
DRAFT STATUTORY INSTRUMENTS

2006 No.

**The Occupational and Personal Pension
Schemes (Consultation by Employers and
Miscellaneous Amendment) Regulations 2006**

Introductory

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006.

(2) Subject to paragraph (3), these Regulations shall come into force on 6th April 2006.

(3) Regulation 22 shall come into force on the day after the day on which these Regulations are made.

(4) Regulation 22 extends to Northern Ireland.

Interpretation

2. In these Regulations—

“active member”—

(a) in relation to an occupational pension scheme, has the meaning given by section 124 of the Pensions Act 1995⁽¹⁾ (interpretation), and

(b) in relation to a personal pension scheme, means any member in respect of whom employer contributions fall to be paid;

“affected members” has the meaning given by regulation 7(4);

“employer contributions”, in relation to an occupational or personal pension scheme, means contributions payable by or on behalf of the employer in relation to the scheme on his own account (but in respect of one or more employees);

“member contributions”, in relation to an occupational or personal pension scheme, means contributions, other than voluntary contributions, by or on behalf of active members of the scheme which are payable out of deductions from the member’s earnings;

“listed change” has the meaning given by regulation 6(2);

“multi-employer scheme” has the meaning given by section 307 of the Pensions Act 2004 (modification of Act in relation to certain categories of schemes);

“personal pension scheme” has the meaning given by regulation 3(3);

“prospective member”—

(a) in relation to an occupational pension scheme, means any person who, under the terms of his contract of service or the rules of the scheme—

- (i) is able, at his own option, to become a member of the scheme,
 - (ii) will become so able if he continues in the same employment for a sufficiently long period,
 - (iii) will be admitted to the scheme automatically unless he makes an election not to become a member, or
 - (iv) may be admitted to it subject to the consent of his employer;
- (b) in relation to a personal pension scheme, means any person who, under the terms of his contract of service, is eligible if he becomes a member of the scheme for employer contributions to be paid in respect of him;
- “the Regulator” means the Pensions Regulator established under section 1 of the Pensions Act 2004 (the Pensions Regulator); and
- “relevant employer” has the meaning given by regulation 3(2).

Application of Regulations

Application

- 3.—(1) These Regulations apply to—
- (a) in the case of an occupational pension scheme which is not a multi-employer scheme—
 - (i) any relevant employer, and
 - (ii) if there is a relevant employer, the trustees or managers of the scheme;
 - (b) in the case of a multi-employer scheme in relation to which there are one or more relevant employers—
 - (i) each relevant employer,
 - (ii) the trustees or managers of the scheme, and
 - (iii) any other person who, under the rules of the scheme, has the power to make a listed change affecting the scheme⁽²⁾; and
 - (c) in the case of a personal pension scheme where direct payment arrangements exist in respect of one or more members of the scheme who are his employees, a relevant employer.
- (2) For the purposes of these Regulations “relevant employer”—
- (a) in the case of an occupational pension scheme, means an employer in relation to the scheme other than one who is excluded by regulation 4; and
 - (b) in the case of a personal pension scheme, means an employer in relation to the scheme other than one who is excluded by regulation 5.
- (3) In these Regulations references to a personal pension scheme are to a personal pension scheme falling within paragraph (1)(c).

Excluded employers: occupational pension schemes

- 4.—(1) This regulation excludes—
- (a) any employer in relation to a public service pension scheme;
 - (b) any employer in relation to a small occupational pension scheme;

(2) The persons referred to in regulation 3(1)(b)(iii) are specified by virtue of modifications of sections 259 and 261 of the Pensions Act 2004 which are made by the Occupational Pension Schemes (Consultation by Employers) (Modification for Multi-employer Schemes) Regulations 2006 (S.I. 2006/16).

