

EXPLANATORY MEMORANDUM TO
THE OCCUPATIONAL PENSION SCHEMES (GOVERNANCE) (AMENDMENT)
REGULATIONS 2018

2018 No. 1103

1. Introduction

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

2. Purpose of the instrument

- 2.1 European Union (EU) Directive 2016/2341¹ on the activities and supervision of institutions for occupational retirement provision (IORPS), (commonly known as “IORP II”) must be transposed by the UK on 13 January 2019. This instrument will implement those articles in IORP II which relate to workplace pension scheme governance into UK law.
- 2.2 IORP II is a recast of the Directive 2003/41/EC², commonly known as “IORP I”, on the same subject matter and this instrument makes further provision in addition to the existing implementation done under the first Directive.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Great Britain.
- 4.2 The territorial application of this instrument is Great Britain.
- 4.3 Northern Ireland will make separate parallel provisions.

5. European Convention on Human Rights

- 5.1 The Minister for Pensions and Financial Inclusion, Guy Opperman has made the following statement regarding Human Rights:

“In my view the provisions of the Occupational Pension Schemes (Governance) (Amendment) Regulations 2018 are compatible with the Convention rights.”

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L2341>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1538742399669&uri=CELEX:02003L0041-20130620>

6. Legislative Context

- 6.1 Until the UK withdraws from the EU, it remains a full member and all the rights and obligations of EU membership remain in force. The Directive has a transposition deadline of 13 January 2019. As the UK will still be a member of the EU at this time it has committed to implement the directive into UK law.
- 6.2 This instrument will transpose the new scheme governance requirements from IORP II into the Pensions Act 2004³ using the power under section 2(2) of the European Communities Act 1972⁴.
- 6.3 The instrument amends primary legislation.
- 6.4 IORP II is a ‘recast’, or revision, of the IORP I Directive. The recast Directive places greater emphasis on effective corporate governance for pension scheme trustees.

7. Policy background

What is being done and why?

- 7.1 IORP I’s occupational pension scheme governance requirements were implemented in 2005. Article 14(1) of IORP I required national regulators to ensure IORPs have sound administrative and accounting procedures, and adequate internal control mechanisms. This was implemented by the insertion of section 249A into the Pensions Act 2004.
- 7.2 Internal controls are the systems and processes put in place by those running an occupational pensions scheme to make sure that the administration of the scheme operates adequately and in accordance with the law.
- 7.3 IORP II places more emphasis on scheme governance than IORP I, and therefore represents a position closer to the UK’s and which is aligned with UK domestic policy priorities⁵. Scheme governance requirements in IORP II are set out across ten articles outlining what comprises an effective system of governance for occupational pension schemes.
- 7.4 A system of governance refers to the overarching system whereby those running an organisation or entity – in this case an occupational pension scheme – conduct their business with effective corporate controls. Internal controls are only one element that sit under this overarching system. Most financial services providers, including those who provide private personal pensions, are already legally required to demonstrate an effective system of governance. More information on the concept of a system of governance may be found in this guidance note⁶ from the European Insurance and Occupational Pensions Authority (EIOPA)⁷.
- 7.5 This instrument amends the governance requirements in the Pensions Act 2004 to require trustees of private occupational pension schemes to establish an effective

³ <https://www.legislation.gov.uk/ukpga/2004/35/contents>

⁴ <https://www.legislation.gov.uk/ukpga/1972/68/contents>

⁵ Those running private occupational pension schemes in the UK are responsible for over £1.5trn of people’s retirement savings, and it is UK policy that such individuals should exercise effective corporate governance in the management of these assets.

⁶ https://eiopa.europa.eu/guidelines/eiopa_guidelines_on_system_of_governance_en.pdf

⁷ EIOPA is the part of the European Financial Services Regulatory Framework which is concerned with the regulation of insurance and pension products in EEA member states.

system of governance which includes internal controls, and which is proportionate to the size, nature, scale and complexity of the activities of the pension scheme.

