Department for Work & Pensions

Extending Opportunities for Collective Defined Contribution Pension Schemes

Public consultation on a policy framework for broadening Collective Defined Contribution provision beyond single or connected employer Collective Defined Contribution schemes

January 2023

Contents

Introduction

This consultation seeks views on policy proposals for broadening Collective Defined Contribution (CDC)[1] provision beyond single or connected employer schemes to accommodate multi-employer schemes. References to multi-employer schemes in this document are also intended to cover Master Trust[2] schemes. There are, however, some areas where different considerations will be appropriate for schemes established on a commercial basis.

Early expressions of interest from stakeholders suggest that a reasonable first step in extending CDC provision might be for multi-employer CDC schemes to operate as whole-life schemes, providing accumulation and decumulation on a collective basis in one package, under the regulatory oversight of the Pensions Regulator (TPR). This consultation outlines our thoughts on the changes that might need to be made to the existing single or connected employer framework to accommodate whole-life multi-employer schemes.

We are also seeking views on the role of CDC in decumulation and particularly the potential for CDC decumulation-only products, including how these might work in practice with appropriate oversight by TPR. The role of CDC in decumulation formed part of a recent call for evidence, which will also help inform our thinking.[3] Chapter 11 seeks to establish whether there is a significant appetite for decumulation only CDC products and further our understanding of the specific challenges their designs might pose. This will inform further thinking on how such provision might be facilitated by trust-based pension providers.

We recognise that contract-based products, which are regulated by the Financial Conduct Authority (FCA), might offer an alternative route for facilitating decumulation-only options for interested individuals. However, there has been little interest amongst potential providers to date.

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[1] The Pension Schemes Act 2021 ("the 2021 Act"), provides the legislative framework to establish and operate CDC schemes, but to ensure they sit clearly within the Money Purchase provisions of existing legislation, the 2021 Act refers to them as Collective Money Purchase (CMP) schemes. The terms CDC and CMP are synonymous.

[2] An occupational pension scheme that is used by two or more employers that are not financially connected and which is not a relevant public service pension scheme. The providers of Master Trusts are often insurers.

[3] www.gov.uk/government/consultations/helping-savers-understand-their-pension-choices/helping-savers-understand-their-pension-choices

About this consultation

Purpose of the consultation

This consultation document includes:

- a recap of the work on CDC schemes to date (Chapter 1)
- a policy consultation on a potential CDC policy framework for accommodating whole-life multi-employer occupational pension schemes (Chapters 2-10), and
- exploring the ways in which CDC as a decumulation only option might be accommodated (Chapter 11).

To provide context, it has been necessary to refer to the following existing legislation relating to CDC schemes and DC Master Trusts:

- Part 1 of the Pension Schemes Act 2021[4] ("the 2021 Act")
- The Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022[5] ("the 2022 Regulations")
- Part 1 of the Pension Schemes Act 2017[6] ("the 2017 Act")
- The Occupational Pension Schemes (Master Trusts) Regulations 2018[7].

Who this consultation is aimed at

We would particularly welcome responses from:

- pension scheme trustees and managers, particularly those from DC Master Trust schemes
- pension scheme service providers, other industry bodies and professionals
- employers who sponsor an occupational pension scheme, and
- those seeking to establish a CDC scheme.

Scope of consultation

This consultation applies to Great Britain as pensions is a reserved matter for Scotland and Wales.

Occupational pensions are a devolved matter for Northern Ireland. It is anticipated that Northern Ireland will make corresponding legislation.

Duration of the consultation

The consultation period begins on 30 January 2023 and will run until 27 March 2023.

[4] www.legislation.gov.uk/ukpga/2021/1/part/1/enacted
[5] www.legislation.gov.uk/uksi/2022/255/contents/made
[6] www.legislation.gov.uk/ukpga/2017/17/part/1
[7] www.legislation.gov.uk/ukdsi/2018/9780111170533/contents

How to respond to this consultation

Please send your consultation responses via email to:

DWP CDC Policy, Team at the shared email address:
CAXTONHOUSE.CDCCONSULTATION@DWP.GOV.UK

Government response

We will publish the government response to the policy consultation on the GOV.UK website.

How we consult

Consultation principles

This consultation is being conducted in line with the revised Cabinet Office consultation principles published in March 2018. These principles give clear guidance to government departments on conducting consultations.

Feedback on the consultation process

We value your feedback on how well we consult. If you have any comments about the consultation process (as opposed to comments about the issues which are the subject of the consultation), including if you feel that the consultation does not adhere to the values expressed in the consultation principles or that the process could be improved, please address them to:

DWP Consultation Coordinator
Legislative Strategy Team
4th Floor, Caxton House
Tothill Street
London
SW1H 9NA

Email: caxtonhouse.legislation@dwp.gov.uk

Data Protection and Confidentiality

For this consultation, we will publish all responses except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public). All responses from organisations and individuals responding in a professional capacity will be published. We will remove email addresses and telephone numbers from these responses, but apart from this we will publish them in full.

For more information about what we do with personal data, you can read DWP's Personal Information Charter.

Ministerial Foreword

In August this year, the legislative framework for Collective Defined Contribution (CDC) pension schemes came into force. For the first time, single or connected employers can set up a pension scheme with fixed costs, which also allows members to have the security of an income for life in retirement, without having to pay for expensive guarantees or members having to make complex decisions about how their pension is invested. We expect the first CDC scheme to begin operating from next year.

This landmark moment in the UK pensions market was achieved through the effective collaboration of all those inside and outside government who have worked so hard to ensure the delivery of our manifesto commitment to develop new types of pension scheme.

Alongside this, we have seen the appetite for extending CDC provision to unconnected multi-employer schemes and Master Trusts grow and grow. This was underscored by the large number of respondents to our recent call for evidence, ‘Helping savers understand their pension choices’, who supported the role CDC can play in helping provide pension scheme members with more options for turning their pension pots into a long-term retirement income.

By extending our secure and dependable CDC framework, more members will be able to benefit from the opportunities of sharing risk. This means their pension savings work harder for them, and provide, on average a better outcome for their retirement than might otherwise be available.

This consultation sets out our proposals for how our CDC framework could be adapted to allow more employers of all sizes to offer CDC schemes, and to allow more flexibility in design. It is an opportunity to help shape the next stage in one of the most significant developments in UK pensions and I encourage all interested parties to respond and play their part in helping improve outcomes for tomorrow’s pensioners.

Laura Trott MP, Minister for Pensions

Chapter 1: Background

1. Collective Defined Contribution (CDC) pension schemes provides an innovative alternative to traditional defined benefit (DB) and defined contribution (DC) pension schemes. In CDC schemes, member and employer contributions are pooled in a collective fund from which an aspired to pension income for life is drawn.

2. The pooling of longevity and investment risks makes CDC schemes more resilient to market shocks. In addition, unlike DB schemes, the pension benefits are not guaranteed in CDC schemes, so they provide employers with predictable costs. External modelling suggests that they can also provide, on average, better returns for members than traditional DC schemes.

3. In late 2018, the government consulted on an appropriate policy framework to provide for CDC schemes where there is a single employer, or where there are multiple employers that are financially connected, for example, forming a group of companies.

4. CDC has also received cross party support. In 2019, both the government and the opposition committed in their manifestos to introduce CDC to the UK pensions market.

5. In August this year, the 2022 Regulations came into force, allowing for the first time, single or connected employers to seek authorisation to operate their own CDC schemes.

6. Alongside the 2022 Regulations, a new Code of Practice ("the code") was introduced by TPR, which is responsible for regulating CDC schemes. The code helps those involved in CDC schemes to understand how to satisfy the authorisation criteria and other matters by providing detailed guidance on the information and standards expected. These two products completed the legislative and regulatory framework for single or connected employer CDC schemes.

Chapter 2: Emerging CDC designs and providers

What initial stakeholder engagement has told us

7. Throughout the development and implementation of the single or connected employer CDC framework, the government indicated that it would consider extending CDC in the future where this was justified, as it was keen to broaden the opportunities that this new type of provision can offer. In anticipation of the potential extension of CDC, the 2021 Act included powers to make regulations to enable other forms of CDC scheme beyond single or connected employer schemes.

