

Governance and rule changes

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Overview

- Is there one concept of “governance”?
- Internal controls and risk management
- Key risks
- Trustee powers
- Section 251 Pensions Act 2004
- RPI to CPI



Governance

- Section 249A Pensions Act 2004 - requirement for internal controls
- The Occupational Pension Schemes (Internal Controls) Regulations 2005
- The Pensions Regulator
 - Codes of Practice
 - statements
 - consultations and reports



The Pensions Regulator

■ November 2009

- Occupational pension scheme governance (a report on the 2009 scheme governance survey)
- Good governance – keeping pensions safe (a statement to scheme trustees)

■ December 2009

- Consultation on revised guidance on internal controls

■ Regulatory Code of Practice No. 9 – Internal Controls



Internal controls and risk management

- Regular risk assessment exercises
- Understand the importance of adequate internal controls
 - awareness of fiduciary obligations to beneficiaries
 - formal procedures:
 - documented controls
 - risk register
 - policies

Internal controls and risk management

■ Identify risks

- regular consideration of nature and extent of internal and external risks

■ Evaluate and assess impact of risks

- develop process, consider impact and probability

■ Manage risk

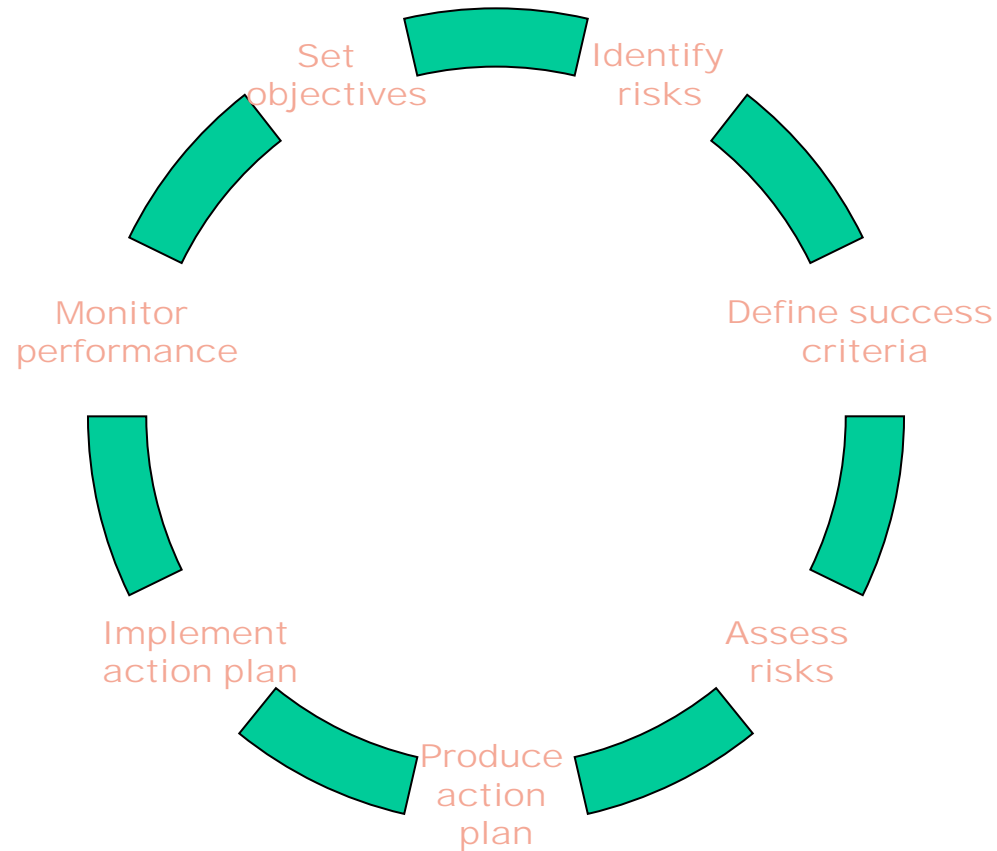
- ensure sufficiency of internal controls
- recognise that internal controls do not eliminate risk

Internal controls and risk management

■ Effective monitoring of controls

- regularly monitor effectiveness of internal controls
- ensure controls kept up to date

The scheme risk management cycle





Key Risks

- Lack of knowledge and understanding
- Conflicts of interest
- Adviser relationships
- Poor record keeping
- Employer covenant
- Investment risk
- Ineffective retirement process

Rule changes and trustee powers

- Trustee considerations
- Scope of power
- Trustee role
- Formalities
- Statutory requirements



Trustee considerations

- What should Trustees consider when asked to exercise their power of amendment?



Scope of power

- Limitations
- Construction
- Draftsman's intention?



Trustee role

- Trustees are fiduciaries
 - proper purpose
 - relevant considerations



Formalities

- Deed or written resolution
- Written evidence of consent
- Any other requirements?



Statutory requirements

- Section 67 Pensions Act 1995
 - what does this protect?
- Section 91 Pensions Act 1995



Section 251 Pensions Act 2004

- From 6 April 2011: certain restrictions on payments to employers
- Resolution must be in interests of the members
- Procedure:
 - pass initial resolution
 - 3 months' notice to members and participating employers
 - pass section 251 resolution
- Power to make resolution may only be exercised once
- Must be exercised before 6 April 2011



From RPI to CPI

- Coalition Government policy:
 - CPI will replace RPI
 - detail unknown
- Statement by the Pensions Regulator – July 2010



Problems with the policy?

■ Example one:

- *“pensions in payment will increase in accordance with legislation”*

■ Example two:

- *“pensions in payment will increase in accordance with the retail prices index”*

■ Example three:

- *“pensions in payment will increase by reference to the Index”*
- *“Index” means “such index as the Trustees may adopt from time to time”*

Conclusions



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