

EXPLANATORY MEMORANDUM TO

THE OCCUPATIONAL PENSION SCHEMES (CLIMATE CHANGE GOVERNANCE AND REPORTING) (MISCELLANEOUS PROVISIONS AND AMENDMENTS) REGULATIONS 2021

2021 No. 857

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument forms part of a package of regulations alongside the Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021¹, which will impose requirements on trustees of certain occupational pension schemes with a view to securing that there is effective governance of those schemes with respect to the effects of climate change and which will also impose related reporting and publication requirements.
- 2.2 This instrument introduces new requirements about trustee knowledge and understanding of matters relating to the effects of climate change for occupational pension schemes, for trustees who are subject to the requirements in the Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021.
- 2.3 This instrument also makes amendments to the Register of Occupational and Personal Pension Schemes Regulations 2005² and to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013³ in consequence of the Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021, to impose new disclosure and notification requirements.

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.

¹<https://www.legislation.gov.uk/uksi/2021/839/contents/made>.

²<https://www.legislation.gov.uk/uksi/2005/597/contents>

³<https://www.legislation.gov.uk/uksi/2013/2734/contents>

4.3 It is anticipated that the Department for Communities will make corresponding legislation for Northern Ireland.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 This instrument forms part of a wider package of regulations alongside the Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021 (“Climate Change Governance and Reporting Regulations”), which are the first regulations to be made under the climate change risk powers inserted into the Pensions Act 1995 by section 124 of the Pension Schemes Act 2021⁴.

6.2 The Climate Change Governance and Reporting Regulations will, from 1st October 2021, impose requirements on trustees of certain occupational pension schemes with a view to securing that there is effective governance of those schemes with respect to the effects of climate change. They will also impose related reporting and publication requirements.

6.3 In consequence of section 124 of the Pension Schemes Act 2021 and the Climate Change Governance and Reporting Regulations, this instrument amends existing pensions legislation to introduce related disclosure and notification requirements and new requirements about trustee knowledge and understanding of matters relating to the effects of climate change for occupational pension schemes.

7. Policy background

What is being done and why?

7.1 All pension schemes are exposed to climate-related risks, irrespective of their current investment strategy. Many schemes are also supported by employers or sponsors whose financial positions and prospects are dependent on current and future developments in relation to climate change.

7.2 Whilst trustees of pension schemes are already required to consider all financially-material risks as part of their fiduciary duty⁵, and trustees of some schemes are required to report on their policies via the Statement of Investment Principles, and on their practice via the annual Implementation Statement⁶, the Government is seeking to clarify and strengthen the focus on climate change.

7.3 Following the report of the UK Government-commissioned Green Finance Taskforce⁷ in March 2018, the Government’s Green Finance Strategy was published in July 2019.

⁴ <https://www.legislation.gov.uk/ukpga/2021/1/contents/enacted>

⁵ The requirement to act in the best interest of another i.e. their members.

⁶ Regulation 2 of the Occupational Pension Schemes (Investment Regulations) 2005 (S.I. 2005/3378) specifies the policies which must be covered in the Statement of Investment Principles; regulation 29A of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (S.I. 2013/2734) imposes publication requirements in relation to the Statement of Investment Principles and Implementation Statement.

⁷ Accelerating green finance: a report by the Green Finance Taskforce -

<https://www.gov.uk/government/publications/accelerating-green-finance-green-finance-taskforce-report>

This set out a range of actions in relation: to mainstreaming climate and environmental factors as a strategic imperative; to mobilise private finance for clean and resilient growth; and to cement the UK's leadership in green finance.

- 7.4 Amongst the announcements were the Government's expectation for all listed companies and large asset owners, including pension schemes, to disclose in line with the Task Force on Climate-related Financial Disclosures' (TCFD)⁸ recommendations⁹ by 2022.
- 7.5 The evidence from the occupational pension scheme sector, as well as nationally and internationally, is that now is an appropriate time to move towards mandatory TCFD-aligned disclosures, beginning with larger pension schemes. TCFD-aligned disclosures offer the opportunity for trustees of occupational pension schemes to move away from the relatively high-level disclosures prescribed in the Statement of Investment Principles and Implementation Statement. The flexible structure of the TCFD recommendations also allows trustees to continuously improve climate risk governance and reporting in the light of rapidly increasing data quality and completeness and emerging best practice.
- 7.6 The Climate Change Governance and Reporting Regulations will therefore impose requirements on trustees of larger occupational pension schemes, authorised master trust schemes (multi-employer defined contributions schemes) and schemes authorised to provide collective money purchase benefits, to reflect the TCFD recommendations. This includes the requirement to produce a report ("TCFD report") containing specified disclosures and to publish the report on a publicly available website, accessible free of charge.
- 7.7 The changes made by this instrument will:
- require trustees who are subject to the Climate Change Governance and Reporting Regulations to have knowledge and understanding of specified matters relating to the effects of climate change for occupational pension schemes, by prescribing those matters for the purposes of the Pensions Act 2004, section 247(4)(c) and will make equivalent provision in respect of corporate trustees for the purposes of section 248(5)(c) of that Act¹⁰;
 - amend the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 ("Disclosure Regulations") to require trustees who have published a TCFD report under the Climate Change Governance and Reporting Regulations to include the website address where it is published in the scheme's annual report and to include the website address and related information in annual benefit statements and annual funding statements sent to scheme members;
 - amend the Register of Occupational and Personal Pension Schemes Regulations 2005 to add to the "registrable information" which trustees are required to provide in their annual scheme return to The Pensions Regulator under section 64 of the Pensions Act 2004, so that:

⁸ The TCFD is a global, private sector led group assembled in December 2015 at the instigation of the international Financial Stability Board (FSB), an international body that monitors and makes recommendations about the global financial system.