8. Over the past 12 months, it has been evident that there is increasing interest in these other forms of CDC scheme. In late 2021 and early 2022, this Department held almost thirty individual discussions with a wide range of interested organisations, including Master Trust providers, unions, insurance companies, consultancy firms, academics, and pension providers to explore what these alternative forms of CDC schemes might look like.

9. This included seeking views on the appetite for particular designs, along with consideration of the barriers or risks these might pose. We have also engaged with TPR and the FCA to discuss the emerging interest in different types of CDC scheme. In addition, earlier this year, the then Minister for Pensions and Financial Inclusion attended an event with The Royal Society for Arts (RSA) CDC Forum to discuss extending CDC more widely. We have also sought to learn lessons from the experiences of CDC schemes in other countries to inform our thinking going forward.

10. Evidence gathered during our initial engagement with stakeholders on broadening CDC provision indicates that:
    - there is strong interest in whole-life CDC schemes catering for multi-employer schemes; and
    - there is interest in the potential for CDC decumulation-only arrangements. However, detailed proposals have yet to emerge in this respect.

11. Stakeholders acknowledged that careful consideration is needed in respect of decumulation-only arrangements specifically. For example, how the set-up and provision of such products would be funded, how sufficient scale would be achieved, their overall sustainability, and how a fair buy-in price will be delivered for prospective members over such arrangements' lifetimes.

New CDC designs

12. It was notable that there was an appetite amongst stakeholders for CDC designs which differ from those permitted by the current legislation for single or connected employer schemes. Initial feedback indicated that those stakeholders whose thinking is most evolved[8] favoured designs which provide greater flexibility to allow for example:
    - differing contribution or accrual rates in the same scheme or section
    - flexibility to vary contribution (and accrual) rates over the lifetime of the scheme in the same scheme or section if the actuarial conversion factors[9] are consistent.

13. We understand why such design features may be attractive in whole-life CDC schemes catering for multiple unconnected participating employers where there is likely to be a desire to minimise cross-subsidies between the employers, or where there are workforces with different demographics, rates of pay, or levels of contribution. However, we are mindful that this new approach would pose different challenges with an impact on how these schemes are authorised and regulated going forward. We want to use this consultation to flesh out what would be needed to allow such designs to flourish whilst providing adequate protection to members.

Key challenges

14. Some of the key challenges identified by stakeholders were:
    - who should be allowed to establish these new forms of whole-life multi-employer CDC scheme?
    - what design features should be required or excluded for these new schemes?
    - when is sectionalisation appropriate in these new designs?
    - given the more complex relationships and different types of scheme provider expected in these new schemes, how should the existing CDC definitions and authorisation criteria be amended?
    - what specific risks and challenges arise in a commercial market and how might these be best addressed?
    - how do we ensure that these new whole-life multi-employer schemes are resilient and sustained over the long-term?

[8] Other CDC designs may be being considered but no meaningful detail of these has emerged so far.
[9] By actuarial conversion factors we mean the factors which are used to determine the benefits provided by each pound sterling of contributions. These would take into account the age of the member and the potentially different retirement ages and mortality expectations that might exist in schemes with multiple employers.

- how might a scheme’s design features and risks be accurately and effectively communicated to members and employers (recognising that both might have different communication needs), and what should be expected of those promoting such schemes?
- how might decumulation-only arrangements work in practice?

15. The outcome of this consultation will inform our thinking on which requirements should apply to which schemes, when and how. For example:
    - there may be certain requirements more relevant to a commercial provider and less relevant to a sectorial provider[10], such as those relating to promotion and marketing.
    - it may be appropriate for some requirements to be linked to a particular design of CDC benefits (e.g. variable contribution versus fixed contribution versus decumulation-only), while others may be linked to the type of provider.
    - more generally, we will also need to ensure there is no inappropriate read across to single or connected employer CDC designs or schemes, though we envisage some read across will be appropriate.

[10] By sectorial provider we are broadly referring to pension schemes serving an industry sector such as construction. The term is meant to be a broad categorisation, as we recognise that, in practice, the way in which such schemes operate and who they cover is quite complex and can cross over industry sectors.

Chapter 3: Key principles for new types of CDC schemes

16. It was evident from our initial engagement with stakeholders that there was interest in the key principles that we envisaged applying to new types of CDC scheme and to what degree these might resemble those in place for single or connected employer schemes.

17. It is inevitable that there will be some read across. We envisage, for example, that the following key principles should continue to apply to all new types of CDC schemes:
    - CDC benefits accessed through occupational pension schemes must be collective money purchase benefits. Not to do so could risk these benefits being redefined as defined benefits, undermining what allows these schemes to work as intended.
    - CDC benefits should only be offered in a trust-based environment for the time being. This would need to be revisited should an appetite for contract-based products emerge in the future.
    - authorisation of CDC schemes by TPR will continue to be required for these new types of schemes. This is necessary to ensure these new CDC schemes are well designed and well run.
    - an authorisation application fee will continue to apply to help ensure that TPR is able to recover its processing costs.
    - CDC designs should continue to include an aspiration to deliver increases at least in line with the Consumer Prices Index (CPI).
    - CDC benefits should be subject to annual valuations and adjustments so that the available assets and the benefits payable remain in balance.
    - any adjustments made to benefits will be made without variation across the membership.
    - the CDC fund of whole-life CDC multi-employer schemes should be subject to the 0.75% CDC charge cap.

Question 1: Do you agree with the key principles we have identified as necessary for the new types of CDC schemes and in particular whole-life multi-employer CDC models? If not, please set out why.

Chapter 4: Defining qualifying benefits and qualifying schemes

CDC benefits and schemes

18. The 2021 Act defines a CDC scheme as a qualifying scheme, or a section of a qualifying scheme, under which all the benefits that may be provided are qualifying benefits. These benefits must include the payment of a pension.

19. In addition, such a qualifying scheme must be used, or be intended to be used, by a single employer or a connected employer.

20. Now that we are looking to extend CDC provision to encompass a broader range of designs and providers, we need to review these provisions to ensure they are appropriate.[11] Our initial thoughts are set out below.

Qualifying benefits

21. We envisage that the existing requirements, relating to qualifying CDC benefits in section 2 of the 2021 Act, will apply to the new types of CDC scheme.

Qualifying schemes

22. Some of the existing qualifying scheme requirements in section 3 of the 2021 Act will continue to apply to the new whole-life multi-employer CDC scheme, for example that qualifying CDC schemes should be occupational pension schemes established under irrevocable trust. However, the existing requirements relating to who may establish CDC schemes will need to be amended to accommodate whole-life multi-employer schemes where the participating employers are not connected. In addition, while we need to make changes to accommodate these new types of CDC scheme, we also want to allow single or connected employers who might prefer these new designs over the single or connected employer regime to be able to access them.

23. There will continue to be explicit requirements in respect of what a new type of CDC scheme should <u>not</u> be. For example, the current omission of relevant public service pension schemes will continue to apply to these new schemes.[12]

Requirement to create a new CDC section

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[11] It should be noted that even if a pension scheme is a qualifying scheme within the definition, it will need to meet the prescribed authorisation criteria if it is to operate. Later sections discuss these criteria in more detail.

[12] Section 3(4) of the 2021 Act

24. We will review the circumstances where it is appropriate to sectionalise a single or connected employer CDC scheme, although a scheme that wishes to offer both CDC and non-CDC benefits within the same scheme should offer these through separate sections. This is because feedback from stakeholders indicates that these designs would require more flexibility than the current regulations allow in order to be able to vary factors, such as contribution and accrual rates within the scheme, as long as the actuarial conversion factors are consistent.

Question 2: Do you agree with our thoughts on what requirements might need amending to accommodate these new CDC designs? What new triggers for sectionalisation other than a change to the actuarial plan do you envisage might be appropriate in these new schemes?

Chapter 5: Authorisation

25. Building and maintaining confidence among industry, employers and employees in CDC schemes will be essential for ensuring their success and for creating a wider choice of CDC options going forward.

26. To build that confidence, it is essential that only well-designed and well-run schemes can operate. The 2021 Act and the 2022 Regulations set out detailed requirements for authorisation that must be met before a CDC scheme can operate. It should not be a surprise that we envisage carrying this forward to the new whole-life multi-employer CDC schemes.

