

Pensions

Consultation on Draft Regulations

**The Occupational and Personal
Pension Schemes
(EEA States)
Regulations 2007**

July 2007

Amendments to Regulations

Paragraph 2: The Occupational Pension Schemes (Contracting-out) Regulations 1996 (definition of overseas scheme) (SI1996/1172) Regulation 1(2)

29. The Occupational Pension Schemes (Contracting out) Regulations 1996 defines an “overseas scheme” as one that is outside the UK or outside one of the member states.

30. To ensure parity between the security of the contracted-out rights in a UK-based scheme and one based overseas, we have in the past required overseas schemes to meet additional conditions before they can contract-out, as, by definition, they were not subject to our regulatory regime.

31. Schemes based in the member states are now covered by a similar regulatory regime (IORP). Therefore, the extra rules no longer had to be applied to these schemes. The definition was accordingly, amended. Through the adoption of the IORP Directive by the EEA States, these states will also have a similar regulatory regime and, if a scheme based in one of those countries fails to pay the contracted-out benefit, the Regulator in that country will be able to enforce the necessary rules.

Paragraph 3: The Protected Rights (Transfer Payment) Regulations 1996 (definition of overseas scheme) (SI 1996/1461) Regulation 1(2) & Paragraph 4: The Contracting-out (Transfer and Transfer Payment) Regulations 1996 (definition of overseas scheme) (SI 1996/1462) Regulation 1(2)

32. These regulations have always allowed the transfer of contracted-out rights to occupational pension schemes which are administered wholly or partly outside the United Kingdom, subject to certain conditions being met.

33. As a consequence of the definition of "occupational pension scheme" that came into effect on 23 September 2005, and to maintain the policy that transfers could take place outside the UK, the definition of "overseas scheme" was changed so that it means either an occupational pension scheme with its main administration outside the member States, or a European pensions institution (as defined in section 239(8) of the Pensions Act 2004), which is what occupational pension schemes in the Member States are now known as.

34. As a result of the further change to the definition of occupational pension scheme to take account of the EEA states, it is necessary to change the definition of "overseas scheme".

Paragraph 5: The Pensions Schemes (Categories) Regulations 2005 (SI 2005/2401) Regulation 2(2)

35. As we explained in paragraph 25, as a consequence of the fact that the Directive now has effect in the EEA States, it has therefore become

necessary to amend the definition of “occupational pension scheme” so that it applies only to schemes based in the UK or outside the EEA States.

Paragraph 6: The Occupational Pensions Schemes (Scheme Funding) Regulations 2005 (SI 2005/3377) Regulation 17(1)(d); and Schedule 2, para 4 (2) and (3)

36. These amendments take account of four scenarios where the adoption of the IORP Directive by the EEA States require changes to the scheme funding provisions:

37. In the first scenario, the scheme is based in the UK, different sections of the scheme apply to members in employment in the member states and to members in employment outside the member states, and the assets attributable to each section can not be used for the purposes of any other section. In the second scenario, the scheme has its main administration in the UK, it applies to members in employment in the member states and to members in employment outside the member states and part of the scheme is or was treated as a separate scheme under section 611(3) of the Income and Corporation Taxes Act 1988. In these cases, the part of the scheme applicable to members employed outside the member states is not required to comply with Part 3 of the Pensions Act 2004. The amendment ensures that the part of the scheme applicable to members employed outside the EEA is not required to comply with Part 3 of the Pensions Act 2004.

38. In the third scenario, the scheme is based outside the member states, different sections of the scheme apply to members in employment in the UK and to members in employment outside the UK, and the assets attributable to each section can not be used for the purposes of any other section. In the fourth scenario, the scheme has its main administration outside the member states, it applies to members in employment in the UK and outside the UK and part of the scheme is or was treated as a separate scheme under section 611(3) of the Income and Corporation Taxes Act 1988. In these cases, the part of the scheme applicable to members employed outside the UK is not required to comply with Part 3 of the Pensions Act 2004. The amendment ensures that this exemption will now apply to schemes based outside the EEA States.

Paragraph 7: The Occupational Pensions Schemes (Regulatory Own Funds) Regulations 2005 (SI 2005/3380) Regulation 10(8) & Regulation 15 (1)(d)(i)

39. These Regulations make a requirement that where a scheme, rather than the employer, covers any risks linked to death, disability or longevity, guarantees any investment performance, or guarantees to provide defined benefits, the scheme must, in their scheme funding calculations, contain an additional “buffer” no less than the minimum required under regulation 4 of those Regulations. The Regulations implement article 17 of the IORP Directive.

List of those consulted

Association of British Insurers
Association of Consulting Actuaries
Association of Pension Lawyers
Confederation of British Industry
Construction Company
Engineering Employers Federation
Faculty and Institute of Actuaries
HMRC
Investment Managers' Association
Institute of Chartered Accountants
National Association of Pension Funds
National Pensions Convention
Pensions Management Institute
Pensions Ombudsman
Policy and Legislation Division DSD Northern Ireland
Slaughter and May
Scottish Executive

Society of Pension Consultants

The Pensions Advisory Service

The Pensions Regulator

Trades Union Congress

National Assembly for Wales

