ASLEF Response to Occupational Pension Schemes – abolition of defined benefit contracting-out consultation

1. The Associated Society of Locomotive Engineers and Firemen (ASLEF) is the UK's largest train driver's union representing more than 20,000 members in train operating companies and freight companies as well as London Underground and light rail systems.

2. ASLEF is glad to have this opportunity to respond to this consultation. The end of contracting out and the National Insurance rebate has raised some difficult questions. Whilst ASLEF has continuously expressed its opposition to the mind-set that what is essentially a National Insurance increase should mean employers are able to reduce their pension contributions, the union recognises that this is now primary law and are happy to contribute to the discussion to ensure that these measures are introduced in a way that will not simply allow employers to make more money by reducing their staffing costs.

3. The added complication is that the Railway Pension Scheme is the largest scheme to be affected by these measures and different to most defined benefit schemes in that has a 60/40 shared cost arrangement. This makes the recouping of National Insurance from the Railway Pension Scheme extremely complicated. ASLEF hopes to raise these issues and complications in this response.

Interpretation

4. ASLEF are happy with the definition of a “principal employer”.

Calculation Framework

5. ASLEF understands the reasoning behind allowing an employer to use a calculation date from any date going back to 31 December 2011. This gives companies the opportunity to use their last triennial valuation. This prevents the additional cost and complication of having a special valuation for these purposes. However, that coupled with the fact that employers have 5 years from the end of the rebate to use override powers means that it may be possible for employers to have more than one valuation and set of assumptions in order to calculate potential changes. This could lead to potential manipulation as employers are able to pick the valuation results and assumptions that they feel could benefit them in the long term. For example, an older valuation may show a reduction in benefits reducing contributions for the employer by an amount smaller or equal to the NI rebate loss. This could make it permissible under the regulations. The later available valuation may show that it would mean a saving above that of the lost rebate and would therefore not be permissible. Yet by choosing the earlier valuation, the employer would be able to make this change.

6. One of the additional problems is that earnings data can be taken across the whole employer. Within the railway industry, earnings can be very different to pensionable pay. Some employees are happy to work as much overtime as possible. The employee and employer will of course pay National Insurance contributions on these earnings. Others work their contracted hours meaning that their earnings are far closer to their pensionable pay. The more earnings there are above pensionable pay, the higher percentage of savings the employer would need to make from the pension to make up the National Insurance contributions increase. In effect, it would therefore be likely that some employees would end up

losing a higher percentage of their pay because of the overtime work undertaken by others.

Unconventional Funding Arrangements

7. One of the biggest issues facing these proposals is how they can work in relation to shared cost schemes. It is therefore also unfortunate that the largest schemes that will be affected by the override will be the Railway Pension Scheme which has such an arrangement. The Railway Pension Scheme has always been a shared cost scheme with contributions split 60/40 between employers and employees. This arrangement has kept the scheme in good stead. All parties involved have an interest in keeping the scheme healthy and affordable. This has led to mature conversation between companies and unions. ASLEF would therefore strongly resist any attempts to move away from the arrangement.

8. An amendment to the bill was moved by Lord Freud on 13th January 2014. It stated that:

Schedule 14, page 78, line 19, at end insert—

“( ) Where the effect of using the power (overriding trustee consent) to increase employee contributions of the relevant members would be to increase the contributions that the employer is required to pay, the power may be used to make other amendments needed to ensure that only the employee contributions are increased because of the use of the power.

“( ) Where the effect of using the power to alter the future accrual of benefits for or in respect of the relevant members would be to decrease the contributions that any members are required to pay, the power may be used to make other amendments needed to ensure

that the contributions of those members are not decreased because of the use of the power."

9. This helps solve one of the biggest problems in dealing with the shared cost arrangement. Before this amendment, any saving to the employer would have to be shared with the employee with a 60/40 split. This means that if it was decided that an employer should save 3% from contributions, an employee would have to save 2% and a total saving of 5% would have to be found from the scheme.

10. However, this solution simply solves one problem and creates another. It will stop the scheme being a 60/40 cost share arrangement. The consultation paper explains, "It would not be appropriate for sponsors of these schemes to use the override power to make scheme rule changes that, in effect, convert a shared cost scheme into a scheme with a more conventional funding arrangement." However ASLEF fails to see how the amendment does anything other than change the 60/40 split of the RPS. Whether benefits are reduced but only the employer makes the saving or alternatively contributions for only the employee are increased, it means that by definition the shared cost arrangement has been changed.

11. The only possibility would be for a separate payment to be added to the employees' contribution. This would mean that going forward all contributions continue to be split 60/40 but employees must pay an additional contribution that is separate. This would not increase or decrease with future service contributions but just in line with pensionable pay. This would be extremely complicated and something ASLEF would argue still does not comply with a shared cost arrangement.

