

*This draft Statutory Instrument supersedes the draft of the same title which was laid before Parliament and published on 24th October 2018 (ISBN 978-0-11-117377-0). It is being issued free of charge to all known recipients of that draft Statutory Instrument.*

*Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.*

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## DRAFT STATUTORY INSTRUMENTS

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**2018 No. \*\*\***

# **EXITING THE EUROPEAN UNION PENSIONS**

## **The Occupational and Personal Pension Schemes (Amendment etc.) (EU Exit) Regulations 2018**

*Made* - - - - **\*\*\***

*Coming into force in accordance with regulation 1*

The Secretary of State for Work and Pensions makes these Regulations in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018(1).

In accordance with paragraph 1(1) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

### **PART 1**

#### **Introduction**

##### **Citation and commencement**

**1.** These Regulations may be cited as the Occupational and Personal Pension Schemes (Amendment etc.) (EU Exit) Regulations 2018 and come into force on exit day.

## PART 2

### Amendment of primary legislation

#### Amendment of the Pension Schemes Act 1993

2.—(1) The Pension Schemes Act 1993(2) is amended as follows.

(2) In section 1 (categories of pension schemes)(3), in subsection (1), in the definition of “occupational pension scheme” omit paragraph (b) and the “and” before it.

(3) In section 19 (discharge of liability where guaranteed minimum pensions secured by insurance policies or annuity contracts)(4), in subsection (4)(a)(i) omit “or any other EEA State”.

(4) In section 149 (procedure on an investigation)(5), in subsection (6)—

(a) in paragraph (l), omit “, EEA central counterparty” and “, EEA CSD”, and

(b) in paragraph (n), omit “other than the United Kingdom”.

(5) In section 158A (other disclosures by the Secretary of State)(6), in the table in subsection (1), in the entry beginning “A recognised investment exchange”—

(a) in column 1 omit “, EEA central counterparty” and “, EEA CSD”, and

(b) in column 2, for the words from “or central securities depository” to the end of the entry substitute “, central securities depository or central counterparty”.

(6) In section 165 (application of certain provisions to cases with foreign element)(7), in subsection (7), for “territory of the member States” substitute “United Kingdom”.

(7) In section 180A (insurer and long-term insurance business)(8), in subsection (1) omit paragraph (b) and the “or” before it.

#### Amendment of the Pensions Act 1995

3.—(1) The Pensions Act 1995(9) is amended as follows.

(2) In section 49 (other responsibilities of trustees, employers, etc), in subsection (8A)—

(a) omit paragraph (b), and

(b) in paragraph (c), omit the words after “Bank of England”.

#### Amendment of the Welfare Reform and Pensions Act 1999

4.—(1) The Welfare Reform and Pensions Act 1999(10) is amended as follows.

(2) In Schedule 5 (pension credits: mode of discharge), in paragraph 6(2)(a), omit “or any other EEA state”.

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(2) 1993 c. 48.

(3) Section 1 was amended by section 239 of the Pensions Act 2004 (c. 35) and S.I. 2007/3014.

(4) Section 19 was amended by S.I. 2001/3649, 2007/3014.

(5) Section 149 was amended by section 159(1) of the Pensions Act 1995 (c. 26), and paragraph 25(b) of Schedule 12 to the Pensions Act 2004 (c. 35), and S.I. 2001/3649, 2013/504, 2017/1064.

(6) Section 158A was inserted by paragraph 9 of Schedule 6 to the Pensions Act 1995 (c. 26) and amended by S.I. 2001/3649, 2017/1064.

(7) Section 165 was amended by paragraph 61(4)(a) of Schedule 1 to the Employment Rights Act 1996 (c. 18) and S.I. 2018/26.

(8) Section 180A was inserted by S.I. 2001/3649 and amended by paragraph 78(4) of Schedule 18 to the Financial Services Act 2012 (c. 21).

(9) 1995 c. 26; subsection (8A) of section 49 was inserted by S.I. 2001/3649 and amended by S.I. 2007/3014.

(10) 1999 c. 30; paragraph 6 of Schedule 5 was amended by S.I. 2001/3649, 2007/3014.

