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## EXPLANATORY NOTE

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

These Regulations 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 Article 10 of the Pensions (Northern Ireland) Order 1995 (“the 1995 Order”) 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 Article 10 of the 1995 Order 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 IV of the Pensions (Northern Ireland) Order 2005 (“the Order”) and the Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005 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”). It also provides that penalties under Article 10 of the 1995 Order apply to an actuary who has failed to take all reasonable steps to ensure compliance with the requirements in that regulation.

Regulation 7 provides that, 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 Article 10 of the 1995 Order 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 Article 10 of the 1995 Order 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). This item of legislation is currently only available in its original format.*

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 Article 10 of the 1995 Order 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 makes provision as to the meaning of “European employer” when that term is used in 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. It also provides that penalties under Article 10 of the 1995 Order apply to a trustee or manager who has failed to take all reasonable steps to ensure compliance with the requirements in that regulation.

Regulation 13 provides that Articles 9(7), 10(8) and 85(6) of the Order are to be read as if the definition of “pensions legislation” included 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, is prescribed registrable information for the purposes of Article 55(2)(h) of the Order.

Regulation 15 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, 30th December 2005, must satisfy for it to be exempt from the requirements in these Regulations.

The Schedule to these 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.

The Pensions (2005 Order) (Commencement No. 1 and Consequential and Transitional Provisions) Order (Northern Ireland) 2005 (S.R. 2005 No. 48 (C. 5)) provides for the coming into operation of Article 55(2)(h), one of the enabling provisions under which these Regulations are made, to be brought fully into operation on 6th April 2005. The Pensions (2005 Order) (Commencement No. 7) Order (Northern Ireland) 2005 (S.R. 2005 No. 543 (C. 37)) provides for the coming into operation of Articles 202(1)(b) and 211, some of the other enabling provisions, for the purpose only of authorising the making of regulations on 6th December 2005 and for all other purposes on 30th December 2005.

As these Regulations, in so far as they are made under the Order, make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Work and Pensions in relation to Great Britain, the requirement for consultation under Article 289(1) of the Order does not apply by virtue of paragraph (2)(e) of that Article.

The transposition of Article 17 of the Directive is detailed in a Transposition Note, a copy of which has been laid in the Business Office and the Library of the Northern Ireland Assembly. Copies of the Note are available from the Department for Social Development, Social Security Policy and Legislation Division, Level 1, James House, 2-4 Cromac Avenue, Gasworks Business Park, Ormeau Road, Belfast BT7 2JA.