- 7.6 The instrument does not apply to authorised master trusts within the meaning of Part 1 of the Pension Schemes Act 2017⁸ as these schemes must already meet governance requirements beyond the establishment of adequate internal controls.
- 7.7 The instrument also does not apply to public service pension schemes within the Public Service Pensions Act 2013⁹. Section 249B of the Pensions Act 2004¹⁰ currently requires public service pension schemes to establish adequate internal controls. The Public Service Pension Schemes Act 2013 and The Pensions Regulator’s (TPR) Code of Practice (COP) 14¹¹ put in place additional governance requirements beyond the establishment of adequate internal controls.
- 7.8 There is an existing duty on the TPR to issue a COP in relation to the duty imposed by section 249A(1) of the Pensions Act 2004 (under regulation 3 of the Occupational Pension Schemes (Internal Controls) Regulations 2005 (S.I. 2005/3379)¹². This instrument prescribes what exactly must be covered by that COP.
- 7.9 The granular details that will expand on the COP content prescribed in this instrument will be developed by TPR in close liaison with the pensions industry and DWP. Part of an effective system of governance is the evaluation of its effectiveness and trustees will be expected to carry out and document such a review by the end of their next scheme year following the publication of the COP, or in alignment with their existing review and document cycle if different.
- 7.10 *The Pensions Regulator* is a non-departmental body which amongst other things regulates private occupational and personal pension schemes provided through employers. TPR’s statutory objectives include promoting the good administration of work-based pension schemes and protecting the benefits of pension scheme members.
- 7.11 *The purpose of TPR’s COPs.* A COP is suited to dealing with detailed requirements of this sort that will need to be approached very differently across a diverse landscape of regulated entities. They are a more agile and flexible means of setting regulatory expectations than legislation and are therefore also particularly appropriate when the economic and regulatory landscape is subject to change.
- 7.12 In this case, transposing the practical details of the governance requirements in a COP will also ensure that the UK is aligned with the flexible and proportionate principles of the IORP II directive.
- 7.13 COPs are subject to formal consultation and are laid before Parliament.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

⁸ <https://www.legislation.gov.uk/ukpga/2017/17/contents>

⁹ <https://www.legislation.gov.uk/ukpga/2013/25/contents>

¹⁰ <https://www.legislation.gov.uk/ukpga/2004/35/contents>

¹¹ <http://www.thepensionsregulator.gov.uk/codes/code-governance-administration-public-service-pension-schemes.aspx>

¹² [The Occupational Pension Schemes \(Internal Controls\) Regulations 2005](#)

9. Consolidation

9.1 No further consolidation of the regulations is planned.

10. Consultation outcome

10.1 We have worked closely with and sought views from a range of stakeholders and affected parties:

10.2 **Industry Stakeholder Group** - Since March 2017 we have been working with influential representatives from across the pensions industry to develop our approach. This has enabled those organisations that will need to comply with this Instrument to be closely involved in assessing the practical implications, including giving consideration of how different types of schemes can achieve an effective system of governance without incurring disproportionate costs. Further detail is in the Impact Assessment. Industry has responded to this targeted consultation approach positively.

10.3 **European Commission** – Department for Work and Pensions (DWP) and TPR officials were closely involved in the negotiation of the IORP II Directive. Since its publication in 2016 officials have continued to engage with the European Commission, including attending transposition workshops in January 2018 and June 2018 to help inform our transposition approach.

10.4 **TPR** – TPR and DWP have worked closely together since the drafting of the IORP II Directive. Since June 2017 we have held more focused official level meetings with TPR to agree how the regulator will revise its COP, what its operational approach will be and how this will be communicated to its regulated community.

10.5 **Key Industry Stakeholders** – in order to ensure we have input from across the pensions industry we have had bilateral meetings with those key stakeholders who have a particular interest in scheme governance and/or Europe. These included meetings with the Pensions and Lifetime Savings Association, leading administrative firms such as Willis Towers Watson, and the Association of Pensions Lawyers. Discussion with the Association of Member Nominated Trustees ensured the perspective of lay trustees (volunteers) formed part of our decision making and reassured them that the regulations will not prevent lay trustees from sitting on trustee boards.

11. Guidance

11.1 DWP does not intend to publish statutory guidance with this instrument. TPR's COP will provide more details on what it expects of trustees. TPR will also identify and target segments of industry and/or specific topics where trustees may benefit from additional guidance or tools, and will provide these.

12. Impact

12.1 The impact on business, charities or voluntary bodies is solely on the pensions industry. As the UK is largely compliant with IORP II we are able to transpose without imposing much additional burden on industry. There will be costs associated with these changes. Any costs will be principally in relation to familiarisation with the new regulations; review of written policies; and risk assessment of the system of governance. An evaluation and risk assessment of the system of governance must be carried out at intervals of not less than three years.

- 12.2 Because schemes must only make changes that are proportionate, the costs will vary widely according to scheme size. The cost estimates are:
- 12.3 £5.1m in year 1(a one-off familiarisation and set up cost); and
- 12.4 £2.7m every subsequent third year (years 4, 7, 10). The review of written policies and the evaluation and risk assessment of the system of governance must be carried out at intervals of not less than three years.
- 12.5 There is no, or no significant, impact on the public sector.
- 12.6 An Impact Assessment is submitted with this Explanatory Memorandum and published alongside it on the legislation.gov.uk website.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The legislation does not include a statutory review clause.

15. Contact

- 15.1 Karen Maskill at the Department for Work and Pensions Telephone: 0113 232 4087 or email: Karen.Maskill@dwp.gsi.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Fiona Walker at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister for Pensions and Financial Inclusion, Guy Opperman, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.