

**The Occupational and Personal Pension Schemes  
(Miscellaneous Amendments) Regulations 2007**

**Consultation on Draft Regulations**

November 2006

**DWP** Department for  
Work and Pensions

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# Foreword

## Preface

We are seeking views on the enclosed draft *Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2007*. The intention is that the regulations will come into force on 6th April 2007.

The consultation is primarily aimed at pension industry professionals, but we would be interested in views from any source.

This document is available on the Department's website at: <http://www.dwp.gov.uk/consultations/2006/index.asp>

## How to respond

The consultation exercise will run from 3 November 2006 to 15 December 2006. Any replies received after that date may not be taken into account. Please send your response by **15 December 2006** to:

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The Adelphi (3<sup>rd</sup> Floor)  
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*Tel: 020 7712 2059*

*e-mail: [pensions-sft@dwp.gsi.gov.uk](mailto:pensions-sft@dwp.gsi.gov.uk)*

## Consultation arrangements

Because of the highly specialised nature of this consultation, Ministers have decided that it is not appropriate to publish it under the provisions of the Cabinet Office Code of Practice on consultation. It does, however, apply best practice from the Code.

A list of those being consulted is attached at Annex A. If you have any suggestions of others who may wish to be involved in this process please contact us.

It would be very helpful when responding to indicate whether you are responding as an individual or representing the views of an organisation. If responding on

behalf of a larger organisation please make it clear whom the organisation represents and, where applicable, how the views of members were assembled.

According to the requirements of the Freedom of Information Act 2000, all information contained in the response, including personal information may be subject to publication or disclosure. By providing personal information for the purposes of the public consultation exercise, it is understood that a Respondent consents to its disclosure and publication. If this is not the case, the Respondent should limit any personal information which is provided, or remove it completely. If a Respondent requests that the information given in response to the consultation be kept confidential, this will only be possible if it is consistent with Freedom of Information Act obligations and general law on this issue. The contact point if you want to discuss this is:

Charles Cushing  
Freedom of Information  
Department for Work and Pensions  
2nd Floor  
Adelphi  
1-11 John Adam Street  
London  
WC2N 6HT

More information about the Freedom of Information Act can be found on the website of the Department for Constitutional Affairs:  
<http://www.dca.gov.uk/foi/guidance/exguide/index.htm>.

## **Feedback**

A summary of responses will be published following the consultation. The Government will aim to publish this summary within three months of the consultation closing. The summary of responses will be available on the Department's website: <http://www.dwp.gov.uk/consultations/2006/index.asp>.

If you have any comments, suggestions or complaints about the way in which this consultation exercise has been conducted please contact the Departmental Consultation Co-ordinator:

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5<sup>th</sup> Floor, East 1, Trevelyan Square  
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## **Regulatory impact assessment**

The Regulations do not impose extra costs to business, charities or the voluntary sector, and they are not, therefore, accompanied by a regulatory impact assessment.

## Commentary on the draft regulations

The following summary explains the purpose of each of the provisions:

**Regulation 1** contains the citation and commencement arrangements.

**Regulation 2** amends *The Personal Pension Schemes (Disclosure of Information) Regulations 1987 (SI 1987/1110)*, by removing or substituting references to legislation which no longer apply.

**Regulation 3** amends *The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (SI 1991/167)* ("the Preservation of Benefit Regulations")

A member who has preserved rights in the form of short service benefit in an occupational pension scheme can take those rights in the form of a lump sum before reaching the scheme's normal pension age (NPA) if the conditions set out in regulation 5 of the Preservation of Benefit Regulations 1991 are satisfied. These provisions are no longer compatible with HMRC legislation, which was amended from April 2006 (for example, HMRC rules allow for a lump sum to be paid in certain circumstances where a scheme is winding-up, but the Preservation of Benefit Regulations do not).

**Regulation 3(3)** amends regulation 5 of the Preservation of Benefit Regulations to allow short service benefit to be paid by means of a lump sum before NPA where the HMRC rules in respect of the payment of the lump sums specified in the amended regulations are satisfied. (For more details see sections 166 and 168 of, and the associated Schedule 29 to, the Finance Act 2004).<sup>1</sup>

**Regulation 4** amends *The Occupational Pension Schemes (Contracting Out) Regulations 1996 (SI 1996/1172)* ("the Contracting-out Regulations")

**Regulation 4(2)** amends the definition of an "overseas scheme" in regulation 1(2) of the Contracting-out Regulations in order to make it clear that an occupational pension scheme is an overseas scheme if it has its main administration outside the member states of the European Union (excluding a scheme which is contracted-out in the Isle of Man).

