Title:
The Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2014
IA No: DWP0046
Lead department or agency:
DWP
Other departments or agencies:
None

Impact Assessment (IA)

Date: 20/02/2014

Stage: Final

Source of intervention: Domestic

Type of measure: Secondary Legislation

Contact for enquiries: Rosemary Ohen

Summary: Intervention and Options

RPC: RPC Opinion Status

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009	**In scope of One-In, Two-Out?**	**Measure qualifies as**
£0m	£0m	£0m	YES	Zero Net Cost

What is the problem under consideration? Why is government intervention necessary?

One deregulatory measure, and two minor and technical measures are required to Private Pensions legislation. These are (a) to make it easier for very large trust-based multi-employer pension schemes to find and appoint an auditor - this measure is deregulatory, (b) to clarify existing regulations around how trustees can meet their liability to provide pensions for members by buying annuities or insurance policies and (c) to correct a referencing error in the Employer Debt Regulations. Legislative changes are required as non-legislative solutions would not deliver the desired outcome.

What are the policy objectives and the intended effects?

(a) The policy objective is to create an exemption for very large multi-employer pension schemes from the auditor independence requirement and the intended effect is to allow them to operate more easily.
(b) The policy objective is to clarify the circumstances in which an annuity or insurance policy may include an option to commute some of the benefits to provide a lump sum.

(c) To correct a referencing error in the Employer Debt Regulations. There is no change to the overall policy, but the updated reference will make the situation clearer for pension schemes.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option

The options were do nothing; or amend the legislation. Justification for the final approach on all three measures is set out below.
a) We explored a number of potential ways of exempting very large multi-employer schemes from the independence requirements with stakeholders, including a non-regulatory approach. It was decided that a criteria based approach was the best way to exempt relvevant schemes.
(b) The purpose is to make clear the commutation options available to trustees under section 19 of the Pension Schemes Act 1993. Clarification can only be achieved by amending the regulations.
(c) There is a referencing error in the Employer Debt Regulations; clarification can only be ahieved by updating the reference.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date: 2018**					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** Yes	**< 20** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: ______________________ Date: 20/02/2014

Summary: Analysis & Evidence

Policy Option

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate:** 0

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate	0		0	**0**

Description and scale of key monetised costs by 'main affected groups'

None

Other key non-monetised costs by 'main affected groups'

None

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low				
High				
Best Estimate	0		0	**0**

Description and scale of key monetised benefits by 'main affected groups'

None

Other key non-monetised benefits by 'main affected groups'

a) This amendment makes it easier for certain schemes to appoint an auditor so there will be some potential savings in search costs though we would expect this to be small and not quantifiable.
b) There may be some unquantifiable benefits to pension schemes and members as they will be able to act with greater efficiency, certainty and that their decisions are in line with the regulations.
c) None

Key assumptions/sensitivities/risks — **Discount rate (%)**

None

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	**Benefits:**	**Net:**	Yes	Zero net cost

Background

1. This impact assessment covers consequential, minor and technical measures which are required to amend various occupational pensions regulations. It is published alongside secondary legislation.

2. **Three sets of regulations are covered by this impact assessment:**

   - **Occupational Pension Schemes (Scheme Administration) Regulations 1996**
   - **Occupational Pension Schemes (Discharge of Liability) Regulations 1997**
   - **Occupational Pension Schemes (Employer Debt) Regulations 2005.**

3. The necessity for all three amendments was discovered through stakeholder engagement: external law firms wrote to the Department and identified areas where our regulations are no longer fit for purpose, or where amendments had been made without consequential changes also being made. The Department worked with interested stakeholders to identify solutions to address these problems.

Section a) Occupational Pension Schemes (Scheme Administration) Regulations 1996

Problem under consideration

3 Occupational pension schemes are required to appoint auditors under section 47 of the Pensions Act 1995. There are, however, restrictions on who can be an auditor of a pension scheme; these restrictions aim to ensure an appropriate degree of separation between the employer, the statutory auditor and the scheme. This is to avoid a situation where an employer or auditor can have an influence on the scheme which might be detrimental to scheme members.

Rationale for intervention

4 The requirements of section 47 of the Pensions Act 1995 are straightforward for schemes with a single sponsoring employer and manageable for most multi-employer schemes which have a small number of participating employers. However, some stakeholders have stated that very large multi-employer schemes are unable to comply with the independence requirements, because of their size, and have called for these schemes to be exempt from the requirement.

5 The reason for this is that some auditors, as well as being partners of audit firms, are also officers of charities or not-for-profit organisations as part of their firms' corporate responsibility commitment. If an auditor is an officer of a charity or not-for-profit organisation which is (1) a company and (2) a participating employer in a pension scheme, the auditor's firm cannot audit the scheme. This makes it difficult for audit firms to meet the independence requirements.

Policy objective

6 This issue was first raised in the context of National Employment Savings Trust (NEST) a large multi-employer, but a number of other large non-associated multi-employer schemes have been set up in recent years. Given the limited number of audit firms able to audit schemes of this size, stakeholders have informed us that it is likely to become increasingly difficult for an audit firm to meet the independence requirement as these schemes grow.

7 The aim is that large multi-employer pension schemes should be able to compete with each other in the auto-enrolment sphere and be able to employ an audit firm.

Description of final proposal

8 We explored a number of ways of exempting large multi-employer schemes from the independence requirement of the Scheme Administration Regulations. Options considered included leaving the situation as it is, a non-regulatory solution and a criteria based approach.

9 The do nothing option was rejected because one scheme had already run into a potential problem with appointing an auditor and had only avoided the issue due to a technicality.

