18 October 2011

Our ref: ICAEW Rep 100/11

Adrian Mallen
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By email: workplacepensionreform.consultation@dwp.gsi.gov.uk

Dear Mr Mallen

Workplace Pension Reform – Completing the legislative framework for Automatic Enrolment

The ICAEW is pleased to respond to your request for comments on *Workplace Pension Reform – Completing the legislative framework for Automatic Enrolment*.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

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ICAEW REPRESENTATION

WORKPLACE PENSION REFORM – COMPLETING THE LEGISLATIVE FRAMEWORK FOR AUTOMATIC ENROLMENT

Memorandum of comment submitted in October 2011 by the ICAEW, in response to Department for Work and Pensions consultation paper Workplace Pension Reform – Completing the legislative framework for Automatic Enrolment published in July 2011

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation paper *Workplace Pension Reform – Completing the legislative framework for Automatic Enrolment* published by Department for Work and Pensions on 19 July 2011. A copy of which is available from this link.

WHO WE ARE

2. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter which obliges us to work 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 136,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

3. 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.

4. This response reflects consultation with the ICAEW 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.

COMMENTS ON THE FORMAT OF THE CONSULTATION

5. We note that the consultation included:

- draft guidance for comment, which is in a PDF format but which includes no paragraph or page numbers to refer to; and

- draft amending regulations, without including a complete consolidated set of the regulations as amended by the proposals (eg, as a separate Annex), because it is very difficult to review the amending regulations in isolation, meaning that all respondents need to 're-invent the wheel' by reviewing the amending regulations alongside the underlying regulations (and we note that this is something we requested in May 2011, when commenting on an earlier draft of the consultation). An example of the confusion this can cause is that it is unclear whether consultation references to provisions in the regulations are to the paragraphs of the amending regulations or the underlying regulations. Also, [new] Part 6, which would be inserted by Regulation 23 of the draft *Automatic Enrolment (Miscellaneous Amendments) Regulations 2011,* appears before Part 5 of those regulations, which again causes confusion.

6. We consider that these made it very difficult for respondents and we therefore request that future consultations are issued in a manner that is better designed to facilitate review and response.

MAJOR POINTS

General comments on auto-enrolment

7. We strongly recommend that new consolidated regulations are issued (with the old regulations withdrawn), rather than amending the existing regulations. Otherwise, the legislation is very hard to follow. In the absence of this, the DWP should publish a composite, consolidated

version of the regulations, because not everyone will subscribe to the commercial databases that produce such composite versions. This should be accompanied by an explanatory booklet, which should include a 'critical path' timeline illustration by reference to their staging date so that employers can readily see by when they are required to carry out the various requirements, for example, sending certain information to their various categories of staff if the employer intends to take advantage of the permitted 3 month waiting period.

8. To minimise the burdens on employers, we believe that HMRC's free-to-use software, which many smaller employers use to calculate PAYE and NIC, should be upgraded so that it is capable of calculating the minimum statutory contributions, to avoid an additional burden for such smaller employers who currently rely on this software. It is important that DWP and tPR engage with HMRC to ensure that this is implemented, and we have also raised this issue with the Pensions Regulator, urging them to engage with HMRC on this issue so that upgrades are in place by the time smaller employers are staged into the regime (currently 2014).

9. We also believe that it would be beneficial to have some form of accreditation system or 'kite mark' for payroll software, to demonstrate that is it able to calculate minimum statutory contributions, and also indicate whether it can determine the contributions payable under the various Tiers under the certification guidance. Such accreditation system could be market-led, and we would be very happy to work with the Pensions Regulator to assist with developing such an accreditation system, so that employers can invest in new or upgraded software products with some degree of comfort that it can be used in order to comply with the new duties. We have also raised these issues regarding HMRC software and software accreditation with tPR.

10. We strongly support the proposal on Page 31 of the consultation that the due date for electronic payment of pension contributions to schemes should be aligned with HMRC's 'due date' of the 22nd of the month, which is a measure we have previously recommended.

