

EXPLANATORY MEMORANDUM TO
THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES
(MISCELLANEOUS AMENDMENTS) REGULATIONS 2007

2007 No. 814

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 contain amendments to various sets of regulations relating to occupational and personal pensions. They correct minor and technical errors which have arisen in current regulations following the Pensions Act 2004, the Civil Partnership Act 2004 and the Finance Act 2004.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2007 introduce a number of technical amendments to the regulations governing personal and private sector occupational pension schemes. These amendments:

- address issues which have arisen from the practical application of the regulations flowing from the Pensions Act 2004;
- make consequential amendments to reflect changes introduced by the Finance Act 2004;
- make consequential amendments to reflect changes introduced by the Civil Partnership Act 2004; and
- implement the guaranteed minimum pension revaluation rate recommended in the Government Actuary's Department's Quinquennial Review (Occupational and Personal Pension Schemes: Review of Certain Contracting-out Terms, Cm 6758).

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 The purposed of each of the provisions contained in the Regulations is outlined below.

7.2 Regulation 2 amends The Personal Pension Schemes (Disclosure of Information) Regulations 1987 (SI 1987/1110), by removing or substituting references to legislation which no longer apply.

7.3 Regulation 3 brings the payment of lump sums in respect of preserved benefit into line with Her Majesty's Revenue and Customs (HMRC) rules that were amended from 6 April 2006. A member who has left an occupational pension scheme and has accrued pension rights in that scheme can take those rights in the form of a lump sum before reaching the scheme's normal pension age if the conditions set out in Regulation 5 of the Preservation of Benefit Regulations 1991 are satisfied. A consequential change has been made to Regulation 8 of these Regulations to ensure that early payment of a pension can continue to be made where the person has reached normal minimum pension age (currently 50, rising to 55 from 2010), or has to retire on health grounds.

7.4 Regulation 4(2) amends the definition of an 'overseas scheme' in Regulation 1(2) of the Occupational Pension Schemes (Contracting-out) Regulations 1996 (SI 1996/1172) ("the Contracting-out Regulations") in order to make it clear that an occupational pension scheme is an overseas scheme if it has its main administration outside the Member States of the European Union. This excludes schemes that are contracted out in the Isle of Man.

7.5 Regulation 4(3) amends regulation 62 of the Contracting-out Regulations in order to provide a revised rate of revaluation, in line with the Government Actuary's recommendation. The revised rate applies to schemes operating "fixed rate" revaluation of Guaranteed Minimum Pensions (GMPs) under sections 16(2) and (3) of the Pension Schemes Act 1993. The new annual rate of 4 per cent compound will apply to the GMPs of members who leave pensionable service in these schemes before normal pension age on or after 6 April 2007. This amendment gives effect to the recommendation in Cm 6758 (Occupational and Personal Pension Schemes: Review of Certain Contracting-out Terms).

7.6 Regulations 5 and 6 restore the policy intention by amending the Protected Rights (Transfer Payment) Regulations 1996 (SI 1996/1461) and the Contracting Out (Transfer and Transfer Payment) Regulations 1996 (SI 1996/1462) to allow transfers to both occupational pensions schemes which

have their main administration outside the member States, and to European pensions institutions.

7.7 Regulation 7 repeals regulation 8(2) of the Personal and Occupational Pension Schemes (Protected Rights) Regulations 1996 (SI 1996/1537). This regulation is no longer needed as it applies only to lump sums paid on grounds of triviality and the link in paragraph 8(1A)(c) through to paragraph 7 of Part 1 of Schedule 29 to the Finance Act 2004 already provides for this.

7.8 Regulation 8 amends the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (SI 1996/1655) ("the Disclosure of Information Regulations") to clarify two provisions which were introduced by the Occupational Pension Schemes (Scheme Funding) Regulations 2005 (SI 2005/3377) ("the Scheme Funding Regulations").

7.9 Regulation 8(2)(a) amends the Disclosure of Information Regulations in order to make it clear that trustees of a pension scheme may issue a summary funding statement before the end of the prescribed period for ensuring that an actuarial valuation or report is received by them.

7.10 Regulation 8(2)(b) inserts a new provision into the Disclosure of Information Regulations to make it clear that trustees are not required to send summary funding statements in the transitional period to members or beneficiaries who only have, or will have, an entitlement in the scheme to money purchase benefits.

7.11 The Divorce etc (Notification and Treatment of Pensions) (Scotland) Regulations 2000 (SI 2000/1050) (S. 4) make provision with respect to the supply of information under section 12A of the Family Law (Scotland) Act 1985 about court orders for payment of pension lump sums where parties divorce or their marriage is declared to be null. Regulation 9 will extend the legislation so that it will apply to civil partners whose civil partnership has been dissolved or declared to be null.

