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## 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.

*Status: This is the original version (as it was originally made).*

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.

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.