General comments on certification

11. We note that section 28 is being amended (by section 11 of the Pensions Bill currently before Parliament) to permit employers to certify

- **EITHER** under s28(2)(a) that the scheme is in the opinion of the person giving the certificate able to satisfy the relevant quality requirement throughout the certification period in relation to relevant jobholders of the employer who are active members of the scheme
- **OR** under the s28(2)(b) as satisfying the 'prescribed alternative requirement' (ie, the 3 Tier alternative quality test).

12. We attach a mark-up of section 28 in the Appendix, for convenience, in which we have made some drafting comments. We very much support the inclusion of ss(2)(a) as this gives employers the ability to certify on grounds other than the Tier tests, for example, by using their internal audit function to confirm minimum contributions will be met. We note that this method of certification is envisaged in the draft regulations, eg under regulation 32H(1)(a) refers to a certificate being with respect to a relevant quality requirement (ie for certificates given under s28(2)(a) or an alternative requirement (ie for certificates given under s28(2)(b)). However, the draft guidance does not deal with employers giving certificates under s28(2)(a), and we therefore believe this should be addressed by amending the guidance to include such additional guidance. In particular, it is very important for employers to have guidance on what tPR would consider to be reasonable grounds for certifying under s28(2)(a), (see paragraph 13 below). (We note that an earlier version of the guidance included the wording 'However, you can still certify your scheme if it meets the relevant quality requirement but you will not be able use the test in the format set out below', which we had assumed was intended to cover certification under s28(2)(a) and which we requested should be elaborated to deal with this in our informal comments which we submitted to the DWP in May 2011.)

13. It should be made clearer, up front in the certification guidance, what the benefits of certification would be for employers. We understand the benefits are that:

i) Provided the certificate/opinion was given on reasonable grounds, the Regulator cannot require the employer to make good any shortfalls that have occurred ie, where some contributions have fallen short of the statutory minimum in any weekly/monthly period.

ii) This effectively means that, while a certificate is in issue, provided it was given on reasonable grounds:
   a. there is no need for the employer to do on-going weekly/monthly checks/reconciliations to ensure the minimum statutory contributions are being paid on the band of qualifying earnings on a weekly or monthly basis; and
   b. (more importantly), employers will not be required to go back and re-wind payroll to correct any such errors, which can be very burdensome and expensive as it will require that shortfalls are calculated as at the date the contributions should have been made, reflecting what their current value would have been had they been deducted and invested on the original due date). Nor can the Regulator impose any financial penalties in respect of any such shortfalls.

iii) When renewing the certificate, the employer is required to check whether any such shortfalls have occurred during the previous certification period and, provided action is taken to rectify such errors going forward (ie for the 'renewal' certification period), the employer can continue certifying and thus benefitting from the above.

14. It is therefore very important that the guidance should make it clear what the Regulator would consider to be reasonable grounds for the opinion (as otherwise the Regulator can treat the certificate as void). For example, if a review of the previous 12 months of earnings was carried out at the time the opinion/certification was given, and such review indicated that no shortfalls would arise, that would be considered to be reasonable grounds. We should welcome clarification of what would be reasonable grounds for a new employer, who only has payroll records for less than 12 months.

15. We also believe that it should be made clear, up front in the guidance, if appropriate records for the previous 12 months (some of which may fall in the previous tax year) need to be kept in order to certify, as this is something that employers will need to do well in advance of their staging date.

16. Page 35 of the consultation refers to the draft certification guidance, which sets out that the certificate should be in place from the staging date. The reasons given for this are that it will '*make it a simpler process for employers, since even if an employer chooses to use a waiting period they may have people opt-in during that period. Otherwise, if an individual opted in an employer might not have time to complete the certification arrangements.*' We do **not** support this approach. We believe that most employees will not 'opt in' during any waiting period and this means that the Tier tests (especially Tier 2) will be skewed and probably could not be met. It makes much more sense for employers to begin the certification period on their deferral date (and to ensure they pay statutory minimum contributions in respect of any employees who opt in).

