



The Pension Benefits Regulations, 1993

Consultation Paper

Regulation of Individual Pension Plans and Designated Pension Plans for Connected Individuals

Consultation Paper:
May 29, 2023

Contents

1. Purpose of Consultation Paper.....	3
2. What is an IPP and a DPP.....	3
3. The FCAA’s Proposed Framework.....	4
4. Connected Members and High-Income Earners.....	6
5. Number of Employers Participating	7
6. Member and Spouse Consent	8
7. Currently Registered Versus Newly Registered Plans.....	8
8. Other Models in Canada.....	9
9. Comments	10

1. Purpose of Consultation Paper

The Government of Saskatchewan (the Government) is considering amending *The Pension Benefits Regulations, 1993* (the Regulations) to exempt certain types of individual pension plans (IPPs) and designated pension plans (DPPs) from registration and regulation under *The Pension Benefits Act, 1992* (the Act).

The Financial and Consumer Affairs Authority (FCAA) is interested in hearing from a variety of stakeholders associated with IPPs and DPPs that are registered under the Act. Based on the feedback received, the FCAA will make recommendations to the Government regarding amending the Regulations.

Section 3 of this paper sets out the FCAA's proposed framework under which IPPs and DPPs containing only connected members would be exempt. The proposed framework would exempt those plans from all requirements of the Act, including registration, filing, funding and all minimum standards.

In this paper, questions will be asked regarding potentially expanding the proposed framework to exempt IPPs and DPPs which contain high-income earners. Questions will also be asked about the conditions under which the exemption should be granted, and whether there are any provisions of the Act or Regulations which stakeholders feel should continue to apply to plans that are otherwise exempt.

2. What is an IPP and a DPP

The plans in the scope of this consultation include certain IPPs and DPPs.

An IPP and a DPP are each defined under the *Income Tax Regulations* (the ITR). Under the ITR, a pension plan may be either an IPP, a DPP or both. Both types of plans are usually established for highly paid executives or persons connected to the employer.

In general terms, an IPP is defined in s. 8300(1) of the ITR as a registered pension plan that contains a defined benefit provision and that at any time in the year or a preceding year, the plan either:

- a) Has fewer than four members and at least one of them is related to a participating employer in the plan, or
- b) Is a DPP and it is reasonable to conclude that the rights of one or more members to receive benefits under the plan exist primarily to avoid the plan qualifying as an IPP under the criteria in paragraph a).

A DPP is defined in s. 8515 of the ITR. In general terms, to be a designated plan the plan must be a registered pension plan that contains a defined benefit provision, members must include a “specified individual” and the aggregate of the pension credits for all specified individuals must exceed 50% of the aggregate of all pension credits in the plan. A plan is not a designated plan if it is maintained pursuant to a collective agreement.

A specified individual is a person who is connected to a participating employer or whose remuneration is greater than 2.5 times the year’s maximum pensionable earnings.

When the term “high-income” earner is used in this consultation paper, it means a person whose remuneration is greater than 2.5 times the year’s maximum pensionable earnings. In 2023, it would include a person who earns more than \$166,500.

In general terms, a connected person is defined in s. 8500(3) of the ITR as an individual who:

- Owns, directly or indirectly, 10% or more of the issued shares of any class of shares of the employer or related employer,
- Does not deal at arm’s length with the employer, or
- Is a specified shareholder of the employer as defined in the *Income Tax Act* (the ITA).

3. The FCAA’s Proposed Framework

The FCAA is considering recommending the following framework to the Government:

- IPPs and DPPs for connected members that are established after the amendments are in force would be automatically exempt from registration under the Act and from all provisions of the Act, including

any requirements or protections under the Act, as long as individuals who are not connected to the employer do not join the plan.

- Existing IPPs and DPPs for connected members would be exempt from registration under the Act and from all provisions of the Act, under certain conditions as follows:
 - In addition to the requirement that members be connected, former members must have been connected immediately before terminating membership.
 - Individuals who are not connected would not be permitted to join the plan.
 - All members, former members, the spouse of each member and former member, and anyone currently entitled to a benefit under the plan must consent to the exemption. This would be a “point in time” exemption, meaning that the spouse is the current spouse at the time the consent is signed. Note that former member is defined in the Act as a person whose membership in the plan has terminated and who retains a present or future entitlement to a benefit pursuant to a plan.
 - There can only be one employer covered by the plan. Plans with more than one participating employer would not qualify for the exemption.
 - The employer must submit an exemption election form. The main purpose of the election form is that the Superintendent receive certification from the employer that: all members are connected; all former members were connected immediately before terminating membership; all members, former members, the spouse of each member and former member and anyone currently entitled to a benefit under the plan have consented to the exemption; and there is only one employer covered by the plan.
- There would be no change to the current rules for IPPs and DPPs which contain high-income earners. These plans would continue to be registered and regulated in the same way they are now.