27. The current authorisation criteria for CDC schemes are as follows:
    - the persons involved in the scheme are fit and proper persons
    - the design of the scheme is sound
    - the scheme is financially sustainable
    - the scheme has adequate systems and processes for communicating with members and others
    - the systems and processes used in running the scheme are sufficient to ensure that it is run effectively, and
    - the scheme has an adequate continuity strategy

28. If TPR stops being satisfied that a CDC scheme meets these requirements, it can withdraw authorisation. However, we need to consider whether the current authorisation criteria work in the designs and structures proposed for schemes with multiple unconnected employers. If criteria do not work, we need to consider what changes are needed.

29. It is worth noting at this point that should alternative or additional authorisation criteria be needed; we intend for legislation to be clear regarding which elements apply in which circumstances. For the purposes of the current consultation, there are a number of aspects to the application and authorisation process that we would like to seek views on.

The prohibition on operating a CDC scheme until it is authorised

30. One area we want to explore is the definition of “operating” at section 7(5) of the 2021 Act to make sure that the prohibition on operating without authorisation is effective for the new whole-life multi-employer CDC designs.

31. The current definition of “operating” applies to a person accepting in relation to the scheme money paid by a member (or prospective member), or money paid

by an employer (or prospective employer) in respect of contributions, fees, charges, or anything else.

32. However, employers may make payments towards setting up or authorising the scheme without breaching the prohibition on operating without authorisation. These current exceptions recognise that single or connected-employer schemes may need some seed-funding from their establishing employer to meet such costs.

33. For whole-life multi-employer schemes including Master Trusts, our intention remains that contributions by a member (or prospective member) or employer (or prospective employer) should not be received in relation to the scheme in advance of its authorisation. However, we would welcome views on what might be permitted in respect of set up and authorisation costs, where a commercial or non-profit sectorial provider to multiple unconnected employers is involved.

34. The current employer-related exemptions work in the single or connected employer environment where the establishing employer is helping to finance the set up and authorisation of its own in-house scheme so that it can be launched successfully. There seems less justification for these exemptions in schemes provided by a third party for profit. In such schemes, the participating employers will have a more distanced relationship with the scheme and are, in simple terms, purchasing an off-the-shelf product. It would therefore seem reasonable for the set-up and authorisation costs to be met by the provider who intends to profit from the scheme’s launch. However, we would welcome your views on whether this is reasonable.

35. New sectorial whole-life multi-employer schemes are also likely to need some seed-funding to meet set-up and authorisation costs in the absence of member contributions. Again, we would welcome views on what might be permitted in this respect. For example, should prospective participating employers in sectorial schemes be allowed to contribute to these costs in advance of authorisation, given there may be no other funding sources available to meet them? Or, should the body providing the scheme meet these costs in the first instance?

36. We also recognise that the potential for commercial CDC models introduces the prospect of pre-agreements, for example between a provider and a prospective participating employer, before a scheme is authorised. We are therefore minded to prohibit such agreements as part of our member and employer protection measures. A similar prohibition exists in section 3(5)(b) of the Pension Schemes Act 2017, which prohibits a person from entering into “an agreement with an employer that relates to the provision of pension savings for employees or other workers” until the scheme is authorised.

Question 3: Should the definition of "operates" at section 7(5) of the 2021 Act be amended for whole-life multi-employer CDC schemes? If you agree, please set out how.

Fit and proper persons requirement

37. TPR is required under the 2021 Act to decide whether it is satisfied that specified persons are fit and proper to act in relation to the scheme in the capacity specified. A list of these specified persons is set out in section 11(2) of the 2021 Act[13]. It reflects the expectation that in a single or connected employer scheme the persons acting in relation to the scheme in the capacities mentioned would be either the employer, the trustees or a combination of both. However, the emergence of commercial and sectorial providers raises new questions as to which persons should be in scope in these new schemes, and how their role is best defined.

Persons subject to scrutiny

38. We are mindful that the usual dynamics between key players in sectorial and commercial schemes will be different. It is no longer the employer of the members who sets up the terms of the scheme or appoints the trustees. This shifts the key relationships and the influences on the running of the scheme. Another major difference is that some of these new CDC schemes will be set up on a commercial basis.

39. We want to ensure that TPR assesses the right people in these new schemes, both at authorisation and on an ongoing basis. We would therefore welcome views on the best way of identifying those who are:
    - establishing sectorial and commercial schemes, given this is expected to be a corporate body or partnership
    - profiting from such schemes, particularly if this might be separate from the establishing entity either from the outset or later in the scheme's lifetime
    - providing financial assistance in respect of running costs where this is required (see the section on Financial Sustainability)
    - making business decisions relating to the commercial activities of the scheme, and
    - marketing and promoting CDC schemes to prospective employers and members.

[13] Supplemented by Regulation 8(2) of the 2022 Regulations.

40. The fit and proper legislation for DC Master Trust schemes might help to inform our approach here. In Master Trusts, the scheme funder[14] and scheme strategist[15] are defined and are subject to scrutiny as part of the fit and proper framework. Would replicating these definitions in the new whole-life multi-employer CDC schemes be effective given the functions we envisage capturing? For example, should we define the scheme funder and scheme strategist separately, or would these functions be performed together in practice in new whole-life multi-employer CDC schemes?

Question 4: How might legislation capture persons performing the functions listed at paragraph 39 in commercial and sectorial schemes so that they are within scope of the fit and proper persons test? Are there other persons that should be brought within scope of the fit and proper persons test for these new schemes?

41. It is envisaged that persons marketing and promoting the scheme will be included in the fit and proper requirements. This recognises that such activities are likely to be crucial in relation to the profitability and viability of commercial CDC schemes, which will rely on uptake amongst prospective participating employers.

42. For Master Trusts, TPR's code of practice indicates that individuals carrying out the functions of a promoter or marketer will be assessed for fitness and propriety if one or both of the following conditions are met:
    - the promoter or marketer has a level of influence in the scheme, either in relation to other parties who have control in running the master trust or in relation to the scheme's design and the benefits offered; and/or
    - the promoter or marketer has a financial motive, receiving commission or consultancy charges from the scheme or having access to wider incentives such as a promise to award a contract or benefit from other services provided to the scheme.

Question 5: Do you agree that those marketing and promoting CDC schemes should be within scope of the fit and proper persons test where certain conditions apply, and if those conditions should be similar to those in Master Trust schemes?

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[14] Section 39(1) PSA 17 - "scheme funder"- in relation to a Master Trust scheme, means a person who:
(a) is liable to provide funds to or in respect of the scheme in circumstances where administration charges received from or in respect of members are not sufficient to cover the costs of establishing or running the scheme, or
(b) is entitled to receive the profits of the scheme in circumstances where those charges exceed those costs

[15] Section 39(1) PSA 17 - "scheme strategist" - in relation to a Master Trust scheme, means a person who is responsible for making business decisions relating to the commercial activities of the scheme

Matters to be considered by The Pensions Regulator

43. Schedule 1 of the 2022 Regulations specifies the matters that TPR must take into account in satisfying itself that the fit and proper persons criterion is met. It is envisaged that many of the existing requirements will read across in respect of sectorial and commercial schemes.

44. However, we need to consider what additional matters should be taken into account in respect of persons undertaking new functions in the new whole-life multi-employer CDC schemes, such as those making business decisions relating to the commercial activities of the scheme. For example, it would seem reasonable to expect those undertaking such a role to have the expertise and experience to act in that capacity given its importance to the success of the scheme.

Question 6: Are any changes or additions needed to Schedule 1 of the 2022 Regulations in respect of matters to be taken into account by TPR, as part of the fit and proper test to reflect the new roles envisaged to exist in sectorial and commercial schemes?

Scheme Design requirement

45. As mentioned earlier, we want to protect members from being enrolled in ill-considered and poorly designed schemes. We envisage, therefore, that the current requirement that TPR needs to be satisfied that a CDC scheme is sound can be read across to the new whole-life CDC schemes with multiple unconnected employers. How soundness is currently determined and the role of the scheme's actuary and trustees in supporting this process, are set out in detail in the 2022 Regulations. The following sections explore whether these approaches continue to be appropriate for the new designs of CDC that we aim to accommodate.