12. In addition ASLEF fails to see how it would be possible to ensure that employers only recoup their extra National Insurance payments if they chose to reduce benefits. The cost of accruing benefits constantly changes. Market conditions and longevity are perhaps the most obvious

causes of this. Therefore at one valuation, future service payments could be far lower than at the next valuation despite the benefits not having changed at all. This means that a saving based on one valuation that would be under that amount permitted by these regulations but going forward could be far higher. For example, an actuary may agree that reducing an accrual rate to 1/65ths would lead to a saving of an amount equal to that of the National Insurance increase and therefore this alteration should be permitted and the employer's contribution reduced accordingly. But if longevity continues to increase, the cost of accruing these benefits will also increase. This means that the saving made by reducing the accrual rate will continuously go up and lead to employers saving far more than the NI additional cost. This is exactly what the regulations claim they do not want to happen.

13. ASLEF appreciates that calculations must be based on a valuation at some point. However pensions are long term investments. Small changes now may well end up being magnified and could be dramatically different over a person's working life.

14. ASLEF cannot see how it would therefore be possible to maintain the 60/40 shared cost arrangement and allow changes to contributions or benefits as proposed in the regulations.

Role of the Actuary

15. ASLEF feels that whilst the regulations talk about the need for trustees to share information within a 4 week time frame, it is also important that the information on which any actuary has signed off the potential changes to scheme rules is freely available for scheme members and representatives to allow for genuine consultation.

Multi-employer schemes

16. The vast majority of ASLEF members are in straight forward single employer sections of the RPS.

Cross-subsidy

17. ASLEF supports the regulations attempts to treat different groups with different benefit structures as separate entities to reduce cross-subsidy. Within the RPS sections there have been changes since privatisation that have meant that there are some members on different benefit structures. In order to make this fair they usually also pay different contribution rates. It would be wrong for those with lesser benefits to cross subsidise those on higher benefits because of these measures.

Questions related to the Contracted-out Regulations

18. ASLEF are happy to see the consultation deal with changes that enable trustees to alter rules to enable the continuation of aspects of the scheme that could be changed due to technicalities and unforeseen consequences. The RPS has a 1.5 times state pension offset. This is based on what is commonly known as the Basic State Pension. This pension will continue to exist for those in receipt of it after the new single tier pension is introduced. It is important that the offset continues to use what we know as the basic state pension as it means the offset is currently £8,821.80. The offset if it was confused with the new single tier pension would be about £11,230, dramatically reducing the value of the RPS.

19. Any minor wording changes that ensure that the offset continues to be the sum which the rules intend are therefore essential.

Other Issues

20. Speaking on the Pension Bill 4th Day of the House of Lords Grand Committee (13th January 2014) the Parliamentary Under-Secretary of State, Lord Freud, made the following statement in relation to Amendment 44:

"I also want to make it clear that we do not see use of the override as a default position for employers. We expect the override to be used by employers only as a fallback position where they need to offset the costs resulting from the end of contracting out and have no options available other than closing the scheme. As several Lords pointed out, there are long-standing and established ways in which employers work with trustees to make changes to schemes when required. The noble Lord Browne, when paraphrasing the Pensions Minister said:

The strong incentive, therefore, is … to have a mature conversation with trustees in order to reach agreement."

21. ASLEF felt that this was an essential part of the Pension Act. Yet there is nothing within the regulations that give any guidance or impetus for employers to negotiate or discuss these matters with trustees, employees or employee representatives. Whilst many employers will want mature conversations with trustees and employee representatives, there are some who will see these regulations as a way to get back their NI increase in whatever way they see fit.

22. From the comments made by the Pension Minister and Lord Freud, ASLEF feel that it is important that there are regulations to back up the sentiment of the Government's proposals. Whilst statutory consultation with members will still apply, this is not a very robust way to ensure they "mature conversations" take place. We therefore call on the government to bring in

legislation to ensure that full consultation with trustees and employee representatives' takes place before the override can be used.

23. An additional complexity on the railways is the fact the employer of any staff working for a train operating company can change frequently whilst they remain in the same pension scheme due to the franchise system. ASLEF want clarity from the government on whether a new franchise holder after April 2016 but within in the next 5 years, will be able to enforce these changes if they have not been used already by the previous franchise holder.

24. As previously mentioned ASLEF has always opposed the principle that an employer should be able to override a trustee, no matter how limited the scope. This principle has now become law. However when examining the regulations being proposed, the Union finds its increasingly difficult to see how this change can be done fairly and be limited to the additional National Insurance costs to employers. Pensions are long term investment and rule changes that save a certain amount now may well save much different figures later. In addition to this, ASLEF believes it is impossible to maintain a genuine 60/40 shared cost arrangement if the override is used. The union hopes that the Pension Minister and the DWP continue to engage the relevant unions to ensure that employees' pensions are not unfairly attacked as a result of this Act.

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