17. Further, we also note that page 16 of the consultation envisages that an employer can apply two or more different deferral dates in order to stagger auto-enrolment across the workforce and we envisage that employers may wish to do this in respect of different categories of staff (for example, having a different date for weekly v, monthly paid staff). We support this and further we suggest that employers should be able to certify separately in respect of such different categories of staff, each such certificate commencing on the relevant deferral date.

General comments on seafarers and offshore workers

18. It needs to be borne in mind that most seafarers and offshore workers have offshore employers. It will not be possible to enforce auto-enrolment obligations on such employers. We suggest that DWP has regard to how HMRC has resolved this same problem for NIC. The territorial limit for NIC liability is smaller than is proposed for auto-enrolment, and employers are encouraged voluntarily to deduct and account to HMRC for employee-only contributions on behalf of employees who are technically obliged to account direct to HMRC for NIC. In other words, we suggest that the only way that the employees of offshore employers will be able in big numbers to be brought into the auto-enrolment regime will be to enable offshore employers voluntarily to auto-enrol employees and deduct and pay only the employee contribution.

Other general comments on the consultation

19. We note that the discussion paper mentions at page 9 that the DWP is undertaking a re-assessment of the existing disclosure regulations, which require private pension schemes to provide information to individuals. As part of this, DWP is intending to consolidate the main ;'disclosure of information' requirements into one statutory instrument – streamlining the provisions to achieve consistency, where possible, and is intending to consult separately on these issues We would support such an overhaul of these regulations, and would urge the DWP to do this as a matter of urgency. We suggest that this could be fast tracked under the reducing red tape initiative, as we understand it is intended that measures implemented under this initiative are implemented on an accelerated basis.

RESPONSES TO SPECIFIC QUESTIONS

Pay reference periods

Q1. We seek views on whether abolition of the Person A rule is a sensible approach. (page 19 of condoc)

20. We do not agree that the introduction of the (higher) earnings 'trigger' will reduce the likelihood of employees accidentally acquiring jobholder status. We understand that many employees currently like to keep their earnings just under the PAYE threshold, for example part time staff, and such employees could very easily accidentally 'spike' over the weekly/monthly (but not annual) earnings trigger. For example, this could happen when such staff do a lot of overtime, for instance, if they do double shifts to cover for colleague sickness or if seasonal workers do extra to cover peak times (eg, to cover harvest, lambing or the Christmas period).

21. We acknowledge that the introduction of the earnings trigger does mean that, once such employees have accidentally acquired jobholder status, they would be more likely to continue to have earnings above the NIC LEL. This in turn would mean that contributions would be more likely to be payable in the future unless they opt out. However, given the significant drop in net income that they would suffer, we fear that they are likely to opt out. Disappointingly the consultation does not consider the financial impact of this on employees who do accidentally 'trip' into the regime. These people will have their contributions based on the band of earnings starting from the much lower threshold of the NIC LEL meaning that, even if such employees opt out, they could suffer cash flow issues until such contributions are refunded.

22. The employer cannot be seen to discourage enrolment so may feel unable to inform or educate their employees about these possible implications, because they may fear that such a warning to those hovering below the PAYE threshold might be construed as discouraging enrolment.

23. However, we also acknowledge that the Person A regime introduces a burden on employers, who would have to maintain records over a rolling twelve month period in respect of those

earning below the trigger, in order to be able to determine whether they fall below the annual limit.

24. We therefore do not agree that the Person A rule no longer has any practical application, and we believe that the DWP needs to consider (and consult on) the above considerations before determining whether it should be abolished.

Q2. Are there any specific examples of where and how the Person A rule would otherwise be used? (page 19 of condoc)

25. Please see our comments at Q1 above, ie we believe that even with the introduction of the 'earnings trigger', the Person A rules would still be widely applicable in reducing the likelihood of employees accidentally acquiring jobholder status, albeit that ongoing contributions are more likely to be payable by such accidental jobholders.

