksi/2010/772/regulation/32M>

The Society of Pension Professionals
124 City Road, London, EC1V 2NX T: 020 7353 1688
E: info@the-spp.co.uk www.the-spp.co.uk

A company limited by guarantee. Registered in England and Wales No. 3095982

NOTICE

You may not take any statement in this document as expressing the view of The Society of Pension Professionals or of any organisation, which the maker of the statement represents. Whilst every effort is made to ensure that this document is accurate, you may not assume that any part, or all, of it is accurate or complete. This document is provided for information only. You may not rely on any part, or all, of this document in deciding whether to take any action or to refrain from action. You may not use this document in part or in whole, or reproduce any statement it contains, without the prior consent of The Society of Pension Professionals.

No liability (other than any liability which cannot be excluded by law) arising from your failure to comply with this Notice rests with The Society of Pension Professionals or with any individual or organisation referred to in this document. Liability is not excluded for personal injury or death resulting from The Society of Pension Professionals' (or any other party's) negligence, for fraud or for any matter which it would be illegal to exclude, or to attempt to exclude, liability.

Detailed Response

Question 1. Are the alternative quality requirements for defined benefit and hybrid schemes continuing to deliver the intended simplifications and flexibility for sponsoring employers and pension schemes that are unable to use the TSS?

Yes. The alternative quality requirement set out in the Pensions Act 2008 Section 23A(1)(b) and Regulation 32M of SI2010/772 is continuing to deliver the intended simplifications and flexibility for some sponsoring employers and pension schemes.

As noted in the call for evidence, the alternative tests were brought in to assist employers with formerly contracted-out schemes (which, from April 2016 onwards, would otherwise have needed to ensure that their schemes met the TSS). It continues to be the case that the main use of this test is as a simpler way to prove that the quality requirement is met, not because the scheme/employer is unable to use the TSS.

Question 2. The legislation is not prescriptive about who should apply the alternative quality requirements. In practice, who is carrying out the tests: the employer (i.e. self-certification) or its professional advisers?

In our view, most employers would have sought advice on this issue from an actuarial adviser. However, responsibility for compliance was sometimes retained by the employer, having considered the actuary's advice, because the employer is best placed to confirm that the specifics of their payroll meant it was compliant.

Question 3. Is there anything sponsoring employers or pension schemes want to bring to DWP's attention about the operation of the alternative quality requirements, in particular regarding previously unforeseen issues when compared to the TSS?

Our understanding is that this is a two-step test that:

- a) The relevant earnings (i.e. the pensionable salary) of each and every member in a group is at least as good as one of the definitions in Regulation 32M(9) of SI2010/772; and
- b) The prescribed percentage is at least that set out in subsection (10) of the same regulation.

There continue to be a number of challenges in relation to the salary definition, making it hard for some employers/schemes to formally certify the requirements despite the scheme clearly being more generous than a basic AE alternative. Our reading of the call for evidence is that the DWP is not convinced of the merits of making any changes in relation to the pay definitions for the alternative quality requirement. This is disappointing, especially given that the DWP stated in its response² to the 2020 call for evidence that it was looking to engage with the industry on this issue.

² <https://www.gov.uk/government/consultations/automatic-enrolment-alternative-quality-requirements-for-defined-benefit-and-hybrid-schemes-being-used-as-a-workplace-pension/outcome/automatic-enrolment-alternative-quality-requirements-for-defined-benefit-and-hybrid-schemes-being-used-as-a-workplace-pension>

We have therefore kept our comments on this issue brief, but we are very happy to expand or meet to discuss.

We note that several schemes had considered using the alternative quality requirement but had not done so because they had been unable to meet one of the definitions pay or it would have been too much work, and potentially involved taking legal advice to prove that they did so. Other issues cited included schemes that used deductions from salary of 1.5 x the basic state pension and those that had differences between the definitions of basic pay used in their rules compared to the legislation (for some schemes, those differences might affect only one or two members, but prevent the definition working for everyone). There can also be problems where pensionable salaries are capped (noting that the 2020 response suggested that the Test Scheme Standard (TSS) might be more appropriate where pensionable salary increases are capped or frozen.)