- (c) any employer in relation to an occupational pension scheme with fewer than two members;
 - (d) any employer in relation to an occupational pension scheme which is an employer-financed retirement benefits scheme;
 - (e) any employer in relation to an unregistered occupational pension scheme which has its main administration outside the member States; and
 - (f) any employer employing in Great Britain a number of employees which does not exceed the maximum number specified in paragraph (2).
- (2) The maximum number is—
- (a) 150 with effect from 6th April 2006 to 5th April 2007,
 - (b) 100 with effect from 6th April 2007 to 5th April 2008, and
 - (c) 50 with effect from 6th April 2008 onwards.
- (3) For the purposes of paragraph (1)(f)—
- (a) the number of people employed by an employer is to be determined using the same method of calculation as is set out in regulation 4 of the Information and Consultation of Employees Regulations 2004⁽³⁾ (calculation of number of employees), but
 - (b) references in that regulation to the previous twelve months are to be taken as references to the period of twelve months ending with the date of the proposal to make a listed change to which regulation 6 of these Regulations applies.
- (4) In this regulation—
- “employer-financed retirement benefits scheme” has the meaning given by section 393A of the Income Tax (Earnings and Pensions) Act 2003⁽⁴⁾ (employer-financed retirement benefits scheme);
- “public service pension scheme” has the meaning given by section 1(1) of the Pension Schemes Act 1993⁽⁵⁾;
- “small occupational pension scheme” means—
- (a) a scheme with fewer than twelve members where all of the members are trustees of the scheme and either—
 - (i) the provisions of the scheme provide that all decisions which fall to be made by the trustees are made by unanimous agreement by the trustees who are members of the scheme, or
 - (ii) the scheme has a trustee who is independent in relation to the scheme for the purposes of section 23 of the Pensions Act 1995⁽⁶⁾ (power to appoint independent trustees) and is registered in the register maintained by the Regulator in accordance with regulations made under subsection (4) of that section;
 - (b) a scheme with fewer than twelve members where a company is a trustee of the scheme, and all the members of the scheme are directors of the company and either—
 - (i) the provisions of the scheme provide that any decision made by the company in its capacity as trustee are made by the unanimous agreement of all the directors who are members of the scheme, or
 - (ii) one of the directors is a trustee who is independent in relation to the scheme for the purposes of section 23 of the Pensions Act 1995 and is registered in the

(3) S.I. 2004/3426.

(4) 2003 c.1. Section 393A was inserted by section 249 of the Finance Act 2004 (c.12).

(5) 1993 c.48. The definition was amended by S.I. 1999/1820. Section 1 is amended by section 239 of the Pensions Act 2004.

(6) 1995 c.26. Section 23 was substituted by section 36(3) of the Pensions Act 2004.

register maintained by the Regulator in accordance with regulations made under subsection (4) of that section; and

“unregistered occupational pension scheme” means an occupational pension scheme which is not registered under section 153 of the Finance Act 2004(7) (registration of pension schemes).

Excluded employers: personal pension schemes

5.—(1) This regulation excludes—

- (a) any employer in relation to a personal pension scheme where no employer contributions fall to be paid towards the scheme; and
 - (b) any employer employing in Great Britain a number of employees which does not exceed the maximum number specified in regulation 4(2).
- (2) Regulation 4(3) also applies for the purposes of paragraph (1)(b).

Restriction on decision-making pending completion of consultation

Consultation required before decisions to make listed changes affecting schemes

6.—(1) No person falling within regulation 3(1) may decide to make a listed change that affects an occupational or personal pension scheme unless such consultation as is required by regulation 7(3) has been carried out.

(2) For the purposes of these Regulations, a change affecting an occupational or personal pension scheme is a “listed change” if—

- (a) in relation to an occupational pension scheme, it is listed in regulation 8, or
- (b) in relation to a personal pension scheme, it is listed in regulation 9,

and it is not excluded by virtue of regulation 10.

(3) Paragraph (1) does not require consultation to be carried out in any of the four cases described in paragraphs (4) to (7).

(4) The first case is where the active or prospective members of the scheme to whom the listed change relates were notified before 6th April 2006 of the proposal to make that change.

(5) The second case is where, in relation to an occupational pension scheme—

- (a) consultation has already been carried out under these Regulations in respect of a proposal to prevent the future accrual of benefits, as described in regulation 8(1)(c), and
- (b) there is a further proposal as a result of that consultation to make a decision to reduce the rate of such accrual, as described in regulation 8(3)(d).

(6) The third case is where, in relation to an occupational pension scheme—

- (a) consultation has already been carried out under these Regulations in respect of a proposal to remove the liability to make employer contributions, as described in regulation 8(1)(d), and
- (b) there is a further proposal as a result of that consultation to make a decision to reduce such contributions, as described in regulation 8(2).

(7) The fourth case is where, in relation to a personal pension scheme—

- (a) consultation has already been carried out under these Regulations in respect of a proposal to cease employer contributions, as described in regulation 9(a), and

(7) 2004 c.12. Section 153 was amended by paragraphs 2 and 3 of Schedule 10 to the Finance Act 2005 (c.7).