Waiting periods

Q3. Is a period of one week from the day following the starting day sufficient time for all employers to issue a notice? (page 26 of condoc)

26. We note the following would be considered to be 'starting days', which are the dates at which a waiting period can be applied in order for there to be a deferral date for auto-enrolling:

i) at the employer's initial 'staging' into the regime - which we consider should be referred to as the employer's 'staging' or 'transitional' waiting period/deferral date;

ii) the date at which an existing worker becomes eligible for auto-enrolment by virtue of earnings or age – which we consider should be referred to as the 'jobholder eligibility' waiting period/deferral date; and

iii) the date on which new staff are hired - which we consider should be referred to as a 'new joiner' waiting period/deferral date.

27. It seems illogical for this to include the staging date but not the employer's triennial re-enrolment date. For instance, an employer may wish to adopt a waiting period at re-enrolment in order to align the re-enrolment dates for (previously-opted-out) staff with existing payroll arrangements. We acknowledge that an employer will have the ability to change their triennial re-enrolment date by up to three months, and the formalities for changing the re-enrolment date are not arduous (currently this appears to be solely at the discretion of the employer[1]) and so some employers could use this flexibility to align with pay cycles. However, some employers may wish to choose different deferral dates, for example, one for weekly paid workers and another for those paid on a monthly or 4 weekly cycle, and so it would seem sensible for 'employer's triennial re-enrolment' to be added as an additional point at which a waiting period can be applied for their various different categories of staff (see the list on page 24 of the consultation).

28. We consider a time limit of one week from the 'starting dates' described above at i) and iii) is a reasonable time limit for notice to be given to weekly paid employees regarding the waiting period and their right to opt in. However, this will be challenging for employers in respect of employees becoming eligible under ii) above, especially where employees have unusual work patterns, and employers should perhaps be given longer in respect of employees becoming eligible by virtue of earnings. In respect of monthly paid employees, a one week limit is likely to be unworkable, particularly in relation to employees becoming eligible under ii) above as the employer systems for monitoring staff earnings/ages in respect of monthly paid workers may not be able to cope with such a notification deadline. We would therefore suggest that the notice period should be linked to the relevant staff pay period, so it would be a week for weekly paid employees and a month for monthly paid. If that general proposition is not considered to be appropriate, the time limit for monthly paids should (like our suggestion above for weekly

[1] Regulation 12 of The Occupational and Personal Pensions Schemes (Automatic Enrolment) Regulations 2010 (S.I 2010/ 772, available at http://www.legislation.gov.uk/uksi/2010/772/contents/made), as amended by the current proposals.

paids) be at least a month in respect of employees becoming eligible as described at ii) above. We agree that employers should also continue to be permitted to send out notices earlier than these deadlines (for instance, with employment contracts or joining packs that might be sent to new joiners a month in advance of their joining date).

Q4. Will employers use a second waiting period? (page 26 of condoc)

29. We think the description of 'additional' or 'second' waiting period is confusing – please see Q3 above for our alternative suggestions.

30. Yes, we believe that employers will wish to utilise the waiting periods under ii) and iii) (ie for jobholders who become eligible or are newly hired) in addition to the waiting period at staging described at i) above. For example, employers with a high staff turnover may wish to utilise a waiting period in respect of short term staff who are hired towards the end of the employer's 'staging' waiting period, or more permanent staff who are joining part way through a payroll period, to avoid having to deal with partial contribution periods.

Q5. For employers using a second waiting period, is a period of one week from the day following the starting day sufficient time for these employers to issue a notice, given that weekly paid employees are generally paid one week in arrears and automatic enrolment should occur from the beginning of the relevant pay reference period? Any extension to this period would have to be balanced with not eating too far into the opt-in window as described above. (page 26 of condoc)

31. See our comments at Q4 above, ie that we think the description of 'additional', 'further' or 'second' waiting period is confusing and at Q3 above for our alternative suggestions.