Determining soundness

46. Broadly, considerations of soundness currently fall into two categories:
    - those relating to the scheme's design, and
    - those relating to the scheme's ability to deliver its benefit aspirations (i.e. its viability).

Design requirements

47. A CDC scheme’s rules must meet prescribed requirements and must also be compliant with the definition of a CDC scheme. It seems sensible that this continues to apply to the new whole-life multi-employer schemes.

Viability requirements

48. With regards to the scheme’s viability, indicators of soundness currently fall into three categories. Matters that should be considered:
    - at initial application and during subsequent annual reviews during live running
    - at initial application only (i.e. a gateway test)
    - at subsequent annual reviews during live running (i.e. a live running test).

49. For example, the first consideration relates to whether the trustees have accurately communicated to the scheme’s members the design of the scheme and the CDC benefits envisaged under the design of the scheme. It expects the scheme actuary to be satisfied that the actuarial advice being used to underpin key communications is properly used. It seems appropriate for this consideration to continue to apply in the new schemes envisaged.

50. However, we would welcome views on whether this consideration should be extended to encompass the accuracy of employer and prospective employer focused communications on these matters. Given the new dynamics expected in commercial schemes, it seems reasonable to put in place measures to ensure that the scheme isn’t being misrepresented to prospective employers, for example in promotional material. It is not envisaged that individual communications would be scrutinised, rather a form of standard wording would be agreed as suitable for said communications.

51. One of the gateway tests for soundness is that, at initial authorisation, the contributions paid to the scheme are expected to be sufficient to provide benefits which increase each year at least in line with the increase in the CPI index of inflation. We wish to maintain this expectation of inflation proofing at initial authorisation in these new designs.

Question 7: Are the current scheme design requirements including the tests still appropriate for assessing soundness in the new whole-life multi-employer schemes? Are there any additional soundness considerations or tests needed in light of the new designs?

Financial Sustainability requirement

52. This authorisation criterion aims to ensure CDC schemes have sufficient financial resources and well considered strategies to meet the costs of setting up and running the scheme, as well as costs associated with the occurrence of a triggering event, such as the need to wind up the scheme.

53. As is currently the case, it is envisaged that TPR will require a range of evidence to enable it to decide whether it is satisfied that new whole-life multi-employer schemes are financially sustainable, including:
- the estimated costs of setting up and running the scheme
- details of the scheme's sources of income and
- the trustees' strategy for meeting any shortfall between its income and costs, including the cost of resolving any triggering event.

Sources of additional financing

54. The strategy for meeting any shortfall between the scheme's income and costs is one area which needs further consideration. As is currently the case, any financing to meet relevant costs will need to be credible and realisable to ensure it is available at the point of need.

55. In single or connected employer schemes, it was expected that this additional financing would in most instances be guaranteed by the establishing employer. Where this was necessary, TPR would consider the ability of that funder to meet these costs.

56. However, the new dynamics and relationships in the new whole-life multi-employer schemes would appear to require an approach which better reflects who is likely to be responsible for establishing and providing these schemes going forward.

Scheme Funder requirements

57. The authorisation framework for DC Master Trusts introduced the concept of the scheme funder. For Master Trusts, a scheme funder is a person who is liable to provide funds to the scheme when the administrative charges derived from members are not sufficient to cover the set up and running costs, or who is entitled to receive any profit from the scheme.

58. We want to explore whether an equivalent role should be established in the new whole-life multi-employer schemes to provide clear lines of accountability, and act as a focus point for TPR when authorising and regulating the scheme, particularly in relation to financial sustainability. As mentioned earlier, we would welcome

views on how scheme funder might best be defined to ensure it captures relevant parties in the new types of CDC scheme.

59. It would be impractical to have numerous scheme funders whose financial capability would need to be assessed by TPR. The 2017 Act provides a clear focal point for assessment by requiring a scheme funder of a Master Trust to be a body corporate, or a partnership that is a legal person under its local law and prohibiting funders from carrying out activities that do not relate directly to the Master Trust schemes, which they are funding. Regulations[16] allow TPR to exempt a funder from the second requirement if TPR considers that the funder's financial position is transparent enough.

60. We would welcome views on whether similar requirements to those at section 10 of the 2017 Act would achieve the focus and transparency we require in respect of those responsible for providing financial support to whole-life multi-employer CDC schemes including Master Trusts.

> **Question 8:** If a scheme funder equivalent is introduced for the new whole-life multi-employer CDC schemes including Master Trusts, should similar scheme funder requirements to those in the DC Master Trusts regime apply? Are there any changes needed to ensure there is a clear focal point for TPR's scrutiny and liability for meeting the relevant costs?

Business Plan

61. Any financing to meet relevant costs will need to be credible and realisable to ensure it is available at the point of need. This will therefore require assessment by TPR of the funder's ability to deliver that financing at initial authorisation and on an ongoing basis.

62. Sufficient evidence will be needed to support this and whilst the current regulations and TPR's code provide a sensible baseline for future requirements this is another area where some changes are likely to be needed to reflect the new providers expected to be involved in whole-life multi-employer schemes.

63. For example, it would seem reasonable to expect that the operation of a commercial CDC scheme should be underpinned by a sound business strategy because the scheme is likely to have been set up for profit and its future sustainability may depend on its success in competing with other commercial providers. In the early days, it is likely to pay out more in expenses than it generates in income from participating employers and members so it needs to plan and be able to explain how it will meet these costs.

[16] Regulation 8 of The Occupational Pension Schemes (Master Trusts) Regulations 2018

64. In the Master Trust framework[17] there are explicit requirements in respect of a business plan. It is one of the main sources of information on which TPR will base its assessment of whether the financial sustainability criterion is met for such schemes. It is reviewed and revised annually and provides key information to enable TPR to assess the reasonableness of the assumptions on which the scheme's business strategy is based, in particular the expectations regarding growth of membership and contributions.

65. Given the potential emergence of commercial CDC providers, a similar approach to that taken in Master Trusts would appear appropriate in new whole-life multi-employer CDC schemes operated by a commercial provider.

Question 9: Should business plan requirements, similar to those for Master Trusts, be introduced for commercial and sectorial CDC whole-life multi-employer schemes? What, if anything, should change? Who should be responsible for preparing the business plan?

Systems and processes to support effective member communications

66. Effective communication is crucial to the success of CDC schemes. Members need to understand how their scheme works, including that what pension they receive could change over the scheme's lifetime. In recognition of this, section 15 of the 2021 Act introduced a new authorisation criterion requiring a CDC scheme to have adequate systems and processes in place to deliver effective communications to relevant persons in relation to the scheme.

67. This is supplemented by Schedule 4 to the 2022 Regulations which sets out what TPR must take into account when deciding whether the scheme meets this criterion. We envisage that similar requirements will apply to whole-life multi-employer CDC schemes.

68. However, we want to consider whether the current requirements in Schedule 4 need amending to encompass the systems and processes, required to support effective communications by those promoting and marketing the scheme, to mitigate the risks of 'over-promising'.

Question 10: Do you agree that the existing requirements should apply to new whole-life multi-employer schemes and are additional requirements needed to help ensure that communications used in promoting and marketing the scheme

[17] Section 9 of 2017 Act. Regulation 7 and Schedule 3 of the Occupational Pension Schemes (Master Trusts) Regulations 2018

are not misleading? How might Schedule 4 of the 2022 Regulations be amended to achieve this?

Systems and processes to support well run schemes

69. As was the case for single or connected employer schemes, the new whole-life multi-employer schemes must be well run. We want to ensure they have the appropriate systems and processes to enable them to maintain a good standard of administration and governance so that there is adequate security for members' savings and their data.

70. Currently, in deciding whether it is satisfied that the systems and processes used in running a CDC scheme are sufficient, TPR must take into account the matters specified in Schedule 5 to the 2022 Regulations.

Question 11: Are any changes or additions needed to the requirements in Schedule 5 of the 2022 Regulations to reflect the new designs and relationships anticipated in the new whole-life multi-employer schemes?

The continuity strategy

71. This authorisation criterion requires trustees of a CDC scheme to prepare a continuity strategy document as part of the scheme's application. This document sets out how the interests of the scheme members will be protected if the scheme experiences a triggering event.[18] Regulation 15 of the 2022 Regulations sets out the information that must be included in the continuity strategy currently. This is designed to help TPR determine whether it is satisfied that the strategy is adequate.

