

PENSIONS

The Pension Schemes (Categories) Regulations 2005

&

**The Occupational Pension Schemes (Trust Exemption)
Regulations 2005**

Government response to the consultation

September 2005

DWP Department for
Work and Pensions

Contents

Introduction

Responses to consultation

List of respondents

Introduction

1. In April 2005 the Government undertook a consultation on The Pension Schemes (Categories) Regulations 2005 and The Occupational Pension Schemes (Trust Exemption) Regulations 2005. The consultation ended on 1 June.
2. Seven responses to the consultation were received. A list of respondents is at **Annex**. The Government is very grateful to all who contributed to the consultation. The comments have been very helpful in finalising the regulations.
3. The Pension Schemes (Categories) Regulations 2005 will come into force on 22 September 2005 for occupational pension schemes with their main administration in the UK and on 6 April 2006 in all other cases. The Occupational Pension Schemes (Trust Exemption) Regulations 2005 will come into force on 22 September 2005.
4. The regulations will be available on the HMSO's website at <http://www.legislation.hmso.gov.uk/stat.htm#2005>.
5. This document is available on the Department's website at www.DWP.gov.uk/consultations/2005/index.asp
6. A paper copy of this document can be obtained from:

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

Tel 020 7962 8564

Condition

7. This document describes the policy underpinning the Regulations. Comments on the regulations should not however be taken as an authoritative interpretation of the law. Such an interpretation can only be provided by a court.

Responses to consultation

8. This document sets out the points made in the consultation and provides the Government's response.

The Pension Scheme (Categories) Regulations 2005

9. Section 239 of the Pensions Act 2004 substitutes new definitions of occupational and personal pension scheme into section 1 of the Pension Scheme Act 1993. These regulations will ensure that certain pension schemes are correctly classified. This section will come into force for occupational pension schemes with their main administration in the UK from 22 September 2005 and from 6 April 2006 for all other purposes.
10. The consultation sought views on whether there were any pension schemes where their classification may not be clear.

Regulation 2

11. Regulation 2(2) seeks to ensure that schemes currently known by H. M. Revenue and Customs as centralised schemes for unassociated employers continue to be classified as occupational pension schemes for pensions legislation purposes. Three respondents confirmed that the regulation achieved its purpose.
12. Three respondents sought confirmation that occupational pension schemes that provide death benefits only will not be classified as pension schemes under the new definition in section 1 of the Pension Schemes Act 1993. Section 1(5) will provide that a pension scheme is one that provides benefits on retirement, on reaching a particular age or on termination of employment. This does not include death benefits and therefore a scheme which provides death benefits only will not be a pension scheme and will not be regulated by pensions legislation.

Regulation 3

13. Two respondents queried why the Regulations will only treat a trust based stakeholder pension scheme without an employer contribution as a personal pension scheme and three respondents queried why the Regulations did not prescribe other pension schemes as personal pension schemes.
14. Regulation 3 is intended to make clear the position of a trust based stakeholder pension scheme. The amended section 1 of the Pension Schemes Act 1993 provides that an occupational pension scheme is one established by the people listed in subsection 1(2). One of these people is “a person representing the interests of people in employment of that description” and such a scheme (for example a scheme established by an affinity group) could therefore be categorised as an occupational pension scheme. Regulation 3 makes clear that where the provisions of such a scheme require the employer of any member of the scheme to make contributions to the scheme, the scheme is an occupational pension scheme, but where there is no such requirement the scheme is a personal pension scheme.
15. The categorisation of other types of scheme is clear without the need for further clarification in regulations. The amended section 1 of the Pension Schemes Act says that a personal pension scheme is one that is not an occupational pension scheme and is established by a person listed in Section 154(1) of the Finance Act 2004.
16. One respondent said that if regulation 3 was intended to ensure that stakeholder pension schemes were subject to Schedule 1 of the Welfare Reform and Pensions Act 1999 then it should say so, rather than apply it for all purposes. Regulation 3 makes clear that the schemes described, which might otherwise be occupational pension schemes, are to be classified as personal pension schemes as referred to in section 1 of the Pension Schemes Act for all purposes and not simply for the purposes of Schedule 1 of the Welfare Reform and Pensions Act 1999.

17. One respondent said that the phrase “terms of the scheme” only included the scheme’s rules and that this may not be wide enough to include other scheme documents that could require an employer contribution. We have amended “terms” to “provisions” to make the position clearer.

The Occupational Pension Scheme (Trust Exemption) Regulations 2005

18. Section 252 of the Pensions Act 2004 transposes article 8 of the European Directive on the Institutions for Occupational Retirement Provision Directive into UK legislation. Article 8 requires legal separation between an occupational pension scheme and its sponsoring undertaking. For occupational pension schemes with their main administration in the UK this is achieved by requiring these schemes to be set up under trust.
19. The regulations exempt certain occupational pension schemes from the trust requirement. Non-trust based schemes fall outside many of the requirements of pensions legislation and these regulations maintain this position.
20. The consultation document asked if there were any other types of occupational pension schemes that should be exempt from the requirement to establish under trust.
21. There was only one response to these regulations. This asked why occupational pension schemes with less than two members will be exempt from the requirement to be established under trust. These schemes are exempt because the members of such schemes are responsible for their own pension provision and do not need the protection provided by the Pensions Acts.
22. We do not intend to make any changes to these regulations as a result of this consultation.

List of respondents

Association of British Insurers

AXA

B and CE

The Faculty and Institute of Actuaries

The Law Society of Scotland

The Society of Pension Consultants

Standard Life