Pensions

Consultation on Draft Regulations

The Occupational Pension Schemes (Member-nominated trustees and Directors) Regulations 2005

July 2005
Contents

• Part One – Foreword
  • Preface
  • Target audience
  • Website
  • How to respond
  • Summary of responses
  • Regulatory Impact Assessment

• Part Two – The Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 2005
  • List of those consulted
  • Draft regulations
Part One – Foreword

Preface

1 This consultation document seeks views on the draft Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 2005 which replace the Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 1996 SI 1216.

2 It also seeks some early views on the practical implications of the Government’s intention to move to a minimum of 50% Member-nominated trustees or directors at some point in the future.

Target audience

3 This consultation is aimed primarily at pension industry professionals and others with a direct interest in the governance of occupational pension schemes. Views from the wider public are also welcome.

DWP website

4 The consultation document is available on the Department’s website at: http://www.dwp.gov.uk/consultations/2005/index.asp

How to respond

5 The consultation period closes on 6th October 2005. We would be grateful for your comments on any of the points covered by the regulations. Please ensure that your response reaches us by that date. Please send consultation responses to:

   David Hone
   Department for Work and Pensions
   Private Pensions Policy
   Adelphi
   3rd Floor
   1-11 John Adam Street
   London
   WC2N 6HT

   Tel: 020 7962 8684

   or:

   E-mail (david.hone@dwp.gsi.gov.uk)
The consultation is being conducted in line with the Code or Practice on Consultation. The Criteria are listed below. The full version can be accessed at http://www.cabinet-office.gov.uk/regulation/Consultation/Code.htm.

The Six Consultation Criteria

1 Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.

2 Be clear about who may be affected, what questions are being asked, and the timescale for responses.

3 Ensure that your consultation is clear, concise and widely accessible.

4 Give feedback regarding the responses received and how the consultation process influenced the policy.

5 Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator.

6 Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

7 The Pensions Regulator is also conducting a consultation on the Code of Practice it is required to produce under section 90 of the Pensions Act 2004. The consultation document can be obtained from the Pensions Regulator's web site at www.thepensionsregulator.gov.uk.

8 The information you send us may need to be passed to colleagues within the Department or to the Pensions Regulator, or published as part of a summary of responses received in response to this consultation. We will assume that you are content for us to do this, and that if you are replying by e-mail, your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system.
9 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. Where respondents request that information given in response to the consultation be kept confidential, this will only be possible if it is consistent with Freedom of Information obligations.

10 When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of a larger organisation please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

11 A list of those consulted is attached. If you have any suggestions of others who may wish to be involved in this process please contact us.

Summary of responses

12 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 at http://www.dwp.gov.uk/consultations/2005/index.asp and paper copies will be available on request.

13 DWP values feedback on how well it consults. If you have any comments about the way in which this consultation exercise is being conducted please contact:

Geoff Ashton  
DWP Consultation Co-ordinator  
5th Floor East  
1 Trevelyan Square  
Leeds  
LS1 6EB

Tel: 0113 23 27 107

E-mail Geoff.Ashton@dwp.gsi.gov.uk
Regulatory impact assessment

14 An assessment of the impact on business, charities or the voluntary sector of the provisions contained in these amending regulations was included in the Regulatory Impact Assessment that accompanied the Pensions Act 2004. Copies of this assessment 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, 2nd Floor, Adelphi, 1-11 John Adam Street, London WC2N 6HT.

15 We have not made an assessment of the impact of the intended change to 50% MNT/MNDs at this stage. The purpose of this consultation is to help explore the impact of the change, and the outcome of this will help us to produce a Regulatory Impact Assessment in due course.
Introduction

16 The regulations are made under the powers in sections 241 to 243 of the Pensions Act 2004 and cover three subjects:

- Exemptions from the requirement to make arrangements that provide for a minimum of 1/3\textsuperscript{rd} member-nominated trustees (MNTs) or member-nominated directors (MNDs),
- Modifications to the requirements in specific circumstances, and
- Transitional arrangements for moving from the current regulatory regime to the new Pensions Act 2004 requirements.

Exemptions from the MNT/MND requirements

17 In considering which types of schemes should be exempt from the MNT/MND requirements, we started by looking at the exemptions from the existing requirements under sections 16 to 21 of the Pensions Act 1995 and considering whether the exemptions are still relevant.