### **Amendment of the Pensions Act 2004**

- 5.—(1) The Pensions Act 2004(11) is amended as follows.
- (2) In section 73 (inspection of premises), in subsection (2)(a), in the list of provisions—
- (a) in the parenthetical description of section 253, for “non-European” substitute “non-UK”, and
  - (b) omit “Part 7 (cross-border activities within European Union);”.
- (3) In section 87 (other permitted disclosures), in subsection (2)(h)(12), for “an EU obligation” substitute “retained EU law”.
- (4) In section 115 (borrowing), in subsection (3)(13), in the definition of “deposit-taker” omit paragraph (b) and the “or” before it.
- (5) In section 201 (other permitted disclosures), in subsection (2)(g)(14), for “an EU obligation” substitute “retained EU law”.
- (6) In section 249A (requirement for internal controls)(15), omit subsection (4).
- (7) In section 253 (non-European scheme to be trust with UK-resident trustee)(16)—
- (a) in the heading, for “Non-European” substitute “Non-UK”, and
  - (b) in subsections (1) and (6), for “EEA states” substitute “United Kingdom”.
- (8) In section 254 (representative of non-European scheme to be treated as trustee)(17)—
- (a) in the heading, for “non-European” substitute “non-UK”, and
  - (b) in subsection (1), for “EEA states” substitute “United Kingdom”.
- (9) Omit Part 7 (cross-border activities within European Union).
- (10) In section 307(2) (modification of this Act in relation to certain categories of schemes) omit paragraph (f) and the “and” before it.
- (11) In Schedule 3 (restricted information held by the Regulator) and Schedule 8 (restricted information held by the Board)(18), in the entry in the table relating to a recognised investment exchange, in the first column omit “, EEA CSD” and “, EEA central counterparty”.

### **Amendment of the Pensions Act 2008**

- 6.—(1) The Pensions Act 2008(19) is amended as follows.
- (2) In section 18 (occupational pension schemes)—
- (a) omit paragraph (b), and
  - (b) in paragraph (c), for “an EEA State” substitute “the United Kingdom”.
- (3) In section 99 (interpretation of Part 1), omit the definition of the “IORP Directive”.

### **Amendment of the Pension Schemes Act 2015**

- 7.—(1) The Pension Schemes Act 2015(20) is amended as follows.

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(11) 2004 c. 35.

(12) Subsection (2) was amended by S.I. 2011/1043.

(13) Subsection (3) was amended by paragraph 104(2) of Schedule 18 to the Financial Services Act 2012 (c. 21).

(14) Subsection (2) was amended by S.I. 2011/1043.

(15) Subsection 249A was inserted by S.I. 2005/3379.

(16) Section 253 was amended by S.I. 2007/3014.

(17) Section 254 was amended by S.I. 2007/3014.

(18) Schedules 3 and 8 were amended by S.I. 2013/504, 2017/1064.

(19) 2008 c. 30.

(20) 2015 c. 8; section 42 is yet to be appointed.

(2) In section 42 (regulatory own fund schemes exempt from indexation), in subsection (3), for inserted subsections (9) and (10) substitute—

“(9) In subsection (1)(a)(ii) “regulatory own fund scheme” means a scheme where the scheme and not any employer in relation to that scheme—

- (a) underwrites any liability to cover against biometric risk;
- (b) guarantees an investment performance; or
- (c) guarantees a level of benefits.

(10) In subsection (9)—

“biometric risk” means liability risks linked to death, disability and longevity;

“employer” has the meaning given by section 318(1) of the Pensions Act 2004.”.

## PART 3

### Amendment of secondary legislation

#### **Amendment of the Occupational Pension Schemes (Contracting-out) Regulations 1996**

**8.**—(1) The Occupational Pension Schemes (Contracting-out) Regulations 1996(**21**) are amended as follows.

(2) In regulation 1(2), in the definition of “overseas scheme”, for “EEA states” substitute “United Kingdom”.

#### **Amendment of the Contracting-out (Transfer and Transfer Payment) Regulations 1996**

**9.**—(1) The Contracting-out (Transfer and Transfer Payment) Regulations 1996(**22**) are amended as follows.

(2) In regulation 1(2), in the definition of “overseas scheme”—

- (a) in paragraph (a), for “EEA states” substitute “United Kingdom”;
- (b) omit paragraph (b) and the “or” before it.

#### **Amendment of the Occupational Pension Schemes (Scheme Administration) Regulations 1996**

**10.**—(1) The Occupational Pension Schemes (Scheme Administration) Regulations 1996(**23**) are amended as follows.

(2) In regulation 1(2), in the definition of “qualifying insurance policy” omit paragraph (b) and the “or” before it.

(3) In regulation 11—

- (a) in paragraph (3)(a) omit “or the central bank of another EEA State”;
- (b) omit paragraph 4(a).

(4) In regulation 15, omit paragraph (2)(a)(ii) and the “or” before it.

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(21) S.I. 1996/1172; amended by S.I. 2007/814, 2007/3014, 2011/1245, 2015/1677; there are other amending instruments but none is relevant.

