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STATUTORY INSTRUMENTS

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**2005 No. 3380**

**PENSIONS**

**The Occupational Pension Schemes  
(Regulatory Own Funds) 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>M1</sup> for the purposes of section 2(2) of the European Communities Act 1972 <sup>M2</sup>, in relation to matters relating to personal and occupational pensions makes the following Regulations in exercise of the powers conferred by section 2(2) of that Act and sections 60(2)(h), 223(1)(b), 232, 315(2) and (5) and 318(1) of the Pensions Act 2004 <sup>M3</sup>.

In accordance with section 317(1) of the Pensions Act 2004 he has consulted with such persons as he considers appropriate.

**Marginal Citations**

**M1** S.I. 2004/3328.

**M2** 1972 c. 68.

**M3** 2004 c. 35. Section 318(1) is cited because of the meaning there given to “modifications”, “prescribed” and “regulations”.

**Citation and commencement**

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

**Interpretation**

2.—(1) In these Regulations—

“the 1995 Act” means the Pensions Act 1995 <sup>M4</sup>;

“the 2004 Act” means the Pensions Act 2004;

“actuarial valuation” has the meaning given by section 224(2)(a) of the 2004 Act;

“the actuary”, in relation to a scheme, means the actuary appointed under section 47(1)(b) of the 1995 Act (professional advisers) in relation to that scheme;

*Status: Point in time view as at 06/04/2007.*

*Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Regulatory Own Funds) Regulations 2005. (See end of Document for details)*

- “biometric risk”<sup>M5</sup> means liability risks linked to death, disability and longevity;
- “the commencement date” means 30th December 2005;
- “employer” has the meaning given by section 318(1) of the 2004 Act (general interpretation);
- “the effective date” of an actuarial valuation is the date by reference to which the assets are valued and the technical provisions and regulatory own funds requirement calculated;
- “regulatory own funds requirement” has the meaning given by regulation 3;
- “the relevant accounts” of a scheme are audited accounts for the scheme—
- (a) which comply with the requirements imposed under section 41 of the 1995 Act (provision of documents for members); and
  - (b) which are prepared for the purpose of an actuarial valuation in respect of a period ending with the effective date of the valuation;
- “the Regulator” has the meaning given by section 1 of the 2004 Act (the Pensions Regulator);
- “schedule of contributions” has the meaning given by section 227(2) of the 2004 Act (schedule of contributions);
- “the Scheme Funding Regulations” means the Occupational Pension Schemes (Scheme Funding) Regulations 2005<sup>M6</sup>;
- “statutory funding objective” has the meaning given by section 222(1) of the 2004 Act (the statutory funding objective);
- “the Taxes Act” means the Income and Corporation Taxes Act 1988<sup>M7</sup>;
- “technical provisions” has the meaning given by section 222(2) of the 2004 Act.

#### Marginal Citations

**M4** 1995 c. 26.

**M5** Under Article 6 of Directive 2003/41/EC of 3rd June 2003 on the Activities and Supervision of Institutions for Occupational Retirement Provision “biometrical risks” are defined as meaning risks linked to death, disability and longevity. There is no definition in the Directive of the term “biometric risk” which appears in Article 17 of the Directive.

**M6** S.I. 2005/3377.

**M7** 1988 c. 1.

#### Regulatory own funds requirement

3.—(1) An occupational pension scheme to which paragraph (3) applies must hold on a permanent basis additional assets above the aggregate of the scheme's technical provisions, in order to absorb discrepancies between the anticipated and actual expenses and profits of the scheme (“the regulatory own funds requirement”).

(2) The additional assets required under paragraph (1) must be—

- (a) no less than the amount calculated in accordance with regulation 4; and
- (b) free of all foreseeable liabilities.

(3) This paragraph applies to a scheme, where the scheme and not any employer in relation to that scheme—

- (a) underwrites any liability to cover against biometric risk;
- (b) guarantees an investment performance; or
- (c) guarantees a level of benefits.

(4) Where any requirement of this regulation is not complied with, section 10(3) to (9) of the 1995 Act (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to ensure compliance, as if this regulation was made under Part 1 of that Act.