- (b) there is a further proposal as a result of that consultation to make a decision to reduce such contributions, as described in regulation 9(b).

Notifications to employers and duty to consult

7.—(1) Any person falling within regulation 3(1) who proposes to make a listed change affecting an occupational or personal pension scheme must give written notice of that change to each employer in relation to the scheme.

(2) Paragraph (1) does not apply—

- (a) in any of the four cases described in regulation 6(4) to (7), or
- (b) where the person proposing the change is a relevant employer in relation to—
 - (i) an occupational pension scheme which is not a multi-employer scheme, or
 - (ii) a personal pension scheme.

(3) If his employees appear to him to include affected members—

- (a) any employer notified under paragraph (1) who is a relevant employer, and
- (b) any relevant employer falling within paragraph (2)(b),

must consult about the listed change in accordance with regulations 11 to 16.

(4) For the purposes of these Regulations “affected members”, in relation to a proposal to make a listed change affecting an occupational or personal pension scheme, means the active or prospective members of the scheme to whom the listed change relates.

Listed changes: occupational pension schemes

8.—(1) Listed changes that affect occupational pension schemes are—

- (a) to increase the normal pension age specified in the scheme rules for members or members of a particular description;
- (b) to prevent new members, or new members of a particular description, from being admitted to the scheme;
- (c) to prevent the future accrual of benefits under the scheme for or in respect of members or members of a particular description;
- (d) to remove the liability to make employer contributions towards the scheme in respect of members or members of a particular description;
- (e) to introduce member contributions in any circumstances in which no such contributions were previously payable;
- (f) to make any increase in member contributions by or on behalf of members or members of a particular description;
- (g) to make any change specified in paragraph (2) or (3).

(2) A listed change affecting only money purchase benefits is to make any reduction in the amount of employer contributions towards the scheme in respect of members or members of a particular description.

(3) Listed changes affecting only benefits which are not money purchase benefits are—

- (a) to change to money purchase benefits some or all of the benefits that may be provided under the scheme to or in respect of members or members of a particular description;
- (b) to change, in whole or in part, the basis for determining the rate of future accrual of benefits under the scheme for or in respect of members or members of a particular description;

- (c) to modify the scheme under section 229(2) of the Pensions Act 2004 (matters requiring agreement of the employer) so as to reduce the rate of future accrual of benefits under the scheme for or in respect of members or members of a particular description;
 - (d) to make any other reduction in the rate of future accrual of benefit under the scheme for or in respect of members or members of a particular description.
- (4) “Normal pension age” has the meaning given by section 180 of the Pension Schemes Act 1993⁽⁸⁾ (normal pension age).

Listed changes: personal pension schemes

9. Listed changes that affect personal pension schemes are—
- (a) to cease employer contributions towards the scheme in respect of members or members of a particular description;
 - (b) to make any reduction in the amount of employer contributions towards the scheme in respect of members or members of a particular description;
 - (c) to make any increase in member contributions by or on behalf of members or members of a particular description.

Listed changes: exclusions

- 10.—(1) For the purposes of regulations 8 and 9, no account is to be taken of any change which—
- (a) is made for the purposes of complying with a statutory provision,
 - (b) is made for the purposes of complying with a determination made by the Regulator, or
 - (c) has no lasting effect on a person’s rights to be admitted to a scheme or on the benefits that may be provided under it.
- (2) No change which is—
- (a) a regulated modification within the meaning of the subsisting rights provisions, and
 - (b) subject to the requirements of those provisions,
- falls within regulation 8.
- (3) “Statutory provision” means a provision comprised in—
- (a) an Act of Parliament or subordinate legislation made under such an Act, whenever passed or made,
 - (b) an Act of the Scottish Parliament or subordinate legislation made under such an Act, whenever passed or made.
- (4) “Subsisting rights provisions” has the meaning given by section 67 of the Pensions Act 1995⁽⁹⁾ (the subsisting rights provisions).

Information provision and consultation

Requirement to provide information

- 11.—(1) In relation to a proposal to make a listed change affecting an occupational or personal pension scheme, each relevant employer to whom regulation 7(3) applies must provide information about the proposal to—

⁽⁸⁾ 1993 c.48.

