

**The Occupational Pensions
(Regulatory Own Funds)
Regulations 2005**

**Government Response to
Consultation**

DWP Department for
Work and Pensions

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The Occupational Pensions (Regulatory Own Funds) Regulations 2005: Government Response to Consultation

Part one: Introduction

1. On 13 May 2003 the European Council of Ministers adopted Directive 2003/41/EC on the Activities and Supervision of Institutions for Occupational Retirement Provision (commonly known as the 'IORP' or 'Occupational Pensions Directive'). This Directive provides a framework for the operation and supervision of occupational pension schemes. Member States were required to have transposed the provisions of the Directive into national law before 23 September 2005. However, given the complex technical nature of this issue, the UK has decided that it is necessary to delay the full implementation for a short time to ensure that the legislation is correct. This legislation is likely to come into force on 30 December 2005.

2. A public consultation exercise on the draft Regulations was held over the period 9 August 2004 to 19 September 2005.

3. Responses were received from 8 sources, the majority of which were organisations comprised of pension lawyers. A list of respondents is reproduced at Annex A. **The Government would like to thank all those who took the time to contribute to the consultation process.**

4. The purpose of this paper is to summarise the views received and the Government's response to them. The paper covers each of the three questions posed in the consultation paper, as well as regulations on which comments were received. There is also a section containing more general comments.

5. The Government is incorporating many of the comments given as part of the consultation, and the Regulations are in the final stages of preparation.

Part Two: Summary of Responses and the Government's Response

Comments Received in response to Question 1 and Regulation 3

6. **Question 1** - The Government welcomes further views regarding specific schemes or types of scheme to which these Regulations might apply.

7. **Regulation 3** describes the types of schemes that are required to hold the additional assets above the technical provisions to serve as a buffer.

Responses

8. "... (we are) not aware of any UK schemes which would currently be caught by the requirements of Article 17 of the Directive... We agree that the Article 17 requirements do not apply to schemes in wind up"
(The Association of Pensions Lawyers)

9. "We have no suggestions for specific schemes or types of schemes to which these regulations might apply.
As (regulation 3) is drafted, it will not in practice be applicable to schemes in the UK..."
(Society of Pensions Consultants)

10. "We are not aware of any schemes or types of scheme to which these regulations might apply."
(Electricity supply pension scheme)

11. (We)... "suggest that there are two other categories of schemes to which Article 17 does not apply but where a re-assurance in the Government response would be helpful -

- Schemes in deferred wind up that are not fully insured and no employer is under an obligation to contribute to it
- Paid up schemes where the benefits are fully secured by annuities"

(Axa-Sun alliance)

12. ... "the regulations as drafted may inadvertently catch some industry-wide or other centralised scheme(s) ... though we are not ... aware of any specific schemes which would definitely be caught. We would ... ask that you (re)consider the language used...."
(The Actuarial Profession)

13. ... "we do not think that the regulations as drafted, especially Regulation 3(1), are sufficiently tight to ensure that the intention that 'only schemes set up to bear the liability of defined benefits would fall under these regulations' is carried through into legislation.... any resulting uncertainty ... would be most unwelcome in this area."
(The Actuarial Profession)

14. "... Article 17 of the Pensions Directive may apply to occupational money purchase schemes which retain the liability for pensions in payment (rather

than assigning annuities to members at the point of retirement) ... It is unclear ... how the requirements could be applied to money purchase schemes.”
(The Association of Consulting Actuaries)

15. “Does the Government have any legal basis for ... (the stated intention that schemes could not become schemes covered by the requirement during their lifetime)? ... Some occupational pension schemes (that) have chosen to continue to operate ... as a closed scheme after the sponsoring employer has withdrawn support ... would appear to be caught by the requirements...”
(The Association of Consulting Actuaries)

Government response to comments

16. The Government is still not aware of any specific schemes to which the Regulations will apply.

17. The legal advice received by the Government indicates that it is expected that the Regulations will normally only apply to schemes set up to underwrite defined benefits themselves.

18. The wording of Regulation 3 follows directly the wording of Article 17 of the Directive, and any tightening of the wording would diverge from the Directive. The Government does not believe the wording in Regulation 3 would catch:

- Industry-wide or other centralised schemes
- Schemes in deferred wind up that are not fully insured and that no employer is under an obligation to contribute to
- Paid up schemes where the benefits are fully secured by annuities

Comments Received in response to Question 2

19. **Question 2** - Are there any other schemes for which a theoretical case for exemption from the Regulations can be made?

Responses

20. “It would seem logical for the exemptions ... to match, so far as relevant, (those) contained in the Occupational Pension Schemes (Scheme Funding) Regulations 2005¹ ... the only relevant discrepancy between the two is in relation to the public service schemes referred to in Regulation 15(1)(a) of the Scheme Funding Regulations ...”
(Association of Pension Lawyers)

21. “We are not aware of any schemes for which a theoretical case for exemption from the regulations can be made.”
(Electricity supply pension scheme)

¹ Referred to in this document as ‘the Scheme Funding Regulations’.

22. “We agree that schemes made under statute with a Government guarantee should be exempt from the requirement ... We do not believe that there is a case for exemption for any other schemes.”
(*The Association of Consulting Actuaries*)

Government response to comments

23. Regulation 14 which exempts certain schemes from the Regulations has now been updated in line with the revised Scheme Funding Regulations, so that the exemptions in those Regulations are mirrored where relevant.

