Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2018

Lead department	Department for Work and Pensions
Summary of measure	The Regulations provided for deferred debt arrangements (DDAs) to enable employers to defer the payment of a pension scheme debt.
Submission type	Post-implementation review
Implementation date	2018 – five-year review by 6 April 2023
Department recommendation	Keep/Retain
RPC reference	RPC-DWP-5258(1)
Opinion type	Formal
Date of issue	28 February 2023

RPC opinion

Rating[1]	**RPC opinion**
Fit for purpose	The Department's recommendation to keep the regulations is supported by proportionate evidence and analysis. The PIR revisits assumptions in the original IA and usefully re-estimates benefits to business. The PIR could be improved in some areas, including further discussion on any impacts on pension schemes and members.

[1] The RPC opinion rating is based on whether the evidence in the PIR is sufficiently robust to support the departmental recommendation, as set out in the better regulation framework. The RPC rating will be fit for purpose or not fit for purpose.

RPC summary

Category	Quality[2]	RPC comments
Recommendation	**Green**	The Department's recommendation to keep the regulations is supported by proportionate evidence and analysis.
Monitoring and implementation	**Satisfactory**	The PIR makes good use of data from the Pensions Regulator. The range of evidence could be expanded to include additional limited informal consultation of stakeholders, including in the voluntary sector.
Evaluation	**Satisfactory**	For a relatively low impact measure, the PIR provides a particularly good re-working of the estimated benefits to business. The PIR could be improved in some areas, in particular through further discussion of impacts on pension schemes and members.

[2] The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. Please find the definitions of the RPC quality ratings here.

Summary of proposal

Where an employer participating in a multi-employer occupational defined benefit pension scheme ceases to employ any active members of the scheme, legislation sets out the requirements for what is commonly known as 'employer debt'. The employer debt is the amount of money that the employer must pay into the scheme if it is underfunded to relinquish responsibility for the scheme. There were easements available to employers to meet these obligations, such as flexible apportionment or a period of grace, but employers within 'non-associated multi-employer schemes' (where employers are from unconnected businesses or organisations) were much less likely to be able to take advantage of these. The Regulations provided for a new option, deferred debt arrangements (DDAs), which would enable these employers to defer the payment of an employer debt, whilst keeping the interests of pension scheme members sufficiently protected. The 2018 impact assessment estimated a net direct saving to business of £8.7 million each year. (The RPC opinion on the IA provides a summary of how this was calculated.[3])

Recommendation

The Department's recommendation to keep the regulations is supported by proportionate evidence and analysis. This is explained further below.

Monitoring and implementation

Proportionate

The PIR's evidence and analysis is consistent with the RPC's proportionality guidance for a low impact (under £10 million EANDCB) measure.[4] The PIR provides a clear statement of achievement against policy objectives and provides a good assessment of actual impacts on business. The PIR would be improved by further discussion of the measure's impact on pension schemes and their members, and how safeguards have performed in ensuring that DDAs have not been detrimental in this respect.

Range of evidence

The PIR appears to rely on information provided by the Pensions Regulator and this relatively 'light-touch' approach seems to be proportionate. The PIR could be strengthened by additional limited informal consultation with stakeholders, such as affected employers and representatives of pension members, as appropriate. In particular, as charities appear to have been a particular target beneficiary of the

[3] See pages 1-2 of https://www.gov.uk/government/publications/the-occupational-pension-schemes-regulations-2018-rpc-opinion

[4] See page 16 of https://www.gov.uk/government/publications/proportionality-in-regulatory-submissions-guidance

measure, it would be useful to consult the voluntary sector. The consultation could address:

- how DDAs have impacted stakeholders;
- feedback on the usefulness and uptake of the scheme, including how the conditions for entry and termination have affected take-up of the scheme. This could inform whether a revision of the conditions might result in greater take-up.
- comments stakeholders have on its implementation;
- any difficulties in the use of DDAs in practice, for example funds and participating employers not being able to agree terms for the use of a DDA acceptable to both. (This could be where, for example, a fund is only willing to have a DDA in place for a period that may be too short for an employer to afford); and
- unintended consequences (see below).

The PIR would benefit from briefly explaining why other countries may not have comparable measures (page 5).

Evaluation

<u>Policy objectives</u>

As noted above, the PIR provides a clear assessment of achievement against the policy objectives.

<u>Unintended effects</u>

The PIR considers unintended consequences, although this could be strengthened in two ways. First, although neither the Department or the Regulator have been notified of negative impacts, the PIR could have informally asked a limited number of stakeholders to confirm the absence of significant unintended effects. Second, the PIR could set out any monitoring processes for picking up any unintended consequences that may arise "later in the process" (page 4).

<u>Original assumptions</u>

This is a strong feature of the PIR. The Department has re-worked the calculations from the IA and demonstrated that benefits to business have been much lower than anticipated, averaging around £1.6 million per year. The PIR provides a good discussion of this, explaining that, although take-up has been higher than expected, the saving per employer was very much lower. The PIR explains that this is affected by significantly improved funding levels for defined benefit schemes and is not, therefore, necessarily a concern. Nevertheless, given the scale of the difference between anticipated and outturn savings and the Department's acknowledgement that it is likely that "a number of factors" (page 10) are involved, the PIR would benefit from further discussion of this area. The PIR could also discuss further the set-up costs of entering into a DDA, including of satisfying the eligibility conditions and taking professional advice (pages 9-10), the possible on-going costs to the pension scheme of monitoring the employer and the costs of terminating the DDA, especially given that these costs were not anticipated in the IA.

Business size

The discussion of impacts on businesses of different size is short but proportionate. The PIR notes that there has been only one DDA by an employer with more than 150 employees and it therefore appears, as anticipated, that the measure has been disproportionately beneficial to smaller businesses.

Intervention required

The PIR demonstrates satisfactorily the case for continued intervention.

Improvements or alternatives considered

The PIR notes that evidence obtained did not identify further opportunities for reducing the burden on business but that the Government will keep this area of legislation under review. The PIR would benefit from addressing whether stakeholders were asked to suggest any improvements.

Future impacts considered

As noted above, the PIR would benefit from briefly discussing future monitoring and evaluation, recognising that DDAs are medium to long-term arrangements (page 4). The PIR could also discuss how the existence of “similar measures” (page 11) affects the present and future reviews.

Regulatory Policy Committee

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