**Regulation 4(3)** amends regulation 62 of the Contracting-out Regulations in order to provide a revised rate of revaluation, in line with the Government Actuary's recommendation. The revised rate applies to schemes operating "fixed rate" revaluation of Guaranteed Minimum Pensions (GMPs) under sections 16(2) and (3) of the Pension Schemes Act 1993. The new annual rate of 4 per cent compound will apply to the GMPs of members who leave pensionable service in these schemes before normal pension age on or after 6 April 2007. This

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<sup>1</sup> The lump sums in sections 166 and 168 of the Finance Act which are not included in the amended regulation would, we believe, either not be payable as short service benefit, or would not be payable before NPA.

amendment gives effect to the recommendation in Cm 6758 (*Occupational and Personal Pension Schemes: Review of Certain Contracting-out Terms*).

**Regulations 5&6** amend *The Protected Rights (Transfer Payment) Regulations 1996 (SI 1996/1461)* and the *Contracting-out (Transfer and Transfer Payment) Regulations 1996 (SI 1996/1462)*, which allow for the transfer of contracted-out rights to occupational pension schemes which are administered wholly or partly outside the United Kingdom (UK), subject to certain conditions being met.

From 22 September 2005 a new definition of “occupational pension scheme” has applied, so that such a scheme must have its main administration either in the UK or outside the member States. What were previously defined as occupational pension schemes in member States other than the UK are now referred to as “European pensions institutions” (as defined in section 293(8) of the Pensions Act 2004). A consequence of the change in the definition of an occupational pension scheme is that the regulations no longer sanction the transfers of contracted-out rights to member States outside the UK.

Regulations 5&6 restore the policy intention by allowing transfers to both occupational pension schemes which have their main administration outside the member States, and to European pensions institutions.

**Regulation 7** repeals regulation 8(2) of *The Personal and Occupational Pension Schemes (Protected Rights) Regulations 1996 (SI 1996/1537)*. This regulation is no longer needed as it applies only to lump sums paid on grounds of triviality and the link in paragraph 8(1A)(c) through to paragraph 7 of Part 1 of Schedule 29 to the Finance Act 2004 already provides for this.

**Regulation 8** – amends *The Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (SI 1996/1655)* (“the Disclosure of Information Regulations”) to clarify two provisions which were introduced by the Scheme Funding Regulations.

Regulation 8(2)(a) amends regulation 5(12ZA) of the Disclosure of Information Regulations in order to make it clear that trustees may issue a summary funding statement before the end of the prescribed period for ensuring that an actuarial valuation or report is received by them.

Regulation 8(2)(b) inserts a new provision into regulation 5 of the Disclosure of Information Regulations to make it clear that trustees are not required to send summary funding statements in the transitional period to members or beneficiaries who only have, or will have, an entitlement in the scheme to money purchase benefits.

**Regulation 9** - amends *The Divorce etc. (Notification and Treatment of Pensions) (Scotland) Regulations 2000 (SI 2000/1050) (S.4)*. These Regulations make provision with respect to the supply of information under section 12A of the Family Law (Scotland) Act 1985 about court orders for payment of pension lump sums

where parties divorce or their marriage is declared to be null. The proposed amendments will extend the legislation so that it will apply to civil partners whose civil partnership has been dissolved or declared to be null.

**Regulation 10** amends *The Pensions on Divorce etc. (Pension Sharing) (Scotland) Regulations 2000 (SI 2000/1051) (S.5)*. These Regulations make provision with respect to pension sharing in Scotland, under the Welfare Reform and Pensions Act 1999, where parties divorce or their marriage is declared to be null. The proposed amendments will extend the legislation so that it will apply to civil partners whose civil partnership has been dissolved or declared to be null.

**Regulation 11** amends *The Stakeholder Pension Schemes Regulations 2000 (SI 2000/1403)* to bring them into line with the tax requirement that the trustees or managers of a stakeholder pension scheme must deduct tax charges from a member's benefit or fund. (See *The Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006 (SI 2006/36)*).

**Regulation 12** - amends *The Occupational Pension Scheme (Winding up etc.) Regulations 2005 (SI 2005/706)* ("the Winding up Regulations").