72. We envisage that the existing continuity strategy requirements should apply to the new whole-life multi-employer CDC schemes. However, we also consider that the new types of CDC scheme should include in their continuity strategy an aspiration to run the scheme as a closed scheme. This is intended to mitigate the potential risk of a commercial provider who opts to dispense with their CDC scheme at some future point because they deem it to be unattractive commercially, even though this may not be in the best interests of the members.[19]

[18] Triggering events are events whose nature poses a risk to the future of a scheme and the interests of members. The current triggering events in respect of a CMP scheme are listed at section 31 of the 2021 Act. These and required actions are discussed in more detail later in this consultation.

[19] It should be noted that a CMP scheme seeking to operate on a closed basis at a future point would need to satisfy the authorisation requirements and seek TPR's permission to do so (see later sections in respect of continuity option 3).

73. For example, if a CDC scheme is expected to remain viable and sustainable based on its current asset holdings, requiring it to wind up because it is no longer commercially attractive to the provider is unlikely to be in the best interests of its current members. This is because the members might continue to receive their CDC benefits in a closed scheme, whereas if they were discharged to a DC scheme on wind up of the scheme, they might be worse off financially.

74. Suitable triggers potentially could be included in scheme rules (alongside those where wind up must be pursued), but this would need careful consideration concerning the pros and cons of such triggers. The aspiration to operate as a closed scheme would then be reflected in the evidence required to support the continuity strategy authorisation requirement. We recognise that this potential approach would not eliminate the risk of wind up completely. For example, if a commercial provider collapses and the supporting infrastructure is no longer available, then the wind up of the scheme is likely to be unavoidable.

75. However, we believe that it is not unreasonable to expect CDC schemes to be designed from the outset to be resilient, so that members can have some confidence that their schemes will be around to provide an income over the course of their retirement. An appropriate balance needs to be struck between commercial interests and the interests of scheme members. In the scenario outlined above, if a CDC scheme is able to satisfy TPR that it is able to continue operating as a closed scheme to the benefit of the members, it seems unjustifiable for it not to do so just because it is not in the commercial interests of the provider. We welcome thoughts on the ways in which this aim can be achieved.

Administration charges and the continuity strategy

76. Section 17(3) of the 2021 Act stipulates that a continuity strategy must contain a section setting out the levels of administration charges that apply to the members of the scheme. This information helps TPR determine whether a CDC scheme would be able to meet the costs of a triggering event, without the trustees increasing or imposing new or increased charges contrary to section 45 of the 2021 Act.

77. Regulation 16 of the 2022 Regulations sets out the information about administration charges that must be included in the continuity strategy currently in order for it to be considered to be adequate. Again, we expect this requirement to apply to the new whole-life multi-employer CDC scheme.

Question 12: Do you agree that it is reasonable for the existing requirements in regulations 15 and 16 of the 2022 Regulations to apply to the new whole-life multi-employer CDC schemes, and that the continuity strategy should include an aspiration to operate the scheme as a closed scheme?

Chapter 6: Applications

78. We envisage that the new whole-life multi-employer CDC schemes will need to seek authorisation from TPR in order to operate (which includes beginning to receive contributions from members and employers). The onus will remain on the applicants to provide TPR with the necessary information to obtain authorisation. We also envisage that the current six-month deadline for TPR reaching a decision on an application will also apply.

79. Regulation 7 of the 2022 Regulations sets out the fee structure for single or connected employer CDC schemes. We will be reviewing the fee structure with input from TPR once the requirements relating to the new whole-life multi-employer CDC schemes, and therefore the costs of processing related applications are clearer. While we want all CDC applicants to be subject to CDC authorisation, it is reasonable to consider the interaction between the two authorisation regimes when an application is made by a Master Trust.

Chapter 7: Valuations and adjustments

80. Regulations 17 to 21 of the 2022 Regulations make provision in relation to the annual actuarial valuation and benefit adjustment process for CDC schemes. These are intended to ensure benefits are adjusted every year in order to keep the value of assets held and the projected costs of benefits in balance. It is important that CDC schemes follow strict rules around benefit adjustment, to ensure that all members are subject to the same adjustments.

81. We want to ensure that CDC schemes operate in ways that avoid bias in favour of any group or cohort of members. To this end, the regulations require:
    - valuations to be undertaken annually using a central estimate methodology that does not seek to be overly optimistic or to build in prudence
    - any adjustment of benefits to apply to all members without variation, and
    - any increases in benefits resulting from the valuation to be sustainable.

82. We envisage that these requirements can broadly read across to whole-life multi-employer CDC designs so that these schemes also avoid bias in favour of any group or cohort of members. However, discussions with stakeholders have highlighted some potential areas which might need to be changed to better accommodate the designs for whole-life multi-employer schemes that have emerged.

83. For example, under the existing requirements, before an increase can be applied, an actuarial valuation must be undertaken to determine whether the available assets are sufficient to fund the cost of that increase assuming it is provided every year over the lives of the members. This approach was not questioned when the 2022 Regulations were consulted on, but it has been suggested that this should be modified for the new multi-employer designs.

84. It has been proposed that the approach of only applying an increase if there are sufficient assets to fund that increase on accrued benefits every year over the life of the membership, should be subject to a limit, for example CPI + 2% per annum. If the available assets are more than sufficient to afford an increase of CPI + 2% then a one-off increase would then be provided to remove any excess surplus. This will ensure that a balance is maintained between the available assets and the amount required to pay benefits.

Question 13: Do you agree that most of the existing requirements can read across to the new whole-life multi-employer schemes? What changes including

the one proposed above do you think should be made to the existing requirements and why?

Chapter 8: The ongoing supervision of CDC schemes

85. TPR's ongoing supervisory role is, and will continue to be, vital if the interests of the members of the new whole-life multi-employer CDC schemes are to be protected. We envisage that most of the existing ongoing supervision requirements can be carried forward to whole-life multi-employer CDC schemes, though there are some areas outlined below that are likely to need changes.

Significant events

86. Section 28 of the 2021 Act provides that TPR must be notified in writing by certain specified people, as soon as reasonably practicable, if they become aware that a significant event has occurred in relation to an authorised CDC scheme.

87. These are events that may affect the ability of an authorised CDC scheme to continue to meet the authorisation criteria. For example, a scheme may have a change of trustee. As the fitness and propriety of a trustee is linked to the authorisation criteria, TPR would need to be informed of this change so that the new trustee may be assessed against the relevant standards.

88. Regulation 23 of the 2022 Regulations sets out the events that must be notified to TPR, as well as certain information that must also be notified to TPR, in respect of certain events. These requirements are intended to help protect members by ensuring that TPR is made aware of such events, and can engage with the scheme as necessary, to obtain additional information or require action to be taken.

89. We recognise that the current list of events will need to be reviewed to ensure that it appropriately reflects the events of significant interest in the new types of CDC scheme. For example, new significant events may be required relating to the different entities that will be involved in whole-life multi-employer schemes.

Question 14: Do you think that the list of events in regulation 23 of the 2022 Regulations needs amending for the new whole-life multi-employer CDC schemes? If so, why? Are there new events that should be added or current events that should be removed?

Triggering events

90. Triggering events are events whose nature poses a risk to the future of a scheme and the interests of members. The current triggering events in respect of a CDC scheme are listed at section 31 of the 2021 Act.

91. It is essential that TPR is told that such an event has occurred so it can ensure that appropriate action is taken to address the event and protect members from that point. Obligations to notify specified persons, the information to be included, and the timetable for doing so are set out in regulation 25 of the 2022 Regulations.

92. We recognise that the list of triggering events and associated requirements for single or connected employers will need some revision for the new whole-life multi-employer CDC schemes. For example, the insolvency of an employer in a whole-life multi-employer scheme may be of less significance than it would be in a single or connected employer scheme. It may also be appropriate to provide for new triggering events relating to the different entities that may be involved in these new whole-life multi-employer schemes such as scheme funders. We will also need to revisit the current notification requirements to determine whether they can work in the new schemes in light of the new entities involved.