32. We believe that the 'second' waiting period referred to in this Q5 relates to the 'eligibility' starting date that we describe under ii) above, and therefore we have addressed this question at paragraph 28 above. We stress that this question does not consider the fact that some employees will be paid on a monthly basis, and that a one week deadline may not be reasonable in respect of 'jobholder eligibility' waiting periods as monitoring processes for staff earnings may not be able to cope with such a notification deadline.

Certification

33. We note that the second paragraph on page 34 of the consultation states that employers may wish to certify if their pension arrangements do not explicitly provide for the statutory minimums (ie 8% total, of which at least 3% is from the employer). However, this misses the point that we make at paragraph 13 above, which is that one of the main benefits of certification is that employers would not need to unwind payroll and calculate contribution shortfalls in the case of (unforeseen) payroll errors/contribution shortfalls, meaning that we believe that even employers who have pension arrangements that do provide for the statutory minimum contribution rates may well wish to certify.

34. We note that on page 34 of the consultation, the text above the bullet points describing the Tier tests should be amended to read 'The test requires that the employer's scheme satisfy at least one of the following for each **relevant** jobholder'.

35. We note the proposal on page 36 that employees should be permitted to seek a copy of the certificate. However, we think that the employer should be permitted to redact any personal information (such as pay bands) relating to other employees that is included on the face of the certificate.

36. We note that page 37 refers to draft paragraph 32H in the regulations, under which an employer can be required to make up the shortfall where a certificate is considered to be void. In some circumstances, the proposal is that these shortfalls are calculated by reference to amounts payable under the certification test. We do not support this approach, and we

instead believe that shortfalls should always be calculated by reference to the statutory minimum contributions.

37. We thank the DWP for providing us with a word version of the certification guidance, and we propose to send our comments on it by way of a mark-up of the guidance that we will submit to the DWP as soon as possible. At that time, we will also provide comments on the draft certification regulations.

Q6. Does the proposed approach to relevant earnings give the right balance between a workable definition for employers in using certification and protection of individuals? (page 35 of condoc)

38. Yes, we support the proposed approach of providing that 'pensionable earnings' for the purposes of the Tier tests should be whichever is greater of basic pay or pensionable pay.

39. However, we consider that it is confusing that 'pensionable earnings' appears twice in the description/explanation/definition, and we would suggest drafting changes, which could be as follows:
'*By "pensionable earnings" we mean whichever is the higher of the employer's definition of pensionable ~~earnings~~pay or basic pay, from pound one. Basic pay would be the elements of pay that do not vary, and therefore excludes variable elements of pay such as commission, bonuses and overtime*.'

Q7. Does the [maximum] 12 month period for certification seem reasonable given that it is to support an easement for employers? (page 35 of condoc)

40. Yes, we support the proposed approach of having a 12 month maximum.

Seafarers and offshore workers

41. Most mariners currently have offshore employers. It would be very unusual for such employers to structure themselves so as to incur employer NIC. They avoid incurring employer NIC by ensuring that none of their land-based staff is based in the UK. We understand the Chamber of Shipping is gathering information regarding the size of these employers, how many employees they employ and where they are based and so we recommend that DWP considers the CoS findings when considering these workers. We believe that Table 2 is unrealistic, as it assumes that the majority of employers will have at least one land-based worker in the UK. We have therefore not answered the specific consultation questions, as they are based on this erroneous assumption, but we make the following general comments.

42. It appears that the new auto-enrolment regime will cover those who are working in or ordinarily work in the UK. This is inconsistent with the most recent amendment of the NIC Regulations, which provides that only ABCD waters (as defined in maritime legislation – essentially inshore waters) are included in the NIC regime. By way of example, employers such as P&O ferries will come within the auto-enrolment rules for workers in UK territorial waters, ie out to the 12 mile limit, but are no longer subject to the NIC rules outside inshore waters.