Regulation 12(2): Where an occupational pension scheme has less than 12 members, and all the members are either trustees or directors of the trustee company, the scheme is exempt from a number of provisions in private pensions legislation, including those governing the preferential liabilities on winding up. Regulation 12(2) amends the description of these small schemes in regulation 3(1) of the Winding up Regulations in order to ensure a consistent definition, and is one of a number of similar amendments in these draft regulations.

Regulation 12(3) amends regulation 8(4)(a) of the Winding up Regulations to extend the scope of that regulation to cover civil partnerships.

**Regulation 13** amends regulation 2 of *The Occupational Pension Schemes (Fraud Compensation Payments and Miscellaneous Amendments) Regulations 2005 (SI 2005/2184)* in order to align the definition of a small scheme with other similar provisions elsewhere in the legislation (see commentary on regulation 12(2) above).

**Regulation 14** amends regulation 2 of *The Pension Schemes (Categories) Regulations 2005 (SI 2005/2401)* in order to ensure that the Pilots' National Pension Fund will be treated as an occupational pension scheme following the change in the definition in section 1 of the Pension Schemes Act 1993 which was introduced by section 239 of the Pensions Act 2004.

**Regulation 15** amends *The Occupational Pension Schemes (Scheme Funding) Regulations 2005 (SI 2005/3377)* ("the Scheme Funding Regulations")

Regulation 15(2) amends regulation 10 of the Scheme Funding Regulations in order to make it clear that where there is more than one participating employer,

the schedule of contributions must show the rates attributable to each participating employer separately.

Regulation 15(3) amends regulation 17 of the Scheme Funding Regulations in order to align the definition of a small scheme with other similar provisions elsewhere in the legislation (see commentary on regulation 12(2) above).

Regulation 15(4)(a) amends paragraph 3(2) of schedule 3 to the Scheme Funding Regulations to correct a cross reference, and to make it clear that trustees are not required to send summary funding statements during the transitional period to members or beneficiaries who only have, or will have, an entitlement in the scheme to money purchase benefits.

Regulation 15(4)(b)&(c) corrects a typesetting error in paragraph 3(2) of Schedule 3 to the Scheme Funding Regulations. The change makes it clear that reference to any payments made to the employer is a separate requirement for inclusion in summary funding statements sent during the transitional period.

Regulation 15(5) amends Schedule 4 to the Scheme Funding Regulations to make it clear that where the actuary certifies that the contributions payable to the scheme are not adequate (under the transitional provision at paragraph 15 of Schedule 4), the trustees must obtain a new actuarial valuation in accordance with Part 3 of the Pensions Act 2004.

**Regulation 16** - amends *The Occupational Pension Schemes (Investment) Regulations 2005 (SI 2005/3378)* (“the Investment Regulations”).

Regulation 16(2) amends regulation 1 of the Investment Regulations in order to align the definition of a small scheme with other similar provisions elsewhere in the legislation (see commentary on regulation 12(2) above).

Regulation 16(3) amends regulation 12 of the Investment Regulations to clarify that the restriction on employer-related investments applies to all occupational pension schemes, not only those set up under a trust.

**Regulation 17** - amends *The Occupational Pension Schemes (Regulatory Own Funds) Regulations 2005 (SI 2005/3380)* (“the Regulatory Own Funds Regulations”).

Regulations 17(2)&17(3): correct an omission in the definition of a “European Employer” for the purposes of regulation 11 of the Regulatory Own Funds Regulations, which do not currently specify who is a qualifying person or a seconded worker. The amendments achieve the policy intention by deleting regulation 11, and cross-referring instead to the definition of “European Employer” in the Cross-border Regulations.

Regulation 17(4) amends regulation 17 of the Regulatory Own Funds Regulations in order to align the definition of a small scheme with other similar provisions elsewhere in the legislation (see commentary on regulation 12(2) above).

**Regulation 18** - amends *The Occupational Pension Schemes (Cross-border Activities) Regulations 2005 (SI 2005/3381)* (“the Cross-border Regulations”).

Regulation 18 (2) amends regulation 2(3) of the Cross-border Regulations to ensure that the more stringent cross-border full-funding requirement only applies to those sections of a multi-employer scheme to which employers involved in cross-border activity contribute.

Regulation 18 (3) amends the definition of a “European employer” and a “host Member State” in Regulation 3 to ensure that the trustees must seek fresh cross border approval whenever their scheme starts to operate in a new Member State.

