

## 2005 No. 2360

### PENSIONS

#### The Occupational Pension Schemes (Trust and Retirement Benefits Exemption) Regulations 2005

<i>Made</i> - - - -	<i>24th August 2005</i>
<i>Laid before Parliament</i>	<i>1st September 2005</i>
<i>Coming into force</i>	<i>22nd September 2005</i>

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 252(4), 255(2), 315(2) and (5) and 318(1) of the Pensions Act 2004(a), and of all other powers enabling him in that behalf, by this instrument which contains regulations made before the end of the period of six months beginning with the coming into force of the provisions of that Act by virtue of which they are made(b), makes the following Regulations:

#### Citation, commencement and interpretation

1. —(1) These Regulations may be cited as the Occupational Pension Schemes (Trust and Retirement Benefits Exemption) Regulations 2005 and shall come into force on 22nd September 2005.

(2) In these Regulations—

“the 2004 Act” means the Pensions Act 2004;

“approved scheme” means an occupational pension scheme—

- (a) which is approved under section 590 (conditions for approval of retirement benefit schemes) or 591 (discretionary approval) of the Income and Corporation Taxes Act 1988(c); or
- (b) in respect of which an application for such approval has been made but has not been determined before 6th April 2006;

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(a) 2004 c. 35. Section 318(1) is cited because of the meaning there given to “prescribed” and “regulations”.

(b) See section 317(1) of the Pensions Act 2004 which provides that the Secretary of State must consult such persons as he considers appropriate before making any regulations by virtue of the provisions of that Act (other than Part 8). Section 317(2)(c) of that Act provides an exemption to consultation where the regulations are made before the end of the period of six months beginning with the coming into force of the provisions of that Act by virtue of which they are made. A consultation exercise has, however, been carried out in respect of regulation 2.

(c) 1988 c. 1. Section 590 was amended by paragraph 18 of Part 1 of Schedule 3 to the Finance Act 1988 (c. 39), section 187 of, paragraphs 3 and 18(2) of Schedule 6, and Part 4 of Schedule 17, to the Finance Act 1989 (c. 26); sections 34(2) to (4), 36(2) and 123 of, and Part 5 of Schedule 19 to, the Finance Act 1991 (c. 31), and paragraphs 2(1) to (8) of Schedule 10 to the Finance Act 1999 (c. 16) and S.I. 2005/723. Section 591 was amended by paragraph 6 of Part 1 of Schedule 13 to the Finance Act 1988; sections 107(2) and (3) and 258 of, and Part 5 of Schedule 26 to, the Finance Act 1994 (c. 9); section 59(2) of the Finance Act 1995 (c. 4), and paragraphs 3(a) and (b) of Schedule 10 to the Finance Act 1999. Sections 590 and 591 are repealed by Part 3 of Schedule 42 of the Finance Act 2004 (c. 12) with effect from 6th April 2006.

OCCUPATIONAL PENSION SCHEMES (**TRUST AND RETIREMENT BENEFITS EXEMPTION**) REGULATIONS 2005

“public service pension scheme” has the meaning given by section 1(1) of the Pension Schemes Act 1993(a) (categories of pension schemes);

“registered scheme” means a scheme which is registered in accordance with section 153 of the Finance Act 2004(b) (registration of pension schemes);

“relevant benefits”, before 6th April 2006, has the meaning given by section 612(1) of the Income and Corporation Taxes Act 1988(c) and, from that date onwards, has the meaning given by section 393B of the Income Tax (Earnings and Pensions) Act 2003(d) (relevant benefits);

“relevant statutory scheme” has the meaning given by section 611A of the Income and Corporation Taxes Act 1988(e) (definition of relevant statutory scheme).

►“scheme undertaking cross-border activities” means a scheme in relation to which the trustees or managers are–

- (a) authorised under section 288 of the 2004 Act (general authorisation to accept contributions from European employers), or
- (b) approved under section 289 of the 2004 Act in relation to a European employer. ◀

Defn. of “scheme undertaking cross-border activities” inserted in reg. 1(2) & reg. 1A inserted. by reg. 18(2) and (3) of S.I. 2005/3381 as from 30.12.05.

