Opinion: non-qualifying regulatory provision confirmation
Origin: Domestic
RPC reference number: RPC16-HMT-3572(1)
Date of implementation: December 2016

Distribution of Insurance Companies 2016

HM Treasury

RPC rating: confirmed as a non-qualifying regulatory provision

The IA is now fit for purpose as a result of the department's response to the RPC's initial review notice. As first submitted, the IA was not fit for purpose.

Description of proposal

The proposal is to update a section of the Companies Act 2006 (the Act) to align with the Solvency 2 Directive and allow life insurance businesses to continue to calculate their distributable profits. Without this alignment, there would be a lack of legal certainty in the calculation of distributable profits, which could lead to a non-payment of year end dividends. The department and business consider this would lead to significant financial market disruption. The new section of the Act sets out a method for calculating realised profits and losses for life insurance companies, which aligns with the requirements of the Directive.

Impacts of proposal

The department states that, in line with the Directive, firms are already required to calculate dividends and report to the Prudential Regulation Authority (PRA) prior to distribution of profits to shareholders. As such, there is no additional burden from the proposed amendment. The same calculation will be made as was previously the case, with no process changes for business to make.

This will be a non-qualifying regulatory provision (NQRP) that will not score under the business impact target.

Quality of submission

As first submitted, the RPC did not consider the submission to be fit for purpose as it did not provide sufficient information to support its claim that there would be no additional burden on business. It also lacked sufficient justification to support the classification of the measure as a NQRP.

The department has now provided further information regarding these points. It explains that the issue addressed by the amendment was brought to the department's attention by business and that business, advisers and regulators have contributed to the development of the amendment. In the course of the development stakeholders have informed the department that there is no additional burden resulting from the amendment. We welcome this best-practice approach to policy development and evidence generation.

Similarly, the department has clearly described evidence from stakeholders which justifies the NQRP classification. The department now explains that there are over 200 life insurance firms, and that payment of dividends is a fundamental part of these companies' activities; the four largest paid out around £3bn in dividends last year. The department therefore argues – appropriately - that failure to pay dividends would lead to a significant risk to the financial markets.

Departmental assessment

Classification	Non-qualifying regulatory provision (Financial Systemic Risk)
Equivalent annual net cost to business (EANCB)	Not applicable (low cost non-qualifying regulatory provision)

RPC assessment

Classification	Non-qualifying regulatory provision (Financial Systemic Risk)
Small and micro business assessment	Not required (low-cost regulation)

Michael Gibbons CBE, Chairman