

2018 No. 1103

PENSIONS

**The Occupational Pension Schemes (Governance) (Amendment)
Regulations 2018**

<i>Made</i>	- - - -	<i>22nd October 2018</i>
<i>Laid before Parliament</i>		<i>23rd October 2018</i>
<i>Coming into force</i>	- -	<i>13th January 2019</i>

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to personal and occupational pensions, makes the following Regulations in exercise of the powers conferred by section 2(2) of that Act.

Citation, commencement and interpretation

- 1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Governance) (Amendment) Regulations 2018.
- (2) These Regulations come into force on 13th January 2019.
- (3) In these Regulations “the Act” means the Pensions Act 2004.

Amendment of the Pensions Act 2004

- 2.—(1) Section 249A(c) of the Act (requirement for internal controls) is amended as follows.
- (2) In the heading, for “internal controls” substitute “an effective system of governance”.
- (3) For subsection (1) substitute—
- “(1) The trustees or managers of an occupational pension scheme must establish and operate an effective system of governance including internal controls.
- (1A) The system of governance must be proportionate to the size, nature, scale and complexity of the activities of the occupational pension scheme.”.
- (4) In subsection (2), for “internal controls” substitute “an effective system of governance including internal controls”.
- (5) In subsection (3), after paragraph (d) insert—

(a) See article 2 of the European Communities (Designation) (No. 7) Order 2004 (S.I. 2004/3328).

(b) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(c) Section 249A was inserted by S.I. 2005/3379; amended by section 40 of, and paragraph 46 of Part 3 of Schedule 6 to, the Constitutional Reform and Governance Act 2010 (c. 25) and section 17(1) of, and paragraphs 1 and 20 of Schedule 4 to, the Public Service Pensions Act 2013 (c. 25); and amended by S.I. 2009/1682.

“(e) an authorised Master Trust scheme within the meaning of Part 1 of the Pension Schemes Act 2017(a).”.

Code of practice

3.—(1) The code of practice which the Regulator issues under section 90(2) of the Act (codes of practice) in relation to the discharge of the duty imposed by section 249A(1)(b) of the Act must include the matters set out in paragraphs (2) to (8), in accordance with paragraphs (9) and (10).

(2) The effective system of governance(c), including—

- (a) how it provides for sound and prudent management of activities;
- (b) how it includes an adequate and transparent organisational structure with a clear allocation and appropriate segregation of responsibilities;
- (c) how it includes an effective system for ensuring transmission of information;
- (d) how it includes an effective internal control system;
- (e) how it ensures continuity and regularity in the performance of its activities, including the development of contingency plans;
- (f) how it includes consideration of environmental, social and governance factors related to investment assets in investment decisions;
- (g) how it is subject to regular internal review.

(3) The following key functions in the occupational pension scheme—

- (a) the risk-management function;
- (b) the function which internally evaluates adequacy and effectiveness of the system of governance; and
- (c) the actuarial function.

(4) Outsourcing of activities.

(5) Written policies in relation to the matters in paragraphs (3) and (4).

(6) The prior approval of the written policies in paragraph (5) by the trustees or managers of the occupational pension scheme, and the review of those policies at least every three years.

(7) Remuneration policies.

(8) The carrying out and documentation of an own-risk assessment of the system of governance by the trustees or managers of the occupational pension scheme, including—

- (a) how the trustees or managers integrate the own-risk assessment into the occupational pension scheme’s management and decision-making processes;
- (b) how the trustees or managers assess the effectiveness of the risk-management system;
- (c) how the trustees or managers prevent conflicts of interest with the employer, where the occupational pension scheme outsources key functions to the same person as the employer or to any person employed by the employer;
- (d) how the trustees or managers assess the occupational pension scheme’s funding needs, with reference to the recovery plan where applicable;
- (e) how the trustees or managers assess the risk to members and beneficiaries relating to the paying out of their benefits and the effectiveness of any remedial action taking into account, where applicable—

(a) 2017 c. 17.

(b) Subsection (1) of section 249A of the Pensions Act 2004 is substituted by regulation 2(3) of these Regulations. The discharge of the duty imposed by section 249A(1) is already a prescribed matter for the purposes of section 90(2)(k) of the Pensions Act 2004 under regulation 3 of the Occupational Pension Schemes (Internal Controls) Regulations 2005 (S.I. 2005/3379).

(c) See subsection (1) of section 249A of the Pensions Act 2004 as substituted by regulation 2(3) of these Regulations.

- (i) indexation mechanisms;
- (ii) benefit reduction mechanisms, including the extent to which accrued pension benefits can be reduced, under which conditions and by whom;
- (f) how the trustees or managers assess the mechanisms protecting retirement benefits, including, as applicable, guarantees, covenants or any other type of financial support by the employer, insurance or reinsurance, or coverage by a pension protection scheme;
- (g) how the trustees or managers assess the operational risks;
- (h) where environmental, social and governance factors are considered in investment decisions, how the trustees or managers assess new or emerging risks, including—
 - (i) risks relating to climate change, the use of resources and the environment;
 - (ii) social risks; and
 - (iii) risks relating to the depreciation of assets as a result of regulatory change;
- (i) the timing of the documentation of the occupational pension scheme’s first own-risk assessment, which must be prepared—
 - (i) within 12 months beginning with the last day of the first scheme year that begins after the Regulator has issued a code of practice referred to in paragraph (1); or
 - (ii) if later—
 - (aa) within 15 months beginning with the date on which the trustees or managers of the occupational pension scheme are next required to obtain an actuarial valuation in accordance with section 224 (actuarial valuations and reports) of the Act; or
 - (bb) by the date on which the trustees or managers of the occupational pension scheme are next required to prepare an annual statement in accordance with regulation 23 (annual statement regarding governance) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996(a);
 - (j) the timing for subsequent own-risk assessments, which must be prepared at intervals of not more than three years.
- (9) Paragraphs (2) to (8) apply to an occupational pension scheme which has 100 members or more.
- (10) Paragraph (2) applies to an occupational pension scheme which has 99 members or fewer.

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

Guy Opperman
Parliamentary Under Secretary of State
Department for Work and Pensions

22nd October 2018

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the requirements relating to conditions governing activities under Title III of the European Union Directive on the activities and supervision of institutions for occupational retirement provision (Directive (EU) 2016/2341) (OJ No. L 354, 23.12.2016, p.37) (“the Directive”).

Regulation 2 amends section 249A of the Pensions Act 2004 (c. 35) (“the Act”) by substituting new subsections (1) and (1A). New subsection (1) imposes a duty on the trustees or managers of an occupational pension scheme to establish and operate an effective system of governance

(a) S.I. 1996/1715; regulation 23 was inserted by S.I. 2015/879; there are amendments which are not relevant to these Regulations.

including internal controls. New subsection (1A) requires that system to be proportionate to the size, nature, scale and complexity of the activities of the occupational pension scheme.

Regulation 3 sets out the matters to be included in the code of practice which the Pensions Regulator issues under section 90(2) of the Act in relation to the duty imposed by section 249A(1) of the Act.

Another set of Regulations, the Occupational Pension Schemes (Cross-border Activities) (Amendment) Regulations 2018 (S.I. 2018/1102) also implement the Directive.

An assessment of the impact of these Regulations on business, charities and the voluntary sector has been made and is published with the Explanatory Memorandum and Transposition Note which are available alongside these Regulations on www.legislation.gov.uk. Copies may be obtained from the Better Regulation Unit of the Department for Work and Pensions, Caxton House, Tothill Street, London SW1 9NA.

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