10 We considered the possibility of a non-regulatory solution, for example by issuing guidance, but concluded that it would not be practical as guidance would not override legislation. It was decided that a criteria based approach, set out in regulations which described the types of schemes who would be exempted from the regulations was the best way forward because it would be clear and easy for stakeholders to understand and for pension schemes to know if they are eligible for exemption.

Monetised and non-monetised costs and benefits of the final proposal

11 This amendment makes it easier for certain schemes to appoint an auditor so there will be some potential savings in search costs though we would expect this to be small and unquantifiable.

Summary and final proposal

12 The final proposal is to amend regulation 4 of the Scheme Administration Regulation to disapply regulation 4(2)(d) in respect of trust-based, multi-employer, occupational pension schemes which have at least 500 participating employers in the scheme. This will make it easier for very large multi-employer schemes to operate within the independence requirements.

b) Occupational Pension Schemes (Discharge of Liability) Regulations 1997

Problem under consideration

13 Stakeholders have requested that we clarify the circumstances in which trustees may obtain a discharge of their liability to provide pension benefits when those benefits have been secured by means of an insurance policy or annuity contract. They have also asked us to clarify when a proportion of benefits may be 'commuted' to provide a lump sum on retirement. Lack of clarity in this area has meant that some stakeholders were reluctant to take advantage of these provisions.

14 Under section 19 of the Pension Schemes Act 1993, trustees or managers of an occupational pension scheme may meet their liability to provide a pension for members by buying an annuity or insurance policy on their behalf. Members are then paid by the insurance company rather than the scheme when they come to receive their pension. A common use of this provision is for pension schemes to bulk buy annuities or insurance policies on behalf of short-service (deferred) members in order to reduce their overall liabilities.

15 Where trustees buy an insurance policy or annuity in order to pay benefits they may choose to include an option for members to take a proportion of those benefits as a lump sum. This is known as 'commutation'. Where a commutation option is provided, trustees or managers of a scheme will only be discharged of their liability if certain conditions are satisfied. These requirements were prescribed in regulation 4 of the Discharge Regulations, however the current version of regulation 4 which was amended following changes to pension tax rules does not have the necessary provisions.

Rationale for intervention and policy objective

16 It has always been the policy that trustees can purchase annuities that include an option for a tax-free commencement lump sum, and the intention of the amendment is to put beyond doubt the options available in the context of securing short service benefits.

Description of final proposal

17 Doing nothing is not an option; the policy intention was unclear and stakeholders are uncertain about the circumstances in which these liabilities could be discharged. Regulations are required to clarify this issue.

Monetised and non-monetised costs and benefits of final proposal

18 There are no costs associated with this amendment. Its purpose is to make clear the commutation options to advisors when they buy annuities or insurance policies in order to pay pension benefits when these become due.

Direct costs and benefits to business calculations (following OITO methodology)

19 There may be some unquantifiable benefits to pension schemes and members as they will be able to act with greater efficiency, certainty and confidence that their decisions are fully supported by clearer regulations.

Summary and final proposal

20 The preferred option is to amend regulation 4 of the Discharge Regulations by inserting a new paragraph 1(c) which allows scheme members to take a proportion of their pension benefits as a lump sum where those benefits are secured by means of an annuity or insurance policy. The limitations are that the scheme member has requested or consented to the lump sum payment and that the payment qualifies as a pension commencement lump sum under the Finance Act 2004.

21 The provision is also subject to new regulation 4(2A) which excludes guaranteed minimum pensions of the earner and their surviving spouse or civil partner from being taken as a pension commencement lump sum. The rationale here is that as these benefits have already been tax-exempt, they cannot be tax-exempt a second time.

c) Occupational Pension Schemes (Employer Debt) Regulations 2005

Problem under consideration

24 When an employer's relationship with its defined benefit pension scheme ends (for example through employer insolvency) an "employer debt" may be payable. The amount of this debt is based on the difference between the value of the assets of the pension scheme and its liabilities calculated on a "full buy out" basis.

25 The employer debt requirements were introduced to prevent employers from abandoning responsibility for their occupational pension schemes, and to protect scheme members when their relationship with their employer comes to an end.

26 An external stakeholder identified an error in the Occupational Pension Schemes (Employer Debt) Regulations 2005, where, in regulation 10, which relates to a criminal deficit arising in money purchase schemes, when some of the underpinning legislation was repealed in 2005 but a reference was not updated to ensure that people were signposted to the correct reference.

Rationale for intervention

27 The cross referencing error had been created by a reference not being updated when it should have been. Clarification can only be ahieved by updating the reference.

Monetised and non-monetised costs and benefits of final proposal

28 There are no direct costs associated with this amendment.

Direct costs and benefits to business calculations (following OITO methodology)

29 There are no costs associated with this amendment.

Summary and preferred option

30 The criminal fraud provisions are now in sections 182 to 189 of the Pensions Act 2004 and the reference in regulation 10 should be to a prescribed offence under section 181(1)(b) of the Pensions Act 2004. The policy has not changed. The regulations therefore correct a cross referencing error.

Micro-businesses

31 These proposals apply to pension schemes sponsored by all sizes of business, so micro-businesses are not exempted. However, in practice, micro-businesses are unlikely to be involved in the administration of pension schemes. Defined benefit schemes are generally used by employers with a large workforce and though all schemes will eventually participate in auto-enrolment, for micro-businesses this is likely to be into large multi-employer defined contribution schemes, so the employer will not be responsible for running them.

Implementation

32 The three changes set out here are implemented in the Occupational Pension Schemes (Miscellaneous Amendment) Regulations 2014. The regulations will come into force on 6 April 2014.