⁽⁹⁾ 1995 c.26. Section 67 is substituted by section 262 of the Pensions Act 2004.

- (a) such of his employees as appear to him to be affected members of the scheme, and
 - (b) any representatives of such members who are to be consulted under regulation 12(2)(a) or (3) or 13(2).
- (2) The information provided under paragraph (1) must—
- (a) be in writing,
 - (b) be provided before the start of consultation under regulation 12 or 13,
 - (c) describe the listed change and state what effects it would (or would be likely to) have on the scheme and its members,
 - (d) be accompanied by any relevant background information,
 - (e) indicate the timescale on which measures giving effect to the change are proposed to be introduced, and
 - (f) be given in such fashion and with such content as are appropriate to enable, in particular, representatives of affected members to consider, conduct a study of, and give their views to the employer on, the impact of the listed change on such members.

Consultation under existing arrangements

12.—(1) If arrangements specified in paragraph (2) or (3) exist in relation to his employees, each relevant employer to whom regulation 7(3) applies must consult about a listed change in accordance with such one or more of those arrangements as he may choose.

(2) The specified arrangements are arrangements under which employees appearing to the employer to be affected members—

- (a) are represented by—
 - (i) in the case of employees of a description in respect of which an independent trade union is recognised by the employer, the representatives of the trade union,
 - (ii) in the case of employees of a description which has elected or appointed information and consultation representatives, those representatives, or
 - (iii) where there exists one or more pre-existing agreements which apply to any of the employees, any representatives identified in accordance with such agreement or agreements; or
 - (b) are to be consulted directly in accordance with the terms of a negotiated agreement or a pre-existing agreement.
- (3) In any case where—
- (a) an election of representatives as described in regulation 13(2) has taken place before any arrangements referred to in paragraph (2) are made, and
 - (b) the interests of affected members are represented by such representatives,

the specified arrangements also include arrangements for consultation of those representatives.

(4) “Independent trade union” and “recognised”, in relation to an independent trade union, have the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992⁽¹⁰⁾.

(5) “Information and consultation representatives” and “negotiated agreement” have the same meaning as in the Information and Consultation of Employees Regulations 2004⁽¹¹⁾.

(6) “Pre-existing agreement”—

⁽¹⁰⁾ 1992 c.52; see sections 5 and 178(3) of that Act.

⁽¹¹⁾ S.I. 2004/3426.

- (a) means an agreement between an employer and his employees or their representatives which satisfies the conditions set out in regulation 8(1)(a) to (d) of the Information and Consultation of Employees Regulations 2004 and which has not been superseded, but
- (b) does not include an agreement concluded in accordance with regulations 17 or 42 to 45 of the Transnational Information and Consultation of Employees Regulations 1999(12) or a negotiated agreement.

Consultation in cases not covered by regulation 12

13.—(1) This regulation applies to a relevant employer to whom regulation 7(3) applies if (and only if) any of the employees who appear to the employer to be affected members are not covered by consultation arrangements referred to in regulation 12.

(2) Where, for the purposes of engaging in consultations under these Regulations, representatives of any affected members have been elected in an election which satisfies the requirements of regulation 14(1), the relevant employer must consult with those representatives about a listed change.

(3) If the interests of any affected members are not represented by representatives who are consulted under paragraph (2), the relevant employer must also consult directly with those members.

(4) If no representatives have been elected as described in paragraph (2), the relevant employer must consult directly with the affected members about a listed change.

(5) Consultation under this regulation—

- (a) is required only in relation to the affected members falling within paragraph (1), and
- (b) is additional to any consultation in relation to other affected members which is required by regulation 12.

Election of representatives

14.—(1) The requirements of this paragraph are that—

- (a) the employer must make such arrangements as are reasonably practical to ensure that the election is fair;
- (b) the employer must determine the number of representatives to be elected so that there are sufficient representatives to represent the interests of active members and the interests of prospective members;
- (c) the employer must determine whether the active and prospective members should be represented by representatives of all such members or by representatives of particular descriptions of such members;
- (d) before the election the employer must determine the term of office as representative of active and prospective members;
- (e) the candidates for election must be active or prospective members of the scheme on the date of the election;
- (f) no active or prospective member may unreasonably be excluded from standing for election;
- (g) all active or prospective members on the date of the election are entitled to vote for member representatives;
- (h) the members entitled to vote may vote for as many candidates as there are representatives to be elected to represent them or, if there are to be classes of representative for particular

descriptions of member, may vote for as many candidates as there are representatives to be elected to represent their particular description of member;

- (i) the election is conducted so as to secure that—
 - (i) so far as is reasonably practicable, those voting do so in secret, and
 - (ii) the votes given at the election are accurately counted.

