The draft Occupational Pension Schemes (Funding and Investment Strategy and Amendment) Regulations 2023

Response from ICAS to the DWP

17 October 2022

Introduction

ICAS is a professional body for more than 23,300 world class businesspeople who work in the UK and in more than 100 countries around the world. Our members have all achieved the internationally recognised and respected CA qualification (Chartered Accountant). We are an educator, examiner, regulator, and thought leader.

Almost two thirds of our working membership work in business; many leading some of the UK's and the world's great companies. The others work in accountancy practices ranging from the Big Four in the City to the small practitioner in rural areas of the country.

We currently have over 4,800 students striving to become the next generation of CAs under the tutelage of our expert staff and members. We regulate our members and their firms. We represent our members on a wide range of issues in accountancy, finance and business and seek to influence policy in the UK and globally, always acting in the public interest.

ICAS was created by Royal Charter in 1854.

General comments

The ICAS Pensions Panel welcomes the opportunity to comment on the Department of Work and Pension's (DWP's) consultation on the draft Occupational Pension Schemes (Funding and Investment Strategy and Amendment) Regulations 2023.

We are broadly supportive of the approach taken towards the preparation of the draft regulations, specifically the bringing of integrated risk management into regulation. We believe it is helpful to codify how good schemes already operate in practice to improve scheme governance across the piece. We acknowledge the policy decision to leave much of the detail for The Pensions Regulator (TPR) to set out in its revised Defined Benefit (DB) Funding Code of Practice. It is therefore important that the Code is drafted so that scheme trustees can continue to take a balanced approach to risk management and therefore do not de-risk further than is necessary at any point in time.

We also appreciate the straightforward way the draft regulations are worded.

In previous responses to the DWP on pension scheme related matters we have commented on the growth of reporting requirements placed on pension schemes around investment governance and reporting, including the Defined Contribution (DC) Chair's statement and adapted TCFD (climate change) disclosures. With the addition of the new DB Chair's statement of strategy, we believe it is timely for the DWP to review and consider rationalising the annual reporting requirements placed on trust-based pension schemes to determine what information is required for regulatory purposes and what is useful to members and/or to other stakeholders.

For larger pension schemes, master trusts and any collective defined contribution schemes established in future, climate change reporting requirements are set out in regulation. The new International Sustainability Standards Board (ISSB) is developing a suite of International Sustainability Disclosure Standards with priority being given to climate-related disclosures. IFRS – S2 on Climate-related Disclosures has been subject to public consultation and the ISSB is in the process of considering consultation responses.

IFRS – S2 could be adopted in the UK and, if this is to happen, the Department for Business, Energy & Industrial Strategy (BEIS) will need to consider which UK companies will be required to apply this and other ISSB standards. We highlight this as we believe it is important for a cross-sector approach to be taken towards climate change reporting by the UK Government. A consistency of approach has the potential to streamline climate change reporting across the economy and could assist pension schemes to obtain data on a basis which is more compatible with their climate change reporting obligations.

We have responded to a selection of the consultation questions below.

If you have any questions on this response, please contact Christine Scott (cscott@icas.com), Head of Charities and Reporting at ICAS.

Responses to consultation questions

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 TPR'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?

Response
We agree that TPR should set out the duration of liabilities at which the scheme reaches significant maturity in the updated DB Funding Code of Practice. However, we are of the view that 12 years may be too short a period.

Strength of the employer covenant

Question 4
i) Do you agree with the way that the strength of employer covenant is defined?

ii) Are the matters which trustees or managers must take into account when assessing it, as provided by draft regulation 7, the right ones?

iii) Does draft regulation 7(4)(c) effectively capture the employer's broader business prospects?

Response
We are broadly content with the way the strength of the employer covenant is defined within the draft regulations. However, we have one point of detail.

