



## BRITISH STEEL PENSION SCHEME

ICAEW welcomes the opportunity to comment on the British Steel Pension Scheme published by DWP on 26 May, a copy of which is available from this [link](#).

This ICAEW response of 23 June 2016 reflects consultation with the Pensions Sub-Committee of the Business Law Committee which includes representatives from public practice and the business community. The Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.

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## MAJOR POINTS

1. We are, of course, sympathetic to the plight of the employer business, its employees and the members of BSPS and the difficult position they are in. However, we believe that the government should find a solution that does not require changes in pension law to be made in such a short timeframe.
2. The consultation paper refers to the 'exceptionality of the situation' but an event such as this was entirely predictable and pensions law has developed in the knowledge of this. Pensions law has complex provisions which have been carefully balanced between members, employers, taxpayers and the industry through levies.
3. Each potential insolvency situation will have its own particular features and introducing changes in pensions law in reactive way without allowing adequate time for consultation and consideration may result in unfair outcomes for others and other unintended consequences. For instance, if it is made easier for schemes to reduce benefits, there is a possibility that a company with a large deficit might try to reduce its exposure arguing that it could not otherwise continue in business when, in fact, it could but would need to service a large deficit. Or a purchaser that would really be prepared to buy the business with its scheme might not admit that and instead press for similar legislation or treatment.
4. The paper identifies a number of features of this case that may be unique or rare, but it is not clear to us that any of these features are ones that should shape the UK's pensions laws. In particular, creating a pensions regime which produces different results according to geographic location (or levels of economic deprivation) [or number of members] could be fraught with difficulty and produce results that many would consider to be unfair. Similarly, while the steel sector may be important to the UK economy, it is not clear to us why different pensions laws should be applied to it; other sectors are important too.
5. Some of the proposals involve changes in law that would apply to schemes in similar circumstances (implying that BSPS is not, after all, a unique case). But even where the alternatives are being put forward to deal with BSPS as a unique case and on a one-off basis (as is suggested in respect of Option 3), changes in the law for this may create expectations of similar treatment for others in future and so increase uncertainty in a sphere of life where stability is important.
6. The consultation offers only limited options, but others might be open to the government, including nationalising the business involved or, perhaps, assuming the pensions assets and liabilities itself in the course of a restructuring exercise. This need not be for all of the scheme – for instance, it may only be needed for pensioners, if the transfer value allowed the remaining scheme to be fully funded.
7. We would like to see government policy on pensions generally guided by long term thinking, not driven by what could be perceived as short term political imperatives.

## RESPONSES TO SPECIFIC QUESTIONS

### Consultation questions

**Question 1. Would existing regulatory levers be sufficient to achieve a good outcome for all concerned?**

8. There is no 'good' outcome, absent a sponsoring employer prepared to fund the scheme. The current mechanisms (eg PPF and RAA) are designed to produce fair results in these sorts of situation, but may, of course, result in more favourable outcomes for some than others.

**Question 2. Is it appropriate to make modifications of this type to members' benefits in order to improve the sustainability of a pension scheme?**

9. As noted in the consultation, the scheme is only sustainable if the employer commits to sponsoring it on the proposed basis and remains solvent in the long term.
10. The section on option 3 compares the position under that option with that if scheme were to fall into PPF but does not show how an RAA might result in a more favourable outcome. It also identifies those who would stand to benefit most as those who would otherwise be subject to the PPF cap (ie those with the highest pensions). We do not believe that the paper explains sufficiently why it would be fair for this group to benefit at the expense of others. We do not comment on which, if any, group is more deserving, but as noted in our introductory comments, there would need to be a very compelling case to merit legislation to alter the priorities that apply under existing law designed to balance competing interests in a fair way.

**Question 3. Is there a case for disapplying the section 67 subsisting rights provisions for the BSPS in order to allow the scheme to reduce indexation and revaluation if it means that most (but not all) members would receive more than PPF levels of compensation?**

11. We appreciate that obtaining consent from all members of a large scheme may be impracticable for logistical reasons if nothing else, but that applies to all large schemes, not just BSPS. The legislative framework is designed to protect subsisting rights and our understanding is that the consent route was only ever intended to be a rarely-used exception. Paragraph 106 of the paper says that ‘many’ members would receive a higher income than they would in the PPF. If this means that some would receive less than they would in the PPF (or RAA), it begs the question why they would vote for it. The proposal therefore seems to be a mechanism to disenfranchise those who would be disadvantaged.

**Question 4. Is there a case for making regulatory changes to allow trustees to transfer scheme members into a new successor scheme with reduced benefit entitlement without consent, in order to ensure they would receive better than PPF level benefits?**

12. There might be a case, but we think that the content of this consultation paper and the time allowed for consultation are inadequate for the issue to be considered appropriately.

**Question 5. How would a new scheme best be run and governed?**

13. No comment.

**Question 6. How might the Government best ensure that any surplus is used in the best interest of the scheme’s members?**

14. No comment.

**Question 7. What conditions need to be met to ensure that regulations achieve the objective of allowing TSUK to reduce the levels of indexation and revaluation payable on future payment of accrued pension in the BSPS without the need for member consent, balancing the need to ensure that member’s rights are not unduly compromised?**

15. No comment.

**Question 8. What conditions need to be met to ensure that regulations achieve the objective of allowing trustees to transfer members to a new scheme without the need for member consent, balancing the need to ensure that members’ rights are not unduly compromised?**

16. No comment.