

# Technical Briefing

No.9



## Proposals announced for consultation by employers requirement

Companies wishing to change their pension schemes from April 2006 will have to formally consult with the affected employees under draft regulations issued by the Government recently.

The draft regulations specify the types and scale of changes that are caught and the consultation process that would then take place. Smaller companies will be exempted from these measures.

In their current form, the regulations do not prevent companies from changing their schemes as long as the consultation requirements are met.

For each consultation, the draft regulations describe:

1. Who is to be informed;
2. When must they be informed;
3. What must they be told;
4. The minimum period for submissions;
5. What consideration must be given to any submissions, and;
6. The Pensions Regulator's role in this process.

## Overview

Any employer who wishes to make a major or significant change to its pension scheme will be required to consult formally with all the affected members under new measures contained in sections 259 to 261 of the Pensions Act 2004.

These sections only set out the broad detail of the measures and so the Government issued draft regulations covering the fine detail in June 2005. Following a short consultation period, the Government is currently reviewing the responses. It is the Government's intention that these new regulations apply with effect from 6 April 2006.

These regulations cover any employer who provides an occupational or personal pension scheme, although smaller companies and other prescribed types are exempted. The draft regulations require companies to consult with affected employees or their nominated representatives (who can be union officials, Information and Consultation representatives or member-nominated).

The Government has also issued draft regulations providing for the protection of nominated representatives during any consultation process as a secondary safeguard. These grant nominated representatives the right to paid time off work in relation to fulfilling this role and protection against unfair dismissal or suffering other detriment to their employment.





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### Types of change covered

The draft regulations list the changes that trigger the requirement to consult as being:

#### Occupational schemes – general

- Increasing scheme retirement age.
- Preventing some or all new members from joining the scheme.
- Stopping future accrual for existing and/or prospective members.
- Removing the employer's liability to contribute to the scheme.
- Raising member contributions where none were previously payable.

#### Occupational schemes – defined contribution

- Reduction in employer contributions by a margin of 2% or more.
- Reduction in employer contributions below a margin of 3%.
- Increase in member contributions by a margin of 2% or more.

#### Occupational schemes – defined benefit

- Conversion of benefits to defined contribution.
- Reduction in rate at which future benefits accrue in the future.
- Increase in member contributions by a margin of 2% or more.

#### Personal pension schemes

- Employer contributions cease under a direct payment scheme.
- Reduction in employer contributions by a margin of 2% or more.
- Reduction in employer contributions below a margin of 3%.
- <sup>a</sup> Increase in member contributions by a margin of 2% or more.

The regulations also require separate, non-qualifying changes made within twelve months of one another to be treated as a single change when deciding whether formal consultation is required.

### The consultation process

The regulations require that employers provide written information about the proposed change to all affected members and their representatives. This must also state the closing date by which any comments and submissions must be submitted. This written information must be provided at least two months before the closing date for submissions.

Employers must consult with either (i) a trade union recognised to any extent for collective bargaining, (ii) an Information and Consultation representative, (iii) those specified in a negotiated agreement (where there is specific reference to pensions) as set out in the I&C regulations, or, where none of the above exist, (iv) the affected members directly.

In certain circumstances, the affected members can elect representatives as part of the consultation process and the regulations set out the requirements that the employer must abide by in this situation. The Government has issued new employment regulations that provide additional protection to member representatives in this regard.

The draft regulations set out the criteria under which nominated representatives must be elected and for how long they are required, who they represent and on what matters they are to act.

The written information concerning a qualifying change must:

- state the changes being proposed and the effect it will have on the scheme and its members;
- be accompanied with any relevant background information;
- indicate the timescale of the change; and
- be in such a format that would enable members and their representatives to consider the change and conduct a study of it.



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### **Consideration given to submissions**

The company is required to consider the responses received and, where authority to make the decision lies with trustees, managers or the principal employer, to provide them with written notice of the responses. Trustees, managers or principal employers with the authority to make a change may only do so when they have considered the responses sent to the employer and are satisfied that an employer has complied with the consultation requirements.

### **The role of the Pension's Regulator**

The draft regulations do not require the company to inform the Pensions Regulator of a proposed change. However, if so requested, the Regulator can be asked to intervene and determine:

- whether employers, trustees, managers or principal employers have complied with the consultation process;
- whether or not a trade union is recognised for the purposes of collective bargaining or whether an Information and Consultation agreement was properly negotiated;
- whether the consultation requirement may be waived or relaxed because the delay to carry out a consultation would not be in the interests of the generality of all the members of the scheme.

### **Exemptions**

The new regulations do not apply to public sector schemes, unfunded occupational schemes, schemes with fewer than 2 members and small schemes. Small companies are also exempt from the new regulations, such companies being defined as employers employing in Great Britain and whose maximum number of employees is (a) 150 between 6 April 2006 and 5 April 2007, (b) 100 between 6 April 2007 and 5 April 2008, and (c) 50 from 6 April 2008.

### **Further Information**

Copies of the draft regulations and the Government's consultation process can be found on the DWP's website at:

[http://www.dwp.gov.uk/publications/dwp/2005/occ\\_pen\\_schemes/oppscer06.pdf](http://www.dwp.gov.uk/publications/dwp/2005/occ_pen_schemes/oppscer06.pdf)

### **CPRM Commentary**

In the past, many companies have made unilateral changes to their pension schemes with little or no prior consultation with affected members. These draft regulations form part of the Government's strategy to prevent such abuses taking place in the future whilst still allowing companies the flexibility to make necessary changes. The extra cost introduced by these measures is expected to be marginal, especially for those companies who operated best practice in the past but come at a time of significantly rising costs for schemes and their sponsors.

If you would like further advice on this or other pension issues, please contact either Walker Yule or Philip Wheeler in Edinburgh (0131 220 8247) or Simon Chrystal in Newcastle (0191 233 9408).