18 Some of the exemptions have been carried forward from the existing MNT/MND requirements with only minor amendments. These are:

(a) Schemes with less than two members - An exemption for single member schemes. This is a common exemption across most requirements of the Pensions Act 1995;
(b) Schemes where section 22 of the Pensions Act 1995 applies - These are schemes with a statutory independent trustee;
(c) Schemes that are not registered for tax purposes - This replaces the former exemption for unapproved schemes. From April 2006, “tax approved” schemes will become “registered schemes”;
(d) Where the scheme is a relevant centralised scheme - This is an existing exemption for schemes where at least one third of the trustees are independent of all the employers, modified as necessary to cater for changes brought in by the Finance Act 2004;
(e) Where the scheme is a direct payment, paid-up insurance scheme – these schemes have no active members, the benefits are secured in an insurance policy, and there are no unallocated assets;

(f) Where the scheme is a former old code scheme - These old schemes where there are no active members and the rate of benefit payable is already fixed;

(g) Where the scheme is a section 615(6) scheme - These are a specific class of schemes set up for certain people working overseas that generally fall outside the scope of pensions legislation;

(h) Where the scheme is set up under section 2 of the Parliamentary and other Pensions Act 1987(power to provide for pensions for Members of the House of Commons etc) - legislation already provides that, with the exception of one pensioner trustee, all the managing trustees of the scheme are Members of Parliament;

(i) Where the scheme has been modified under Schedule 5 to the Coal Industry Act 1994 – The trustee arrangements for the schemes concerned are under the control of the Secretary of State at the Department of Trade and Industry;

(j) Where the scheme is a stakeholder pension within the meaning of section 1 of the Welfare Reform and Pensions Act 1999.

There are some exemptions that are new, or have been changed substantially:

(a) Where the scheme is a relevant small occupational pension scheme - This is a generic exemption that is being applied across a number of Pensions Act requirements for small schemes where all the members are already trustees and the MNT requirements are, in effect, already met. It replaces the existing exemption for “Small Self Administered Schemes” (SSASs) that will cease to be a separate legal entity as a result of the Finance Act 2004. We are aware there have already been some comments on this definition in response to consultation on other regulations, and we will consider these if appropriate;

(b) Where the composition of the board of trustees is governed by church law - As church law has the same legal status as provisions enacted by Parliament, it would be inappropriate to override it. The current measure requires that at least one third of the Church of England Pensions board is made up of people who represent the members of the schemes it acts for;
(c) Where the scheme is a scheme where the sole trustee, or all the
trustees are independent within the meaning given by section 23(3)
of the Pensions Act 1995 - There are a number of schemes where
all the trustees are independent of both employer and employees –
often as a result of agreements between employer and employees.
Disturbing such arrangements is difficult to justify.

20 The regulations provide for corresponding exemptions in respect of the
requirement to appoint member-nominated directors where the scheme
has a corporate trustee. The only difference is additional exemptions:

(a) for schemes where the employer is the sole trustee, and all the
members are current or former directors, and

(b) for wholly insured schemes where the insurance company is the
trustee.

These are both existing exemptions under the Pensions Act 1995.

Are there any other types of scheme where we should be considering an
exemption from the MNT/MND requirements?

Modifications

21 Modifications to the requirements of sections 241 and 242 are limited to:

(a) Provisions to ensure that where scheme rules already provide for
more than the minimum one-third MNT/MNDs, the legislation does
not result in a reduction to one-third. This would otherwise be
possible, as the effect of section 306 is that arrangements required
under section 241 or 242 normally override scheme rules.

(b) Provisions to ensure that in schemes where the power to remove
MNT/MNDs is vested in the members of the scheme, this is not
overridden by the requirement that MNT/MNDs can only be
removed with the approval of the other trustees/directors.
Transitional arrangements

22 Sections 16 to 21 of the Pensions Act 1995 and the associated regulations will be repealed from April 2006. We are proposing, however, that any arrangements approved under section 17(1) or 19(1) of the Pensions Act 1995 (the so-called “employer opt out” arrangements) should not come to an end until:

(a) the date approval would cease according to the current regulations – which in the bulk of cases will be between November 2006 and October 2007, or

(b) 31st October 2007,

whichever is the earlier.

23 We have achieved this by means of a modification to the definition of the commencement date in sections 241 and 242 of the Pensions Act 2004. Schemes will still have a reasonable time after the commencement date to implement new arrangements.

Will the majority of existing opt-outs have come to an end by 31st October 2007?