(22) S.I. 1996/1462; amended by S.I. 2007/814, 2007/3014, 2016/200; there are other amending instruments but none is relevant.

(23) S.I. 1996/1715; amended by S.I. 2006/778, 2015/575; there are other amending instruments but none is relevant.

### **Amendment of the Occupational Pension Schemes (Winding Up) Regulations 1996**

**11.**—(1) The Occupational Pension Schemes (Winding Up) Regulations 1996(24) are amended as follows.

(2) In regulation 10, omit paragraph (1)(d).

### **Amendment of the Occupational Pension Schemes (Discharge of Liability) Regulations 1997**

**12.**—(1) The Occupational Pension Schemes (Discharge of Liability) Regulations 1997(25) are amended as follows.

(2) In regulation 2—

(a) omit paragraph (1)(b) and the “or” before it;

(b) in paragraph (2), for “Sub-paragraphs (a) and (b)” substitute “Sub-paragraph (a)”.

### **Amendment of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000**

**13.**—(1) The Pension Sharing (Implementation and Discharge of Liability) Regulations 2000(26) are amended as follows.

(2) In regulation 11—

(a) omit paragraph (1)(b) and the “or” before it;

(b) in paragraph (2), omit “and (b)”.

### **Amendment of the Pension Sharing (Pension Credit Benefit) Regulations 2000**

**14.**—(1) The Pension Sharing (Pension Credit Benefit) Regulations 2000(27) are amended as follows.

(2) In regulation 5—

(a) omit paragraph (3)(b) and the “or” before it;

(b) in the opening words of paragraph (4), omit “and (b)”.

### **Amendment of the Stakeholder Pension Schemes Regulations 2000**

**15.**—(1) The Stakeholder Pension Schemes Regulations 2000(28) are amended as follows.

(2) In regulation 1(3), in the definition of “insurer” omit paragraph (b) and the “or” before it.

### **Amendment of the Register of Occupational and Personal Pension Schemes Regulations 2005**

**16.**—(1) The Register of Occupational and Personal Pension Schemes Regulations 2005(29) are amended as follows.

(2) In regulation 1(4), omit the definition of “scheme undertaking cross-border activities”.

(3) In regulation 2(1), omit sub-paragraph (c) and the “or” before it.

(4) In regulation 3(1), omit sub-paragraph (j) and the “and” before it.

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(24) S.I. 1996/3126; amended by S.I. 2006/467; there are other amending instruments but none is relevant.

(25) S.I. 1997/784; amended by S.I. 2001/3649; there are other amending instruments but none is relevant.

(26) S.I. 2000/1053; amended by S.I. 2001/3649; there are other amending instruments but none is relevant.

(27) S.I. 2000/1054; amended by S.I. 2001/3649; there are other amending instruments but none is relevant.

(28) S.I. 2000/1403; amended by S.I. 2001/3649; there are other amending instruments but none is relevant.

(29) S.I. 2005/597; amended by S.I. 2006/467, 2018/1102; there are other amending instruments but none is relevant.

### **Amendment of the Pension Protection Fund (Appointment of Ordinary Members) Regulations 2005**

17.—(1) The Pension Protection Fund (Appointment of Ordinary Members) Regulations 2005(30) are amended as follows.

(2) In Schedule 1, in paragraph 14(c) omit “members of the European Parliament,”.

### **Amendment of the Occupational and Personal Pension Schemes (General Levy) Regulations 2005**

18.—(1) The Occupational and Personal Pension Schemes (General Levy) Regulations 2005(31) are amended as follows.

(2) In regulation 2(1), omit the definition of “cross-border section 615 scheme”.

(3) In regulation 3(1), omit “, other than such a scheme which is a cross-border section 615 scheme,”.

### **Amendment of the Occupational Pension Schemes (Employer Debt) Regulations 2005**

19.—(1) The Occupational Pension Schemes (Employer Debt) Regulations 2005(32) are amended as follows.

(2) In regulation 4(1), omit sub-paragraph (g)(ii) and the “and” before it.

### **Amendment of the Occupational Pension Schemes (Winding up etc.) Regulations 2005**

20.—(1) The Occupational Pension Schemes (Winding up etc.) Regulations 2005(33) are amended as follows.

(2) In regulation 3(1), omit sub-paragraph (h)(ii) and the “and” before it.

### **Amendment of the Pension Protection Fund (PPF Ombudsman) Order 2005**

21.—(1) The Pension Protection Fund (PPF Ombudsman) Order 2005(34) is amended as follows.

