

EXPLANATORY MEMORANDUM TO
THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES
(CONSULTATION BY EMPLOYERS AND MISCELLANEOUS
AMENDMENT) REGULATIONS 2006

2006 No. 349

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 require employers to consult with employees who will be affected by a proposal to make certain changes to either an occupational pension scheme or to a personal pension scheme where direct payment arrangements exist. They prohibit the making of a change unless there has been prior consultation by persons who are employers in relation to the scheme, list the changes that trigger the requirement to consult and specify the details of the consultation required. The regulations also provide employment protection rights to the people consulted.
 - 2.2 An amendment to the Financial Assistance Scheme (Internal Review) Regulations 2005 (S.I. 2005/1994) is also included. This rectifies a typographical error and restores the original intention of allowing the scheme manager to extend the 1 month time limit for scheme members to ask for an internal review to 12 months where necessary.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 Sections 259 to 261 of the Pensions Act 2004 (the Act) provide for regulations to require employers to consult with prescribed persons about prescribed changes to employees' pension arrangements. This is the first use of these powers.
 - 4.2 Sections 259 and 261 extend to decisions about occupational pension schemes which are made by employers or trustees or managers of the scheme. The Occupational Pension Schemes (Consultation by Employers) (Modification for Multi-employer Schemes) Regulations 2006 modified those sections so that regulations made under them may additionally extend, in the case of multi-employer schemes, to

decisions about the scheme which are made by any other person.
These regulations were made at the same time as these regulations.

5. Extent

5.1 These Regulations extend to Great Britain, with the exception of the amendment to the Financial Assistance Scheme (Internal Review) Regulations 2005, which extends to Northern Ireland.

6. European Convention on Human Rights

Stephen Timms MP, the Minister of State for Pensions Reform, has made the following statement regarding Human Rights:

In my view the provisions of the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 are compatible with the Convention rights.

7. Policy background

7.1 Following consultation on “Simplicity, security and choice: Working and saving for retirement”, the Government gave a commitment in June 2003 to make it a requirement on employers to consult before making changes to pension schemes. This would ensure changes are developed in partnership and address anxieties about future pension provision.

Consultation

7.2 The Department for Work and Pensions published draft regulations for consultation on 6 June 2005. There were thirty-seven responses. Responses were received from employers, trade unions and pensions professionals. As a result of comments made in the responses, some changes have been made to the regulations. These include changes to the list of changes that the employer is required to consult on and requiring employers to consult using existing pensions consultation arrangements.

7.3 The amendment to the Financial Assistance Scheme (Internal Review) Regulations 2005 has not been subject to consultation. This is because in this case it appears to the Secretary of State that, by reason of urgency, consultation is inexpedient.

8. Impact

8.1 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 Bill 2004. The relevant extract from that assessment is attached to this memorandum.

8.2 The impact on the public sector is negligible.

9. Contact

Dave Nicks at the Department for Work and Pensions, tel: 020 7962 8564 or email: Dave.Nicks@dwp.gsi.gov.uk can answer any queries regarding this instrument.

REGULATORY IMPACT ASSESSMENT

An extract of the Pensions Act 2004 Regulatory Impact Assessment is attached.

3.7 Requirement to consult employees

3.7.1 Currently there is no requirement for employers to consult employees who are members of pension schemes, or their representatives, before making major changes to future pension arrangements. However, many employers already follow good practice and give members the opportunity to feed in their views. This proposal would place a statutory requirement on employers to consult.

3.7.2 Doing nothing would mean that there would continue to be employers who would make changes to future pension arrangements without consultation. Working through non-legislative routes such as developing codes of good practice is unlikely to provide an effective remedy, particularly since decisions on pension schemes can be of key significance to the future financial position of businesses and the future retirement security of employees.

3.7.3 It is not intended that the consultation requirement should provide members or their representatives with any sort of veto on change.

3.7.4 The proposal has been broadly welcomed. The key issues highlighted in consultation in terms of how it is implemented are:

- to tailor the requirement so that it applies to those affected by the proposed change rather than wider groups, and that the changes covered are significant;
- to recognise that there are already a range of consultation mechanisms in place; and
- to ensure that any new regulations do not hinder business flexibility to make long term commercial decisions.

3.7.5 Further consultations have taken place with the TUC and the CBI and the pensions industry as more detailed policy design has developed.

3.7.6 The proposal will ensure that employees who are affected active members of pension schemes and/or their representatives have the opportunity to feed in their views on proposed changes to their future pension arrangements before the decision is made.

Benefits

3.7.7 It could benefit up to around 7.4 to 7.7 million employees who are currently active members of private sector occupational pension schemes or group personal pensions, by ensuring they are consulted about changes which will affect their

future pension. Introducing this requirement will also help to highlight the value of workplace pension provision to both employers and employees.

Costs/savings

- 3.7.8 The cost to business from this proposal might be between £2.2 million and £2.8 million per year, depending on the provisions made in the regulations for small employers. This cost is based on the assumption that any given scheme is likely to make the type of major change which triggers the requirement on average once every four years. Or put another way, in any given year, it is assumed that one if four schemes are likely to make such major changes.
- 3.7.9 It is assumed that to fulfil the consultation requirement, employers will i) circulate information about the proposed changes ii) hold a meeting with employee representatives where these exist. Indications are that many employers already engage in formal consultation on major pensions changes as a matter of good HR practice and employment relations. Therefore the requirement will only impose additional costs on a proportion of employers who do not currently consult. It is assumed for the purposes of these costings that around a quarter of companies where there is a formal representative structure, and around half of companies where such a structure does not exist will be affected.
- 3.7.10 The requirement could imply a proportionately higher cost (on a per member/employee basis) for smaller businesses. Possible exemptions are currently being considered. These include a small employer exemption for employers with fewer than 50 employees in line with the Information and Consultation Directive or employers with fewer than 5 employees in line with current Stakeholder Pension provision.
- 3.7.11 The Pensions Regulator will enforce compliance with the requirement to consult. The maximum penalty will be a fine of £50,000 for the breach of the duty to consult, in line with The Pensions Regulator's powers to fine for other breaches of pensions legislation.