#### Calculation of the amount of the regulatory own funds requirement

- 4.—(1) The amount of the regulatory own funds requirement is the aggregate of—
- (a) a sum equal to 4% of the technical provisions of the occupational pension scheme; plus
  - (b) a sum equal to 0.3% of the capital at risk for members of the scheme in respect of which the capital at risk is not a negative figure, and where the capital at risk is as calculated in paragraph (2).
- (2) For the purposes of paragraph (1)(b) “capital at risk” means—
- (a) to the extent that the benefit payable on death in respect of a member of the scheme comprises a lump sum benefit, the amount of that lump sum payable on death; and
  - (b) to the extent that the benefit payable on death comprises the purchase of an annuity, payment of a sum by instalments or any other kind of periodical payments, the present value of that benefit calculated in a way consistent with the determination of the scheme's technical provisions,

less the scheme's technical provisions in relation to those members.

(3) Where any requirement of this regulation is not complied with, section 10(3) to (9) of the 1995 Act applies to a trustee or manager who has failed to take all reasonable steps to ensure compliance, as if this regulation was made under Part 1 of that Act.

#### Modification of Part 3 of the 2004 Act and the Scheme Funding Regulations

5.—(1) Part 3 of the 2004 Act (scheme funding) shall be modified in its application to an occupational pension scheme that is subject to the regulatory own funds requirement so that it applies as if—

- (a) in section 221 of the 2004 Act (pension schemes to which Part 3 of the 2004 Act applies)—
  - (i) for “occupational pension scheme other than—” in subsection (1) there is substituted “occupational pension scheme except a scheme of a kind specified in regulation 15 of the Occupational Pension Schemes (Regulatory Own Funds) Regulations 2005”,
  - (ii) paragraphs “(a)” and “(b)” of that subsection are omitted, and
  - (iii) subsection “(2)” is omitted;
- (b) in section 224 of the 2004 Act—
  - (i) the words after “one year” in subsection “(1)(a)” are omitted,
  - (ii) for “scheme's assets and calculating its technical provisions” in subsection (2)(a) there is substituted “scheme's assets, and calculating its technical provisions and the amount of the regulatory own funds requirement”,
  - (iii) paragraphs “(c)” and “(d)” of subsection (2) are omitted,
  - (iv) the word “and” at the end of paragraph (a) of subsection (3) and paragraph (b) of that subsection are omitted, and
  - (v) the words “or report” in subsections (4), (6) and (7) and the words “or reports” in subsection (5) are omitted;
- (c) in section 226 of the 2004 Act (recovery plan)—

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- (i) for “they must, within the prescribed time—” in subsection (1) there is substituted “ they must take such steps as are necessary to ensure that the statutory funding objective is met within two years after that date. ”,
  - (ii) paragraphs (a) and (b) of that subsection are omitted, and
  - (iii) subsections (2) to (6) are omitted;
  - (d) in section 227(6)(b)(i) of the 2004 Act, for “by the end of the period specified in the recovery plan” there is substituted “ within two years after that date ”; and
  - (e) in section 231 of the 2004 Act (powers of the Regulator), the words after “ section 226 ” in subsection (1)(d) are omitted.
- (2) The Scheme Funding Regulations shall be modified in their application to an occupational pension scheme that is subject to the regulatory own funds requirement so that they apply as if—
- (a) in regulations 6(2) and (3)(a) (statement of funding principles), 7(2)(a) (actuarial valuations and reports), 9(1) and (2)(a) (schedule of contributions) and 13 (period for obtaining employer's agreement), for “15 months” there is substituted “ 12 months ”;
  - (b) regulations 7(5) and 8 (recovery plan) are omitted;
  - (c) in regulation 10 (content and certification of schedules of contributions)—
    - (i) in paragraph (2), for “five years after the date on which the schedule is certified, or in a case where—” there is substituted “ two years after the date on which the schedule is certified ”, and the words “ that longer period ” are omitted,
    - (ii) sub-paragraphs (a) and (b) of that paragraph are omitted, and
    - (iii) in paragraph (4), for the words “give effect to a recovery plan”, there is substituted “ comply with section 226 or any regulatory own funds requirement ”; and
  - (d) regulations 17 (general exemptions) and 18 (exemption connected with winding up) are omitted.

