

2019 No. 115

PENSIONS

**The Occupational Pension Schemes (Investment and Disclosure)
(Amendment) Regulations (Northern Ireland) 2019**

Made - - - -

6th June 2019

Coming into operation in accordance with regulation 1

The Department for Communities, being a Department 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 that section, sections 109(1), (6) and (7), 177(2) to (4) and 178(1) of the Pension Schemes (Northern Ireland) Act 1993(c) and Articles 35(4), 36(1), (1A)(a) and (9) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(d), and now vested in it(e).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Investment and Disclosure) (Amendment) Regulations (Northern Ireland) 2019 and, except as provided for in paragraphs (2) and (3), shall come into operation on 30th September 2019.

(2) The following regulations shall come into operation on 1st October 2019—

- (a) regulation 2;
- (b) regulation 3(1), (2) and (3)(a);
- (c) regulation 3(3)(b) in so far as it relates to the insertion of paragraph (2B)(a) into regulation 29A of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014(f), and
- (d) regulation 5.

(3) The following regulations shall come into operation on 1st October 2020—

- (a) regulation 3(3)(b) for all remaining purposes, and
- (b) regulation 3(4).

(a) See Schedule 2 to 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 Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7)
(c) 1993 c. 49; section 109(1) was amended by section 48(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)); section 109(6) and (7) was inserted by section 43 of the Pensions Act (Northern Ireland) 2015 (c. 5 (N.I.)); section 178(1) was amended by Parts 3 and 4 of Schedule 5 to the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))
(d) S.I. 1995/3213 (N.I. 22); Article 35 was substituted by Article 221 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)); Article 36(1) and (1A) was substituted for Article 36(1) by Article 222(2) of that Order; Article 36(9) was added by Article 222(6) of that Order
(e) See Article 8(b) of S.R. 1999 No. 481 and section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.))
(f) S.R. 2014 No. 79; regulation 29A was inserted by regulation 3(6) of S.R. 2018 No. 53

(4) The Interpretation Act (Northern Ireland) 1954^(a) shall apply to these Regulations as it applies to an Act of the Assembly.

Amendment of the Occupational Pension Schemes (Investment) Regulations

2.—(1) The Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005^(b) are amended in accordance with paragraph (2).

(2) In regulation 2(c) (statement of investment principles)—

(a) after paragraph (3)(c) add—

“(d) their policy in relation to the trustees’ arrangement with any asset manager, setting out the following matters or explaining the reasons why any of the following matters are not set out—

- (i) how the arrangement with the asset manager incentivises the asset manager to align its investment strategy and decisions with the trustees’ policies mentioned in sub-paragraph (b);
- (ii) how that arrangement incentivises the asset manager to make decisions based on assessments about medium to long-term financial and non-financial performance of an issuer of debt or equity and to engage with issuers of debt or equity in order to improve their performance in the medium to long-term;
- (iii) how the method (and time horizon) of the evaluation of the asset manager’s performance and the remuneration for asset management services are in line with the trustees’ policies mentioned in sub-paragraph (b);
- (iv) how the trustees monitor portfolio turnover costs incurred by the asset manager, and how they define and monitor targeted portfolio turnover or turnover range, and
- (v) the duration of the arrangement with the asset manager.”;

(b) in paragraph (4)—

(i) after the definition of “non-financial matters” insert—

““portfolio turnover costs” means the costs incurred as a result of the buying, selling, lending or borrowing of investments;”;

(ii) in the definition of “relevant matters” for “governance, and” substitute “governance;”;

(iii) in the definition of “relevant persons” for “equity.” substitute “equity;”;

(iv) after the definition of “relevant persons” add—

““stakeholder” means a person or a group of persons who has an interest in the issuer of debt or equity;

“targeted portfolio turnover” means the frequency within which the assets of the scheme are expected to be bought or sold;

“time horizon” means the time period over which the trustees evaluate the performance of the asset manager;

“turnover range” means the minimum and maximum frequency within which the assets of the scheme are expected to be bought or sold.”.

(a) 1954 c. 33 (N.I.)

(b) S.R. 2005 No. 569

(c) Regulation 2 is amended by regulation 4(2) of S.R. 2018 No. 165

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

3.—(1) The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014 are amended in accordance with paragraphs (2) to (4).

(2) In regulation 4(1)(a) (application of these Regulations) after “25 and, where” insert “the scheme falls within Article 35 of the 1995 Order (investment principles) or”.

(3) In regulation 29A(b) (publishing charges and transaction costs and other relevant information)—

(a) after paragraph (1) insert—

“(1A) Where Article 35 of the 1995 Order applies to a scheme which does not fall within paragraph (1), the information specified in paragraph (2B) must be made publicly available free of charge on a website in accordance with this regulation.”;

(b) after paragraph (2A)(c) insert—

“(2B) The specified information is—

(a) the latest statement of investment principles governing decisions about investments prepared for the scheme under Article 35 of the 1995 Order, and

(b) the information which must be included in the most recent document prepared under regulation 12(d) in accordance with paragraph 30(ca) of Schedule 3.”.