Are any other transitional arrangements needed?

The move to 50% MNT/MNDs

24 At the TUC conference in September 2004, the Secretary of State announced that the Government would be moving toward raising the minimum proportion of MNTs from 1/3rd to 50%. A power to make the change by order was subsequently introduced into the Pensions Act 2004. This means the Government can, by means of secondary legislation that must be passed by a resolution of both the House of Commons and the House of Lords, change the minimum proportion of MNTs at some point in the future.

25 In introducing the change, the Government said:

“This provision will give us the opportunity to work with the industry to determine the best way of meeting the challenge of moving to 50 per cent MNTs, which is something that we intend to do. We will certainly give time for the new provisions in the Bill to bed in before moving to 50 per cent MNTs. In other words, we will move to it over time.”
This consultation document gives us the opportunity to seek early views on the practical implications of moving to 50%.

26 We are already receiving enquiries about the move to 50%, mainly in connection with:

(1) The timing of the change,

(2) The future for independent trustees - the requirement for 50% MNTs means employers may face the prospect of appointing less than 50% if there is also an independent trustee to be accommodated. The fear is that the independent trustee might be removed to ensure there is an equal number of member and employer-nominated trustees, and

(3) The impact on decision making – in particular the role of the chairman and casting votes.

Timing of the change

27 We have already given a commitment to allow other provisions of the Pensions Act 2004 bed in before we move to 50%, but we have not decided exactly when this should be. It will be late 2007 before the new MNT/MND arrangements are fully in place, and with that in mind, we would like to work toward implementing the 50% requirement by some time in 2009.

Is 2009 a reasonable timescale for moving to 50% MNT/MNDs?

Independent Trustees

28 We recognise concerns that have been expressed about the role of independent trustees. Although all trustees have the same roles and responsibilities in relation to the scheme, we appreciate the perceived threat to the position of independent trustees that sit on the boards of many schemes.

29 We do not want to disturb the position of independent trustees, so we propose to make provision to disregard any independent trustees for the purpose of calculating the 50% minimum.

Does this proposal address concerns?
The impact on decision making

30 Concerns have been expressed about the impact on trustee decision making, and the role of the chairman in particular. In some schemes, the chairman has a casting vote, and there is concern that this will not be able to continue once the new provisions come into force, because the chairman exercising a casting vote is a function for the purpose of section 241(7). Section 241(7) says “Nothing in the arrangements or in the provisions of the scheme may exclude member-nominated trustees from the exercise of functions exercisable by other trustees by reason only of the fact that they are member-nominated trustees”.

31 It is not our intention to interfere in the decision making processes of individual schemes, and our view is that there is nothing in the legislation that prevents a chairman from exercising a casting vote, provided there is nothing in the trust deed and rules that actively prevents an MNT from becoming the chairman.

Exemptions

32 Our working assumption is that schemes exempt from the MNT/MND requirements in the Pensions Act 2004 will remain exempt after the change to 50%, and that all other schemes will be required to move to 50%.

Are there any schemes or types of scheme where there are compelling reasons not to increase the minimum proportion to 50%?

Are there any other issues or concerns about moving to 50% MNT/MNDs that we need to be aware of?

Regulatory Impact Assessment

33 A regulatory impact assessment will be prepared when we consult formally on the Government’s detailed proposals, but we would welcome early views or comments on the likely impact of the move to 50%.
List of those consulted

Aries Pensions and Insurance Systems
Association of British Airways Pensioners
Association of British Insurers
Association of Consulting Actuaries
Association of Independent Financial Advisors
Association of Pensioneer Trustees
Association of Pension Lawyers
Cabinet Office (Regulatory Impact Unit)
Confederation of British Industry
Consumers Association
Co-Op pension scheme
Engineering Employers Forum
Equal Opportunities Commission
Federation of Small Businesses
Government Actuary’s Department
HM Treasury (MOCOP)
Industry Wide Pension Schemes Group
Institute and Faculty of Actuaries
Joint Working Group on Occupational Pensions
Law Debenture
Linklaters
Marconi
National Association of Pension Funds
National Consumer Council
National Pensioners Convention
OPAS
Pensions Ombudsman
Policy and Legal Division DHSS Northern Ireland
Railways Pension Scheme
Sacker and Partners
SAUL
Skandia Life
Society of Pension Consultants
The Association of Corporate Trustees
The Law Society
The Law Society of Scotland
The Pensions Regulator
The Pensions Management Institute
The Scottish Executive
The Welsh Assembly
Trades Union Congress
UNITE
The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 241(8)(c), 242(10), 243(2), 315(2) and (4), and 318(1) of the Pensions Act 2004(a), and of all other powers enabling in that behalf, [and after consultation with such persons as he considers appropriate(b)], makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Member-Nominated Trustees and Directors) Regulations 2005 and shall come into force on 6th April 2006.