Comments Received in response to Question 3

24. **Question 3** - Will exempting any of the schemes on the list cause a problem because of the cross-border activity restriction?

25. “... It is not clear to us how (the prohibition of exempted schemes from undertaking cross-border activity) has been implemented ...”
(*Association of Pension Lawyers*)

26. “We are not aware of any problems which would be caused by exempting any of the listed schemes.”
(*Society of Pension Consultants*)

27. “We are not aware of any practical problems arising from exemption of any schemes”
(*Electricity supply pension scheme*)

28. “Without further clarification ... it is difficult to know whether the cross-border restriction will present a problem for exempted schemes.”
(*The Association of Consulting Actuaries*)

Government response to comments

29. Regulation 15 has now been amended to make explicit the fact that the exemptions only cover schemes that are not undertaking cross-border activity.

Comments Received in response to Regulations 2 and 14

Responses

30. “We note that draft regulations 2 and 14 contain out of date references to OPRA.”
(*Society of Pension Consultants*)

Government response to comments

31. The references to the Occupational Pensions Regulatory Authority have been replaced by references to the Pensions Regulator.

Comments Received in response to Regulation 4 – calculation of additional assets requirement

32. **Regulation 4** lays down the rules to apply for the purposes of calculating the minimum amount of additional assets to form the buffer.

Responses

33. “In Regulation 4(1)(b), the expression “short term (and group) death cover” is not defined.....

... in Regulation 4(1)(b) the size of the buffer required in respect of “short term” death cover is higher than that applicable in respect of longer term arrangements. However, the rules set out in Article 28.2 of Directive 2002/83/EC (applied by Article 17.2 of IORP) suggests that the reverse should be the case....

In Regulation 4(2), it is necessary to add at the end words such as “in relation to those members and those benefits”. Otherwise the scheme’s aggregate death benefits will be set off against the scheme’s entire technical provisions and “capital at risk” will always be a negative figure so that Regulation 4(1)(b) will never actually apply.”

(Association of Pension Lawyers)

Government response to comments

34. The references to short term (and group) death cover in Regulation 4(1)(b) have been removed. Therefore definitions of these terms are no longer required.

35. The distinction between short term and longer term cover in the calculation for additional assets has been removed. The distinction loses the relevance it has in the insurance field when applied to the field of pensions, where calculations are not made on an individual contract by contract basis, and cover is often provided over a longer time frame. Regulation 4 now uses a standard figure of 0.3% of the capital at risk for calculating the buffer, rather than 0.15% for short term cover and 0.3% for longer term risk. This figure fulfils the Directive’s requirements, but in a manner more workable for the pensions industry.

36. The words “in relation to those members” have been added to Regulation 4(2)(b) for the purposes of calculating the ‘capital at risk’ which feeds into the buffer calculation.

Comments Received in response to Regulation 10 – postponement

37. **Regulation 10** – postpones the application of the requirement to hold additional assets to schemes with insufficient assets to comply with the requirement, until 2010. Certain cross-border activities are prohibited during the postponement period.

Responses

38. “ ... It would ... be better simply to cross-refer to the definition of “European employer” in the Cross-border Activities Regulations² ... (than to replicate it)”
(*Association of Pension Lawyers*)

Government response to comments

39. The definition has been revised to take account of changes made to the Cross-border Activities Regulations, and also to include all the constituent parts. The Regulations replicate the definition rather than cross refer to it so that the Regulations are more self-contained.

Comments Received in response to Schedules

Responses

40. “We would expect to see any changes agreed to the Scheme Funding regulations certificates to be ... implemented in these regulations...”
(*The Actuarial Profession*)

41. “... The existence of a schedule of contributions implies that there is a sponsoring employer that is under an obligation to underwrite the liability ...”
(*Association of Consulting Actuaries*)

Government response to comments

42. The changes made to the wording of the certificates in the Occupational Pension Schemes (Scheme Funding) Regulations 2005, have now been reflected in the schedule to these Regulations.

43. It is not the Government’s intention that the ‘schedule of contributions’ in these Regulations should place an obligation on any employer to underwrite the liabilities of a scheme.

Other Comments:

44. “The Pensions Law Sub-Committee of the Law Society of Scotland (“the Sub-Committee”) had no comments in relation to the above draft regulations.”
(*The Law Society of Scotland*)

45. “We are concerned... that unforeseen and possibly unintended consequences could flow from the Directive.”
(*Association of Consulting Actuaries*)

Government response

² The regulations referred to are the Occupational Pension Schemes (Cross-border Activities) Regulations 2005.

46. The Government is aware of the risk of unforeseen and unintended consequences, and has taken steps to minimise this risk. These steps include undertaking the consultation, and taking further time (beyond the timeline initially envisioned) to ensure the quality of the Regulations.

Conclusion

47. The comments received have proved valuable in further shaping the development of the Government's implementation strategy and once again it offers thanks to all those who participated in the process. Views have either helped to firm up solutions to issues and problems, or helped highlight areas of potential difficulty.

48. Any further comments regarding the Occupational Pension Schemes (Regulatory Own Funds) Regulations 2005 should be addressed to the European Pensions Team, 3rd Floor Adelphi Building, 1-11 John Adam Street, London WC2N 6HT.

List of Respondent Organisations

The Actuarial Profession
Association of Consulting Actuaries
Association of Pension Lawyers
Axa-Sun alliance
Electricity Supply Pension Scheme
The Law Society of Scotland
Society of Pension Consultants
Standard Life