93. In addition, the Master Trust regime has a triggering event that relates to a decision by the trustees that the Master Trust scheme is at risk of failure so that a continuity option needs to be followed. We consider that triggering event should read across to the new whole-life multi-employer CDC schemes.

Question 15: Do you agree that the list of triggering events that apply to single or connected employer CDC schemes needs some revision to accommodate whole-life multi-employer CDC schemes? Are there new events that should be added or current events that should be removed?

The implementation strategy

94. We envisage that the existing requirements relating to the implementation strategy, which is a document setting out how the interests of members are to be protected following the occurrence of a triggering event, will be carried forward for whole-life multi-employer CDC schemes.

Chapter 9: Continuity options

95. As previously mentioned, triggering events are events which can pose a risk to the future of a scheme and the interests of members. These are listed at section 31 of the 2021 Act and will be revisited to ensure that appropriate triggers are included for the new whole-life multi-employer CDC schemes.

96. Currently, where a CDC scheme has had a triggering event, the trustees must pursue one of three continuity options:
    - Continuity option 1: discharge of liabilities and winding up
    - Continuity option 2: resolving triggering event, and
    - Continuity option 3: conversion to closed scheme

97. The continuity options framework is necessary to protect scheme members. It ensures that there is a structured plan of action in response to triggering events, which is approved and monitored by TPR. We envisage that these continuity options will also be a feature of the new whole-life multi-employer CDC scheme framework for the same reasons.

98. Trustees will generally have a choice over which continuity option they pursue. However, where TPR has decided that the withdrawal of authorisation is necessary, and this decision becomes final, or where a scheme has been found to be operating without authorisation, then provisions will ensure that the trustees must pursue continuity option 1. This is because, in this situation, the scheme poses a level of risk to members which means it cannot be permitted to continue.

Continuity option 1 - discharge of liabilities and winding up

99. Section 36 of the 2021 Act provides the framework where the trustees of a CDC scheme are pursuing continuity option 1 following a triggering event. The requirements of section 36 combined with those in respect of the implementation strategy are intended to protect members by ensuring that the wind-up process takes place within a framework that has been agreed and monitored by TPR.

100. Schedule 6 of the 2022 Regulations provides the details of this framework. It aims to ensure that the value of members' accrued rights to benefits are transferred to suitable pension schemes or alternative payment arrangements, and that wind up is completed in a timely manner and with minimal disruption to members. It is also intended to ensure that pensioner members, including those who reach retirement age during wind up, receive an appropriate level of income whilst wind up is being completed. We consider that these intentions also read across to the whole-life multi-employer CDC schemes.

The commencement of wind up

101. For single or connected employer CDC schemes, the CDC regulations provide for a date on which winding up is taken to begin for the purposes of continuity option 1, this is known as the winding up commencement time (WUCT).[20] This date is important as it marks the start of the 'winding up period' and starts the clock ticking in terms of various activities that must be undertaken by the trustees to wind up the scheme. Importantly, it also marks the point beyond which certain activities cease such as contributions to and accruals in the scheme.

102. We will need to identify a similar point in the new whole-life multi-employer CDC schemes, taking account of what is appropriate in schemes whose structures and relationships differ from those in single or connected employer CDC schemes. However, this does pose some challenges.

103. Should a CDC scheme which has solvent participating employers need to wind up, the early cessation of contributions may compromise their automatic enrolment (AE) obligations. Whilst we envisage that winding up of whole-life multi-employer CDC schemes will be rare, it might take some time for the participating employers to make alternative pension arrangements for their current employees going forward.

104. In Master Trusts, the trustees of a scheme that is pursuing continuity option 1 may:

- arrange for the future contributions of employers and active members to be paid to a receiving scheme from a date to be decided by the trustees
- arrange for any contributions received from employers and active members to be forwarded to the trustees of the receiving scheme[21].

105. In effect, this means that the trustees in a Master Trust that is being wound up can ensure ongoing AE compliance/continuity of saving by transferring contributions by, or in respect of, current employees into the new, receiving Master Trust, whilst the old scheme is still being wound up.

106. This appears to make sense in the individual DC space. However, such an approach seems less appropriate in the more complex environment of CDC. Allowing ongoing contributions and accruals to continue in such schemes might be perceived as reinforcing failure in some cases. A short AE amnesty for affected employers might offer a solution, but this would mean a pause in

[20] See Schedule 6 of the 2022 Regulations.
[21] See paragraph 14 of Schedule 5 to the Master Trust regulations.

members' continuity of saving, which is not attractive. This would need careful management to ensure this pause in saving was not prolonged.

Question 16: Is a similar approach to the wind up commencement time (and the cessation of contributions/accruals) appropriate in respect of the new whole-life multi-employer schemes? If not, why not? Given AE obligations, how might participating employers be provided with sufficient opportunity to make alternative arrangements, before contributions are prohibited in the whole-life multi-employer CDC scheme being wound up, whilst managing risks to members?

Discharge options and trustee duties

107. We will revisit the default and alternative member discharge options available to see whether any further additions are warranted, and what conditions should apply to these. We will also explore any tax implications associated with wind up, including discharge options, with HM Revenue and Customs.

Question 17: Are the current default and alternative discharge options sufficient for the new whole-life multi-employer CDC schemes?

Quantification of the value of beneficiaries' accrued rights to benefits

108. The current prescribed quantifications are intended to ensure that account can be taken of the value of the scheme's assets and what this means for members, including the level of periodic income payments that are required by the 2021 Act to be made for pensioner members, over the course of wind up. We consider that this approach is consistent with a basic principle of CDC schemes, that there is a balance between payments and the value of the assets, and are of the view, that these requirements can read across to the new whole-life multi-employer schemes.

Periodic income

109. As is currently the case, we will want 'pensioner members', including those who achieve that status during wind up, to receive an income during wind up and envisage that it may be calculated in the same way as it currently is.

Notifications and responses

110. We will review the existing requirements to make sure they are directed at appropriate persons or entities, cover the appropriate ground, and contain appropriate references and deadlines for whole-life multi-employer schemes.

Administration charges - obligations on receiving schemes

111. We consider that existing requirements should also apply to the new whole-life multi-employer schemes.

Question 18: Do you agree that the existing framework for the wind up of a CDC scheme can read across to the new whole-life multi-employer schemes? What changes, other than the ones mentioned above, do you consider should be made for these new schemes?

Continuity option 2 - resolving a triggering event

112. The aim of continuity option 2 is to allow some flexibility for trustees where the triggering event does not warrant the winding up or closure of the scheme. It provides a framework for ensuring appropriate action is taken whilst ensuring that there is an external check that the triggering event has been properly resolved. This is necessary to protect members.

113. We envisage that this option will be available to whole-life multi-employer CDC schemes for the same reasons.

Continuity option 3 - conversion to closed scheme

114. For reasons explained earlier, we believe that it is right that CDC schemes are robust and sustainable and that members can have some confidence that they will be around to provide an income over the course of their retirement. That a CDC design should aspire to continue as a closed scheme[22] in certain circumstances rather than wind up does not seem an unreasonable expectation if it can be shown to be in the best interests of members and would show commitment by those providers seeking to operate in this space.

115. Section 38 of the 2021 Act sets out the requirements currently to be followed by trustees and TPR, when a decision is taken to convert the scheme to a closed scheme under continuity option 3 following a triggering event. Continuity option 3 provides a structured framework for securing TPR's permission to run as a closed scheme.

116. Whilst continuity option 3 may need amendment to reflect earlier comments regarding scheme rules, we envisage that the remaining provisions are likely to be similar to those in place for single or connected employers.

[22] Closed, in relation to a CMP scheme, means closed to new contributions or new members (or both).

Chapter 10: Other policy considerations

Transfers

117. As is the case with single or connected employer CDC schemes, we envisage that members of whole-life multi-employer schemes who have not started to receive their pension income, will have a statutory right to transfer to another pension scheme if they wish. In addition, to ensure members of traditional DC schemes can take advantage of the potential benefits of CDC they will be able to transfer into these new schemes as long as the trustees of the receiving scheme have agreed to the transfer.