(2) Where, after an election of representatives satisfying the requirements of paragraph (1) has been held—

- (a) one of those elected ceases to act as a representative, and
- (b) the active or prospective members (or any description of them) are no longer represented, those members must elect another representative by an election satisfying the requirements of paragraph (1)(a), (e), (f) and (i).

(3) The relevant employer must from time to time review the number of representatives determined under paragraph (1)(b) and the number of representatives elected must be adjusted accordingly (whether by members electing one or more other representatives by an election satisfying the requirements of paragraph (1)(a), (e), (f) and (i), by not holding an election under paragraph (2) or otherwise).

Conduct of consultation

15.—(1) Each relevant employer who carries out a consultation must make such arrangements with respect to the persons to be consulted as appear to him to secure that, so far as is reasonably practicable, the consultation covers all affected members.

(2) In the course of consultation, the relevant employer and any person consulted are under a duty to work in a spirit of co-operation, taking into account the interests of both sides.

(3) At the start of any consultation required by these Regulations, the relevant employer must notify the persons to be consulted of any date set for the end of the consultation or for the submission of written comments.

(4) An appropriate period must be allowed for carrying out the consultation which in any event must not be less than 60 days.

(5) If no responses to the consultation are received before the end of the period allowed for the consultation in accordance with paragraphs (3) and (4), the consultation is to be regarded as complete.

End of consultation

16.—(1) Where the relevant employer who carries out a consultation is not the person who proposed the listed change (“P”), the relevant employer must, as soon as reasonably practicable after the consultation is complete—

- (a) report to P on the views (if any) which were expressed to the relevant employer otherwise than in writing,
- (b) where the responses include written comments, forward those comments to P, and
- (c) in any case where no responses were received, notify P accordingly.

(2) In a case falling within paragraph (1), P must take reasonable steps to satisfy himself that each consultation required by these Regulations in relation to the scheme was carried out in accordance with regulations 11 to 15.

(3) After the end of the period allowed for the consultation, the person who proposed the listed change must consider the responses (if any) received in the course of consultation before making his decision as to whether or not to make a listed change.

Miscellaneous

Employment rights and protections in connection with consultation

17. The Schedule to these Regulations contains provision as to employment rights and protections which, in connection with consultation under these Regulations, apply to the employees of an employer in relation to an occupational or personal pension scheme.

Exclusivity of remedy

18.—(1) The remedy for a failure to comply with any obligations under regulations 6 to 16 in respect of any proposal or decision to make a listed change is by way of complaint to the Regulator.

(2) A complaint may be made by—

- (a) any representative of affected members who falls within regulation 12(2)(a) or (3) or 13(2) (including any such representative who is not consulted), and
- (b) any active or prospective member of an occupational or personal pension scheme who considers that he is or may be an affected member.

Powers of the Regulator to waive or relax requirements

19.—(1) The Regulator may by order waive or relax any of the requirements of regulations 6 to 16.

(2) The power under paragraph (1) may be exercised only if the Regulator is satisfied that it is necessary to do so in order to protect the interests of the generality of the members of the scheme.

Waiver or relaxation of requirements: amendment of Schedule 2 to the Pensions Act 2004

20. After paragraph 44 of Schedule 2 to the Pensions Act 2004 (the reserved regulatory functions) add—

“PART 5

OTHER FUNCTIONS

45. The power to make an order under regulation 19 of the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (S.I. 2006/) to waive or relax any of the requirements of regulations 6 to 16 of those Regulations.”.

Waiver or relaxation of requirements: prescribed regulatory function

21. The Regulator’s power to make an order under regulation 19 to waive or relax any of the requirements of regulations 6 to 16 is prescribed for the purposes of section 97(5)(u) of the Pensions Act 2004 (special procedure: applicable cases).

Miscellaneous amendment

22. In regulation 5(3) of the Financial Assistance Scheme (Internal Review) Regulations 2005(**13**) (time for making an application for a review of a reviewable determination), for “or (b)” substitute “or (c)”.

Signed by authority of the Secretary of State for Work and Pensions.

2006

Minister of State,
Department for Work and Pensions