### **Certification of additional assets requirement**

**6.—**(1) If an occupational pension scheme is subject to the regulatory own funds requirement, the calculation of the amount of the regulatory own funds requirement must be certified by the actuary.

(2) An actuarial valuation of the scheme must include the actuary's certification of the calculation of the amount of the regulatory own funds requirement in the form set out in the Schedule.

(3) If the actuary cannot certify the calculation of the amount of the regulatory own funds requirement, he must report the matter in writing to the Regulator within a reasonable period after the end of the period within which the actuarial valuation must be received by the trustees or managers.

(4) Where the actuary fails to take all reasonable steps to ensure compliance with this regulation, section 10(3) to (9) of the 1995 Act applies, as if this regulation was made under Part 1 of that Act.

### **Restoration of regulatory own funds**

**7.—**(1) If, having obtained an actuarial valuation and certification of the calculation of the regulatory own funds requirement for an occupational pension scheme, it appears to the trustees or managers of that scheme that the regulatory own funds requirement was not met as at the effective date of the actuarial valuation, the trustees or managers must take such steps as are necessary to ensure that the regulatory own funds requirement is met within two years after the effective date of that valuation.

(2) The trustees or managers must send the Regulator a report of the steps to be taken under paragraph (1), within a reasonable period after having obtained the actuarial valuation and certification of the calculation of the amount of the regulatory own funds requirement.

(3) Where paragraph (1) or (2) is not complied with the Regulator may by order exercise either or both of the following powers—

- (a) it may modify the scheme as regards the future accrual of benefits;
- (b) it may impose a schedule of contributions specifying—
  - (i) the rates of contributions payable towards the scheme by or on behalf of the employer and the active members of the scheme, and
  - (ii) the dates on or before which such contributions are to be paid.

(4) Where paragraph (1) or (2) is not complied with, section 10(3) to (9) of the 1995 Act applies to a trustee or manager who has failed to take all reasonable steps to ensure compliance, as if this regulation was made under Part 1 of that Act.

#### **Certification of schedule of contributions**

**8.—**(1) If an occupational pension scheme is subject to the regulatory own funds requirement the certification of the schedule of contributions for the scheme must also include certification of the schedule of contributions in respect of the additional assets requirement in the form set out in the Schedule.

(2) Where paragraph (1) is not complied with, section 10(3) to (9) of the 1995 Act applies to a trustee or manager who has failed to take all reasonable steps to ensure compliance, as if this regulation was made under Part 1 of that Act.

#### **Statement of funding principles**

**9.** The policy of the trustees or managers of a scheme for securing that the regulatory own funds requirement in relation to the scheme is met is a prescribed matter for the purposes of section 223(1) (b) of the 2004 Act (statement of funding principles).

#### **Postponement**

**10.—**(1) If an occupational pension scheme had insufficient assets on 23rd September 2005 to comply with the regulatory own funds requirement, compliance with regulation 3(1) is postponed until 22nd September 2010 (the “postponement period”), after which date compliance with the regulatory own funds requirement cannot be further postponed.

(2) If compliance with regulation 3(1) is postponed in accordance with paragraph (1) the trustees or managers must notify the Regulator of the postponement and the postponement period within a reasonable period after the effective date of the first valuation under Part 3 of the 2004 Act.

- (3) During the postponement period a trustee or manager must not—
- (a) accept any contributions from a European employer under section 287 of the 2004 Act (occupational pension scheme receiving contributions from European employer);
  - (b) apply for authorisation by the Regulator to accept any contributions from a European employer under section 288 of the 2004 Act (general authorisation to accept contributions from European employers); or
  - (c) apply for approval by the Regulator in relation to a particular European employer under section 289 of the 2004 Act (approval in relation to a particular European employer).