Regulations 18 (4)–(6) amend regulations 5, 7 and 10 in order to: allow schemes which were operating on a cross-border basis prior to the 23 September 2005 (‘pre-23 September 2005 schemes’) to apply for authorisation if they missed the 29 March 2006 deadline; and to allow such schemes to apply for approval to operate on a cross-border basis with other European employers. The regulations do not currently provide for either situation.

Regulation 18 (7) amends the definition of “ringfencing” in regulation 15 to ensure that the Regulator can instruct the trustees of the scheme to complete the necessary ringfencing within a specified period of time.

Regulation 18(8) ensures that cross-border schemes are exempt from the requirement of section 66A (3) of the Pensions Act 1995 which requires that members of a scheme who work outside the UK should be treated the same as members of a scheme who work wholly in the UK. UK based cross-border pension schemes cannot comply with this requirement as the Cross-border Regulations (as expressed by Article 20 (5) of the EU Occupational Pensions Directive) require schemes to observe the social and labour law relevant to the Member State in which the member is based. Consequently members who work permanently outside the UK may be treated differently from those members who work wholly in the UK, on account of other EU States’ differing social and labour law. The Cross-border Regulations do not, however, apply to members working on secondment (as defined in the Cross-border Regulations) in other EU States.

Regulation 18(9) amends schedule 1 paragraph 6 (7) to add two further information requirements for schemes seeking approval to accept contributions in relation to a particular European employer. The additional requirements reflect changes to a protocol document covering schemes operating on a cross-border

basis which were agreed by *The Committee of European Insurance and Occupational Pension Supervisors (CEIOPS)*<sup>2</sup>.

**Regulation 19** - amends regulation 4(4)(b) of *The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (SI 2006/349)* in order to align the definition of a small scheme with other similar provisions elsewhere in the legislation (see commentary on regulation 12(2) above).

**Regulation 20** amends regulation 2 of *The Occupational Pension Schemes (Trustees' Knowledge and Understanding) Regulations 2006 (SI 2006/686)* in order to align the definition of a small scheme with other similar provisions elsewhere in the legislation (see commentary on regulation 12(2) above).

**Regulation 21** - amends *The Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 2006 (SI 2006/714)* ("the Member-nominated Trustees and Directors Regulations").

Regulation 21(2) amends regulation 1 of the Member-nominated Trustees and Directors Regulations in order to align the definition of a small scheme with other similar provisions elsewhere in the legislation (see commentary on regulation 12(2) above).

Regulations 21(3) and (4) exempt the National Assembly for Wales Members' Pension Scheme (NAWMPS), and the schemes listed in the schedule to *The Railway Pensions (Protection and Designation of Schemes) Order 1994*, from the requirements of the Member-nominated Trustees and Directors Regulations. The NAWMPS is analogous to the scheme set up under the Parliamentary and other Pensions Act 1987, which is already exempt from these requirements, and the inclusion of the schemes listed in the Railway Pensions Order 1994 is necessary in order to ensure that the pre-existing exemptions for these schemes will continue.

Regulation 21(5) amends two typographical errors in the listed of revoked regulations in the schedule to the principal regulations.

**Regulation 22** – makes two revocations which are consequential to the Pensions Act 2004, but were omitted from the schedule of revocations.

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<sup>2</sup> CEIOPS was established in 2005 to provide advice to the European Commission on insurance and occupational pensions matters and to establish standards and guidelines to facilitate cooperation between national supervisory authorities.

## **Annex A**

### **List of those consulted:**

Association of British Insurers  
Association of Consulting Actuaries  
Association of Corporate Trustees  
Association of Independent Financial Advisers  
Association of Pension Lawyers  
British Chambers of Commerce  
Confederation of British Industry  
Consumers' Association  
Department of Social Development (Northern Ireland)  
Engineering Employers' Federation  
Federation of Small Businesses  
Financial Ombudsman Service  
Financial Services Authority  
Government Actuary's Dept  
HM Revenue & Customs  
Hewitt Associates  
Institute and Faculty of Actuaries  
Institute of Chartered Accountants  
Institute of Chartered Accountants in Scotland  
Institute of Directors  
Investment Management Association  
Law Society  
Law Society of Scotland  
National Association of Pension Funds  
National Consumers Council  
National Pensioners Convention  
Pensions Management Institute  
Pensions Ombudsman  
Scotland Office  
Society of Pension Consultants  
The Construction Company  
The Pensions Advisory Service  
The Pensions Regulator  
Trades Union Congress