

2018 No. 214

PENSIONS

**The Occupational Pension Schemes (Governance) (Amendment)
Regulations (Northern Ireland) 2018**

Made - - - - - *19th December 2018*

Coming into operation - - - - - *13th January 2019*

The Department for Communities(a), being a Department designated(b) for the purposes of section 2(2) of the European Communities Act 1972(c) in relation to personal and occupational pensions, makes the following Regulations in exercise of the powers conferred by that section.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Governance) (Amendment) Regulations (Northern Ireland) 2018 and shall come into operation on 13th January 2019.

(2) In these Regulations “the Order” means the Pensions (Northern Ireland) Order 2005(d).

Amendment of the Order

2.—(1) Article 226A(e) of the Order (requirement for internal controls) is amended in accordance with paragraphs (2) to (5).

(2) In the heading for “internal controls” substitute “an effective system of governance”.

(3) For paragraph (1) substitute—

“(1) The trustees or managers of an occupational pension scheme must establish and operate an effective system of governance including internal controls.

(1A) The system of governance must be proportionate to the size, nature, scale and complexity of the activities of the occupational pension scheme.”.

(4) In paragraph (2) for “internal controls” substitute “an effective system of governance including internal controls”.

(5) In paragraph (3) after sub-paragraph (c) add—

“(d) an authorised Master Trust scheme within the meaning of Part 1 of the Pension Schemes Act 2017(f) (master trusts) or any corresponding Northern Ireland legislation.”.

(a) See section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.))

(b) See Schedule 2 to the European Communities (Designation) (No. 7) Order 2004 (S.I. 2004/3328)

(c) 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)

(d) S.I. 2005/255 (N.I. 1)

(e) Article 226A was inserted by regulation 2 of S.R. 2005 No. 567 and amended by paragraph 20 of Schedule 4 to the Public Service Pensions Act (Northern Ireland) 2014 (c. 2 (N.I.))

(f) 2017 c. 17

Code of practice

3.—(1) The code of practice which the Pensions Regulator issues under Article 85(2) of the Order (codes of practice) in relation to the discharge of the duty imposed by Article 226A(1)(a) of the Order (requirement for effective system of governance) must include the matters set out in paragraphs (2) to (8), in accordance with paragraphs (9) and (10).

(2) The effective system of governance**(b)**, including—

- (a) how it provides for sound and prudent management of activities;
- (b) how it includes an adequate and transparent organisational structure with a clear allocation and appropriate segregation of responsibilities;
- (c) how it includes an effective system for ensuring transmission of information;
- (d) how it includes an effective internal control system;
- (e) how it ensures continuity and regularity in the performance of its activities, including the development of contingency plans;
- (f) how it includes consideration of environmental, social and governance factors related to investment assets in investment decisions;
- (g) how it is subject to regular internal review.

(3) The following key functions in the occupational pension scheme—

- (a) the risk-management function;
- (b) the function which internally evaluates adequacy and effectiveness of the system of governance, and
- (c) the actuarial function.

(4) Outsourcing of activities.

(5) Written policies in relation to the matters in paragraphs (3) and (4).

(6) The prior approval of the written policies in paragraph (5) by the trustees or managers of the occupational pension scheme, and the review of those policies at least every three years.

(7) Remuneration policies.

(8) The carrying out and documentation of an own-risk assessment of the system of governance by the trustees or managers of the occupational pension scheme, including—

- (a) how the trustees or managers integrate the own-risk assessment into the occupational pension scheme's management and decision-making processes;
- (b) how the trustees or managers assess the effectiveness of the risk-management system;
- (c) how the trustees or managers prevent conflicts of interest with the employer, where the occupational pension scheme outsources key functions to the same person as the employer or to any person employed by the employer;
- (d) how the trustees or managers assess the occupational pension scheme's funding needs, with reference to the recovery plan where applicable;
- (e) how the trustees or managers assess the risk to members and beneficiaries relating to the paying out of their benefits and the effectiveness of any remedial action taking into account, where applicable—
 - (i) indexation mechanisms;
 - (ii) benefit reduction mechanisms, including the extent to which accrued pension benefits can be reduced, under which conditions and by whom;

(a) Article 226A(1) and (1A) is substituted for Article 226A(1) by regulation 2(3) of these Regulations. The discharge of the duty imposed by Article 226A(1) is already a prescribed matter for the purposes of Article 85(2)(k) of the Pensions (Northern Ireland) Order 2005 under regulation 3 of S.R. 2005 No. 567

(b) See Article 226A(1) of the Pensions (Northern Ireland) Order 2005

- (f) how the trustees or managers assess the mechanisms protecting retirement benefits, including, as applicable, guarantees, covenants or any other type of financial support by the employer, insurance or reinsurance, or coverage by a pension protection scheme;
 - (g) how the trustees or managers assess the operational risks;
 - (h) where environmental, social and governance factors are considered in investment decisions, how the trustees or managers assess new or emerging risks, including—
 - (i) risks relating to climate change, the use of resources and the environment;
 - (ii) social risks, and
 - (iii) risks relating to the depreciation of assets as a result of regulatory change;
 - (i) the timing of the documentation of the occupational pension scheme’s first own-risk assessment, which must be prepared—
 - (i) within 12 months beginning with the last day of the first scheme year that begins after the Pensions Regulator has issued a code of practice referred to in paragraph (1), or
 - (ii) if later—
 - (aa) within 15 months beginning with the date on which the trustees or managers of the occupational pension scheme are next required to obtain an actuarial valuation in accordance with Article 203 of the Order (actuarial valuations and reports), or
 - (bb) by the date on which the trustees or managers of the occupational pension scheme are next required to prepare an annual statement in accordance with regulation 23 of the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997^(a) (annual statement regarding governance);
 - (j) the timing for subsequent own-risk assessments, which must be prepared at intervals of not more than three years.
- (9) Paragraphs (2) to (8) apply to an occupational pension scheme which has 100 members or more.
- (10) Paragraph (2) applies to an occupational pension scheme which has 99 members or fewer.

Sealed with the Official Seal of the Department for Communities on 19th December 2018

(L.S.)

Anne McCleary
A senior officer of the Department for Communities

(a) S.R. 1997 No. 94; regulation 23 was added by regulation 17(1) of S.R. 2015 No. 309 and amended by regulation 5 of S.R. 2016 No. 192 and regulation 2 of S.R. 2018 No. 53

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the requirements relating to conditions governing activities under Title III of the European Union Directive (EU) 2016/2341 on the activities and supervision of institutions for occupational retirement provision (O.J. No. L354, 23.12.16, p.37) (“the Directive”).

Regulation 2 amends Article 226A of the Pensions (Northern Ireland) Order 2005 (“the Order”) by substituting paragraphs (1) and (1A) for the existing paragraph (1). Substituted paragraph (1) imposes a duty on the trustees or managers of an occupational pension scheme to establish and operate an effective system of governance including internal controls. Paragraph (1A) requires that system to be proportionate to the size, nature, scale and complexity of the activities of the occupational pension scheme.

Regulation 3 sets out the matters to be included in the code of practice which the Pensions Regulator issues under Article 85(2) of the Order in relation to the duty imposed by Article 226A(1) of the Order.

An assessment of the impact of these Regulations is detailed in a Regulatory Impact Assessment, copies of which, together with a Transposition Note, are laid in the Business Office and the Library of the Northern Ireland Assembly. Copies are 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 on the website: <https://www.communities-ni.gov.uk/articles/pension-information>.

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