(4) If at any time during the postponement period, the trustees or managers are satisfied, having taken actuarial advice, that the scheme has sufficient assets to meet the regulatory own funds

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requirement, they may resolve or determine that the regulatory own funds requirement applies to the scheme.

(5) If the trustees or managers resolve or determine in accordance with paragraph (4), that the regulatory own funds requirement applies to the scheme from a date before the expiry of the postponement period, they must, within one month of the resolution or determination, notify the Regulator of the resolution or determination and the date from which the regulatory own funds requirement applies to the scheme.

(6) If the trustees or managers resolve or determine in accordance with paragraph (4), that the regulatory own funds requirement applies to the scheme from a date before the expiry of the postponement period, they must not subsequently resolve or determine to reapply the postponement period to the scheme.

(7) Where any requirement of this regulation is not complied with, section 10(3) to (9) of the 1995 Act applies to a trustee or manager who has failed to take all reasonable steps to ensure compliance, as if this regulation was made under Part 1 of that Act.

(8) In this regulation, “European employer” has the meaning [F1 given in regulation 3 of the Occupational Pension Schemes (Cross-border Activities) Regulations 2005 (meaning of “European employer” and “host member State” in Part 7 of the Pensions Act 2004).]

F1 Words in reg. 10(8) substituted (6.4.2007) by Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2007 (S.I. 2007/814), regs. 1, 17(2)

Meaning of “European employer”

F2 11. ....

F2 Reg. 11 omitted (6.4.2007) by virtue of Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2007 (S.I. 2007/814), regs. 1, 17(3)

Scheme annual report, accounts and actuarial valuation

12.—(1) If an occupational pension scheme (other than a scheme to which paragraph (3) applies) is subject to the regulatory own funds requirement the scheme's annual report, relevant accounts and annual actuarial valuation must—

- (a) include a statement that the regulatory own funds requirement applies to the scheme;
(b) include the effective date from which the requirement applies;
(c) show the amount of the regulatory own funds requirement calculated as at the date of the scheme's last actuarial valuation; and
(d) show the amount of additional assets held by the scheme to cover the requirement.

(2) In this regulation the effective date is the date by reference to which the regulatory own funds requirement applies to a scheme.

(3) If compliance with regulation 3(1) is postponed in accordance with regulation 10(1), the scheme's annual reports, relevant accounts and annual actuarial valuation must include a statement that compliance with the regulatory own funds requirement is postponed until 22nd September 2010.

(4) Where any requirement of this regulation is not complied with, section 10(3) to (9) of the 1995 Act applies to a trustee or manager if he fails to take all reasonable steps to ensure compliance, as if this regulation was made under Part 1 of that Act.

### Improvement notices and third party notices

13. For the purposes of compliance with these Regulations, sections 13(7) (improvement notices), 14(8) (third party notices) and 90(6) (codes of practice) of the 2004 Act shall be read as if the definition of “pensions legislation” includes these Regulations.

### Registrable information

14. Whether the regulatory own funds requirement applies to the scheme and, if it applies, the date from which it applies, is prescribed registrable information for the purposes of section 60(2)(h) of the 2004 Act (registrable information).

### Exemptions

- 15.—(1) These Regulations do not apply 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<sup>M8</sup> (power to provide for pensions for Members of the House of Commons etc.);
  - (d) a scheme which is treated as such by virtue of paragraph 4 or 5 of Schedule 2 to the Scheme Funding Regulations (modifications of the 2004 Act and the Scheme Funding Regulations) and—
    - (i) in the cases described in paragraphs 4(2) and 5(2)(a) of that Schedule, applies to members in employment outside the member States, and
    - (ii) in the cases described in paragraphs 4(3) and 5(2)(b) of that Schedule, applies to members in employment outside the United Kingdom;
  - (e) a scheme which—
    - (i) provides relevant benefits,
    - (ii) is neither a relevant statutory scheme nor a tax approved scheme, nor, from 6th April 2006, a tax registered scheme, and
    - (iii) has fewer than 100 members;
  - (f) a section 615(6) scheme which has fewer than 100 members;
  - (g) a scheme which has fewer than two members;
  - (h) [<sup>F3</sup>a scheme with] fewer than 12 members, where all the members are trustees of the scheme and either—
    - (i) the provisions of the scheme provide that [<sup>F4</sup>any decision made by the trustees is] made by the unanimous agreement of the trustees who are members of the scheme, or
    - (ii) the scheme has a trustee [<sup>F5</sup>who is independent] in relation to the scheme for the purposes of section 23 of the 1995 Act<sup>M9</sup> (power to appoint independent trustees) and is registered in the register maintained by the Regulator in accordance with regulations made under subsection (4) of that section;
  - (i) [<sup>F6</sup>a scheme with] fewer than 12 members, [<sup>F7</sup>where a company is the sole trustee] of the scheme and all the members of the scheme are directors of the company and either—