(a) 2004 c.35. Section 318 is cited for meaning there given to the terms ‘modification’, ‘prescribed’ and ‘regulations’.

(b) See section 317(2)(d) of the Pensions Act 2004 which provides that the Secretary of State must consult such persons as he considers appropriate before making regulations by virtue of the provisions of that Act (other than Part 8).
“former old code scheme” means a registered scheme which was formerly approved under section 208 of the Income and Corporation Taxes Act 1970(a) (UK company distributions not generally chargeable to corporation tax) and under the provisions of which—

(a) no further contributions are payable; and
(b) the entitlement in respect of each member is to a benefit consisting of a specified fixed amount which may not be altered unless

(i) he retires otherwise than at his normal pension age; or
(ii) another person becomes entitled to a benefit in respect of him;

“independently selected” in relation to a trustee of a scheme or a director of a company which is a trustee of a scheme, means selected as a trustee (or as the case may be a director)—

(a) by some or all of the members of the scheme (otherwise than wholly or mainly by members who are directors of companies which are employers in relation to the scheme), or
(b) by an organisation which represents some or all of the members of the scheme (other than wholly or mainly members who are such directors);

“insurer” means

(a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000(b) (performance of regulated activities) to effect or carry out contracts of long-term insurance, or
(b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act (EEA passport rights), which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of long-term insurance;

“registered scheme” has the meaning given in section 153 of the Finance Act 2004(c) (registration of pension schemes);

“relevant centralised scheme” means a scheme in which—

(a) membership is open to employees of more than one employer under a single scheme;
(b) the employers are not associated or connected; and
(c) in the case of a scheme in which each trustee is a company—

(i) the scheme rules do not provide that the power to appoint or remove all the directors is exercisable solely by one employer; and
(ii) at least one third of the directors of each of those companies are independent or independently selected; or
(d) in the case of a scheme where at least one of the trustees is a person, either

(i) the scheme rules do not provide that the power to appoint or remove all the trustees is exercisable solely by one employer; or
(ii) at least one third of the trustees are persons who—

(aa) have no legal or beneficial interest in the assets of any of the employers or of the scheme (otherwise than as trustees) and are neither connected with, nor associates of, any of the employers; or
(bb) have been independently selected;

“relevant executive pension scheme” means a scheme—

(a) in relation to which the company is the only employer and the sole trustee, and

---

(a) 1970 c.10. This Act was repealed with savings by section 290 of, and Schedule 11 paragraph 24(1) to, the Taxation of Chargeable Gains Act 1992 (c.12) Schedule 12, and section 258 of, and Schedule 26 to the Finance Act 1994 (c.9).
(b) 2000 c.8.
(c) 2004 c.12.
(b) the members of which are either current or former directors of the company and which includes at least one-third of the current directors;

“relevant wholly insured scheme” means a scheme under which all the benefits are secured by contracts of insurance or annuity contracts, some or all of which are with an insurer which—
(a) is, or is connected with, the sole trustee of the scheme; but
(b) is not, and is not connected, with the employer;

“relevant small occupational pension scheme” means—
(a) a scheme with fewer than twelve members, where all the members are trustees of the scheme, and either
   (i) the rules of the scheme provide that all decisions are made only by the trustees who are members of the scheme by unanimous agreement; or
   (ii) the scheme has an independent trustee who is independent in relation to the scheme for the purposes of section 23 of the Pensions Act 1995(a) (power to appoint independent trustees) and is registered in the register maintained by the Authority in accordance with regulations made under subsection (4) of that section; or
(b) a scheme with fewer than twelve members where all the members are directors of a company which is the sole trustee of the scheme and either—
   (i) the rules of the scheme provide that all decisions are made only by the members of the scheme by unanimous agreement, or
   (ii) one of the directors of the company is independent in relation to the scheme for the purposes of section 23 of the Pensions Act 1995(b) and is registered in the register maintained by the Authority in accordance with regulations made under subsection (4) of that section;

“section 615(6) scheme” means a scheme with such a superannuation fund as is mentioned in section 615(6) of the Income and Corporation Taxes Act 1988(c) (exemption from tax in respect of certain pensions).