(4) In paragraph 30 of Schedule 3 (information to be given on request) after sub-paragraph (c) insert—

“(ca) a statement which must—

(i) set out how, and the extent to which, in the opinion of the trustees, the policy required under regulation 2(3)(c)(e) of the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005 has been followed during the year, and

(ii) describe the voting behaviour by, or on behalf of, trustees (including the most significant votes cast by trustees or on their behalf) during the year and state any use of the services of a proxy voter during that year;”.

Amendment of the Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes (Investment and Disclosure) (Amendment and Modification) Regulations

4.—(1) The Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes (Investment and Disclosure) (Amendment and Modification) Regulations (Northern Ireland) 2018(f) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 4 (amendment of the Occupational Pension Schemes (Investment) Regulations)—

(a) in paragraph (2)—

(i) in sub-paragraph (a)—

(aa) in head (iii) in the added sub-paragraph (b)(vii) for “investments, and” substitute “investments;”;

(bb) in head (iv) in the substituted sub-paragraph (c)(ii) for “matters.” substitute “matters, and”;

(a) Regulation 4(1) was amended by regulation 3(2) of S.R. 2018 No. 53

(b) The heading to, and paragraph (1) of, regulation 29A are amended by regulation 5(3) and (4)(a) of S.R. 2018 No. 165

(c) Paragraph (2A) is inserted by regulation 5(4)(b) of S.R. 2018 No. 165

(d) Regulation 12 is amended by regulation 5(2) of S.R. 2018 No. 165

(e) Regulation 2(3)(c) is substituted by regulation 4(2)(a)(iv) of S.R. 2018 No. 165

(f) S.R. 2018 No. 165

- (ii) in sub-paragraph (b) in the added paragraph (4)—
 - (aa) in the definition of “relevant matters” after “strategy,” insert “capital structure, management of actual or potential conflicts of interest,”;
 - (bb) in the definition of “relevant persons” before “or another” insert “, another stakeholder”;
- (b) for paragraph (3) substitute—

“(3) In regulation 2A(1)(b)(a) (additional requirements in relation to default arrangement) after “regulation 2(3)(b)” insert “and, if that scheme has 100 or more members, regulation 2(3)(c) and (d)(b)”.”.
- (3) In regulation 5 (amendment of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations)—
 - (a) in paragraph (2)(b) for the added paragraph (5) substitute—

“(5) Where Article 35 of the 1995 Order (investment principles) applies to a scheme the following information must be made publicly available free of charge in accordance with regulation 29A—

 - (a) the information listed in paragraph 30(ca)(c) of Schedule 3 but only if the scheme is not a relevant scheme within the meaning of regulation 1(2) of the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997(d) (interpretation), or
 - (b) the information listed in paragraph 30(f)(e) of that Schedule but only if the scheme is a relevant scheme within the meaning of that regulation.”;
 - (b) for paragraph (4)(c) substitute—

“(c) in paragraph (4) after “paragraph (2)” insert “, (2A) or (2B)”.”;
 - (c) in paragraph (5)—
 - (i) in sub-paragraph (a) in the substituted sub-paragraph (d)—
 - (aa) in head (ii) for “(vii), and” substitute “(vii);”;
 - (bb) after head (iii) add—

“(iv) paragraph (3)(d), and”;
 - (ii) in sub-paragraph (c) in the added sub-paragraph (f)—
 - (aa) in head (iii) for “change, and” substitute “change;”;
 - (bb) in head (iv) for “review.” substitute “review, and”;
 - (cc) after head (iv) add—

“(v) describe the voting behaviour by, or on behalf of, trustees (including the most significant votes cast by trustees or on their behalf) during the year and state any use of the services of a proxy voter during that year.”.

Transitional provisions

5.—(1) The first policies in relation to the matters referred to in regulation 2(3)(d) of the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005 to be prepared by the trustees of a scheme in accordance with regulation 2 or 2A(1) of those Regulations must be prepared by the relevant date.

(2) The first policies in relation to capital structure, management of actual or potential conflicts of interest and another stakeholder referred to in regulation 2(3)(c) of the Occupational Pension

(a) Regulation 2A was inserted by regulation 20(3) of S.R. 2015 No. 309
 (b) Paragraph (3)(d) is added by regulation 2(2)(a) of these Regulations
 (c) Paragraph 30(ca) is inserted by regulation 3(4) of these Regulations
 (d) S.R. 1997 No. 94; the definition of “relevant scheme” was inserted by regulation 14 of S.R. 2015 No. 309
 (e) Paragraph 30(f) is added by regulation 5(5)(c) of S.R. 2018 No. 165

Schemes (Investment) Regulations (Northern Ireland) 2005 to be prepared by the trustees of a scheme in accordance with regulation 2 or 2A(1) of those Regulations must be prepared by the relevant date.