7.12 The Pensions on Divorce etc (Pension Sharing) (Scotland) Regulations 2000 (SI 2000/1051) (S.5) make provision with respect to pension sharing in Scotland. Under the Welfare Reform and Pensions Act 1999, where parties divorce, a pension can be shared between the parties. The amendment extends the legislation so that it applies to civil partners whose civil partnership has been dissolved or declared to be null.

7.13 It is a tax requirement that trustees or managers of a pension scheme must deduct tax charges from a member's benefit or fund. Regulation 11 amends the Stakeholder Pension Schemes Regulations 2000 (SI 2000/1403) to bring them into line with this requirement.

7.14 Where an occupational pension scheme has less than 12 members, and all the members are either trustees or directors of the trustee company, the scheme is exempt from a number of provisions in private pensions legislation, including those governing the preferential liabilities on winding up.

Regulation 12(2) amends the Occupational Pension Scheme (Winding up etc) Regulations 2005 (SI 2005/706) ("the Winding up Regulations") in order to ensure a consistent definition and is one of a number of similar amendments in these regulations.

7.15 Regulation 12(3) amends Regulation 8(4)(a) of the Winding up Regulations to extend the scope of that regulation to cover civil partnerships.

7.16 Regulation 13 amends Regulation 2 of the Occupational Pension Schemes (Fraud Compensation Payments and Miscellaneous Amendments) Regulations 2005 (SI 2005/2184) in order to align the definition of a small scheme with other similar provisions elsewhere in the legislation (see 7.14 above.)

7.17 Regulation 14 amends regulation 2 of the Pension Schemes (Categories) Regulations 2005 (SI 2005/2401) in order to ensure that the Pilots' National Pension Fund will be treated as an occupational pension scheme following the change in the definition in section 1 of the Pension Schemes Act 1993 which was introduced by section 239 of the Pensions Act 2004.

7.18 Regulation 15 amends the Scheme Funding Regulations to address issues which have arisen since the provisions came into force from 30 December 2005.

7.19 Regulation 15(2) amends regulation 17 of the Scheme Funding Regulations in order to align the definition of small scheme with other similar provisions elsewhere in the legislation (see 7.14 above).

7.20 Regulation 15(3) amends paragraph 3(2) of Schedule 3 to the Scheme Funding Regulations to correct a cross reference and to make it clear that trustees are not required to send summary funding statements during the transitional period between the Minimum Funding Requirement and the new arrangements to members or beneficiaries who only have, or will have, an entitlement in the scheme to money purchase benefits. It also corrects a typesetting error in paragraph 3(2) of Schedule 3 to the Scheme Funding Regulations, making it clear that reference to any payments made to the employer is a separate requirement for inclusion in summary funding statements sent during the period of transition between the minimum funding requirement and the scheme funding arrangements.

7.21 Regulation 15(4) amends Schedule 4 to the Scheme Funding Regulations to make it clear that where the actuary certifies that the contributions payable to the scheme are not adequate (under the transitional provision at paragraph 15 of Schedule 4), the trustees must obtain a new actuarial valuation in accordance with Part 3 of the Pensions Act 2004.

7.22 Regulation 16(2) amends regulation 1 of the Occupational Pension Schemes (Investment) Regulations 2005 (SI 2005/3378) ("the Investment

Regulations") in order to align the definition of a small scheme with other similar provisions elsewhere in the legislation (see 7.14 above).

7.23 Regulation 16(3) amends regulation 12 of the Investment Regulations to clarify that the restriction on employer-related investments applies to all occupational pension schemes, not only those set up under a trust.

7.24 There is an omission in the Occupational Pension Schemes (Regulatory Own Funds) Regulations 2005 (SI 2005/3380) ("the Regulatory Own Funds Regulations") and regulation 17 corrects this. The Regulatory Own Funds Regulations do not specify who his a qualifying person or a seconded worker, and the amendments achieve the policy intention by deleting regulation 11 of the Regulatory Own Funds Regulations and introducing a cross-reference to the definition of "European Employer" in the Cross-border Regulations (see 7.26 below).

7.25 Regulation 17(4) amends regulation 17 of the Regulatory Own Funds Regulations in order to align the definition of a small scheme with other similar provisions elsewhere in the legislation (see 7.14 above.)

7.26 The Occupational Pension Schemes (Cross-border Activities) Regulations 2005 (SI 2005/3381) ("the Cross-border Regulations") prescribes the procedure an occupational pension scheme based in the UK wishing to be sponsored by an employer located in another EU State must follow to enter into "cross-border activity". Section 287-295 Pensions Act 2004 refer.

7.27 Regulation 18(2) amends regulation 2(3) of the Cross-border Regulations to ensure that the more stringent cross-border full-funding requirement only applies to those sections of a multi-employer scheme to which employers involved in the cross-border activity contribute.