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- (i) the provisions of the scheme provide that any decision made by the company in its capacity as trustee [<sup>F8</sup>is made by the unanimous agreement] of the directors who are members of the scheme, or
  - (ii) [<sup>F9</sup>one of the directors of the company] is independent in relation to the scheme for the purposes of section 23 of the 1995 Act and is registered in the register maintained by the Regulator in accordance with regulations made under subsection (4) of that section;
  - (j) a scheme which is subject to the regulatory own funds requirement merely because it provides for the payment of death benefits under the scheme, but only if the death benefits are secured by insurance policies or annuity contracts;
  - (k) a scheme which is the subject of a scheme failure notice under section 122 (insolvency practitioner's duty to issue notices confirming status of scheme) or 130 (Board's duty where application or notification received under section 129) of the 2004 Act; or
  - (l) subject to regulation 16, a scheme which is being wound up.
- (2) This regulation does not apply to a scheme of a kind referred to in paragraphs (1)(a) and (d) to (i) if it is a scheme undertaking cross-border activities.
- (3) In this regulation—
- “enactment” includes an enactment comprised in, or in an instrument under, an Act of the Scottish Parliament;
- “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<sup>M10</sup>);
  - (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;
- “relevant benefits” has the meaning given in section 612(1) of the Taxes Act<sup>M11</sup> (interpretative provisions and regulations for the purposes of Chapter 1 of Part 14 of the Taxes Act) or, from 6th April 2006, section 393B of the Income Tax (Earnings and Pensions) Act 2003<sup>M12</sup> (relevant benefits);
- “relevant statutory scheme” has the meaning given in section 611A(1) of the Taxes Act<sup>M13</sup> (definition of relevant statutory scheme);
- “section 615(6) scheme” means a scheme with such a superannuation fund as is mentioned in section 615(6) of the Taxes Act (funds for the provision of benefits in respect of employment outside the United Kingdom);
- “scheme undertaking cross-border activities” means a scheme in relation to which the trustees or managers are—
- (a) authorised under section 288 of the 2004 Act (general authorisation to accept contributions from European employers); or
  - (b) approved under section 289 of the 2004 Act in relation to a European employer;



“tax approved scheme” means a scheme which is approved or was formerly approved under section 590 or 591 of the Taxes Act <sup>M14</sup> (approval of retirement benefit schemes) or in respect of which an application for such approval has been duly made but has not been determined;

“tax registered scheme” means a scheme which from 6th April 2006 is, or is treated as, registered under Chapter 2 of Part 4 of the Finance Act 2004 (registration of pension schemes).

(4) In paragraph (3), “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 <sup>M15</sup> (constitution of councils);
- (d) an administering authority as defined in Schedule 1 to the Local Government Pension Scheme Regulations 1997 <sup>M16</sup> (interpretation).

(5) Where these Regulations cease to apply to a scheme to which they previously applied, because the scheme is of a kind referred to in paragraph (1), that does not affect any rights or obligations arising before these Regulations ceased to apply.