- A plan that is exempt would continue to be exempt even if a member or former member was connected to the employer at the time the plan became exempt, then subsequently ceases to be connected.
- An IPP or DPP would automatically be exempt from the application of the Act, if its registration under the ITA has been revoked, either before or after the Regulations come into force. This would apply even if the plan has members that are not connected members.

The sections below will expand upon some of the items in the proposed framework. The FCAA is open to adjusting the proposed framework to the Government based on the feedback received.

4. Connected Members and High-Income Earners

Most jurisdictions in Canada exempt some or all IPPs and/or DPPs from most requirements of their pension legislation. In most jurisdictions, it is only plans for connected individuals which have exemptions. The FCAA is aware that some jurisdictions that exempt only plans with connected members may be contemplating extending that to plans with high-income earners.

In other jurisdictions, where only plans for connected individuals are exempt, it is typically a requirement that all active members are connected, and former or retired members must have been connected immediately before terminating active membership.

There are 129 IPPs or DPPs registered under the Act. According to the information we have available to us, about 95% of these plans contain only connected persons. About 60% of the plans that contain only connected persons have only one member in the plan.

The FCAA proposes that plans that contain only connected persons should be exempt. For plans for connected individuals, the plan members make the decisions with respect to the plan design and the plan fund and do not need the protection of the Act. The cost of compliance does not provide commensurate value for the plan members.

For IPPs or DPPs that include high-income earners, those members are not the plan sponsor or administrator. They do not have the same influence over

plan design or plan funding as would a connected member. The FCAA proposes that the regulatory framework with respect to those plans should not change, as the members should still be protected by the Act. However, it could be that business owners would be more inclined to establish plans for high-income earners if there were no registration or other requirements under the Act.

QUESTION 1: Do you agree that plans containing only connected members should be exempt from registration and regulation under the Act? If you feel that plans that contain high-income earners should also be exempt, why do you feel that way?

5. Number of Employers Participating

An IPP or a DPP can have more than one participating employer. In that case, the plan administrator would be a Board of Trustees. The plan sponsor could be an association, a corporation or other body. The plan could be a defined benefit plan or a target benefit plan. In a plan with more than one participating employer, the plan members would not have direct influence on the plan design or plan funding. Therefore, the FCAA feels that if a plan has more than one participating employer, the current regulatory framework that applies to that plan should not change. This is because it is felt that the members of those plans should still be protected by the Act.

As far as the FCAA knows, there are not any IPPs or DPPs with more than one participating employer registered under the Act. However, there are plans of this nature registered in other jurisdictions. It is possible that this type of plan could be offered to Saskatchewan residents, whether the plan would be registered in Saskatchewan or in another jurisdiction.

QUESTION 2: Do you agree that plans with more than one participating employer should be required to be registered under the Act, and all provisions of the Act should continue to apply?

6. Member and Spouse Consent

The FCAA feels that it is important that, in order for existing IPPS and DPPs to be exempt from registration and other requirements of the Act, plan members, former members and their spouses and anyone currently entitled to a benefit under the plan must consent.

It is important that members, former members and spouses and anyone currently entitled to a benefit under the plan understand that if consent is given, they will be exempt from the Act, and they will lose the rights and protections of the Act. This is particularly important for spouses. The Act requires that pensions payable to plan members who have a spouse are payable during the lives of the member and their spouse, and after death of the member, the pension continues to be payable to the spouse for life. If a plan is exempt from all requirements of the Act, the spouse would not have a right to payments from the plan, as the ITA does not have this requirement.

It is important that members, former members, spouses and anyone currently entitled to a benefit under the plan are given the choice to consent or not to consent. It is possible that some members, former members, spouses or anyone currently entitled to a benefit under the plan may prefer that the plan remains registered and subject to the provisions in the Act.

