

**EXPLANATORY MEMORANDUM TO
THE INFORMATION AND CONSULTATION OF EMPLOYEES
(AMENDMENT) REGULATIONS 2006**

2006 No. 514

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. **Description**

2.1 These Regulations amend the Information and Consultation of Employees Regulations 2004 (SI 2004 No. 3426) (“the ICE Regulations”).

2.2 The Regulations ensure that employers making certain changes to occupational and personal pension schemes are not required to consult employees, or their representatives about these changes, under the ICE Regulations if they are complying with obligations to inform and consult about them in accordance with the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (“the Pensions Regulations”) and with requirements imposed by these Regulations.

2.3 The Regulations will achieve this in two ways. Firstly, they will allow employers to whom standard Information and Consultation provisions apply the opportunity to give their employee representatives written notice that they will be consulting under the Pensions Regulations. Secondly, where a negotiated agreement exists which contains requirements to consult on listed pensions changes, an employer may give written notice to employee representatives or individuals that he will be consulting under the Pensions Regulations instead (provided that the agreement was made before 6 April 2006).

2.4 These Regulations and the Pensions Regulations are due to come into force on 6 April 2006. A copy of the ICE Regulations, the draft Pensions Regulations and the explanatory memoranda can be found at <http://www.opsi.gov.uk/stat.htm>.

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

3.1 None.

4. **Legislative Background**

4.1 Section 42 of the Employment Relations Act 2004 contains a power to amend the ICE Regulations. Section 42(8) provides for such amendments to be made by affirmative resolution.

4.2 The Pensions Regulations, which are made under (amongst others) sections 259 to 261 of the Pensions Act 2004, require employers to consult with employees who will be affected by a proposal to make certain changes to employees' pension arrangements. The detailed requirements are contained in the Pensions Regulations, which were laid on the same day as these Regulations.

4.3 The ICE Regulations impose general obligations to inform and consult on employers.

4.4 The modification in these Regulations will provide employers with an opportunity to ensure that obligations arising under the ICE Regulations to consult employees or their representative on certain pension issues do not apply where the information and consultation obligations in the Pensions Regulations apply.

5. Extent

5.1 These Regulations apply to Great Britain.

6. European Convention on Human Rights

6.1 Gerry Sutcliffe MP, the Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs, has made the following statement regarding Human Rights:

In my view the provisions of the Information and Consultation of Employees (Amendment) Regulations 2006 are compatible with the Convention rights.

7. Policy background

7.1 Following the consultation on "Simplicity, security and choice: Working and saving for retirement", the Government gave a commitment to make it a requirement on employers to consult before making changes to pensions schemes.

7.2 The Department for Work and Pensions began consulting on 6 June 2005. They received thirty seven responses. As a consequence of comments in the response, the Department for Trade and Industry decided to make this small, technical amendment to the ICE Regulations.

8. Impact

8.1 An assessment of the compliance costs to business of the measures arising from the Pensions Act, and the Regulations, has been placed in the libraries of both Houses of Parliament. Copies may be obtained from the Department for Work and Pensions, Regulatory Impact Unit, 4th Floor,

Adelphi, 1-11 John Adam Street, London WC2N 6HT. This is also available at http://www.dwp.gov.uk/publications/dwp/2004/ria/pensions_bill_2004_rev.pdf

The relevant paragraphs of the RIA are attached to this memorandum.

8.2 This measure is intended to remove the potential for an employer being bound by both the Pensions Regulations and the ICE Regulations. Employers would not therefore bear the cost of having to defend separate actions before the Pensions Regulator and the CAC in the event of a failure to consult employees on listed changes to pension schemes. The Regulations also prevent an employer potentially being liable to pay two fines for a single failure. The administrative process of notifying representatives of the intention to comply with the obligations in the Pensions Regulations will have a negligible impact on business.

9. Contact

Steven Greenwell at the Department of Trade and Industry, tel: 020 7215 5056 or email: steven.greenwell@dti.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. At the time of its publication it was not envisaged that these Regulations would be made.

3.7 Requirement to consult employees

3.7.1 Currently there is no specific 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.