(2) In Article 7(2)(j), omit “, an EEA central counterparty” and “, an EEA CSD”.

### **Amendment of the Pensions Regulator (Contribution Notices and Restoration Orders) Regulations 2005**

22.—(1) The Pensions Regulator (Contribution Notices and Restoration Orders) Regulations 2005(35) are amended as follows.

(2) In regulation 3(1), omit sub-paragraph (i)(ii) and the “and” before it.

### **Amendment of the Financial Assistance Scheme Regulations 2005**

23.—(1) The Financial Assistance Scheme Regulations 2005(36) are amended as follows.

(2) In regulation 2(3), omit sub-paragraph (b) and the “or” before it.

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(30) [S.I. 2005/616](#).

(31) [S.I. 2005/626](#); amended by [S.I. 2006/467](#); there are other amending instruments but none is relevant.

(32) [S.I. 2005/678](#); amended by [S.I. 2006/467](#); there are other amending instruments but none is relevant.

(33) [S.I. 2005/706](#); amended by [S.I. 2006/467](#); there are other amending instruments but none is relevant.

(34) [S.I. 2005/824](#); amended by [S.I. 2013/504](#), [2017/1064](#); there are other amending instruments but none is relevant.

(35) [S.I. 2005/931](#); amended by [S.I. 2006/467](#); there are other amending instruments but none is relevant.

(36) [S.I. 2005/1986](#), to which there are amendments not relevant to these Regulations.

### **Amendment of the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005**

**24.**—(1) The Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005(37) are amended as follows.

(2) In regulation 2(2), omit sub-paragraph (b) and the “or” before it.

### **Amendment of the Occupational Pension Schemes (Trust and Retirement Benefits Exemption) Regulations 2005**

**25.**—(1) The Occupational Pension Schemes (Trust and Retirement Benefits Exemption) Regulations 2005(38) are amended as follows.

(2) In regulation 1(2), omit the definition of “scheme undertaking cross-border activities”.

(3) Omit regulation 1A.

### **Amendment of the Pension Schemes (Categories) Regulations 2005**

**26.**—(1) The Pension Schemes (Categories) Regulations 2005(39) are amended as follows.

(2) In regulation 2, omit paragraph (2)(b) but not the final “and”.

### **Amendment of the Financial Assistance Scheme (Appeals) Regulations 2005**

**27.**—(1) The Financial Assistance Scheme (Appeals) Regulations 2005(40) are amended as follows.

(2) In regulation 28(3)(k), omit “, EEA central counterparty”, and “, EEA CSD”.

### **Amendment of the Occupational Pension Schemes (Scheme Funding) Regulations 2005**

**28.**—(1) The Occupational Pension Schemes (Scheme Funding) Regulations 2005(41) are amended as follows.

(2) For regulation 17(1)(d), substitute—

“(d) a scheme which is treated as such by virtue of paragraph 4 or 5 of Schedule 2 to these Regulations and applies to members in employment outside the United Kingdom;”.

(3) In Schedule 2—

(a) in paragraph 4, in sub-paragraphs (2)(b) and (d)(i) and (3)(a), for “EEA states” in each place where it occurs substitute “United Kingdom”;

(b) omit paragraph 6 (schemes undertaking cross-border activities).

### **Amendment of the Occupational Pension Schemes (Investment) Regulations 2005**

**29.**—(1) The Occupational Pension Schemes (Investment) Regulations 2005(42) are amended as follows.

(2) In regulation 1(2)—

(a) in the definition of “qualifying insurance policy”, omit paragraph (b) and the “or” before it;

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(37) S.I. 2005/2189, to which there are amendments not relevant to these Regulations.

(38) S.I. 2005/2360; amended by S.I. 2005/3381.

(39) S.I. 2005/2401; amended by S.I. 2007/3014; there are other amending instruments but none is relevant.

(40) S.I. 2005/3273; amended by S.I. 2013/504; there are other amending instruments but none is relevant.

(41) S.I. 2005/3377; amended by S.I. 2007/3014; there are other amending instruments but none is relevant.

(42) S.I. 2005/3378; amended by S.I. 2009/615, 2015/575, 2017/701; there are other amending instruments but none is relevant.



- (b) omit the definition of “scheme undertaking cross-border activities”.
- (3) In regulation 4(11)—
  - (a) in the definition of “derivative instrument”, for the words from “of Section C” to “financial instruments” substitute “of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(43)</sup>”;
  - (b) in the definition of “regulated market”—
    - (i) omit paragraph (a);
    - (ii) for paragraph (b) substitute the following—
      - “(b) a UK regulated market or an EU regulated market within the meaning of Article 2.1.13A and 2.1.13B respectively of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments; or”.
- (4) In regulation 15A, omit paragraph (2)(b) but not the final “or”.
- (5) Omit regulation 17.

