

The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2010

This response is submitted by Unite, the UK's largest trade union with almost 2 million members across the private and public sectors. The union's members work in a range of industries including manufacturing, financial services, print, media, construction, transport and local government, education, health and not for profit sectors.

Unite members place a high priority on securing and maintaining high quality company pension provision. The Union believes that such pensions should be covered by employees contracts of employment and the any changes in pension provision should be subject to a proper process of negotiation and consultation with members.

Unite campaigned for and has taken a particular interest in consultation rights for scheme members, as have been enacted by 'The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006. This response in focused on Regulation 6 of the proposed Regulations, which amends these regulations

Executive Summary

- **Unite welcomes the proposed extension of the listed changes subject to consultation to cover a change in pensionable pay**
- **Regulation should seek to capture a wider range of changes and not just those which are effected by a change in scheme rules**
- **The limitation of the proposal to DB schemes is not justified**

The Unite case in detail

The proposed Regulation extends the present listed changes on which employers are required to consult to include a change in the definition of pensionable earnings in the scheme rules of a defined benefit occupational pension scheme

Unite welcomes this change as helping to fill a clear gap in the current Regulations. However, we would question whether the amendment goes sufficiently far as to capture all situations where a change in pensionable earnings is a concern.

(a) Background to pensionable pay, pay determination and pensions

In order to illustrate why this is so it is necessary to consider the wider legal and the way in which changes in pay come about.

A clear principle in pension law in respect of defined benefit schemes is that benefits once accrued should not be reduced. This is implemented by Section 67 of the 1995 Pensions Act which places a restriction on rule changes which reduce members' accrued rights and only permits them where member consent is obtained.

Where members find fault with Section 67 is that it defines a members accrued rights as being only the amount of benefit they would have if they had left service immediately before an amendment was made. What this means is a deferred benefit increasing in line with statutorily defined inflation linkage. This definition leaves the door open to the spirit of the legislation being fundamentally undermined.

Changes can be made in the basis of future accrual in final salary schemes which may be perceived as reducing the value of past service benefits.

Examples of this could be :-

- Limiting the future growth of pensionable pay below the rate of inflation
- Changing the definition of pensionable pay to exclude elements of pay
- Changing the definition of final pensionable pay

Where such changes occur the legislation is complied with if members are given a guarantee that their pension will not be less than their accrued rights at the date of the change. What this means in practice is that the value of their

future accrual is reduced below the nominal level offered as part of it is required to cover the required guarantee.

A further problem for members is that the normal operation of a scheme can be altered by a deliberate change in the basis by which increases in pay are awarded.

Definitions of 'pensionable pay' in scheme rules vary widely. They can be all inclusive, e.g 'gross earnings' , or specifically limited , e.g 'basic pay', and where limited can admit employer discretion in designation of what is pensionable.

Limited pay definitions leave the door open to changes in practice as do not require any change in scheme rules. A policy can be adopted whereby increases in pay may be awarded in deliberately non-pensionable form. Action of this sort can again lead to a situation where member's accrued rights are artificially reduced. The net additional value of future accrual in the scheme can be severely compromised relative to the value of accrued rights if a member had opted out of future accrual and secured statutory increases in their deferred benefit.

Superimposed on this can be situations where employers choose to use explicit coercion in respect of granting pay increases or promotions deliberately with a view to securing member consent in respect of changes in pension arrangements.

It might be argued by some that changes in pay are quite separate from pensions and that any impact they have on pension provision is incidental and cannot be regulated for in a pension context. This is not how the matter is perceived by members who can find both their future pension and their past service pension significantly compromised as a matter of deliberate employer policy.

(b) How might the Regulation be improved

The Regulation is very specific in limiting its remit to changes in pensionable pay 'in the scheme rules'. This will capture some but not all changes relevant to future pension provision. It will leave other changes in employer practice unregulated which may have equal or greater significance for members' future pension provision.

It would be better if the Regulation and Guidance sought to capture a wider range of changes whereby changes in employer policy in respect of modifying the definition or future growth of pensionable pay are designed to significantly alter the basis of future pension provisions or affect past service rights.

Regulation ought also to try and capture situations where employers seek to modify employees' future pension provision by the use of sanctions which while not directly impacting on pension are designed to induce employees to accept detrimental changes in their future pension provision voluntarily and so avoid any listed changes in rule having to be made

The Regulation is confined in its application to defined benefit schemes. This would seem to derive from the already present listed change in respect of DC schemes which covers a reduction in employer contributions.

It is not clear that this exclusion is wholly justified as it leaves the door open to employers adopting a policy of granting pay increases in non-pensionable form or redefining elements in the pay packet to take pay out of what is defined as pensionable. Such changes could lead to employer contributions being frozen or reduced in a way which compromises members' future pension expectation.

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