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STATUTORY INSTRUMENTS

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**2005 No. 3379**

**PENSIONS**

**The Occupational Pension Schemes  
(Internal Controls) Regulations 2005**

*Made* - - - - *8th December 2005*  
*Laid before Parliament* *9th December 2005*  
*Coming into force* - - *30th December 2005*

The Secretary of State, being a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup>, in relation to personal and occupational pensions makes the following Regulations in exercise of the powers conferred by section 2(2) of that Act and sections 90(2)(k) and 318(1) of the Pensions Act 2004<sup>(3)</sup>.

This instrument contains regulations made before the end of the period of six months beginning with the coming into force of section 90(2)(k) of the Pensions Act 2004 by virtue of which they are made<sup>(4)</sup>.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Internal Controls) Regulations 2005 and shall come into force on 30th December 2005.

(2) In these Regulations “the Act” means the Pensions Act 2004.

**Amendment of the Act**

2. After section 249 of the Act (requirement for knowledge and understanding: supplementary) insert—

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(1) See the European Communities (Designation) (No. 7) Order 2004 (S.I. [2004/3328](#)).

(2) 1972 c. 68.

(3) 2004 c. 35. Section 318(1) is cited because of the meaning there given to “prescribed” and “regulations”.

(4) 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 regulations by virtue of the provisions of that Act (other than Part 8). Section 317(2)(c) of that Act provides an exemption to the consultation requirement where the regulations are made before the end of the period of six months beginning with the coming into force of the provision of that Act by virtue of which they are made.

**“Requirement for internal controls**

**249A.**—(1) The trustees or managers of an occupational pension scheme must establish and operate internal controls which are adequate for the purpose of securing that the scheme is administered and managed—

- (a) in accordance with the scheme rules, and
- (b) in accordance with the requirements of the law.

(2) Nothing in this section affects any other obligation of the trustees or managers of an occupational pension scheme to establish or operate internal controls, whether imposed by or by virtue of any enactment, the scheme rules or otherwise.

(3) This section does not apply in relation to—

- (a) a scheme which—
  - (i) is established by or under an enactment (including a local Act), and
  - (ii) is guaranteed by a public authority;
- (b) a pay-as-you-go scheme;
- (c) a scheme which is made under section 2 of the Parliamentary and other Pensions Act 1987 (c. 45) (power to provide for pensions for Members of the House of Commons etc.) .

(4) But subsection (3) does not disapply this section in relation to any scheme the trustees or managers of which are—

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

(5) In this section—

“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;

“internal controls” means—

- (a) arrangements and procedures to be followed in the administration and management of the scheme,
- (b) systems and arrangements for monitoring that administration and management, and
- (c) arrangements and procedures to be followed for the safe custody and security of the assets of the scheme;

“local authority” means—

- (a) in relation to England, a county council, a district council, a London borough council, the Greater London Authority, the Common Council of the City of London in its capacity as a local authority or the Council of the Isles of Scilly,
- (b) in relation to Wales, a county council or county borough council,
- (c) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39) (constitution of councils),
- (d) an administering authority as defined in Schedule 1 to the Local Government Pension Scheme Regulations 1997 (S.I.1997/1612) (interpretation);

“pay-as-you-go scheme” means an occupational pension scheme under which there is no requirement for assets to be set aside in advance for the purpose of providing

benefits under the scheme (disregarding any requirements relating to additional voluntary contributions);

“public authority” means—

- (a) a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975 (c. 26)),
- (b) a government department (including any body or authority exercising statutory functions on behalf of the Crown),
- (c) the Scottish Ministers,
- (d) the National Assembly for Wales, or
- (e) a local authority.”.

### **Codes of Practice**

**3.** The discharge of the duty imposed by section 249A(1) of the Act is a prescribed matter for the purposes of section 90(2)(k) of that Act (codes of practice).

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

8th December 2005

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

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## EXPLANATORY NOTE

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

These Regulations amend the Pensions Act 2004 (c. 35) (“the Act”) by adding section 249A (requirement for internal controls). Section 249A implements the requirement in Article 14(1) of the European Union Directive on the Activities and Supervision of Institutions for Occupational Retirement Provision (Directive 2003/41/EC) (“the Directive”) that the trustees or managers of an occupational pension scheme must have adequate internal control mechanisms.

Regulation 2 inserts section 249A into the Act. Subsection (1) of section 249A imposes a duty on the trustees or managers to establish and operate internal controls. Subsection (2) provides that the duty established by subsection (1) does not affect any other obligation on the trustees or managers, whether statutory or otherwise, to establish and operate internal controls. Subsection (3) lists the occupational pension schemes to which the requirements of section 249A do not apply, but subsection (4) provides that despite subsection (3) those requirements do apply to any scheme that is undertaking cross-border activities within the European Union. Subsection (5) provides for interpretation in respect of section 249A.

Regulation 3 provides that the Pensions Regulator must issue a code of practice relating to the duty imposed by section 249A(1) of the Act.

As regulation 3 is 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 it is made, the requirement for the Secretary of State to consult such persons as he considers appropriate does not apply. However, in this instance, a consultation exercise has nevertheless taken place.

With the exception of the part of Article 14(1) of the Directive which concerns adequate internal controls, Article 14(1) of the Directive is already implemented by the legislative provisions 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, 3rd floor, Adelphi, 1-11 John Adam Street, London WC2N 6HT.

An assessment of the impact of these Regulations on business, charities and the voluntary sector has been made. Copies of this Regulatory Impact Assessment have been placed in the libraries of both Houses of Parliament. Copies may be obtained from the Better Regulation Unit of the Department for Work and Pensions, 4th floor, Adelphi, 1-11 John Adam Street, London WC2N 6HT.