- F3** Words in reg. 15(1)(h) substituted (6.4.2007) by [Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/814\)](#), regs. 1, **17(4)(a)(i)**
- F4** Words in reg. 15(1)(h)(i) substituted (6.4.2007) by [Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/814\)](#), regs. 1, **17(4)(a)(ii)**
- F5** Words in reg. 15(1)(h)(ii) substituted (6.4.2007) by [Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/814\)](#), regs. 1, **17(4)(a)(iii)**
- F6** Words in reg. 15(1)(i) substituted (6.4.2007) by [Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/814\)](#), regs. 1, **17(4)(b)(i)**
- F7** Words in reg. 15(1)(i) substituted (6.4.2007) by [Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/814\)](#), regs. 1, **17(4)(b)(ii)**
- F8** Words in reg. 15(1)(i)(i) substituted (6.4.2007) by [Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/814\)](#), regs. 1, **17(4)(b)(iii)**
- F9** Words in reg. 15(1)(i)(ii) substituted (6.4.2007) by [Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/814\)](#), regs. 1, **17(4)(b)(iv)**

### Marginal Citations

- M8** 1987 c. 45.
- M9** Section 23 was substituted by section 36(3) of the Pensions Act 2004.
- M10** 1975 c. 26.
- M11** Section 612(1) is repealed from 6th April 2006 by section 326(1) of the [Finance Act 2004 \(c. 12\)](#).
- M12** 2003 c. 1. Section 393B is inserted by section 249(3) of the Finance Act 2004.
- M13** 1988 c. 1. Section 611A was inserted by paragraph 15 of Schedule 6 to the [Finance Act 1989 \(c. 26\)](#) and was amended by paragraph 5 of Schedule 5 to the [Finance Act 1999 \(c. 16\)](#). Section 611A is to be repealed by Part 3 of Schedule 42 to the Finance Act 2004 from 6th April 2006.
- M14** Section 590 was amended by paragraph 18 of Part 1 of Schedule 3 to the [Finance Act 1988 \(c. 39\)](#); paragraphs 3 and 18 of Schedule 6, and Part 4 of Schedule 17, to the Finance Act 1989; sections 34 and 36(2) of, and Part 5 of Schedule 19 to, the [Finance Act 1991 \(c. 31\)](#); paragraph 2 of Schedule 10 to the Finance Act 1999 and [S.I. 2005/723](#). Section 591 was amended by paragraph 6 of Schedule 13 to the Finance Act 1988; section 107 of, and Part 5 of Schedule 26 to, the [Finance Act 1994 \(c. 9\)](#); sections 59(2) and 60(1) of the [Finance Act 1995 \(c. 4\)](#) and paragraph 3 of Schedule 10 to the Finance Act 1999. Sections 590 and 591 are to be repealed by Part 3 of Schedule 42 to the Finance Act 2004 with effect from 6th April 2006.

*Status: Point in time view as at 06/04/2007.*

*Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Regulatory Own Funds) Regulations 2005. (See end of Document for details)*

**M15** 1994 c. 39.

**M16** S.I. 1997/1612

### Exemption connected with winding up

**16.**—(1) Where the winding up of a scheme begins on or after the commencement date, the exemption provided for in regulation 15(1)(l) is subject to the condition set out in paragraph (2).

(2) The condition referred to in paragraph (1) is that the trustees or managers of the scheme ensure that they receive, before the end of each scheme year following the scheme year in which the winding up of the scheme begins, the actuary's estimate of the solvency of the scheme as at the end of the preceding scheme year.

(3) In paragraph (2)—

“the actuary's estimate of solvency of the scheme” means—

- (a) except in the case referred to in sub-paragraph (b), an estimate by the actuary of whether, at the end of the relevant scheme year, the value of assets of the scheme to be taken into account under paragraph (1) of regulation 3 of the Scheme Funding Regulations (determination of assets and liabilities) exceeded or fell short of the sum of—
  - (i) the cost of purchasing annuities, of the type described in section 74(3)(c) of the 1995 Act<sup>M17</sup> (discharge of liability by insurance, etc.) and on terms consistent with those in the available market, which would be sufficient to satisfy the liabilities to be taken into account under paragraph (2) of that regulation, and
  - (ii) the other expenses which, in the opinion of the actuary, would be likely to be incurred in connection with the winding up of the scheme,
 and the amount of the excess or, as the case may be, the shortfall;
- (b) where the actuary considers that it is not practicable to make an estimate in accordance with sub-paragraph (a), an estimate of the solvency of the scheme at the end of the relevant scheme year made in such manner as the actuary considers appropriate in the circumstances of the case;