43. We should welcome clarification of exactly what is meant by 'working in' the UK. Will it include someone who visits a UK port or UK territorial waters only for a few days? What about aircrew who land at Heathrow for a few hours? Or other workers who come into a UK airport for a few hours? Common sense would suggest that these workers should not be included.

44. Presumably the regime will catch individuals working on the UK Continental Shelf and if so we have the offshore employer to consider. For example, individuals working in the oil and gas industries have an NIC liability by virtue of being deemed resident in the UK but workers in other industries are not. Again, we should welcome confirmation that mariners on vessels crossing part of the UK Continental Shelf can be ignored.

45. Looking again at Table 2, if the level of the existing pension provision is already good, the projected cost of £7 million seems high.

46. Where there is an offshore employer, we query whether in practical terms legislation can impose an employer charge. We note that even HMRC recognises that it cannot pursue non-UK employers for NIC, whereas the DWP's consultation paper seems bullish on this point.

47. Table 1 suggests that 85% of UK officers and 20% of UK ratings are already in the maritime pension fund or another pension scheme. Membership of a scheme of some sort is likely to have been made available to the majority but those who have not joined have already declined. This suggests to us that the estimated opt-out figure is too low.

48. The figure cited in Table 1 of 5,000 foreign nationals ordinarily employed in the UK may appears high on first blush but we suggest that given the current objections many have to paying NIC, the opt-out estimate may be too low.

49. Currently these workers are supposed to account for employee NIC direct to HMRC; there is no employer NIC contribution. HMRC encourages employers voluntarily to deduct and pay to HMRC the employee NIC on behalf of their employees, and many employers do this, partly because they suspect that otherwise their employees may omit to meet their obligations and partly because doing so does not make them liable to an employer NIC liability.

50. We suggest that DWP, instead of imposing on offshore employers an unenforceable obligation to auto-enrol employees, makes available a voluntary procedure under which such offshore employers are encouraged to auto-enrol employees and deduct and pay an employee pension contribution (to overcome the inertia issue) but would not be required to pay an employer contribution, ie, similar to the NIC procedure.

51. Failing this, there may be a risk that offshore employers will no longer be willing to pay the employee NIC on a voluntary basis if they are pursued for auto-enrolment employer pension contributions.

52. Where employees from overseas are working in the UK and paying, under a cross-border social security agreement, foreign social security contributions which contribute to an overseas state pension, it is arguable that auto-enrolment contributions are not payable because they are social security contributions which are already being paid in the other country. We have raised this point before but are not aware that it has been addressed.

53. We wonder how the auto-enrolment regime will interact with the Maritime Labour Convention due to be introduced in 2012. One of the features of that convention is that all mariners should have cover for healthcare and benefits. Current UK NIC legislation does not impose a liability for non-EU residents.

Q8. Do you agree with the estimates provided in summary form and in full in the Impact Assessment which accompanies this consultation of (a) economic costs to businesses and (b) benefits to individuals? If not, please provide estimates and supporting information. (page 45 of condoc)

54. We note that the impact assessment covers only the seafarers and offshore workers proposals. Please also see our comments above.

Q9. Do you agree with the estimates provided in summary form and in full in the Impact Assessment which accompanies this consultation of the average earnings for different types of worker? If not please provide estimates and supporting information. (page 45 of condoc)

55. Please see our comments above.

Q10. Can you provide any evidence relating to the number of firms (a) employing eligible seafarers, (b) employing offshore workers and (c) the sizes of those firms? (page 45 of condoc)

56. Please see our comments above.

Q11. Can you provide any evidence which would assist the Government in developing a full understanding of the likely impact of automatic enrolment on the shipping industry? (page 45 of condoc)

57. Please see our comments above.

Q12. Can you provide any evidence which would assist the Government in developing a full understanding of the likely impact of automatic enrolment on the offshore industry? (page 45 of condoc)

58. Please see our comments above.

Other comments on the consultation

59. There are typos on page 16, as the references to Paragraph 12(3) and its sub-sections should be to paragraph 12(2) of the relevant draft regulations.

