

The Occupational Pensions Scheme (Member-nominated Trustees and Directors) regulations 2006

Government's response to consultation

Introduction

- 1 Consultation on the draft Occupational Pensions Scheme (Member-nominated Trustees and Directors) regulations began in July 2005 and ended on 16th October 2005.
- 2 45 responses were received. A list of respondents is attached.
- 3 As well as formal consultation on the draft regulations, the consultation paper also sought views on the proposed change from a minimum of one third to a minimum of one half member-nominated trustees. The Government will respond to that part of the consultation paper in due course.
- 4 The Occupational Pensions Scheme (Member-nominated Trustees and Directors) regulations 2006 (SI 2006/714) were laid on 16th March, and came into force on 6th April.
- 5 The regulations are available on the OPSI website at
www.opsi.gov.uk/si/si2006/uksi_20060714_en.pdf:
- 6 This document is available on the DWP website at:
<http://www.dwp.gov.uk/consultations/2006/>
- 7 A paper copy can be obtained from:

Department for Work and Pensions
3rd Floor
Adelphi
1-11 John Adam Street
London
WC2N 6HT

Disclaimer

- 8 This document describes the policy underpinning the Occupational Pensions Scheme (Member-nominated Trustees and Directors) regulations 2006. The commentary on the regulations should not be taken as an authoritative statement of the law. Such an interpretation can only be provided by a court.

Response to consultation

Introduction

- 9 The regulations provide for exemptions and modifications to the requirements to make arrangements for the appointment of member-nominated trustees (MNTs) and directors (MNDs) under sections 241 to 243 of the Pensions Act 2004.

Main issues raised

- 10 The main issues raised by respondents were:
- (a) exemptions for small insured schemes
 - (b) existing exemptions from the MNT/MND requirements
 - (c) exemptions for multi-employer schemes
 - (d) schemes where the employer is insolvent or in liquidation
 - (e) transitional requirements in relation to existing MNT/MNDs

Exemptions for small insured schemes

- 11 A number of respondents argued that there should be an exemption for small insured schemes. They argued that such schemes would have previously been able to take advantage of the employer “opt-out” arrangement. As this is no longer an option, such schemes would have to make arrangements that provide for at least one third MNTs, and this would represent a disproportionate administrative burden.

- 12 This is a finely balanced issue. On the one hand, the Government is keen to promote member involvement in occupational pension schemes, but on the other there is a commitment to simplification and reducing regulatory burden. We estimate such an exemption would reduce the one off implementation costs from £25m to around £10m.

On balance, we decided an exemption for small insured schemes is justified, and the necessary amendments were made to the regulations.

Exemptions for Multi-employer schemes

- 13 A number of respondents re-iterated the need to continue the existing exemptions in relation to multi-employer schemes.

The policy is to recognise the particular issues and challenges faced by multi-employer schemes and to continue to exempt from the provisions of the Pensions Act 2004 those schemes that are already exempt from the MNT/MND requirements of the Pensions Act 1995, and we are satisfied the regulations achieve this.

Schemes where the employer is insolvent or in liquidation

- 14 We had representations from schemes that are already closed, and where the employer is in liquidation or has been dissolved. In these schemes there is a closed membership and a closed fund, so member benefits are particularly sensitive to administration costs.

The Government agreed the cost of imposing the MNT requirements in these circumstances is unjustified, and the regulations were amended to exempt schemes where the trustees are independent of the employer by virtue of the employer having been dissolved or liquidated before 6th April 2005.

Transitional Requirements in relation to existing MNT/MNDs

- 15 It was pointed out that there is a risk MNTs and MNDs appointed under section 16 or section 18 of the Pensions Act 1995 might not meet the definitions of member-nominated trustees and directors under the 2004 Act. This would be (for example) where there was no pensioner involvement in the nomination and selection process.

We agreed it would be disproportionate to expect these trustees to be replaced, especially if they had not been in post long, so we have made a transitional provision to allow them to remain in office for the remainder of their agreed term (which is a maximum of six years).

Technical and drafting changes

- 16 A number of minor technical and drafting changes were made as a result of comments.

List of respondents

The Actuarial Profession
Alfred Herbert Pension Scheme Ltd
Amicus
Association of British Airways Pensioners
Association of British Insurers
The Association of Consulting Actuaries
Association of Pension lawyers
The Association of Corporate Trustees
Barclays
Barnett Waddingham
BBC Pensioners' Association
G S Bell
Capital Cranfield Pension Trustees Ltd
Church Of England Pensions Board
The Co-operative Group
The Electricity Supply Pension Scheme
Ford Motor Company Ltd
GMB
H&V Pensions
Independent Pension Trustee Ltd
Invensys Pension Scheme
Jaguar
Land Rover
Law Debenture
Law Society of Scotland
Legal and General
Linklaters (Solicitors)
Mercers
MGN Pension Trustees Ltd
Alastair Miller
National Association of Pension Funds
Norwich Union
Occupational Pensioners Alliance
Railways Pension Trustee Company Limited
SAUL Trustee Company
Jonathan Seres
The Society of Pension Consultants
Standard Life
Travers Smith (Solicitors)
TUC
Universities Superannuation Scheme
University of Nottingham
Welplan
Wiggins Teape Pensioners Association
Wragge and Co (Solicitors)