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STATUTORY INSTRUMENTS

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**2006 No. 349**

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

*Application of Regulations*

**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<sup>(1)</sup> (calculation of number of employees), but
  - (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<sup>(2)</sup> (employer-financed retirement benefits scheme);
- “public service pension scheme” has the meaning given by section 1(1) of the Pension Schemes Act 1993<sup>(3)</sup>;

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<sup>(1)</sup> S.I.2004/3426.

<sup>(2)</sup> 2003 c. 1. Section 393A was inserted by section 249 of the Finance Act 2004 (c. 12).

<sup>(3)</sup> 1993 c. 48. The definition was amended by S.I. 1999/1820. Section 1 is amended by section 239 of the Pensions Act 2004.

“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<sup>(4)</sup> (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<sup>(5)</sup> (registration of pension schemes).

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<sup>(4)</sup> 1995 c. 26. Section 23 was substituted by section 36(3) of the Pensions Act 2004.

<sup>(5)</sup> 2004 c. 12. Section 153 was amended by paragraphs 2 and 3 of Schedule 10 to the Finance Act 2005 (c. 7).