118. We also envisage that the existing transfer process for single or connected employer CDC schemes will largely read across to whole-life multi-employer schemes, including the timeline for facilitating transfers, and that an individual's share of the collective assets will be calculated on an actuarial basis. One difference with the transfer process for whole-life multi-employer schemes, is that the actuarial calculation of a member's share of the collective assets will need to take into account the factors considered in the scheme's actuarial plan, such as age and accrual rates. This will ensure that the calculation is fair, accurate and should not be detrimental to the interests of the remaining members of the scheme.

CDC Charge cap and other charge control measures

119. Schedule 3 to the 2021 Act amended the Pensions Act 2014 to help clarify that regulations can be made under the powers in that Act to provide for controls on charges borne by members in CDC schemes. This included implementing a charge cap in single or connected employer CDC schemes. Schedule 7 of the 2022 Regulations amended the Occupational Pension Schemes (Charges and Governance) Regulations 2015[23] to provide for a charge cap to apply to members of CDC schemes used for automatic enrolment.

120. We envisage that the existing CDC charge cap will apply to the new whole-life multi-employer CDC schemes in the same way. We do not consider that the charge cap would prevent the new schemes from investing in higher return seeking assets for longer, particularly since the proposed performance fee easements for DC schemes would also apply to all CDC schemes.

[23] www.legislation.gov.uk/ukdsi/2015/9780111128329/contents

121. In addition, the other charge control measures that apply to single or connected employer schemes will also apply to the new whole-life multi-employer schemes. We will continue to monitor whether the *de minimis* measure on flat fee charges should apply to CDC schemes and will take the relevant action if needed.

Scams

122. The measures introduced by the government to safeguard members from pension scams will apply to CDC schemes, including the new whole-life multi-employer CDC schemes. This includes the 'transfer rights' provisions that were introduced under section 125 of the 2021 Act. The regulations made under this section apply to members who transfer out of CDC schemes, ensuring they are covered by the new protections. It will also facilitate transfers into CDC schemes authorised by the TPR, without the need for additional protections to be applied.

Subsisting rights provisions

123. We envisage that the existing subsisting rights protections, that apply to single or connected employer schemes, should also apply to the new whole-life multi-employer CDC schemes as far as appropriate. For example, section 24 of the 2021 Act amended sections 67 and 67A of the Pensions Act 1995 to prohibit the transformation of defined benefits into CDC benefits. The amendments also imposed a requirement for member consent to be obtained where there is a transformation of CDC benefits into other types of money purchase benefits and vice versa.

124. However, CDC benefits are unique in that the level of benefits is adjusted annually in line with the provisions at sections 18-23 of the 2021 Act, regulations 17 to 20 of the 2022 Regulations and the scheme rules. The amendment to the Occupational Pension Schemes (Modification of Schemes) Regulations 2006, made by the Occupational Pension Schemes (Collective Money Purchase Schemes) (Modifications and Consequential and Miscellaneous Amendments) Regulations 2022 ("the Consequential and Modification Regulations 2022") provides clarity that such adjustments, if made in compliance with those provisions, are not in conflict with the subsisting rights provisions.

Disclosure and publication requirements

125. The Consequential and Modifications Regulations 2022 made a number of changes to existing legislation concerning the disclosure of information to members of CDC schemes. This includes the collective nature of these schemes and the important key message that CDC benefits can fluctuate, reiterating this at key points in the member journey (at joining, on an on-going annual basis,

approaching retirement and to pensioner members with benefit in payment). This covered, for example, information contained in Annual Benefit Statements, the timing of the latter and the scope and content of the benefit adjustment notification sent to members of CDC schemes.

126. In addition, section 46 of the 2021 Act introduced some publication requirements for single or connected CDC schemes to provide for an additional layer of transparency. This included a requirement to publish a scheme design statement and valuation, and a benefit adjustment statement.

127. We consider that these disclosure and publication requirements can be read across to the new whole-life multi-employer CDC schemes, but we would welcome further views on this.

Question 19: Do you agree that the existing requirements, outlined in Chapter 10, which apply to single or connected employer schemes can be read across to the new whole-life multi-employer CDC schemes, other than where a modification has been highlighted?

Automatic enrolment (AE) quality requirement

128. Employers choosing to use a single or connected employer CDC scheme to meet their AE duties are required, as with other schemes, to ensure that the scheme meets the minimum quality requirements for qualifying schemes under the Pensions Act 2008[24].

129. The 2022 Regulations introduced an alternative AE quality test for single or connected employer schemes. We will need to revisit this test in the context of whole-life multi-employer CDC schemes and will consider whether it would be appropriate to develop another alternative test for these new schemes.

[24] www.legislation.gov.uk/ukpga/2008/30/contents

Chapter 11: Decumulation-only arrangements

130. There has been considerable interest in the potential for CDC decumulation only arrangements and how they might help improve member choice and outcomes in the existing DC decumulation market. This chapter has been informed by the work on decumulation only CDC arrangements undertaken by the RSA CDC Forum, the recent Call for Evidence on decumulation which contained a question about the role of CDC in decumulation, and feedback from other interested parties we have engaged with on this subject.

131. Such arrangements could provide those approaching retirement with an income product that allows them to share investment and longevity risk. In addition, a CDC decumulation fund has the potential to provide, on average, better returns than the traditional options of annuities or drawdown. This is because their longer-term investment horizons mean they will be able to invest more in higher return seeking assets for longer. Members can be confident that they have a fully managed investment fund, providing them with an income for life (although the annual benefit level is not guaranteed).

132. It has been suggested that CDC decumulation only arrangements can be a natural extension of the single or connected employer regime that has been introduced as well as the whole-life multi-employer and Master Trust framework we explored in previous chapters. We recognise there is a read across to whole-life schemes but there are key differences. For example, in a whole-life scheme both members and employers contribute to the collective fund, and it is those contributions (and investment performance) that will determine the member's share of the collective assets over time, and the level of the member's benefits from the scheme.

133. In a decumulation only CDC arrangement, members would transfer to the scheme at the point of decumulation with their pension pot. The value of their pot at that time will determine what pension income the member might receive from the arrangement. Market conditions or other factors when members decumulate may significantly affect either the value of their pot, or the factors used to calculate their projected benefits from the scheme. There are also issues relating to the pricing mechanism used at decumulation and how this will ensure fairness for both the incoming member and existing scheme members.

Key principles we want to retain for decumulation only CDC arrangements

134. We acknowledge that decumulation only CDC arrangements will be different to whole-life CDC schemes, and this will read across to the key principles considered earlier in this document. The principles we consider should be retained for decumulation only arrangements are:

- the CDC benefits in these arrangements must be collective money purchase benefits.
- the arrangements would be offered through a trust based occupational pension scheme.
- such arrangements will require authorisation and supervision by TPR to help ensure only well designed and well-run schemes can operate and to protect the interests of members. We want to work with interested parties and seek views on the appropriate authorisation and supervision requirements.
- an authorisation fee would apply.
- CDC benefits would be subject to annual valuation and adjustment.

135. Whilst we are open to considering other options, we are minded to include an expectation that schemes aim to provide inflation-linked increases in decumulation as this can significantly smooth the impact of market shocks and reduce the likelihood of cuts in nominal benefit rates.

136. However, the fair pricing of entry for new members, and the way that pension increases could interact with that could lead to some perverse outcomes, such as the cost of entry becoming too high, because the scheme had done very well with investment returns in the past. There are ways of addressing this, for example by capping positive adjustments in exchange for a one-off uplift for existing members, or by calculating the adjustments of different cohorts of members separately to keep the price of entry stable. We want to better understand the risks and implications of these approaches and why they might be necessary.

Key areas for consideration

137. Whilst we recognise the potential benefits of decumulation only CDC arrangements, we are keen to develop our understanding of how they might work in practice and of their implications and risks. In particular, decumulation products have historically been regulated by the FCA, but this is fresh ground for trust-based schemes. The rules governing contract-based decumulation products and their member protections are not completely replicated in the trust-based environment. We need to understand what potential gaps exist and develop adequate member protections, striking an appropriate balance between commercial interests and protecting the interests of members.

138. The following paragraphs outline further key areas we seek views on.

Seed capital

139. Given that decumulation only CDC arrangements might not be set up by employers and could be commercial arrangements, we seek views on who would provide the initial funding for setting up such schemes. We do not want members to bear the costs of establishing the scheme beyond paying the administration charges. This would also extend to the operating costs of the scheme over the short to medium term when the level of member-borne charges might be insufficient to cover those costs.