⁹ Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures (June 2017). <https://www.fsb-tcf.org/publications/final-recommendations-report/>

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

- trustees who are required to publish a TCFD report under the Climate Change Governance and Reporting Regulations must inform The Pensions Regulator of the website address of the published report or, where no report has been published, whether the period within which the trustees must publish the report has ended; and
 - trustees who are required to publish excerpts of the Chair’s statement (annual statement regarding governance), their Statement of Investment Principles, or their Implementation Statement under regulation 29A of the Disclosure Regulations, must inform The Pensions Regulator of the website address where these documents are published.
- 7.8 The disclosure and notification requirements in this instrument recognise the growing government, regulatory, industry and public interest in the sustainability and value delivered by scheme investment practices.
- 7.9 The TCFD’s final recommendation report emphasises the importance of including climate-related financial disclosures in an organisation’s annual mainstream financial filings. This instrument therefore also introduces a requirement to do so by requiring trustees to include the website address of the TCFD report in their annual report. We have taken this approach because TCFD reports, done well, will be quite long and detailed. Therefore, requiring their inclusion in full would unnecessarily add to the overall length of schemes’ annual report and accounts.
- 7.10 The Pension Policy Institute’s report in 2018¹¹ found that evidence of member engagement in environmental, social and governance factors is increasing significantly. There is an opportunity to facilitate engagement further by requiring trustees to notify members about the scheme’s TCFD reports. We consider that requiring trustees to provide this information to scheme members via annual benefit statements and annual funding statements will enable members to engage with their scheme’s climate-related performance and its potential impact on their savings for the future.
- 7.11 The requirement to include the website address of the TCFD report in the annual scheme return releases The Pensions Regulator from the practical supervisory burden of requesting this information separately, or needing to actively seek the disclosure on each scheme’s website separately from the issue and review of the scheme returns. This will make compliance with this instrument and the Climate Change Governance and Reporting Regulations easier to monitor and enforce. In consequence of this new requirement, the instrument also introduces requirements to provide in the annual scheme return the website address of excerpts of the Chair’s statement (annual statement regarding governance), the Statement of Investment Principles and the Implementation Statement, where trustees are required to publish these documents, so as to ensure consistency of approach.
- 7.12 Respondents to our August 2020 policy consultation reported a low level of trustee knowledge in relation to climate risk and that new requirements of trustees in an area that is currently developing rapidly may require upskilling or training. This instrument therefore also introduces a requirement for trustees who are subject to the requirements in Part 1 of the Schedule to the Climate Change Governance and

¹¹ PPI - 'ESG: past, present and future', <https://www.pensionspolicyinstitute.org.uk/media/2398/20181002-ppi-esg-past-present-and-future-report-final.pdf>

Reporting Regulations to have knowledge and understanding of the identification, assessment and management of risks and opportunities relating to climate change for occupational pension schemes, insofar as is relevant to those requirements. The degree of knowledge and understanding required is that appropriate for the purpose of enabling the trustee to properly exercise their functions. In the case of corporate trustees, the company is required to secure that any person exercising its functions as trustee has the appropriate degree of knowledge and understanding of these matters¹².

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.

9. Consolidation

9.1 Informal consolidated text of the instruments will be available to the public free of charge via the 'National Archives' website: www.legislation.gov.uk.

10. Consultation outcome

10.1 The Secretary of State has consulted on the changes made by this instrument. Consultations on policy proposals and on draft regulations were conducted together with the consultations relating to the Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021.

10.2 We put our policy proposals to a public consultation¹³, held between 26 August and 7 October 2020 for six weeks. We then conducted a subsequent consultation¹⁴ on our draft regulations and statutory guidance, held between 27 January and 10 March 2021 for six weeks. Both consultations were supported by meetings with stakeholders and smaller groups of industry and legal experts to examine the detailed proposals, the financial impact of the proposed changes and the draft regulations and draft statutory guidance.

Consultation on the policy proposals

10.3 We received 99 formal responses to the consultation itself. These were made up of 25 responses from corporate or industry-wide occupational schemes; 10 trade bodies; 9 membership bodies; 8 dedicated consultancy firms; 7 law firms; 6 civil society bodies; 5 dedicated master trust sponsors; 5 firms who offer both consultancy and master trusts; 5 investment managers; 5 Local Government Pension Scheme bodies; 3 individuals; 2 each of insurer/master trust sponsors, trade unions and data providers; 1 professional trustee firm, personal pension provider and fiduciary manager; and a statutory body.

