

Employer debt in Defined Benefit pension schemes: DWP consults on new deferred debt arrangement

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Following a call for evidence back in March 2015, the Department for Work and Pensions (DWP) has issued its long-awaited consultation on amendments to the Occupational Pension Scheme (Employer Debt) Regulations. The proposed amendments to the regulations will be of significant interest to charities which still have active members in a final salary or defined benefit (DB) scheme, or have only recently ceased to have active members in such a scheme and are in a 'grace period'.

The proposed amendments provide a new mechanism for dealing with the (often substantial) employer 'exit debt' that can rise when a scheme employer ceases to employ active members in a DB scheme at a time when the scheme continues to have active members employed by other scheme employers. There are already several mechanisms available for managing this 'exit debt' (for example, via a 'flexible apportionment arrangement' which allows another scheme employer to take on the exit debt of an exiting employer). However, not many of these arrangements provide a viable solution for charities.

The proposed new 'deferred debt arrangement' (DDA) will allow exiting employers, or employers in a 'grace period', to defer their 'exit debt'. The scheme trustee must consent to the DDA and must be satisfied that all remaining employers (including the exiting employer) can together fund the ongoing liabilities of the scheme (the so-called 'funding test'). Once agreed, the benefit of the DDA to the exiting employer is that it will be treated for scheme funding purposes as though it were still an active scheme employer and will continue to pay ongoing funding contributions required under the recovery plan, rather than being required to pay the full exit debt immediately on exit.

- The exiting employer will remain ultimately liable for its own exit debt that can be triggered in various circumstances including if:
- the exiting employer (with the trustee's consent) opts to trigger the exit debt in order to sever all liability to the scheme entirely;
- the exiting employer restructures or an insolvency event or winding-up occurs in respect of the exiting employer; or
- there is a scheme funding failure by the exiting employer or the scheme trustee decides the DDA is no longer in the interests of the scheme (for example, if the exiting employer has a weak covenant).

The consultation on the amended regulations closed on 18 May 2017 and Withers provided input into the consultation response provided by the Association of Pension Lawyers. Whilst there are various aspects that need some refinement, the new DDA mechanism could provide a helpful mechanism for many charities participating in DB schemes, who currently face the prospect of a substantial exit debt on ceasing to employ any active members in the scheme and who currently have very few viable options for managing that liability.

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