## ►Application

**1A.** With the exception of regulation 2(a), these Regulations do not apply to any scheme undertaking cross-border activities. ◀

**Exemption from trust requirement**

- 2.** An occupational pension scheme which is–
  - (a) a public service pension scheme;
  - (b) an occupational pension scheme with fewer than two members; or
  - (c) an occupational pension scheme which–
    - (i) has fewer than 100 members;
    - (ii) provides relevant benefits; and
    - (iii) is neither–
      - (aa) an approved scheme;
      - (bb) a relevant statutory scheme; nor
      - (cc) a registered scheme;

is a scheme of a prescribed description for the purposes of section 252(4) of the 2004 Act (UK-based scheme to be trust with effective rules).

**Exemption from retirement-benefit activities limitation**

- 3.** An occupational pension scheme which–
  - (a) has fewer than 100 members;
  - (b) provides relevant benefits; and
  - (c) is neither–
    - (i) an approved scheme;

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- (a) 1993 c. 48. The definition was amended by S.I. 1999/1820. Section 1 is amended by section 239 of the Pensions Act 2004.
  - (b) 2004 c. 12. Section 153(8) of the Finance Act 2004 is amended by paragraph 2 of Schedule 10 to the Finance Act 2005 with effect from 6th April 2006, and section 153(8A) is inserted by paragraph 3 of Schedule 10 to the Finance Act 2005 with effect from 6th April 2006.
  - (c) The definition of “relevant benefits” was amended by paragraph 10(1) of Schedule 10 to the Finance Act 1999. Section 612(1) is repealed by section 326(1) of the Finance Act 2004 with effect from 6th April 2006.
  - (d) 2003 c. 1. Section 393B is inserted by section 249(3) of the Finance Act 2004.
  - (e) Section 611A was inserted by paragraph 15 of Schedule 6 to the Finance Act 1989, and was amended by paragraph 5 of Schedule 5 to the Finance Act 1999, and is repealed by Part 4 of Schedule 3 to the Finance Act 2004 with effect from 6th April 2006.

- (ii) a relevant statutory scheme; nor
- (iii) a registered scheme;

is a scheme of a prescribed description for the purposes of section 255(2) of the 2004 Act (activities of occupational pension schemes).

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

25th August 2005

*Stephen C. Timms*  
Minister of State,  
Department for Work and Pensions

### EXPLANATORY NOTE

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

These Regulations prescribe the description of schemes which are exempt from the requirement in section 252(2) of the Pensions Act 2004 (c. 35) (“the Act”) that trustees or managers of an occupational pension scheme with its main administration in the United Kingdom must not accept funding payments unless the scheme is established under irrevocable trust. These Regulations also prescribe the description of a scheme which is exempt from the requirement in section 255(1) of the Act, that an occupational pension scheme with its main administration in the United Kingdom must be limited to retirement-benefit activities.

Regulation 2 provides for the description of those schemes which are exempt from the requirements of section 252(2) of the Act.

Regulation 3 provides for the description of a scheme which is exempt from the requirements of section 255(1) of the Act.

As these Regulations are made before the expiry of the period of six months beginning with the coming into force of the provisions of the Act by virtue of which they are made, the requirement for the Secretary of State to consult such persons as he considers appropriate does not apply. The Secretary of State has, however, carried out a consultation exercise in respect of regulation 2.

Section 252(2) of the Act transposes Article 8 of Directive 2003/41/EC (“the Directive”) on the activities and supervision of institutions for occupational retirement provision. Article 8 requires legal separation of the assets of an occupational pension scheme and those of a sponsoring employer. Section 255(1) of the Act transposes Article 7 of the Directive. Article 7 requires that occupational pension schemes are limited to retirement-benefit activities. The transposition of Articles 7 and 8 of the Directive is detailed in the Transposition Table that accompanied the Act. A copy of that Table has been placed in the libraries of both Houses of Parliament. Copies may be obtained from the Department for Work and Pensions, Better Regulation Unit, 4th floor, Adelphi, 1-11 John Adam Street, London WC2N 6HT.

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

