

**EXPLANATORY MEMORANDUM TO THE  
OCCUPATIONAL PENSION SCHEMES (TRUST AND RETIREMENT  
BENEFITS EXEMPTION) REGULATIONS 2005**

**2005 No. 2360**

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 exempt certain occupational pension schemes from the requirement to be established under irrevocable trusts and the requirement that occupational pension schemes limit their activities to retirement benefits activities.
  
  - 2.2 The current requirement for occupational pension schemes to be established under trust in order to be able to obtain Revenue approval and tax benefits is going to be replaced by a requirement under the Pensions Act 2004 for occupational pension schemes to be set up under trust in order to be able to receive funding; they will also be able to register for tax benefits. Certain schemes will be exempt from this requirement to be set up under trust.
  
  - 2.3 Transposing the European Directive on the Activities and Supervision of Institutions for Occupational Retirement Provision (IORP) (2003/41/EC) into UK legislation requires occupational pension schemes to limit their activities to retirement-benefit related activities. These regulations exempt unapproved schemes which do not receive tax privileges from this requirement (referred to from April 2006 as Employer Financed Retirement Benefits Schemes).
  
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None
  
4. **Legislative Background**
  - 4.1 Section 252 of the Pensions Act 2004 requires the legal separation of the sponsoring employer from an occupational pension scheme whose main administration is in the UK by requiring such a scheme to be established under an irrevocable trust in order for the scheme to be able to accept funding contributions. Section 252(4) contains a power to exempt schemes from this requirement. This is the first use of this power.

4.2 Section 255 of the Act requires occupational pension schemes to limit their activities to retirement-benefit related activities. These regulations are made under the power in section 255(2) to exempt schemes from this requirement. This is the first use of this power.

4.3 These regulations will come into force on 22<sup>nd</sup> September 2005.

## **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**

### Regulation 2

7.1 The Pension Act provides protection to members of occupational pension schemes. As part of this protection and in order to comply with European Directive on the Activities and Supervision of Institutions for Occupational Retirement Provision (IORP) (2003/41/EC), schemes are required to be established under irrevocable trust to ensure the legal separation between the employer and the pension scheme so that the assets held in the scheme are safeguarded for the members in the event of the bankruptcy of the employer. Certain occupational pension schemes are not required to be set up as trust. These schemes are public service pension schemes, occupational pension schemes with fewer than two members and occupational pension schemes with fewer than a hundred members which provide relevant benefits and which are neither approved schemes nor relevant statutory schemes (Funded Unapproved Retirement Benefits Schemes and Unfunded Unapproved Retirement Benefits Schemes) nor registered schemes (referred to in the Finance Act 2004 as Employer Financed Retirement Benefits Schemes).

7.2 Members of public service pension schemes do not need to be set up under trust, because the assets of these schemes are legally separated from the sponsoring employer by another means. Members of occupational pension schemes with fewer than two members do not need the protection of pensions legislation because the individual member is able to look after his own pension provision; and the members of unapproved occupational pension schemes are highly paid individuals earning in excess of the Revenue earnings cap (£105,600), they do not receive tax privileges and do not need the protections of the Pensions Act.

- 7.3 Consultation was carried out on the trust exemption provision in April and May amongst the Pension industry. Only one response was received, which sought clarification of the policy for exempting schemes with fewer than two members from the trust requirement.

#### Regulation 3.

- 7.4 The IORP Directive requires occupational pension schemes to limit their activities to retirement-benefit related activities. However, schemes with fewer than 100 members can be exempted from this requirement by virtue of Article 5 of the same Directive. Regulation 3 provides that occupational pension schemes with fewer than a hundred members which provide relevant benefits and which are neither approved schemes nor relevant statutory schemes (Funded Unapproved Retirement Benefits Schemes and Unfunded Unapproved Retirement Benefits Schemes) nor registered schemes (referred to in the Finance Act 2004 as Employer Financed Retirement Benefits Schemes) are exempt from this requirement. These schemes are for high earners earning in excess of Revenue limits. Members do not get tax privileges and do not need the protection of the Pensions Act.
- 7.5 Consultation was not undertaken on regulation 3 because these Regulations are exempt from a consultation by section 317(2)(c) of the Act.

### **8. Impact**

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2 There is no impact on the public sector.

### **9. Contact**

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