

**THE OCCUPATIONAL PENSION SCHEMES  
(NON-EUROPEAN SCHEMES EXEMPTION)  
REGULATIONS 2008**

**Government response to the consultation**

April 2008

**DWP** Department for  
Work and Pensions

## **Contents**

- Introduction
- Responses to consultation
- List of respondents
- Annex A – Respondents to consultation

## Introduction

1. In October 2007, the Government undertook a consultation exercise on the Occupational Pension Schemes (Non-European Schemes Exemption) Regulations 2008.
2. These Regulations describe the type of occupational pension schemes that are exempt from the requirement in section 253 of the Pensions Act 2004 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 consultation ended on 30 November 2007.
3. Ten responses to the consultation were received. A list of respondents is at **Annex 1**. The Government is very grateful to all who contributed to the consultation. The comments have been very helpful in finalising the Regulations.
4. The Occupational Pension Schemes (Non- European Schemes Exemption) Regulations 2008 were laid on 11/03/2008 (SI 2008/624). The Regulations come into force on 6 April 2008.
5. The regulations are available on OPSI's website at [http://www.opsi.gov.uk/si/si2008/pdf/uksi\\_20080624\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20080624_en.pdf)
6. This document is available on the Department's website at [www.dwp.gov.uk/publications/dwp/2007/occ-pen-consult/resp-opsnese-regs08.pdf](http://www.dwp.gov.uk/publications/dwp/2007/occ-pen-consult/resp-opsnese-regs08.pdf)
7. A paper copy of this document can be obtained from:

Olu Abe  
Department for Work and Pensions  
3<sup>rd</sup> Floor  
Adelphi  
1-11 John Adam Street  
London WC2N 6HT

Tel 020 7962 8500

## *Condition*

8. This document describes the policy underpinning the Regulations. However, the comments made in this document should not be taken as an authoritative interpretation of the law. Such an interpretation can only be provided by a court.

## *Contents of the Regulations*

9. The Regulations provide exemptions from the requirements of section 253 of the Pensions Act 2004 which prohibits the payment of contributions to occupational pension schemes administered outside the EEA unless the scheme is established under trust and there is a trustee or nominee in the UK.
10. The Regulations also clarify the meaning given to an “unregistered occupational pension scheme” to ensure that it doesn’t include schemes that are treated as registered after A-day because they had been approved prior to A-day.

## **Responses to consultation (specific comments and Government’s response)**

11. The following paragraphs sets out the issues raised in response to the consultation exercise, and provides the Government’s response, which may be taken as an indication of how the Government plans that the Regulations should work in practice.

## *Exemptions from other regulatory requirements*

12. One respondent suggested the view that we should consider exemptions for non-European schemes from specific statutory requirements as originally provided in Regulations issued for consultation in October 2005.
13. **Government’s response** - Although the Government has decided to exempt unregistered schemes from the restrictions of section 253 of the Pensions Act 2004, it has no plans to re-examine the decision not to exempt EEA schemes from other specific statutory requirements.

## *Scope of the Regulations*

14. One respondent suggested we should limit the scope of the exemption to section 253(3), as to include schemes covered by section 253(2) would allow schemes with both employer and employees in the UK to opt out of UK regulation by moving administration of the scheme outside the EU.
15. Section 253(2) applies to all employers based in the UK (wherever their employees work) and s253(3) applies to employers (wherever they are based) in respect of employees who work in the UK.
16. **Government's Response** – The Government considered this suggestion but we have to remember the exemption only covers unregistered schemes, and these are schemes that fall outside the scope of most UK regulation anyway. The risk of UK schemes avoiding UK regulation by moving outside the EEA is minimal. Therefore, the Government does not intend to limit the exemption in this way.
17. Respondents also made a number of helpful drafting suggestions. These were considered by our drafting lawyers and were taken on where it was considered the change would be beneficial.

## **Thanks**

18. We are most grateful to everyone who took the time to comment on this consultation document.

## **ANNEX 1: - List of respondents**

The Association of Pensions Lawyers

The Faculty and Institute of Actuaries

The Law Society of Scotland

J W D Trythall

Slaughter and May

The Society of Pension Consultants

CBI

Price Waterhouse Coopers

Travers Smith

Watson Wyatt Worldwide