The regulations refer to 'employer' singular. However, schemes can be supported by the covenant of more than one employer, for example, group schemes or multi-employer schemes. It may be helpful clarification if the regulations included some additional wording to reflect that some schemes have more than one sponsoring employer. This could be achieved by setting out how the term 'employer' should be interpreted.

We believe that clarification is required especially for non-associated multi-employer schemes established on a last man standing basis.

Risk in relation to calculation of liabilities on journey plan

Question 11
Do you think that the principles in paragraphs 4 and 5 of Schedule 1, requiring funding risks and investment risks to be linked primarily to the strength of the employer covenant, are sensible?

Response
We are supportive of the principles and welcome the inclusion of integrated risk management within regulation for the first time. This is reflective of how schemes do or should approach risk management in practice. We believe that the draft regulations have the potential to improve risk management practices where there are existing shortcomings.

Liquidity

Question 12
Do you think that the new liquidity principle set out in paragraph 6 of Schedule 1 is a sensible addition to the existing liquidity requirement of regulation 4(3) of the Occupational Pension Schemes (Investment) Regulations 2005?

Response
We support the new liquidity principle set out in the draft regulations and view this as being consistent with TPR's extant guidance on assessing and monitoring the employer covenant.

Question 13
Will the matters and principles set out in Schedule 1 enable the scheme specific funding regime to continue to apply flexibly to the circumstances of different schemes and employers, including those schemes that remain open to new members?

Response
Yes, we believe that the scheme specific funding regime will continue under the draft regulations.

We believe it is important that scheme trustees can continue to take a balanced approach to risk management so that schemes do not de-risk further than is necessary at any point in time. Also, we do not wish to see the sponsoring employers of open schemes, which are judged to be sustainable, to close their schemes to new members or future accrual.

That is not to say that there are not circumstances where it would be appropriate for an employer to cease admitting new members to a scheme or to cease future accrual. We are aware of employers participating in open schemes where they do not appear to have a sufficiently strong covenant to support their continuing participation.

The risk carried should remain appropriate throughout the lifecycle of the scheme.

Funding and investment strategy – level of detail

Question 14
Is the level of detail required for the funding and investment strategy by draft regulation 12 reasonable and proportionate?

Question 15
Do you think the requirement for high level information on expected categories of investments will impact trustees' independence in making investment decisions in the interests of scheme members?

Response
We are broadly happy with the proposal for the funding and investment strategy.

We believe it is vital that the trustees make investment decisions on behalf the scheme. This is consistent with trust law and also a tenet of pension regulation in the UK since the Maxwell scandal. This tenet was also maintained in developing the climate change reporting requirements now placed on larger DB schemes.

While genuine consultation with the employer on scheme investment related matters is entirely reasonable, it is important that pension regulation remains clear that it is the trustees who are the decision-makers.

We believe that the draft regulations maintain the role of pension trustees as decision-makers in that regard. TPR should therefore be able to reinforce this point in its new DB Funding Code of Practice.

Determination, review and revision of funding and investment strategy

Question 16
Are the requirements and timescales for determining, reviewing and revising the funding and investment strategy in draft regulation 13 realistic?

Response
Yes, we believe the timescales are realistic.

Statement of strategy

Question 17
Are there any other assessments or explanations that trustees should evidence in Part 2 of the statement of strategy?

Response
We have no suggestions for other assessments or explanations to be gathered as evidence.

Requirements for chair of trustees

Question 18
Do you agree that these are the appropriate requirements for the scheme trustee board when appointing a chair? Are there any other conditions that should be applied?

Response
We are content with these proposals for appointing a chair to a scheme trustee board.

Multi-employer schemes

Question 22
Will the requirements in draft regulations 20(9) work in practice for all multi-employer pension schemes?

Response
We believe that the requirements in draft regulation 20(9) will work in practice for all multi-employer schemes.

Where a multi-employer scheme requires an actuarial valuation for an individual section, we support the requirement to produce a funding and investment strategy and a statement of strategy for that section.

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