QUESTION 3: Do you agree that members, former members, spouses and anyone currently entitled to a benefit under the plan should have to consent in order for existing IPPs and DPPs for connected members to be exempt from the Act?

7. Currently Registered Versus Newly Registered Plans

The FCAA proposes that IPPs or DPPs for connected persons which are established after the amendments are in force should automatically be exempt from all requirements of the Act, including registration, and from all protections under the Act. In this case, members would be aware from the outset that they will be registered only under the ITA, and the rules of the Act would not apply.

QUESTION 4: Do you agree that IPPs or DPPs for connected persons that are established after the Regulations are in force should automatically be exempt from the Act?

8. Other Models in Canada

In some jurisdictions, the framework is quite different than what is being proposed in Saskatchewan. The framework proposed by the FCAA is similar to the framework in Ontario.

In the other jurisdictions, IPPs and DPPs do not have to apply for an exemption and members, former members and spouses and anyone currently entitled to a benefit under the plan do not have to consent. Rather, the plans automatically fall under the rules where there is an exemption from some provisions (like plan registration and funding), but other provisions (like portability options, spousal rights on death and creditor protection) continue to apply. The provisions that continue to apply vary by jurisdiction.

QUESTION 5: In FCAA's proposed framework, do you feel that any provisions of the Act should continue to apply to IPPs and DPPs that apply for and are granted an exemption? If so, which provisions?

QUESTION 6: Would you prefer that Saskatchewan adopt a framework that is similar to that in Alberta and British Columbia, where certain plans are automatically exempt from some provisions (like plan registration and funding), but other provisions (like portability options and spousal rights on death) continue to apply? If so, which provisions do you feel should continue to apply?

9. Comments

We are interested in hearing from you. In addition to providing your comments on the questions posed throughout this paper, please feel free to provide any additional and relevant information. For your ease in responding, the questions posed in this paper are also provided below.

QUESTION 1: Do you agree that plans containing only connected members should be exempt from registration and regulation under the Act? If you feel that plans that contain high-income earners should also be exempt, why do you feel that way?

QUESTION 2: Do you agree that plans with more than one participating employer should be required to be registered under the Act, and all provisions of the Act should continue to apply?

QUESTION 3: Do you agree that members, former members and spouses and anyone currently entitled to a benefit under the plan should have to consent in order for existing IPPs and DPPs for connected members to be exempt from the Act?

QUESTION 4: Do you agree that IPPs or DPPs for connected persons that are established after the Regulations are in force should automatically be exempt from the Act?

QUESTION 5: In FCAA's proposed framework, do you feel that any provisions of the Act should continue to apply to IPPs and DPPs that apply for and are granted an exemption? If so, which provisions?

QUESTION 6: Would you prefer that Saskatchewan adopt a framework that is similar to that in Alberta and British Columbia, where certain plans are automatically exempt from some provisions (like plan registration and funding), but other provisions (like portability options and spousal rights on death) continue to apply? If so, which provisions do you feel should continue to apply?



Comments can be submitted to pensions@gov.sk.ca or mailed to:

Pensions Division – IPP/DPP Consultation
Financial and Consumer Affairs Authority
400 - 2365 Albert Street
Regina SK S4P 4K1

Comments must be received by **July 15, 2023**.

The Freedom of Information and Protection of Privacy Act (the FOIP Act) applies to any submissions made to the Superintendent of Pensions (the Superintendent) in response to this consultation (the Consultation). As such, the information, including personal information, you provide to the Consultation is being collected for purposes of determining potential future changes to legislation, and will be used or/and disclosed for that purpose and in accordance with the provisions of the FOIP Act and applicable provisions of the Act.

All submissions received from organizations in response to this Consultation will be considered public information and may be disclosed to any person or/and published on the website of the FCAA. The Superintendent will consider an individual showing an affiliation with an organization to have given their response on behalf of that organization.

Responses from individuals who do not show an affiliation with an organization will not be considered public information. The Superintendent may also publish responses received from individuals. However, your personal information (such as name, email address, mailing address) will not be disclosed unless there is an exemption under the FOIP Act that allows for its disclosure. The Superintendent may use your provided contact information to follow up with you to clarify your responses.

If you have any questions about the above, please contact the Pensions Division of the FCAA at 306-787-7650 or pensions@gov.sk.ca.