(3) For the purposes of paragraph (2), a director is independent in relation to a scheme only if he—
(a) has no direct legal or beneficial interest in the assets of any of the employers or of the scheme, and
(b) is neither connected with, nor an associate of, any of the employers.

(4) For the purposes of these regulations, unless the context otherwise requires—
(a) sections 249 and 435 of the Insolvency Act 1986 (connected and associated persons)(d) shall apply as they apply for the purposes of that Act; and
(b) section 74 of the Bankruptcy (Scotland) Act 1985 (associated persons)(e) shall apply as it applies for the purposes of that Act.

(5) The definition of insurer in paragraph (2) must be read with—
(a) section 22 of the Financial Services and Markets Act 2000 (the classes of activity and categories of investment); and
(b) any relevant order under that section; or
(c) Schedule 2 to that Act.

(6) References to “employers” in paragraphs (c)(i) and (d) of the definition in paragraph (2) of “relevant centralised scheme” and in paragraph (3) do not include companies which carry on the

---

(a) 1995 c.26.
(b) Section 23 was substituted by section 36(1) and (3) of the Pensions Act 2004.
(c) 1988 c.1.
(d) 1986 c.45. Section 435 is as amended by section 261 of, and schedule 7 to, the Civil Partnership Act 2004 (c.33).
(e) 1985 c.66. Section 74 is as amended by section 261 of, and schedule 28 to, the Civil Partnership Act 2004.
business of acting as trustee of, or providing administrative services to, the scheme and no other business.

Exemptions under section 241(8)(c) of the Act (Powers: s241(8)(c) of the Pensions Act

2. Section 241 of the Act (requirement for member-nominated trustees) does not apply in relation to a scheme, if the scheme—
   (a) has less than two members;
   (b) is a scheme to which section 22 of the Pensions Act 1995(a) (independent trustees-circumstances in which following provisions apply) applies;
   (c) is a scheme that is an occupational pension scheme within the meaning given by section 1 of the Pension Schemes Act 1993(b) (categories of pension schemes), but which is not a registered scheme;
   (d) is a relevant small occupational pension scheme;
   (e) is a relevant centralised scheme;
   (f) is a direct payment, paid-up insurance scheme;
   (g) is a former old code scheme;
   (h) is a section 615(6) scheme;
   (i) is set up under section 2 of the Parliamentary and other Pensions Act 1987(c)(power to provide for pensions for Members of the House of Commons etc);
   (j) has been modified under Schedule 5 to the Coal Industry Act 1994(d) (pension provision in connection with restructuring);
   (k) is a scheme where the sole trustee, or all the trustees are independent within the meaning given by section 23(3) of the Pensions Act 1995(e) (power to appoint independent trustees);
   (l) is a stakeholder pension within the meaning of section 1 of the Welfare Reform and Pensions Act 1999(f) (meaning of “stakeholder pension scheme”); or
   (m) is a scheme where the composition of the board of trustees is governed by church law.

Prescribed exemptions under section 242(10) of the Act (Powers section 242(10) of the PA 2004)

3. Section 242 of the Act (requirement for member-nominated directors of corporate trustees) does not apply in relation to a scheme if the scheme—
   (a) has less than two members;
   (b) is a scheme to which section 22 of the Pensions Act 1995 (independent trustees-circumstances in which following provisions apply) applies;
   (c) is a scheme that is an occupational pension scheme within the meaning given by section 1 of the Pension Schemes Act 1993 (categories of pension schemes), but which is not a registered scheme;
   (d) is a relevant small occupational pension scheme;
   (e) is a relevant centralised scheme;

(a) Section 22 is as amended by section 47(1) of the Child Support, Pensions and Social Security Act 2000 (c.19) and section 36(1) and (2)(a), (b), (c), and (d) 319(1), 322(1) and paragraphs 34 and 40 of Schedule 12 to the Act.
(b) 1993 c.48. Section 1(1) is as amended by section 239(1), (2) and (3) of the Act.
(c) 1987 c.45. Section 2 is as amended by section 2(1) of the Ministerial and other Pensions and Salaries Act 1991 (c. 5).
(d) 1994 c.21. Schedule 5 is as amended by section 240 of, and Schedule 1 paragraph 64 to the Employment Rights Act 1996 (c. 18).
(f) 1999. c.30. Section 1 is as amended by sections 285(1),(2), (3) and (4), 319(1) and paragraphs 11 and 12 of Schedule 12 to the Pensions Act 2004.
(f) is a direct payment, paid-up insurance scheme;

