
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prohibit the making of certain changes to occupational or personal pension schemes unless consultation about the change is carried out beforehand. They also amend the Financial Assistance Scheme (Internal Review) Regulations 2005 (S.I. 2005/1994).

Regulations 3 to 5 specify the persons to whom the Regulations apply. For all occupational or personal pension schemes, these are relevant employers. For occupational pension schemes which have at least one relevant employer, the Regulations also apply to trustees or managers of the scheme and, if the scheme is a multi-employer scheme, to any other person who has power to change the scheme.

Regulation 6 prohibits the making of any change specified in regulation 8 or 9 (“listed changes”) without consultation having been carried out by each relevant employer in relation to the scheme. Regulation 10 specifies certain changes that are excluded. Regulation 7 requires the person who proposes the change to notify all employers in relation to the scheme. If an employer is a relevant employer and has employees who are affected by the change, regulation 7(3) requires him to consult in accordance with regulations 11 to 16.

Regulations 11 to 16 provide for the way in which consultations are to be conducted. Information must be provided under regulation 11. Under regulation 12, where arrangements for consultation already exist, a relevant employer must consult in accordance with those arrangements. He is able to choose one or more of those arrangements and, if any affected members are not covered by such arrangements, he must also consult in accordance with regulation 13. If no consultation arrangements already exist, the employer has to consult in accordance with regulation 13 only. Regulation 13 provides that, where representatives have been specially elected for the purposes of consultation under the Regulations, the employer must consult with them. Regulation 14 sets out the requirements for such an election. If no representatives have been elected, or if the representatives do not represent the interests of all the members who are not covered by any consultation required under regulation 12, the employer must consult directly with the members. Regulation 15 requires the employer to ensure that the consultation covers all affected members so far as is reasonably practicable and outlines a duty of co-operation that applies to those engaged in it. Once the period allowed for consultation is ended, responses to the consultation must be considered under regulation 16.

Regulation 17 introduces the Schedule to the Regulations which makes provision for employment rights and protections in relation to persons who are consulted. Paragraphs 2 to 4 of the Schedule provide that consulted representatives are entitled to time off and remuneration when acting as a representative. Paragraphs 5 to 8 make provision protecting employees, and any representatives who are consulted, against unfair dismissal and other detriment. Paragraph 9 provides for conciliation procedures to be available in any proceedings before an employment tribunal brought under the Schedule and paragraph 10 makes provision for appeals to be made to the Employment Appeal Tribunal on a point of law. Paragraphs 11 to 13 place restrictions on contracting out of the requirements imposed by these Regulations.

Regulations 18 and 19 make provision as to the role of the Pensions Regulator in enforcing the Regulations. Regulation 20 amends the Pensions Act 2004 (c. 35) so that any decision of the Pensions Regulator under regulation 19 to make an order to waive or relax a requirement of the Regulations must be taken by the Determinations Panel established under Part 1 of the Pensions Act 2004. Regulation 21 adds the power under regulation 19 to the list of regulatory functions which are eligible to be carried out under the special procedure in cases of urgency.

Regulation 22 amends the Financial Assistance Scheme (Internal Review) Regulations 2005 to correct a typographical error.

Changes to legislation: *There are currently no known outstanding effects for the The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006. (See end of Document for details)*

An assessment of the impact on business, charities and the voluntary sector of the provisions in these Regulations is included in the Regulatory Impact Assessment that accompanied the Pensions Act 2004. A copy of that assessment has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department for Work and Pensions, Better Regulation Unit, 4th Floor, The Adelphi, 1-11 John Adam Street, London WC2N 6HT.

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