

# **Occupational Pensions**

## **The Occupational Pension Schemes (EEA States) Regulations 2007**

### **Government Response to Consultation**

**October 2007**

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# The Occupational Pension Schemes (EEA States) Regulations 2007: Government Response to Consultation

## Chapter one: Introduction

**1.1** The Occupational Pensions Directive 2003/41/EC (otherwise known as the Institution for Occupational Retirement Pension or IORP Directive) (**link to directive:** [http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l\\_235/l\\_23520030923en00100021.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_235/l_23520030923en00100021.pdf)) was incorporated into the European Economic Area (EEA) Agreement by decision of the EEA Joint Committee on 7 July 2006, entering into force in Norway, Iceland and Liechtenstein on 12 April 2007. The Directive has been in effect in EU States since 23 September 2005.

**1.2.** The IORP Directive provides a framework for the operation and supervision of occupational pension schemes in the EU. The effect of its extension to the other EEA States<sup>1</sup> is that certain UK pensions legislation which implemented the Directive, i.e. the Pensions Act 2004 and other associated Regulations will need to be amended so that their application takes account of the fact that the IORP Directive now applies in all of the EEA States. The EEA Regulations seek to amend the appropriate UK legislation.

**1.3** In drafting the EEA Regulations, our intention is simply to ensure that the existing legislation which introduced the provisions of IORP is extended to the other EEA States, rather than to introduce any significant policy changes to these areas, regulating in a proportionate way. To this end, a public consultation exercise was held over the period 31 July 2007 to 24 September 2007. As part of this process, a consultation paper was produced and made widely available.

**1.4** In all, 5 written responses to the Government's consultation paper were received from organisations with an interest in the Regulations. A list of these respondents is reproduced at Annex A. The Government would like to thank all those who took the time to contribute to the consultation process.

**1.5** The purpose of this paper is to summarise the views received and the Government's response to them. Of the 5 responses, all were generally content. Only 3 provided substantive comment on the proposed Regulations, therefore this document only addresses those responses.

## Chapter two: Summary of Responses and the Government's Response

### Proposed Title for the Regulations

### **Original View**

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<sup>1</sup> The other EEA states refers to Norway, Iceland and Liechtenstein

**2.1** The Regulations include a requirement to amend the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 and hence this required us to include a reference to “Personal Pension Schemes” in the title.

## **Response**

**2.2** One response (Friends Provident) suggested that the title of the regulations was misleading. The only reference to “personal” is in the Consultation by Employers Regulations and the specific reference only applies to occupational pensions. It was therefore suggested that the reference to “personal” in the title of regulations should be removed.

## **Government Response to comments**

**2.3** We agree with this suggestion and have removed the reference in the title to “Personal”.

## Regulation 3 – Amendment of the Pensions Act 1995 (Section 49 (8A) (c))

### **Original View**

**2.4** The legislation requires the trustees of a scheme to keep any money held by them in a separate account kept by them with a deposit taker. Deposit taker is defined as the Bank of England or the Central Bank of a Member State other than the UK.

**2.5** Article 19 of the IORP Directive prevents Member States from restricting occupational pension schemes from appointing for the custody of assets either a custodian or depositary established in another Member State. As these provisions now apply to all the EEA States, so this legislation must be extended to include the other EEA States.

### **Response**

**2.6** One response questioned the necessity to restrict the definition of “deposit taker” to the Bank of England or other central EEA bank and requested clarification on this point.

### **Government Response to comments**

**2.7** As we explained in the introduction, the intention of these Regulations is not to carry out any major policy changes, simply to extend certain legislations to take account of the other EEA States adoption of the IORP Directive. The definition of deposit taker is not being restricted. It will still include the other alternatives provided by section 49 (8A), namely:

*“(a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;*

*(b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits;*

*(d) the National Savings Bank; or*

*(e) a municipal bank, that is to say a company which was, immediately before the repeal of the Banking Act 1987 exempted from the prohibition in section 3 of that Act by virtue of section 4(1) of, and paragraph 4 of Schedule 2 to, that Act.”*

## Regulation 4 – Amendments to sections 287,289-291, and 293-295 Cross-border Activities within the European Union

### **Original View**

**2.8** These amendments are required to take account of the fact that the adoption of the IORP Directive by the other EEA States has enabled schemes in the UK to be sponsored by employers based in the other EEA States (to enter into cross-border activity) and for schemes based in the other EEA States to be sponsored by employers based in the UK.(As determined by sections 287-295 of the Pensions Act 2004 and the “Occupational Pension Schemes (Cross-border Activities) Regulations 2005 (SI 2005/3381)”(The Cross-border Regulations)).

**2.9** We mentioned in our consultation that we were aware that the extension of IORP to the other EEA States would potentially impact on any UK based schemes who are currently being sponsored solely by employers located in Norway, Iceland or Liechtenstein and whose pension scheme members are subject to the social and labour law of those EEA States. This would also include any UK based employers with members working under contract in another EEA State, who are subject to the social and labour laws of that EEA State. We asked you to provide details of any scheme being sponsored in this way.

### **Response**

**2.10** We had 1 response to our question on the subject of whether there were any UK based schemes currently being sponsored solely by employers located in Norway, Iceland or Liechtenstein. The National Association of Pension Funds (NAPF) advised that they were not aware of any schemes being sponsored in this way.

### **Government Response to comments**

**2.11** The response from the NAPF and our own research lead us to believe that there are no UK based schemes being sponsored in the manner detailed in 2.9. **We therefore have not carried out an Impact Assessment as it does not appear that any schemes will be impacted by the introduction of these regulations**, nor will there be any need to introduce transitional measures in respect of such schemes.

## Other General Comments on the Regulations

**2.12** One response (Mercer) was concerned at the growing gap between HMRC and DWP legislation adding that DWP will soon refer to “EEA States” in their pensions legislation whereas HMRC will refer to “member states”. Mercer also suggested that an amendment was required to the Welfare Reform and Pensions Act (WRAPA)1999, Schedule 5, paragraph 6(2). The reference to “Member States” should be changed to “EEA States”.

### **Government Response to comments**

**2.13** We have asked Mercer to supply details of the HMRC legislation they believe requires amendment. We will pass the information they supply on to HMRC and ask them to consider whether it is necessary to amend their legislation in view of the fact that the IORP Directive has now been adopted by the other EEA States.

**2.14** Schedule 5, paragraph 6(2) of the WRAPA 1999 concerns the manner in which a scheme may discharge its liability in respect of a pension credit. The Government agree that the same principles apply to this proposed amendment as to amendments already included in the Regulations in respect of the manner in which a scheme may discharge its contracted-out benefits liability (Pensions Scheme Act 1993, section 19(4)(a)(i); namely that an annuity contract or policy of insurance may be taken out with an insurer carrying out long term business in the UK or another EEA State (formerly EU State). Hence the suggested amendment has been added to the Regulations.

### **Chapter three: Conclusion**

**3.1** Once again the Government would like to thank you for the helpful responses to this consultation. Your responses have confirmed the Government’s position as far as extension of cross-border activity is concerned with the other EEA States and highlighted a possible future discrepancy between DWP and HMRC legislation. Action on the latter point is already taking place and you will be informed should further changes to HMRC legislation be required.

**Annex A:**  
**List of Respondent Organisations**

Actuarial Profession  
Association of British Insurers  
Friends Provident  
Mercer  
National Association of Pension Funds