

EXPLANATORY MEMORANDUM TO
THE OCCUPATIONAL PENSION SCHEMES (NON-EUROPEAN SCHEMES
EXEMPTION) REGULATIONS 2008

2008 No. 624

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 The Regulations provide for an exemption from section 253 of the Pensions Act 2004 for unregistered schemes. Section 253 prohibits the payment of contributions to occupational pension schemes administered outside the EU unless the scheme is established under trust and there is a trustee or nominee in the UK. The Regulations also clarify the meaning given to an “unregistered occupational pension scheme” to ensure that it doesn’t include schemes treated as registered from 6 April 2006.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Background**
 - 4.1 Section 253 of the Pensions Act 2004 was introduced to support the concept of trusts in UK occupational pension regulation. As trusts are at the heart of the regulatory framework for occupational pension schemes, we sought to require schemes operating in the UK to continue to be trust based following changes to the taxation arrangements for pension schemes in the Finance Act 2004.
 - 4.2 Under pre A-day (6 April 2006), tax legislation approved occupational pension schemes were effectively required to be set up under trust. The purpose of section 253 is to require schemes operating in the UK to continue to be trust based as trust law underpins the regulatory framework for UK occupational pension.
 - 4.3 The purpose of the Regulation is to ensure unregistered overseas pension schemes can continue to contribute in respect of members in the UK.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Section 253 of the Pensions Act 2004 applies in respect of schemes with their main administration outside the EEA. It provides that unless the scheme is established under trust with a UK resident trustee (or nominee):

- *if the employer is based in the UK*, the employer cannot contribute to the pension scheme in respect of their employees (wherever they are), and
- *if the employer is based outside the UK*, the employer cannot contribute to the pension scheme of any UK employees.

7.2 From April 2006, an existing *unapproved* scheme became an unregistered scheme for tax purposes. Although the scheme was unapproved, tax relief for individual members may have been available pre A-day. Tax relief for individuals may also be available after A-day – either under transitional arrangements or the new “migrant member relief” provisions, so many existing unregistered overseas schemes wish to continue accepting contributions in respect of members in the UK.

7.3 The purpose of the Regulations is to ensure that these employer contributions can continue.

Consultation

7.4 A six week consultation exercise was carried out that sought comments on the draft Regulations. Nine responses to the consultation were received.

Key issues raised

Exemptions from other regulatory requirements

7.5 One respondent suggested that we should consider exemptions for non-European schemes from other statutory requirements.

- 7.6 Although we have decided to exempt unregistered schemes from the restrictions of section 253, we have no plans to exempt EEA schemes from other specific statutory requirements.

Scope of the Regulations

- 7.7 One respondent suggested we should limit the scope of the exemption to section 253(3), as to include schemes covered by section 253(2) would allow schemes with both employer and employees in the UK to opt out of UK regulation by moving administration of the scheme outside the EU.

- 7.8 We considered this suggestion but as the exemption only covers unregistered schemes that fall outside the scope of most UK regulation anyway, the risk of UK schemes avoiding UK regulations by moving outside the EEA is minimal.

Guidance

- 7.9 These Regulations are of interest to pension lawyers, pension scheme actuaries and trustees and the amendments are minor and technical. It is therefore inappropriate to issue specific guidance.

Consolidation

- 7.10 Not applicable.

8. Impact

- 8.1 An Impact Assessment has not been produced for this instrument as it has no impact on the costs of business, charities or voluntary bodies.

- 8.2 There are no public sector costs.

9. Contact

Olu Abe at the Department for Work and Pensions (Tel: 020 7962 8500) or e-mail: olu.abe@dw.p.gsi.gov.uk can answer any queries regarding the instrument.