ICAEW
REPRESENTATION 86/22

THE DRAFT OCCUPATIONAL PENSION SCHEMES (FUNDING AND INVESTMENT STRATEGY AND AMENDMENT) REGULATIONS 2023

Issued 17 October 2022

ICAEW welcomes the opportunity to comment on The draft Occupational Pension Schemes (Funding and Investment Strategy and Amendment) Regulations 2023 published by Department for Work and Pensions on 26 July 2022, a copy of which is available from this link.

For questions on this response, please contact the ICAEW Business Law team at representations@icaew.com quoting REP 86/22.

ICAEW considers the overall intent of the draft Regulations to be well-founded. An increased focus on reaching low dependency on the employer covenant is broadly a good aim for UK DB schemes. We welcome the proposed approach of regulations setting principles and defining concepts combined with a TPR code of practice supplying more detail and flexibility.

However we do have a number of specific points where we consider

- Parliament should set more of the framework in the draft regulations
- Employers who continue to supply a strong covenant should be entitled to benefit from that
- The proposed legislation may have unintended consequences

This response of 17 October 2022 is made by ICAEW's Business Law Department and reflects consultation with the Pensions Sub-Committee which includes representatives from public practice and the business community.

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KEY POINTS

1. The consultation covers a range of areas and asks 25 questions, some of which have multiple parts. The material covered includes a number of issues where expect other practitioners – in particular the actuarial profession – to have the most appropriate expertise to answer. Therefore, we have confined our response to those questions where our Pensions Sub-Committee felt ICAEW could best contribute.

Scheme Maturity - Question 1:

Draft regulation 4(1)(b) provides that a scheme reaches significant maturity on the date it reaches the duration of liabilities in years specified by the Pensions Regulator's revised Defined Benefit Funding Code of Practice.

i) Do you think that it would be better for the duration of liabilities at which the scheme reaches significant maturity to be set out in the Regulations rather than the Code of Practice?

ii) If you think that the point of significant maturity should be specified in Regulations, do you agree that a duration of 12 years is an appropriate duration at which schemes reach significant maturity?

2. We agree that scheme maturity is an appropriate metric to use in determining when a scheme's funding and investment strategy should focus on low dependency on the employer covenant.
3. In our view where the duration of those liabilities is used as the test for the low dependency obligation to apply, that factor is sufficiently important that it should be set by Parliament in the legislation. This is subject to the point we make below regarding the obligation being less absolute than proposed where covenant is strong.
4. We are comfortable that 12 years is an appropriate duration, subject to the point we make below regarding the obligation being less absolute than proposed where covenant is strong.

Low dependency investment allocation - Question 2:

Do you think that the definition of low dependency investment allocation provided by draft regulation 5 is appropriate and will it be effective?

Low dependency funding basis - Question 3:

Do you think that the definition of low dependency funding basis provided by draft regulation 6 is appropriate and will it be effective?

5. We take these questions together to make one point. While the subject of a specific questions, we consider that the proposed Regulations are unfairly inflexible for employers who continue to provide a strong covenant to a mature scheme.
6. We see no reason in principle why an employer that continues to supply a strong covenant should not be allowed to benefit from that covenant by continuing to be involved in scheme funding and investment strategy. The maturity of the scheme with such covenants support should not present any issues for the trustees or the members and if the employer considers the risk-reward of a strategy that continues to be higher risk than low dependency should remain entitled to pursue that course.
7. Where such a scheme may develop a surplus, this may benefit members with increased security and/or discretionary additional benefits

Recovery plan - Question 20:

Do you consider that the matters prescribed by regulation 8(2) of the Occupational Pension Schemes (Scheme Funding) Regulations 2005 remain relevant for trustees or managers to take account of when determining or revising recovery plans? If so, why and how are they relevant to the setting of appropriate recovery plans?

8. We have great concerns about the proposed amendments to require the trustees or managers, when determining whether a recovery plan is appropriate, to follow the principle that funding deficits should be recovered as soon as the sponsoring employer can reasonably afford in the absence of a due consideration of the sponsoring employer's other capital requirements.
9. In our view, without this conditionality, this creates a strong likelihood of unintended consequences, namely that employers who sponsor defined benefit pension schemes will find it harder to obtain lending or other corporate finance. The proposed lender or financer will see such a legislative duty as giving the pension scheme a form of preferred creditor status that will adversely affect its lending/financing decision.
10. Therefore, we would not support the proposed change and question 21 would not arise. If question 21 did arise (Do you consider that the new affordability principle at draft regulation 20(8) should have primacy over the existing matters, if they do remain relevant?) our answer would be "No."

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