Question 20: Who would be responsible, for meeting the costs of establishing the arrangement and the short-medium term operating costs?

How will sufficient scale be achieved and maintained

140. The full benefits of CDC are best realised through scale. Unlike whole-life schemes, where initially there will be more active members than pensioner members to help achieve scale, decumulation only CDC arrangements will need to attract significant numbers of transfers-in to achieve the appropriate economies of scale to provide the aspired-to pension incomes for life.

141. Again, unlike whole-life schemes where there may be greater certainty over the level of future contributions, there is likely to be less certainty about future on-flows into a decumulation only CDC arrangement. This has significant implications for the sustainability of the arrangement and what that might mean for pensioner benefits. There are a lot of small pension pots in the occupational pensions market, and we would welcome views on how this might impact achieving and maintaining scale.

Question 21: How could such arrangements establish scale and what evidence is there to support this? In addition, until such schemes achieve and maintain scale do commercial providers envisage providing the funding needed to smooth volatility and deliver the aspired to pension benefits? How would the potential issue of small pots be addressed?

Pricing and the potential for mortality underwriting

142. We want to seek views on the mechanisms that will be used to determine the buy-in price of people transferring-into a decumulation only CDC arrangement. To ensure that people transferring into these schemes are treated fairly, rules will need to be developed regarding the pricing mechanism, so a consistent approach is taken. In addition, the pricing mechanism must not disadvantage the existing members of these arrangements or create excessive cross-subsidies. An appropriate balance needs to be struck between fairness between individuals and not creating an overly complex mechanism that results in high buy-in costs.

143. Mortality underwriting is a feature of the annuity market and we have been advised that this has become more detailed in recent years. For example, the factors that may be considered include health, socio-demographic factors and even location. It has been suggested that such assumptions should be considered in the context of decumulation only arrangements. For example, one organisation we talked to suggested that these factors should be considered when determining the price at which someone buys into the arrangement.

Question 22: What mechanism should be used to determine the price at which people might buy into a decumulation only CDC arrangement and what can be done to ensure individuals are treated fairly? In addition, should mortality underwriting be a feature of these arrangements, and how would this best be done?

Member communications and marketing

144. Given that decumulation only CDC arrangements will operate differently from whole-life schemes, existing and prospective members must be able to understand the terms and conditions of the arrangement, how their buy-in price has been calculated, and how this will influence their aspired to pension income.

145. As with whole-life CDC schemes, members and prospective members must understand that their pension income is not guaranteed and can fluctuate because of an annual valuation and adjustment mechanism.

146. Decumulation only CDC arrangements are more likely to be commercial arrangements and we want to manage the risk of over-promising. By this we mean the risk that the promotional material/communications of the commercial arrangements may be over optimistic about the risks and benefits prospective members might receive, in order to get an edge over competitors. Feedback has highlighted the need to avoid mis-selling and pointed out that steps would need to be taken to avoid that scenario.

147. Having a consistent approach to how buy-in prices are calculated and how the arrangements are allowed to market themselves would also help members to make a reasonable comparison between options in the market and help them make informed decisions.

Question 23: What steps can be taken to ensure communications to members help them understand how these new arrangements will work and how can consistent standards be achieved in the way commercial arrangements market their products to prevent over-promising?

Question 24: What other changes in addition to those set out in this document, do you think need to be made to ensure the effective and fair operation of decumulation only CDC arrangements?

Annex: Summary of questions

Question 1: Do you agree with the key principles we have identified as necessary for the new types of CDC schemes and in particular whole-life multi-employer CDC models? If not, please set out why.

Question 2: Do you agree with our thoughts on what requirements might need amending to accommodate these new CDC designs? What new triggers for sectionalisation other than a change to the actuarial plan do you envisage might be appropriate in these new schemes?

Question 3: Should the definition of “operates” at section 7(5) of the 2021 Act be amended for whole-life multi-employer CDC schemes? If you agree, please set out how.

Question 4: How might legislation capture persons performing the functions listed at paragraph 39 in commercial and sectorial schemes so that they are within scope of the fit and proper persons test? Are there other persons that should be brought within scope of the fit and proper persons test for these new schemes?

Question 5: Do you agree that those marketing and promoting CDC schemes should be within scope of the fit and proper persons test where certain conditions apply, and if those conditions should be similar to those in Master Trust schemes?

Question 6: Are any changes or additions needed to Schedule 1 of the 2022 Regulations in respect of matters to be taken into account by TPR, as part of the fit and proper test to reflect the new roles envisaged to exist in sectorial and commercial schemes?

Question 7: Are the current scheme design requirements including the tests still appropriate for assessing soundness in the new whole-life multi-employer schemes? Are there any additional soundness considerations or tests needed in light of the new designs?

Question 8: If a scheme funder equivalent is introduced for the new whole-life multi-employer CDC schemes including Master Trusts, should similar scheme funder requirements to those in the DC Master Trusts regime apply? Are there any changes needed to ensure there is a clear focal point for TPR’s scrutiny and liability for meeting the relevant costs?

Question 9: Should business plan requirements, similar to those for Master Trusts, be introduced for commercial and sectorial CDC whole-life multi-employer schemes? What, if anything, should change? Who should be responsible for preparing the business plan?

Question 10: Do you agree that the existing requirements should apply to new whole-life multi-employer schemes and are additional requirements needed to help ensure that communications used in promoting and marketing the scheme are not misleading? How might Schedule 4 of the 2022 Regulations be amended to achieve this?

Question 11: Are any changes or additions needed to the requirements in Schedule 5 of the 2022 Regulations to reflect the new designs and relationships anticipated in the new whole-life multi-employer schemes?

Question 12: Do you agree that it is reasonable for the existing requirements in regulations 15 and 16 of the 2022 Regulations to apply to the new whole-life multi-employer CDC schemes, and that the continuity strategy should include an aspiration to operate the scheme as a closed scheme?

Question 13: Do you agree that most of the existing requirements can read across to the new whole-life multi-employer schemes? What changes including the one proposed above do you think should be made to the existing requirements and why?

Question 14: Do you think that the list of events in regulation 23 of the 2022 Regulations needs amending for the new whole-life multi-employer CDC schemes? If so, why? Are there new events that should be added or current events that should be removed?

Question 15: Do you agree that the list of triggering events that apply to single or connected employer CDC schemes needs some revision to accommodate whole-life multi-employer CDC schemes? Are there new events that should be added or current events that should be removed?

Question 16: Is a similar approach to the wind up commencement time (and the cessation of contributions/accruals) appropriate in respect of the new whole-life multi-employer schemes? If not, why not? Given AE obligations, how might participating employers be provided with sufficient opportunity to make alternative arrangements, before contributions are prohibited in the whole-life multi-employer CDC scheme being wound up, whilst managing risks to members?

Question 17: Are the current default and alternative discharge options sufficient for the new whole-life multi-employer CDC schemes?

Question 18: Do you agree that the existing framework for the wind up of a CDC scheme can read across to the new whole-life multi-employer schemes? What changes, other than the ones mentioned above, do you consider should be made for these new schemes?

Question 19: Do you agree that the existing requirements, outlined in Chapter 10, which apply to single or connected employer schemes can be read across to the new whole-life multi-employer CDC schemes, other than where a modification has been highlighted?

Question 20: Who would be responsible for meeting the costs of establishing the arrangement and the short-medium term operating costs?

Question 21: How could such arrangements establish scale and what evidence is there to support this? In addition, until such schemes achieve and maintain scale do commercial providers envisage providing the funding needed to smooth volatility and deliver the aspired to pension benefits? How would the potential issue of small pots be addressed?

Question 22: What mechanism should be used to determine the price at which people might buy into a decumulation only CDC arrangement and what can be done to ensure individuals are treated fairly? In addition, should mortality underwriting be a feature of these arrangements, and how would this best be done?

Question 23: What steps can be taken to ensure communications to members help them understand how these new arrangements will work and how can consistent standards be achieved in the way commercial arrangements market their products to prevent over-promising?

Question 24: What other changes in addition to those set out in this document, do you think need to be made to ensure the effective and fair operation of decumulation only CDC arrangements?