Draft Regulations laid before Parliament under section 316(2)(m) and (n) of the Pensions Act 2004, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2006 No.

PENSIONS
TERMS AND CONDITIONS OF EMPLOYMENT

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

Made - - - - 2006
Coming into force in accordance with regulation 1(2) and (3)

These Regulations are made in exercise of the powers conferred by sections 10(5)(a), 259(1) and (2), 260(1), 261(2) and (4), 286(1) and (3)(g), 315(2), (3) and (5) and 318(1), (4)(a) and (5) of the Pensions Act 2004(**1**).

In accordance with section 317(1) of that Act, the Secretary of State for Work and Pensions has consulted with such persons as he considers appropriate, except in the case of regulation 22, to which section 317(2)(b) of that Act applies, as it appears to the Secretary of State that by reason of urgency consultation is inexpedient.

A draft of this instrument has been laid before Parliament in accordance with section 316(2)(m) and (n) of the Pensions Act 2004 and approved by a resolution of each House of Parliament.

Accordingly, the Secretary of State for Work and Pensions makes the following Regulations:

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.

(**1**) 2004 c.35. Sections 259 and 261 have been modified by regulation 2 of the Occupational Pension Schemes (Consultation by Employers) (Modification for Multi-employer Schemes) Regulations 2006 (S.I. 2006/16). Section 318(1) is cited because of the meaning there given to "modifications", "prescribed" and "regulations".

(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(**2**) (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—

(**2**) 1995 c.26.

(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(**3**); 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;

(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(**4**) (calculation of number of employees), but

(**3**) 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).

(**4**) S.I. 2004/3426.

(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(**5**) (employer-financed retirement benefits scheme);

"public service pension scheme" has the meaning given by section 1(1) of the Pension Schemes Act 1993(**6**);

"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(**7**) (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 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(**8**) (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).

(**5**) 2003 c.1. Section 393A was inserted by section 249 of the Finance Act 2004 (c.12).
(**6**) 1993 c.48. The definition was amended by S.I. 1999/1820. Section 1 is amended by section 239 of the Pensions Act 2004.
(**7**) 1995 c.26. Section 23 was substituted by section 36(3) of the Pensions Act 2004.
(**8**) 2004 c.12. Section 153 was amended by paragraphs 2 and 3 of Schedule 10 to the Finance Act 2005 (c.7).

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

(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