“scheme year” means—

- (a) either—
  - (i) a year specified for the purposes of the scheme rules in any document which contains those rules, or
  - (ii) if no such year is specified, the period of 12 months commencing on 1st April or on such date as the trustees or managers select; or
- (b) such other period (if any) exceeding six months but not exceeding 18 months as is selected by the trustees or managers in connection with—
  - (i) the commencement or termination of the scheme, or
  - (ii) a variation of the date on which the year or period referred to in sub-paragraph (a) is to commence.

### Marginal Citations

**M17** Section 74(3)(c) was amended by S.I. 2001/3649.

Signed by authority of the Secretary of State for

8th December 2005

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

**Status:** Point in time view as at 06/04/2007.

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## SCHEDULE

Regulation 6(2) and 8(1)

### ACTUARY'S CERTIFICATES

#### Form of actuary's certification of the calculation of the regulatory own funds requirement

Name of scheme

Calculation of regulatory own funds requirement

I certify that, in my opinion, the calculation of the scheme's regulatory own funds requirement as at [insert effective date of valuation on which the calculation is based] is made in accordance with the Occupational Pension Schemes (Regulatory Own Funds) Regulations 2005.

Signature:

Date:

Name:

Qualification:

Address:

Name of employer  
(if applicable):

#### Form of actuary's certification of schedule of contributions in respect of the regulatory own funds requirement

Name of scheme

Adequacy of rates of contributions

I certify that, in my opinion, the rates of contributions shown in this schedule of contributions are such that—  
the regulatory own funds requirement could have been expected on [effective date of valuation on which the schedule is based] to continue to be met for the period for which the schedule is to be in force, or

the regulatory own funds requirement could have been expected on [effective date of valuation on which the schedule is based] to be met by [a date within two years of the effective date of that valuation].

[Delete whichever option does not apply]

In forming this opinion, I have complied with the requirements imposed by the Occupational Pension Schemes (Regulatory Own Funds) Regulations 2005.

Signature:

Date:

Name:

Qualification:

Address:

Name of employer  
(if applicable):

## EXPLANATORY NOTE

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

These Regulations are made under section 2(2) of the European Communities Act 1972 (c. 68) and implement Article 17 of the European Union Directive [2003/41/EC](#) on the Activities and Supervision of Institutions for Occupational Retirement Provision (OJNo. L 235, 23.9.03, p.10) (“the Directive”).

Regulation 3 requires that where an occupational pension scheme itself, rather than an employer, covers any liability for risks linked to death, disability or longevity, guarantees any investment performance, or guarantees to provide defined benefits, the scheme must have additional assets above its technical provisions, which are no less than the minimum required under regulation 4. The additional assets must be free of foreseeable liabilities and must absorb discrepancies between anticipated and actual expenses and profits under the scheme. Regulation 3 also provides that penalties under section 10 of the Pensions Act 1995 (c. 26) (“the 1995 Act”) apply to a trustee or manager who has failed to take all reasonable steps to ensure compliance with the requirements in that regulation.

Regulation 4 provides that the minimum additional assets required (“the regulatory own funds requirement”) are 4% of the scheme's technical provisions, plus 0.3% of the amount by which the total amount which the scheme would be obliged to pay on the immediate death of all members of the scheme exceeds the technical provisions. The amount of additional assets held to cover the

regulatory own funds requirement shall be taken to be the amount shown in the scheme's annual report and accounts. Regulation 4 also provides that penalties under section 10 of the 1995 Act apply to a trustee or manager who has failed to take all reasonable steps to ensure compliance with the requirements in that regulation.

Regulation 5 modifies Part 3 of the Pensions Act 2004 (c. 35) ("the 2004 Act") and the Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377) so that where these Regulations apply an actuarial valuation of the occupational pension scheme must be carried out annually.