It would be helpful to amend the qualifying test so that members, where the rules limit the benefits to the AA/LTA, can be excluded from the qualifying tests (or where members choose to opt down to do so) and also to expand the enrolment/re-enrolment exemptions to allow employers to exclude members from enrolment/re-enrolment where the member has identified that they are affected by the AA/(unprotected) LTA and therefore wish to opt-out of pension provision.

Finally, we note that the Pensions Minister hopes³ to consult on regulations under the Pensions (Extension of Automatic Enrolment) (No. 2) Bill⁴ in Autumn 2023. If the lower qualifying earnings limit is removed or reduced, then this would improve the benefits under the TSS. As a result, it might be necessary to review the percentage of pay in Regulation 32M(10) of SI2010/772 for the cost of accruals test for consistency.

Both changes could mean a scheme would no longer pass the relevant test.

It would be helpful for there to be transitional provisions so that the assessment as to whether a scheme still meets the qualifying requirements does not need to be undertaken until calculations would in any event be carried out by the actuary. This would be consistent with the approach taken for the cessation of contracting out in April 2016.

Finally, we note that in December 2014 analysis from the Government Actuary's Department (GAD)⁵ suggested that 10% to 12% of qualifying earnings would broadly represent the cost of providing the benefits under the TSS for a typical membership profile. The DWP set the rate at 10%, including 1% for the cost of providing dependant pension benefits.

Recent changes in market conditions may mean that the cost of providing TSS benefits is now lower. However, given that there is a floor to the percentage that can be specified of 8% and that most DB schemes' cost of accruals are well in excess of these percentages, we have not done any detailed analysis on this point. At this stage, we are not pressing for a review of the percentages.

Question 4 (applicable only to CDC schemes). Does the alternative quality requirements for CDC schemes remain appropriate for single and connected employers, and does it remain

³ <https://bills.parliament.uk/bills/3422>

⁴ <https://bills.parliament.uk/bills/3422>

⁵

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/381566/technical-changes-to-automatic-enrolment.pdf

appropriate for the new types of CDC schemes?

The current alternative CDC test looks at the actual collective contributions, which we see as appropriate for single employer schemes that may operate under the current regulations. However, our view is that it will be more appropriate for whole-life multi-employer or master trust CDC to be able to consider the cumulative contributions for each employer rather than the scheme as a whole. There is a similar issue under the DB alternative quality requirements, which is addressed in paragraph 30 of the guidance ([Automatic enrolment: guidance on the alternative quality requirements for defined benefits pension schemes and the defined benefits element of hybrid pension schemes \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/guidance/automatic-enrolment-guidance-on-the-alternative-quality-requirements-for-defined-benefits-pension-schemes-and-the-defined-benefits-element-of-hybrid-pension-schemes)). The issue for CDC could also be addressed in updated guidance.

We also believe that all CDC schemes (and in particular whole-life multi-employer or master trust CDC which provide CDC benefit accumulation based on the principle of providing equivalent value to the contributions paid for each individual) should be able to certify using the alternative quality requirements that currently apply for DC schemes should they wish to do so, i.e. based on the total contribution rate that applies to each individual dependent on the pensionable pay definition.

Response ends

Yours faithfully

Kirsty Cotton,
Defined Benefit Committee, SPP

Edd Collins,
Chair, Collective Defined Contribution Group, SPP

Fred Emden
Chief Executive, SPP

THE SOCIETY OF PENSION PROFESSIONALS (SPP)

SPP is the representative body for the wide range of providers of advice and services to pension schemes, trustees and employers. The breadth of our membership profile is a unique strength for the SPP and includes actuaries, lawyers, investment managers, administrators, professional trustees, covenant assessors, consultants and specialists providing a very wide range of services relating to pension arrangements.

We do not represent any particular type of pension provision nor any one interest-body or group. Our ethos is that better outcomes are achieved for all our stakeholders and pension scheme members when the regulatory framework is clear, practical to operate, and promotes value and trust.



Many 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. The SPP's membership collectively employs some 15,000 people providing pension-related advice and services.