

EXPLANATORY MEMORANDUM TO
THE OCCUPATIONAL PENSION SCHEMES (TRUSTEES' KNOWLEDGE
AND UNDERSTANDING) REGULATIONS 2006

2006 No.686

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 These Regulations provide for easements to, and exceptions from, the requirement in the Pensions Act 2004 for trustees of occupational pension schemes to know and understand specific pension scheme topics and also be familiar with their own scheme documents.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 These regulations are made under powers in the Pensions Act 2004. They are subject to the negative resolution procedure.
 - 4.2 Sections 247 and 248 of the Pensions Act 2004 provide that trustees of occupational pension schemes must be conversant with documents relating to their scheme and must have knowledge and understanding of the law and principles applicable to pensions and pension schemes.
 - 4.3 Section 249 of that Act states that regulations may provide for any provision in sections 247 or 248 not to apply, or to apply with modifications to a trustee in prescribed circumstances.
 - 4.4 These regulations, which are the first use of the power in section 249, give newly appointed trustees who do not have expertise in any part of pensions and trust law or any part of scheme funding or asset investment matters, a six-month period of grace from the date of their appointment before they are required to comply with the requirement for knowledge and understanding of pension law and principles. They also exempt trustees in certain small occupational pension schemes from that requirement for knowledge and understanding.

5. Extent

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1 Trustees play a critical role in the governance of their occupational pension scheme. They are appointed from a range of backgrounds, some are professional trustees, others, appointed by the company providing the scheme or by the members of the scheme, will not be. Whilst many trustees discharge their duties admirably, many are deficient in their knowledge of pension law and investment principles.

7.2 A key recommendation of the Myners Report on institutional investment was that trustees should be “familiar with the issues” when making investment decisions. The Report formed the basis for the voluntary “Myners Code” (Institutional investment in the UK; a review; Paul Myners 2001). The subsequent Government review of the effectiveness of that code revealed that although progress was being made, further action was needed to accelerate improvement in key areas, in particular in relation to trustee expertise and decision-making processes. In addition, Sir Derek Morris, as part of his independent review of the actuarial profession, indicated that trustees needed a better understanding of actuarial matters in order to challenge their advisers (Morris Review, Interim Assessment 2004).

7.3 The Pensions Act 2004 now makes explicit that trustees are required to know and understand specific pension scheme topics and also be familiar with their own scheme documents.

7.4 The Pensions Regulator will provide a Code of Practice for use by trustees giving practical guidelines on the requirements of pension legislation and set out standards of conduct and practice expected of those who must meet these requirements. The intention is that the standards set out in the Code are consistent with how those involved in a well-run pension scheme should choose to meet their legal requirements.

- 7.5 It is recognised that newly-appointed trustees who come to the position with no previous expertise in any of the fields of pension or trust law or in scheme funding or asset investment need some time to acquire the knowledge they need in order to effectively fulfil their role. These regulations therefore provide a six-month period of grace from the date of their appointment before such trustees are required to comply with the requirement for knowledge and understanding. There was a limited public consultation on the draft regulations with around a dozen representatives of the financial services industry, pension professionals, regulatory and advisory bodies and trades union representatives.
- 7.6 Eight responses were received. Some commented that the six-month period of grace being offered to newly-appointed individual lay trustees should also be offered to newly-appointed directors of a company that was itself a trustee (i.e. a corporate trustee), where that director had no previous pension expertise. This view has been accepted and accommodated within the regulations.
- 7.7 Trustees of certain small occupational pension schemes are exempted from other requirements of legislation governing pension schemes. For reasons of consistency across pension legislation these regulations were revised to exempt such trustees from the requirement for knowledge and understanding.
- 7.8 Some responders felt that the six-month period of grace was too short. After due consideration it was considered that the proposed period of grace should remain at six-months. This decision took account of the need to get appropriate trustees up to speed with their knowledge and understanding as soon as possible and the fact that the requirements recognise that the degree of knowledge and understanding varies between trustees according to their role with the pension scheme.

8. Impact

- 8.1 These Regulations impose no costs on business, charities or the voluntary sector. A Regulatory Impact Assessment is not therefore appropriate.
- 8.2 These Regulations impose no new costs on the public sector.

9. Contact

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