10.4 The responses were strongly positive in relation to the principle of more effective action on climate risk, and as a result, were broadly supportive of our specific policy proposals. Outside of a very small number of respondents who were opposed to any

¹² See sections 247 and 248 of the Pensions Act 2004: <https://www.legislation.gov.uk/ukpga/2004/35/contents>

¹³ <https://www.gov.uk/government/consultations/taking-action-on-climate-risk-improving-governance-and-reporting-by-occupational-pension-schemes>

¹⁴ <https://www.gov.uk/government/consultations/taking-action-on-climate-risk-improving-governance-and-reporting-by-occupational-pension-schemes-response-and-consultation-on-regulations>

further action being taken at all, no respondents stated any significant objection to our disclosure and notification proposals.

- 10.5 In light of numerous respondents reporting a low level of knowledge in relation to climate risk we added a new proposal, requiring trustees to have an appropriate degree of knowledge and understanding of the principles relating to identification, assessment and management of climate change risks and opportunities in order to properly exercise their functions.
- 10.6 We made a small number of additional changes but these were largely technical in nature, and did not have a significant material impact on the policy or its implementation. Full details can be found in the Government's consultation response.

Consultation on Draft Regulations and Draft Statutory Guidance

- 10.7 We received 54 responses to the consultation. These were made up of 9 responses from trade bodies; 8 from dedicated consultancy firms, 2 dedicated master trust sponsors, and 4 that do both; 7 membership bodies; 6 law firms; 5 from corporate occupational schemes; 4 Local Government Pension Scheme bodies; 2 insurer/master trust sponsors; 2 civil society bodies; 2 investment managers; 1 professional trustee firm; 1 fiduciary manager and 1 think tank.
- 10.8 The responses were again broadly supportive of our policy proposals and the changes we made to our policy following our August consultation were largely welcomed by industry. The vast majority of respondents were content that our draft regulations delivered on our stated policy intent.
- 10.9 We made a small number of minor changes to the draft regulations and the draft statutory guidance, for clarity in light of the responses received and to ensure the regulations fully match the policy intent. Full details can be found in the Government's consultation response¹⁵.

11. Guidance

- 11.1 In complying with the requirements introduced by regulation 4 of this instrument, trustees are required by section 113(2A) of the Pension Schemes Act 1993 to have regard to statutory guidance prepared by the Secretary of State.
- 11.2 The statutory guidance "Governance and reporting of climate change risk: guidance for trustees of occupational schemes" is published on Gov.uk and will be reviewed as a minimum every three years, from the first date of publication, and updated when necessary.
- 11.3 It explains to trustees of schemes subject to requirements in the Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021 how to satisfy the requirements in this instrument with regard to disclosing the website address of the TCFD report in the annual report and accounts, annual benefit statement and, where applicable, the annual funding statement.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is principally on the pensions industry, principally Occupational Pension Schemes with £1bn or more in assets, and

¹⁵ [Taking action on climate risk: improving governance and reporting by occupational pension schemes – response and consultation on regulations - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/taking-action-on-climate-risk-improving-governance-and-reporting-by-occupational-pension-schemes-response-and-consultation-on-regulations)

both master trusts (“multi-employer defined contribution schemes) and schemes offering collective money purchase benefits which have been authorised by The Pensions Regulator.

- 12.2 The Equivalent Annual Net Direct Cost to Businesses of the package of measures contained in both this instrument and the Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021 is £6.2m.
- 12.3 Costs principally stem from requiring pension schemes in scope to perform scenario analysis of the effect of a range of temperature scenarios on their assets and liabilities in the relevant years, calculate a range of metrics including the greenhouse gas emissions of the portfolio, as well as producing and disclosing a TCFD report.
- 12.4 There is no, or no significant, impact on the public sector.
- 12.5 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum 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 Guy Opperman MP, Parliamentary Under-Secretary of State for the Department for Work and Pensions, has made the following statement under section 28(2)(b) of the Small Business, Enterprise and Employment Act 2015.

“Having had regard to the Statutory Review Guidance for Departments published under section 31(3) of the Small Business, Enterprise and Employment Act 2015, in my view, it is not appropriate to make provision for review in the Occupational Pension Schemes (Climate Change Governance and Reporting) (Miscellaneous Provisions and Amendments) Regulations 2021.”
- 14.2 We recognise the importance of monitoring and evaluating the initial impact of our regulations. The legislation does not include a statutory review clause; however, we have stated publically in our consultation response our intention to undertake a review in 2023. This will cover all the aspects normally required by a statutory review clause.
- 14.3 In the case of the measures in this instrument specifically, the net annualised impact on business would be less than +/- £5 million, which provides further reason as to why a review clause would be inappropriate.

15. Contact

- 15.1 David Farrar at the Department of Work and Pensions Telephone: 07785 234213 or email: david.farrar@dwp.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Jo Gibson, Deputy Director for Private Pensions and Arms Length Bodies, at the Department of 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.