(g) is a former old code scheme;

(h) is a section 615(6) scheme;

(i) is set up under section 2 of the Parliamentary and other Pensions Act 1987 (power to provide for pensions for Members of the House of Commons etc);

(j) has been modified under Schedule 5 to the Coal Industry Act 1994(a) (pension provision in connection with restructuring);

(k) is a stakeholder pension within the meaning of section 1 of the Welfare Reform Act 1999 (meaning of “stakeholder pension scheme”);

(l) is a scheme which is a relevant executive pension scheme in relation to the company;

(m) is a scheme where the sole director, or all the directors are independent within the meaning given by section 23(3) of the Pensions Act 1995(b) (power to appoint independent trustees); or

(n) is a scheme which is a relevant wholly insured scheme.

**Prescribed modifications to the requirements of sections 241 and 242 of the Act (Powers section 243(2) of the Pensions Act 2004 and 315(5))**

4.—(1) Sections 241 (requirements for member-nominated trustees) and 242 (requirement for member-nominated directors of corporate trustees) of the Act are modified in their application to the cases prescribed in paragraphs (2), (3) and (4).

(2) In relation to a scheme where the scheme rules contain provisions requiring that there be more than one third member trustees, sections 241 and 242 of the Act are modified as if—

(a) in section 241(1)(a) for “one-third of the total number of trustees” there were substituted “the nomination and selection of member-nominated trustees in a proportion not less than that proportion set out in the scheme rules”;

(b) section 241(4) were omitted;

(c) in section 242(1)(a) for “one-third of the total number of directors of the company” there were substituted “the nomination and selection of member-nominated directors in a proportion not less than that proportion set out in the scheme rules”; and

(d) section 242(4) were omitted.

(3) In relation to a scheme where the scheme rules provide that trustees of the scheme may be removed by a vote of the membership, then section 241 shall be modified as if subsection (6) were omitted.

(4) In relation to a scheme which has arrangements for the appointment of trustees or directors approved under sections 17(1) (exceptions) or 19(1) (corporate trustees: exceptions) of the Pensions Act 1995(c), prior to the date these regulations enter force, sections 241 and 242 are modified as if—

(a) in section 241 for subsection (3)(a) and (b) there were substituted—

“(a) the date the approval under regulation 20 of the Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 1996 (cessation of approval of appropriate rules and alternative arrangements)(d) would lapse but for the revocation of those regulations; or

(b) 31st October 2007;

whichever is the earlier.”; and

(a) 1994, c.21.Schedule 5 is as amended by section 240 of, and Schedule 1 to the Employment Rights Act 1996 (c.18).

(b) Section 23 was substituted by section 36(1) and (3) of the Pensions Act 2004.

(c) Sections 17 and 19 are modified in their application to certain classes of multi-employer schemes by the Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 1996, (S.I. 1996/1216).

(b) in section 242 for subsection (3)(a) and (b) there were substituted—

“(a) the date the approval under regulation 20 of the Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 1996 (cessation of approval of appropriate rules and alternative arrangements) would lapse but for the revocation of those regulations; or

(b) 31st October 2007;

whichever is the earlier.”.

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

Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations provide for prescribed classes of scheme that do not need to comply with the requirements for independent trustees and directors under sections 241 and 242 of the Pensions Act 2004 (c. 35).

Regulation 2 prescribes the types of scheme where the minimum proportion of independent trustees set out under section 241(1) is not required.

Regulation 3 prescribes the types of scheme where the minimum proportion of independent directors set out under section 242(1) is not required.

Regulation 4 prescribes the circumstances in which the provisions of sections 241 and 242 are modified where existing scheme rules require a higher proportion of trustees or directors to be independent. It also provides for transitional provisions for schemes that were excepted under the previous regulations relating to member-nominated trustees.

An assessment of the impact on business, charities and the voluntary sector of the provisions in these regulations was included in the Regulatory Impact Assessments that accompanied the Pensions Act 2004. A copy of this assessment 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, 2nd Floor, Adelphi, 1-11 John Adam Street, London, WC2N 6HT.