EXPLANATORY MEMORANDUM TO

THE PENSION SCHEMES (CATEGORIES) REGULATIONS 2005

2005 No.

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These regulations clarify that certain pension schemes that are currently classified as occupational pension schemes or personal pension schemes retain that classification under the new definitions of occupational pension scheme and personal pension scheme introduced by section 239 of the Pensions Act 2004.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 Section 239 of the Pensions Act 2004 substitutes new definitions of occupational and personal pension schemes into section 1 of the Pensions Schemes Act 1993.

4.2 The amended definition of "occupational pension scheme" contains powers to prescribe pension schemes as occupational pension schemes. This power is being used for first time in regulation 2 to ensure that schemes that are currently classified as occupational pension schemes continue to be so classified.

4.3 Regulation 3 makes clear that a trust based stakeholder pension scheme, as described, will continue to be classified as a personal pension scheme under the substituted section 1 definitions. This regulation is made using the power in Section 8(2) of the Welfare Reform and Pensions Act 1999 which is being used for the first time.

4.4 These regulations will come into force on 22nd September 2005.

5. Extent

5.1 This instrument applies to England, Wales and Scotland under section 323(1) of the Act.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The new definition of occupational pension scheme is consequential to the simplifications in the Finance Act 2004 and to ensure compliance with the European Directive on the Activities and Supervision of Institutions for occupational retirement provision (2003/41/EC).

7.2 These new definitions are needed because under the simplified tax regime introduced by the Finance Act 2004, which comes into force on 6 April 2006, the HM Revenue and Customs provisions will no longer distinguish between occupational and personal pensions. Therefore a clear distinction needs to be made in pensions legislation to ensure that occupational pension schemes are regulated by the Pensions Regulator.

7.3 Consultation was undertaken on these Regulations during April and May. There were seven responses. Responses were mainly about technical issues in the draft regulations rather than issues of policy.

8. Impact

8.1 The assessment of the impact on business, charities and the voluntary sector of the provisions in these regulations has been carried out in the Regulatory Impact Assessment that accompanied the Act. This instrument has no impact.

8.2 There is no impact on the public sector.

9. Contact

Dave Nicks at the Department for Work and Pensions, tel: 020 7962 8564 or email: Dave.Nicks@dwp.gsi.gov.uk can answer any queries regarding this instrument.