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APPENDIX

Section 28 as amended by Pensions Bill currently before the House of Commons

Certification that quality requirement or alternative requirement is satisfied

(1)The Secretary of State may by regulations provide that, subject to provision within subsection (6)(f), a scheme to which this section applies is to be taken to satisfy the relevant quality requirement in relation to each of an employer's relevant jobholders ~~any jobholder of an employer~~ if a certificate given in accordance with the regulations is in force [in relation to the employer – ICAEW comment: should these words be deleted, or the following wording be added at the end of this ss (1): "*in respect of those relevant jobholders*"?].

(1A) In this section—

(a) "relevant jobholder" means a jobholder to whom the certificate in question applies;

(b) a reference to a scheme includes a reference to part of a scheme.

(2)The certificate must state—

(a) that, in relation to ~~the~~relevant jobholders of the employer who are active members of the scheme, the scheme is in the opinion of the person giving the certificate able to satisfy the relevant quality requirement throughout the certification period, or

(b) that, in relation to those jobholders, the scheme is in that person's opinion able to satisfy a prescribed alternative requirement throughout the certification period.

(2A) Alternative requirements must be such that, assuming all jobholders to be active members of schemes to which this section applies, for at least 90% of jobholders—

(a) employer contributions, and

(b) total contributions,

would be likely to be no less if every scheme satisfied an alternative requirement applicable to it than if every scheme satisfied the relevant quality requirement.

(2B) In subsection (2A)—

"alternative requirement" means a requirement prescribed under subsection (2)(b);

"employer contributions", in relation to an active member of a scheme, means the amount of contributions that have to be paid under the scheme in respect of the member by the employer;

"total contributions", in relation to an active member of a scheme, means the total amount of contributions that have to be paid under the scheme in respect of the member by the employer and by the member.

(2C) The Secretary of State—

(a) must apply the test in subsection (2A) when regulations under subsection (2)(b) are first made, and

(b) must carry out subsequent reviews of whether the test continues to be satisfied.

A review under paragraph (b) must be carried out during 2017, and after that each review must be completed no more than three years after the completion of the previous one.

(3)This section applies to—

(a)a money purchase scheme to which section 20 applies;

(b)a personal pension scheme to which section 26 applies;

(c)a hybrid scheme, to the extent that requirements within section 24(1)(a) apply.

(4)The "relevant quality requirement"—

(a)for a scheme within subsection (3)(a), means the quality requirement under section 20;

(b)for a scheme within subsection (3)(b), means the quality requirement under section 26;

(c)for a scheme within paragraph (c) of subsection (3), means the requirements mentioned in that paragraph.

(5)Regulations may make further provision in relation to certification under this section.

(6)Regulations may in particular make provision—

(a)as to the period for which a certificate is in force (the "certification period");

(b)as to the persons by whom a certificate may be given;

(c)as to procedures in connection with certification or where a certificate has been given;

(d)requiring persons to have regard to guidance issued by the Secretary of State;

(e)requiring an employer to calculate the amount of contributions that a scheme, and any section 26 agreements, required to be paid by or in respect of any relevant jobholder in the certification period;

(f)as to cases where the requirements of a scheme, and any section 26 agreements, as to payment of contributions by or in respect of relevant jobholders of an employer did not satisfy prescribed conditions.

(7)Provision within subsection (6)(f) includes in particular provision for a scheme not to be treated by virtue of regulations under this section as having satisfied the relevant quality requirement unless prescribed steps are taken (which may include the making of prescribed payments).

(8)In subsection (6) "section 26 agreements" means the agreement required, in the case of a scheme within subsection (3)(b), by section 26(4) and any agreement required, in the case of such a scheme, by section 26(6).

(9)The Secretary of State may by order repeal this section.