

Pensions

Consultation on Draft Regulations

**The Occupational Pension Schemes  
(Non-European Schemes Exemption)  
Regulations 2007**

**October 2007**

## Introduction

1 This consultation seeks views on the enclosed draft regulations:

### **The Occupational Pension Schemes (Non-European Schemes Exemption) Regulations 2007**

2 Section 253 of the Pensions Act 2004 prohibits employer payments to an occupational pension scheme with its main administration outside the EU unless the scheme is established under trust and there is a trustee or nominee in the UK. The purpose of section 253 is to ensure occupational pension schemes operating in the UK fall within the scope of the UK regulatory regime.

3 The attached regulations exempt unregistered overseas schemes, and split approved overseas schemes from the requirements of section 253.

4 We recognise there are a number of overseas employers operating occupational pension schemes in their home country with employees working in the UK. In many cases the individual wishes to remain a member of the home scheme, and the employer wishes to make payments to the scheme on behalf of the member. In many cases the scheme itself is not registered with HMRC for tax purposes, but the individual may qualify for tax benefits under the migrant member relief provisions.

In these cases we accept there is no reason to require the scheme to operate under trust with a UK resident trustee (or nominee).

## Regulatory Impact Assessment

5 There is no regulatory impact assessment associated with these regulations. As the purpose of the exemption is to allow existing arrangements to continue, there are no costs to business.

## How to respond

6 This document is also available on the Department's website at: <http://www.dwp.gov.uk/consultations/2007/>

7 Your comments on any aspect of the draft regulations would be welcomed. Please ensure your response reaches us by **30<sup>th</sup> November 2007**

8 Please send your responses, preferably by email, to:

Email: [david.hone@dpw.gsi.gov.uk](mailto:david.hone@dpw.gsi.gov.uk)

David Hone  
Department for Work and Pensions  
3<sup>rd</sup> Floor  
Adelphi  
1-11 John Adam Street  
LONDON WC2N 6HT

Tel 020 7962 8684

### **Consultation arrangements**

- 9 Because of the specialised and limited nature of this consultation, Ministers have decided it is not appropriate to publish it under the provisions of the Cabinet Office Code of Practice on consultation. It does, however, apply best practice from the Code.
- 10 A list of those being consulted is attached. If you have any suggestions of others who may wish to be involved in this process please contact us.
- 11 It would be very helpful when replying to indicate whether you are responding as an individual or representing the views of an organisation.
- 12 According to the requirements of the Freedom of Information Act 2000, all information contained in the response, including personal information may be subject to publication or disclosure. By providing personal information for the purposes of the public consultation exercise, it is understood that a Respondent consents to its disclosure and publication. If this is not the case, the Respondent should limit any personal information which is provided, or remove it completely. If a Respondent requests that the information given in response to the consultation be kept confidential, this will only be possible if it is consistent with Freedom of Information Act obligations and general law on this issue. The contact point if you want to discuss this is:

Charles Cushing  
Freedom of Information  
Department for Work and Pensions  
2<sup>nd</sup> Floor  
Adelphi  
1-11 John Adam Street  
London WC2N 6HT

More information about the Freedom of Information Act can be found on the website of the Ministry of Justice:

<http://www.justice.gov.uk/whatwedo/freedomofinformation.htm>

## **Feedback**

- 13 A summary of responses will be published following the consultation. The Government will aim to publish this summary within three months of the consultation closing. The summary of responses will be available on the Department's website:

<http://www.dwp.gov.uk/consultations/2007/index.asp>.

If you have any comments, suggestions or complaints about the way in which this consultation exercise has been conducted please contact the Departmental Consultation Co-ordinator:

Roger Pugh

Department for Work and Pensions Consultation Co-ordinator

2<sup>nd</sup> Floor, Britannia House

2 Ferensway

HULL HU2 8NF

*Telephone: 01482 609571*

*Fax: 01482 609658*

*e-mail: [roger.pugh@dwp.gsi.gov.uk](mailto:roger.pugh@dwp.gsi.gov.uk)*

**Organisations to be consulted:**

Confederation of British Industry  
Faculty and Institute of Actuaries  
The Pensions Ombudsman  
Law Society  
Law Society of Scotland  
Occupational Pensions Schemes Joint Working Group  
The Pensions Advisory Service  
The Pensions Regulator  
Trades Union Congress

**2007 No.**

**PENSIONS**

**The Occupational Pension Schemes (Non-European Schemes  
Exemption) Regulations 2007**

<i>Made</i> - - - -	2007
<i>Laid before Parliament</i>	2007
<i>Coming into force</i> - -	2007

These Regulations are made in exercise of the powers conferred by sections 253(5), 315(2) and 318(1) of the Pensions Act 2004(1).

In accordance with section 317(1) of that Act the Secretary of State for Work and Pensions has consulted such persons as he considers appropriate.

Accordingly the Secretary of State for Work and Pensions makes the following Regulations.

**Citation, commencement and interpretation**

1.—a) These Regulations may be cited as the Occupational Pension Schemes (Non-European Schemes Exemption) Regulations 2007 and shall come into force on [ ... ] 2007.

(1) In these Regulations—

“split approved scheme” means a retirement benefits scheme which is, immediately before 6th April 2006, in accordance with section 611 of the Income and Corporation Taxes Act 1988(2) (definition of “retirement benefits scheme”), treated as two or more separate schemes and at least one of those separate schemes was not approved for the purposes of Chapter 1 of Part 14 of the Income and Corporation Taxes Act 1988 (retirement benefit schemes);

“unregistered occupational pension scheme” means a pension scheme which is not registered under section 153 of the Finance Act 2004(3) (registration of pension schemes).

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(1) 2004 c.35. Section 318(1) is cited because of the meaning there given to “prescribed” and “regulations”.  
(2) 1988 c.1. Section 611 (along with the whole of Chapter 1 of Part 14 of that Act) was repealed from 6th April 2006 by section 326(1) of, and Part 3 of Schedule 42 to, the Finance Act 2004 (c.12).  
(3) 2004 c.12. Section 153 was amended by paragraphs 2 and 3 of Schedule 10 to the Finance Act 2005 (c.7).

## **Exemption of non-European scheme from trust requirement**

2. For the purposes of section 253(5) of the Pensions Act 2004 (non-European scheme to be trust with UK-resident trustee) schemes of a prescribed description are—

- (a) a split approved scheme which has its main administration outside the EEA States; and
- (b) an unregistered occupational pension scheme which has its main administration outside the EEA States.

Signed by authority of the Secretary of State for Work and Pensions.

Address	<i>Name</i>
Date	Minister of State, Department for Work and Pensions

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations describe the type of occupational pension schemes that are exempt from the requirement in section 253 of the Pensions Act 2004 (c.35) that an employer may only cause contributions to be made to a scheme whose main administration is outside the EEA States if the scheme is established under trust and has a trustee resident in the United Kingdom.

The exempt schemes are split approved schemes and those which are not registered under section 153 of the Finance Act 2004 (c.12).

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