(3) The first year's information which falls under regulation 29A of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014 to be published by the trustees of a scheme on a website in accordance with paragraph (2B)(a) of that regulation must be published on a website by the relevant date.

(4) The first year's information in relation to the matters referred to in paragraph 30(ca) of Schedule 3 to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014 prepared under regulation 12 of those Regulations to be published by the trustees of a scheme on a website in accordance with regulation 29A(2B)(b) of those Regulations must be published on a website by the relevant date.

(5) The first year's information in relation to capital structure, management of actual or potential conflicts of interest and another stakeholder that falls within paragraph 30(f)(i) to (iv) of Schedule 3 to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014 prepared under regulation 12 of those Regulations to be published by the trustees of a scheme on a website in accordance with regulation 29A(2A)(b) of those Regulations must be published on a website by the relevant date.

(6) The first year's information in relation to the matters referred to in paragraph 30(f)(v) of Schedule 3 to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014 prepared under regulation 12 of those Regulations to be published by the trustees of a scheme on a website in accordance with regulation 29A(2A)(b) of those Regulations must be published on a website by the relevant date.

(7) The relevant date for the purposes of paragraphs (1) to (3) is 1st October 2020.

(8) The relevant date for the purposes of paragraphs (4) to (6) is 1st October 2021.

(9) Paragraphs (1) to (3) do not apply to the trustees of a scheme which begins to operate after 30th September 2020.

(10) Paragraphs (4) to (6) do not apply to the trustees of a scheme which begins to operate after 30th September 2021.

Sealed with the Official Seal of the Department for Communities on 6th June 2019

(L.S.)

Anne McCleary
A senior officer of the Department for Communities

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement by institutions for occupational retirement provision (O.J. No. L132, 20.5.17, p.1) (“the Directive”). They do so by amending the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005 (“the Investment Regulations”), the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014 (“the Disclosure Regulations”) and the Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes (Investment and Disclosure) (Amendment and Modification) Regulations (Northern Ireland) 2018.

Regulation 2 implements Article 3h.2 (arrangements with asset managers) of the Directive by requiring trustees to include a policy on asset managers containing prescribed information in the statement of investment principles (“the SIP”) required under Article 35 of the Pensions (Northern Ireland) Order 1995 and the default SIP required under regulation 2A of the Investment Regulations.

Regulations 3 and 4 implement Articles 3g (disclosure of engagement policy and the engagement policy implementation) and 3h (disclosure of investment strategy) of the Directive by amending, amongst other things, regulations 4, 12 and 29A of, and paragraph 30 of Schedule 3 to, the Disclosure Regulations. They require, amongst other things, the trustees of all trust schemes which fall within the scope of Article 35 of the Pensions (Northern Ireland) Order 1995 to make available free of charge the engagement policy implementation statement and the SIP on a website, or where appropriate, in hard copy form to the public as a whole to enable people to have access to the SIP of occupational pension schemes.

Regulation 5 contains transitional provisions so that the trustees of a defined benefit scheme which starts to operate by a certain date are allowed until 1st October 2020 to comply with the requirement to publish the SIP on a website, or where appropriate, in hard copy form. In addition, they ensure that the trustees of a scheme which starts to operate by a certain date are allowed until 1st October 2020 to comply with the requirement to include certain information in the SIP and default SIP. They also ensure that the trustees of a scheme which starts to operate by a certain date are allowed until 1st October 2021 to comply with the requirement to publish certain information on a website, or where appropriate, in hard copy form.

As these Regulations, in so far as they are made under the Pensions (Northern Ireland) Order 1995, make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Work and Pensions in relation to Great Britain, the requirement to consult under Article 117(1) of that Order does not apply by virtue of paragraph (2)(e) of that Article.

An assessment of the impact of these Regulations is detailed in a Regulatory Impact Assessment, a copy of which, together with a Transposition Note, are laid in the Business Office and the Library of the Northern Ireland Assembly. Copies are also annexed to the Explanatory Memorandum which is available alongside this Statutory Rule on the website: <http://www.legislation.gov.uk/nisr>. Copies are also available from the Department for Communities, Social Security Policy and Legislation Division, Level 8, Causeway Exchange, 1-7 Bedford Street, Belfast BT2 7EG or from the website: <https://www.communities-ni.gov.uk/articles/pension-information>.

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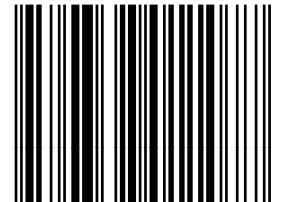
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