Regulation 6 provides that when an actuarial valuation is carried out the actuary must certify the calculation of the regulatory own funds requirement in the form set out in the Schedule to these Regulations. Any failure to do so must be reported by the actuary to the Pensions Regulator ("the Regulator"). Regulation 6 also provides that penalties under section 10 of the 1995 Act apply to an actuary who has failed to take all reasonable steps to ensure compliance with the requirements in that regulation.

Under regulation 7 if the regulatory own funds requirement was not met as at the effective date of the actuarial valuation, the trustees or managers must take such steps as are necessary to ensure that the regulatory own funds requirement is met within two years after that date. The trustees or managers must send the Regulator a report of the steps to be taken. The Regulator may modify the scheme as regards future accrual of benefits and may give directions as to the calculation of the regulatory own funds requirement. The Regulator may also impose a schedule of contributions. Penalties under section 10 of the 1995 Act apply to a trustee or manager who has failed to take all reasonable steps to ensure compliance with the requirements in that regulation.

Regulation 8 provides that certification of the schedule of contributions must be in the form set out in the Schedule to these Regulations; it also provides that penalties under section 10 of the 1995 Act apply to a trustee or manager who has failed to take all reasonable steps to ensure compliance with the requirements in that regulation.

Regulation 9 provides that the statement of funding principles for the scheme must include the policy for securing that the regulatory own funds requirement is met.

Regulation 10 provides that for those schemes with insufficient assets as at 23rd September 2005 to meet the regulatory own funds requirement, that requirement is postponed until 22nd September 2010; it also provides that a trustee or manager must not undertake cross-border activities during the postponement period. The trustees or managers must inform the Regulator of the postponement and the postponement period. If during the postponement period the scheme has sufficient assets to meet the regulatory own funds requirement the trustees or managers may resolve or determine that the requirement applies to the scheme, and if so, they must inform the Regulator. Regulation 10 also provides that penalties under section 10 of the 1995 Act apply to a trustee or manager who has failed to take all reasonable steps to ensure compliance with the requirements in that regulation.

Regulation 11 provides for interpretation under regulation 10.

Regulation 12 provides that the annual report, accounts and actuarial valuation of an occupational pension scheme which is subject to the regulatory own funds requirement must state whether the regulatory own funds requirement applies to the scheme, and the date from which it applies. If compliance is postponed until 22nd September 2010 the scheme's annual report, relevant accounts and annual actuarial valuation must include a statement to that effect. Regulation 11 also provides that penalties under section 10 of the 1995 Act apply to a trustee or manager who has failed to take all reasonable steps to ensure compliance with the requirements in the regulation.

Regulation 13 provides that sections 13(7), 14(8) and 90(1) of the 2004 Act are to be read as if the definition of "pensions legislation" includes these Regulations.

Regulation 14 provides that information as to whether the regulatory own funds requirement applies to a scheme and whether compliance has been postponed, are prescribed registrable information for the purposes of section 60(2)(h) of the 2004 Act.

Regulation 15(1) exempts certain kinds of schemes which are not undertaking cross-border activities within the European Union from the requirements of these Regulations.

**Status:** Point in time view as at 06/04/2007.

**Changes to legislation:** There are currently no known outstanding effects for the The Occupational Pension Schemes (Regulatory Own Funds) Regulations 2005. (See end of Document for details)

Regulation 16 provides for the conditions that a scheme which is winding up, where the winding up begins on or after the 30th December 2005, must satisfy for it to be exempt from the requirements in these Regulations.

The Schedule to the Regulations sets out the form of the regulatory own funds certificates for the calculation of the regulatory own funds requirement and schedule of contributions in respect of the regulatory own funds requirement.

These Regulations have only a negligible impact on the cost or savings of business. Publication of a full Regulatory Impact Assessment is not necessary for such legislation. Copies of a transposition note concerning the implementation of the Directive by these Regulations may be obtained from Private Pensions, Department for Work and Pensions, 3rd floor, Adelphi, 1-11 John Adam Street, London WC2N 6HT.

**Status:**

Point in time view as at 06/04/2007.

**Changes to legislation:**

There are currently no known outstanding effects for the The Occupational Pension Schemes (Regulatory Own Funds) Regulations 2005.