#### **Amendment of the Occupational Pension Schemes (Regulatory Own Funds) Regulations 2005**

**30.**—(1) The Occupational Pension Schemes (Regulatory Own Funds) Regulations 2005<sup>(44)</sup> are amended as follows.

- (2) In regulation 10, omit paragraphs (3) and (8).
- (3) In regulation 15—
  - (a) in paragraph (1)(d)—
    - (i) omit paragraph (i);
    - (ii) in paragraph (ii), for “paragraphs 4(3) and 5(2)(b)” substitute “paragraphs 4(2) and (3) and 5(2)(a) and (b)”;
  - (b) omit paragraph (2);
  - (c) in paragraph (3), omit the definition of “scheme undertaking cross-border activities”.

#### **Amendment of the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006**

**31.**—(1) The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006<sup>(45)</sup> are amended as follows.

- (2) In regulation 4(1), in sub-paragraph (e), for “EEA states” substitute “United Kingdom”.

#### **Amendment of the Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 2006**

**32.**—(1) The Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 2006<sup>(46)</sup> are amended as follows.

- (2) In regulation 1(2), in the definition of “insurer” omit paragraph (b) and the “or” before it.

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<sup>(43)</sup> S.I. 2001/544; amended by S.I. 2006/3384, 2017/488.

<sup>(44)</sup> S.I. 2005/3380; amended by S.I. 2007/814, 2007/3014; there are other amending instruments but none is relevant.

<sup>(45)</sup> S.I. 2006/349; amended by S.I. 2007/3014; there are other amending instruments but none is relevant.

<sup>(46)</sup> S.I. 2006/714, to which there are amendments not relevant to these Regulations.



### **Amendment of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010**

**33.**—(1) The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010<sup>(47)</sup> are amended as follows.

(2) In regulation 32E, in paragraph (1), omit the words “or which is an occupational pension scheme within section 18(b) of the Act.”.

(3) Omit regulation 32J.

(4) In regulation 35—

(a) in paragraph (1)(a)(i), omit “or (b)”;

(b) omit paragraph (1)(b) together with the final “and”;

(c) in paragraph (2), for the definition of “competent authority” substitute—

““competent authority” means the Financial Conduct Authority or the Pensions Regulator;”.

(5) In regulation 39, omit paragraph (7)(a).

(6) In regulation 44, in the heading and the body of the regulation, for “EEA States” substitute “United Kingdom”.

(7) In regulation 45—

(a) in paragraphs (1) to (5) and (7), for “18(b) or (c)” substitute “18(c)”;

(b) in paragraphs (1), (3) and (7), omit sub-paragraph (b) and the “or” before it.

(8) In regulation 46, omit paragraph (b) and the “or” before it.

### **Amendment of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013**

**34.**—(1) The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013<sup>(48)</sup> are amended as follows.

(2) In Schedule 1 (description of schemes), omit paragraph 1(2)(c) but not the final “or”.

### **Amendment of the Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014**

**35.**—(1) The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014<sup>(49)</sup> are amended as follows.

(2) Omit Part 18 (cross-border schemes).

### **Amendment of the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015**

**36.**—(1) The Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015<sup>(50)</sup> are amended as follows.

(2) In regulation 6(2), for “EEA states” substitute “United Kingdom”.

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<sup>(47)</sup> [S.I. 2010/772](#); amended by [S.I. 2012/1257](#), [2013/3115](#), [2015/501](#), [2015/575](#), [2017/701](#); there are other amending instruments but none is relevant.

<sup>(48)</sup> [S.I. 2013/2734](#), to which there are amendments not relevant to these Regulations.

<sup>(49)</sup> [S.I. 2014/1711](#).

<sup>(50)</sup> [S.I. 2015/1677](#), to which there are amendments not relevant to these Regulations.

## PART 4

### Revocation of secondary legislation

**37.** The Occupational Pension Schemes (Cross-Border Activities) Regulations 2005(**51**) are revoked.

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

Date

*Name*  
Parliamentary Under Secretary of State  
Department for Work and Pensions

## EXPLANATORY NOTE

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

These Regulations are made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under paragraphs (a), (c), (d), (e), and (g) of subsection (2)) arising from the withdrawal of the UK from the European Union.

These Regulations amend legislation in the field of occupational and personal pension schemes. Part 2 amends primary legislation, Part 3 amends secondary legislation, and Part 4 revokes secondary legislation.

No impact assessment has been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.