

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

Alert | 1 March 2018



### Introduction

On 26 February 2018, the DWP published a [response](#) to the consultation on the draft Occupational Pension Schemes (Employer Debt) (Amendment) Regulations 2017 together with a final version of the regulations, now called [The Occupational Pension Schemes \(Employer Debt and Miscellaneous Amendments\) Regulations 2018](#) (“the Regulations”).

### Key points

- Provided certain conditions are met, on and from 6 April 2018, an employer in a multi-employer DB scheme will be able to defer the requirement to pay an employer debt on ceasing to employ an active member.
- This option will sit alongside current options for managing employer debt, such as [FAAs](#).
- In addition, the regulations make a small number of technical amendments which aim to clarify aspects of the employer debt legislation.

### Background

The DWP published a [consultation](#) in April 2017 on draft regulations to introduce a new option for employers in multi-employer schemes to defer the requirement to pay an employer debt on ceasing to employ an active member (see our [Alert](#)). This followed concerns, raised in response to a 2015 [call for evidence](#), that non-associated employers are often unable to take advantage of the current options for managing an employer debt.

Currently, if a company exits an underfunded multi-employer DB scheme, its share of the deficit (if any) generally becomes a debt due to the trustees (the “employer debt”). A debt calculation is triggered where an employer has “ceased to employ at least one person who is an active member” of the pension scheme, where another employer with DB liabilities continues to employ at least one active member (an “employment-cessation event” or “ECE”).

# Deferred debt arrangement (“DDA”)

The Government considers that a DDA will enable employers in a multi-employer pension scheme, whose only change in circumstance is that they are ceasing to employ an active member, to retain an on-going commitment to their schemes. It believes that this will be of particular help to smaller employers, such as charities.

## Conditions

A DDA will enable an employer in a multi-employer scheme (whether the employers are associated or not) to defer the requirement to pay an employer debt, provided the following conditions are satisfied:

- an ECE has occurred in relation to the deferred employer, or would have occurred had that employer not entered into and remained in a period of grace (see below)
- the scheme is not in a PPF assessment period, or being wound up, when the DDA takes effect
- the trustees are satisfied both that the scheme is unlikely to enter a PPF assessment period in the next 12 months, and that the deferred employer’s covenant to the scheme is not likely to weaken materially within the period of 12 months beginning with the date on which the DDA would be due to take effect (“the employer covenant condition”).

The DDA will take effect when the trustees, being satisfied that the above conditions are met, consent in writing to the arrangement.

The proposal for a funding test (an assessment of whether the DDA would have an adverse effect on the security of members’ benefits) has been removed, following consultation. The DWP is satisfied that the employer covenant condition, together with the trustees’ ability to terminate the DDA where there is likely to be a material weakening of the employer covenant in the next 12 months, will provide “adequate member protection”

## Periods of grace

DDAs will be open to those who are already in a “period of grace”. (Subject to certain conditions, employers can use a “period of grace” to cease employing an active member of the pension scheme temporarily without triggering an employer debt.)

The Regulations amend the existing period of grace provisions so that an employer who does not employ an active scheme member, or enter into a DDA, by the last day of a period of grace will be treated as if the period of grace has not applied. This could result in an employer debt being due from the employer, calculated at the time it ceased to employ an active member of the scheme.

## Status of deferred employer

While the DDA is in place, the deferred employer will remain an employer for scheme funding and scheme administration purposes.

## Ending a DDA

The Regulations aim to make clear when a DDA will terminate and in which circumstances an ECE will occur. Termination events include:

- the scheme commencing wind-up
- the deferred employer and the trustees reaching mutual agreement to end the DDA
- a freezing event occurring
- the trustees serving notice on the deferred employer that the DDA has come to an end.

Trustees may serve notice to bring the DDA to an end if they are reasonably satisfied that:

- the deferred employer has failed to comply materially with its duties under the scheme funding regulations,
- the deferred employer's covenant to the scheme is likely to weaken materially in the next 12 months, or
- the deferred employer has failed to comply materially with its general duty to disclose information to the trustees under the Occupational Pension Schemes (Scheme Administration) Regulations 1996.

## Next steps

The Regulations will come into force on 6 April 2018. We understand TPR will update its guidance in due course.

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