17 December 2013

Our ref: ICAEW Rep 176/13

Mrs Alison Humberstone OBE
Pensions Protection and Stewardship Division
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Dear Mrs Humberstone

Bridge Consultation

ICAEW welcomes the opportunity to comment on the Consultation - *The Pensions Act 2011 (Transitional and Consequential Provisions) Regulations 2014* published by Department for Work and Pensions on 1 November 2013, a copy of which is available from this link.

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 140,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

This response reflects consultation with the ICAEW Pensions Subcommittee 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.

The broad thrust of your proposals is to reverse the effect of the Supreme Court decision in *Bridge*. Fundamentally, this is a public policy decision which is for ministers to make and our comments relate to the practicality and fairness of implementing the policy in the detailed way in which you propose. A simplistic summary of the policy is that a number of benefits which the Supreme Court held in *Bridge* to be money purchase are to have their status changed so that they are treated as defined benefit. There are a number of different categories of such benefit but for the purposes of this letter we call them 'Bridge Benefits' and where relevant we also use the terms 'Bridge Liabilities' and 'Bridge Assets' to mean the liabilities and assets relating to such benefits.

A major part of your proposed policy is to make the amendments to reclassify Bridge Benefits retrospective to 1 January 1997 and in some cases retrospective to 28 July 2011, the day after the Supreme Court Judgment in *Bridge* and the date on which the Government announced that it would make retrospective changes of the kind now described in detail in the draft Regulations.

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We understand the policy intention to provide comfort to relevant stakeholders who may have taken action in reliance on the Government announcement that Bridge Benefits, Bridge Assets and Bridge Liabilities would all be changed with retrospective effect from 28 July 2011. However we have a fundamental concern that no such stakeholder would have had legal certainty that such changes would have been made or the detail of them and that the correct analysis of the law in the period from 28 July 2011 (and indeed before it) to the date when these regulations are passed is that Bridge Benefits were money purchase benefits and that Bridge Assets and Bridge Liabilities should be treated accordingly.

In our view it would be wholly improper for the proposed Regulations to provide that any person would be in jeopardy as a result of correctly applying the law as it stood prior to these Regulations being passed. This would include parties to corporate transactions where section 75 may have applied and been taken into account, warranties given that benefits were money purchase or were not defined benefit, scheme accounts for any period which closed before the effective date of the Regulations, company accounts reporting on defined benefit obligations (and money purchase pension obligations) in the period prior to the Regulations taking effect, scheme mergers, pensions bulk transfers, apportionment arrangements, reduced transfer values and pension sharing on divorce.

On the other hand, we recognise that in certain circumstances relevant stakeholders would have had a legitimate expectation that the Government would deliver on its announcement that legislation would be retrospective and so it would appear that there may be unfairness if some retrospection was not provided for. In our opinion the correct approach to solving this difficulty is to provide for permissive retrospection exonerating parties in transactions where they applied the ‘future legislation’ without condemning or placing in jeopardy parties who followed the law as set out by the Supreme Court in *Bridge*.

Taking into account the ICAEW's role we have specific concern that no retrospection should be applied to the treatment of either pension scheme or sponsoring employer audited accounts or financial statements as, properly advised, the preparers and the auditors of those accounts and statements would have had to follow the legislation in force at the time and could not have varied their approach based on a non-binding ministerial statement regarding future legislative intentions such as that made on 28 July 2011. While we would need to consider the impact of the proposed changes more fully in this respect (if they were to be implemented as proposed), we cannot overstate how concerned we would be if there was to be any suggestion of retrospectivity in the treatment of Bridge Assets and Bridge Liabilities for the purposes of corporate accounting periods which have already closed. Potential investors, actual shareholders, directors and other interested parties have an expectation that UK corporate entities report their financial position on a basis that is certain and provides for valid comparison between different entities and for consolidation where appropriate between connected entities. Indeed, we would normally expect a transitional period of at least twelve months to be given for implementation of changes affecting accounting treatment.

We have some concern that the position regarding schemes with a guaranteed rate of return or with a defined benefit underpin, may not yet have been fully worked through. In particular where a member has a significant money purchase pot with an insignificant defined benefit underpin it would appear to us to be disproportionate to place the administrative, technical and legal burdens of running a defined benefit scheme on the trustees of such a scheme. We would respectfully suggest that there is room for some amendment to be made to the section 67 regime on amendments to pension schemes to allow for such benefits to be treated as wholly money purchase going forward providing some actuarial test is met. We recognise that in terms of legislative timing such a proposal may need to be considered as part of a second stage of post-*Bridge* legislation.

Finally, we note that a short consultation period of 6 weeks was designated for this consultation. We do not think this adequate to consider all the potential ramifications were the changes to be made as proposed and we have therefore commented on the main issue of principle only at this stage.

Yours sincerely

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