7.28 Regulation 18(3) amends the definition of a "European employer" and a "host member State" in Regulation 3 to ensure that the trustees must seek fresh cross-border approval whenever their scheme starts to operate in a new member State.

7.29 Regulations 18(4)-(6) amend regulations 5, 7 and 10 in order to:

- allow schemes which were operating on a cross-border basis before 23 September 2005 ('pre-23 September 2005 schemes') to apply for authorisation if they missed the 29 March 2006 deadline; and
- allow pre 23 September 2005 schemes who previously could not expand their operations to other EU States to apply for approval to operate on a cross-border basis with other European employers.

The regulations do not currently provide for either situation.

7.30 Regulation 18(7) amends the definition of "ringfencing" in regulation 15 of the Cross-border Regulations so that the Pensions Regulator can instruct the trustees of the scheme to complete necessary ringfencing within a specified period of time.

7.31 Regulation 18(8) ensures that cross-border schemes are exempt from the requirement of section 66A(3) of the Pensions Act 1995 which requires that members of a scheme who work outside the UK should be treated the same as members of a scheme who work wholly in the UK.

7.32 UK based cross-border pension schemes cannot comply with this requirement as the Cross-border Regulations (as expressed by Article 20.5 of the EU Directive on Institutions for Occupational Retirement Provision) requires schemes to observe the social and labour laws relevant to the Member State in which the member is based. Consequently, members who work permanently outside the UK may be treated differently from those who work wholly in the UK because of other EU States differing social and labour laws. The Cross-border Regulations do not, however, apply to members working on secondment (as defined in the Cross-border Regulations) in other EU member States.

7.33 The Committee of European Insurance and Occupational Pension Supervisors (CEIOPS) was established in 2005 to provide advice to the European Commission on insurance and occupational pensions matters and to establish standards and guidelines to facilitate co-operation between national supervisory bodies. Regulation 18(9) amends Schedule 1, Paragraph 6(7) to add two further information requirements for schemes seeking approval to accept contributions in relation to a particular European employer. The additional requirements reflect changes to a protocol document covering schemes operating on a cross-border basis which were agreed by CEIOPS.

7.34 Regulation 19 amends regulation 4(4)(b) of the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (SI 2006/349) in order to align the definition of a small scheme with other similar provisions elsewhere in the legislation (see 7.14 above).

7.35 Regulation 20 amends regulation 2 of the Occupational Pension Schemes (Trustees' Knowledge and Understanding) Regulations 2006 (SI 2006/686) in order to align the definition of a small scheme with other similar provisions elsewhere in the legislation (see 7.14 above).

7.36 Regulation 21(2) amends the Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 2006 (SI 2006/714) ("the Member-nominated Trustees and Directors Regulations") in order to align the definition of a small scheme with other similar provisions elsewhere in the legislation (see 7.14 above).

7.37 Regulation 21(3) and (4) exempt the National Assembly for Wales Members' Pension Scheme (NAWMPS) and the schemes listed in the schedule to the Railway Pensions (Protection and Designation of Schemes) Order 1994 from the requirements of the Member-nominated Trustees and Directors Regulations. The NAWMPS is analogous to the scheme set up under the Parliamentary and other Pensions Act 1987, which is already exempt from these requirements, and the inclusion of the schemes listed in the Railway

Pensions Order is necessary in order to ensure that the pre-existing exemptions for these schemes will continue.

7.38 Regulation 21(5) amends two typographical errors in the list of revoked regulations in the Member-nominated Trustees and Directors Regulations.

7.39 Regulation 22 makes two revocations that are consequential to the Pensions Act 2004 but here omitted from the schedule of revocations.

Consultation

7.40 The Regulations went out for consultation on 3 November 2006 and the consultation closed on 15 December 2006. Most respondents welcomed the package, and a few had no other comment than that. Other responses concerned the technical details of the draft, and most were accepted.

7.41 A few respondents raised matters which had not been included in the package, and a note has been made of these for future packages or for consolidation.

Consolidation

7.42 This package of Miscellaneous Amendments amends a number of statutory instruments; we recognise the case for consolidation in a number of these, for example the Disclosure Regulations. However, we await the outcome of a deregulatory review which may recommend a complete overhaul of the regulations.

Guidance

7.43 These regulations are of interest to pensions lawyers, pensions scheme actuaries and trustees and the amendments are minor and technical. It is therefore inappropriate to issue specific guidance.

8. Impact

8.1 These regulations have only a negligible cost impact on business, charities or the voluntary sector. A full Regulatory Impact Assessment is not necessary for such legislation.

8.2 The impact on the public sector is minimal. Most public sector pension schemes are exempt from these provisions which apply primarily to private sector occupational pension schemes, or to personal pension schemes.

9. Contact

Ruth Saunders at the Department for Work and Pensions (Tel: 020 7712 2059 or e-mail: ruth.saunders@dwp.gsi.gov.uk) can answer any queries regarding the instrument.

