

**Automatic enrolment:
Career average schemes as qualifying schemes**

Sacker & Partners LLP's response to consultation

1. Introduction

1.1 The purpose of this document is to set out our comments on the DWP's [consultation](#) on "Automatic enrolment: career average schemes as qualifying schemes".¹

1.2 Sackers is a firm of solicitors specialising in pensions law. We act for in excess of 800 pension schemes, including household names and a number of FTSE-100 clients. The views expressed in Sackers' response to this consultation have been collated following discussions with a sub-group of the firm's solicitors.

2. Background

2.1 We note that the Government's intended policy on career-average revalued earnings (CARE) schemes is to allow them to be used as qualifying schemes for the purposes of automatic enrolment, so long as they provide for the accrued rights to benefits under the scheme to be revalued at, or above, a prescribed minimum rate² at any time when the jobholder's pensionable service is continuing.

2.2 The draft regulations which are the subject of this consultation propose a minor technical amendment to regulation 36³ to allow CARE schemes which provide for a mix of guaranteed and discretionary increases to qualify, provided that the revaluation is funded for and included in the statement of funding principles.

2.3 We welcome the Government's aim to reduce the level of prescription about how revaluation in CARE schemes is achieved while ensuring that the members of these types of scheme remain protected.

2.4 We have one comment on the draft regulations and a related comment which we set out below.

3. Comments

3.1 Regulation 36 is drafted in the negative so that it excludes certain CARE schemes from being qualifying schemes. Under regulation 36(2)(b), a CARE scheme cannot be a qualifying scheme if benefits "are to be revalued at less than the minimum rate". By contrast, the phrasing of new regulation 36(2)(d) expressly states that "benefits are *required* to be revalued at less than the minimum rate..." [our emphasis]. In our view, there is a risk that, if this new provision is inserted without amendment, existing regulation 36(2)(b) becomes less clear.

¹ Published on 30 April 2012

² Regulation 36, The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (SI 2010/772)

³ As above

To address this, we suggest that the word "required" is also inserted in this provision, so that the phraseology of both sub-clauses is the same. For the avoidance of doubt, 36(2)(b) would read: "such benefits are required to be revalued at less than the minimum rate".

- 3.2 Our additional comment relates to regulation 36(4). This provision prescribes the minimum rate of revaluation of accrued benefits. Regulation 36(4) makes reference to "an annual increase" based on the percentage increase in the index "for the year by reference to which the revaluation is made". It is unclear whether in these circumstances revaluation must also be applied in the final year of pensionable service in the relevant CARE scheme, where this is a part year only. It would therefore be helpful if this point could be clarified.

Sacker & Partners LLP
11 June 2012