

2019 No. 982

PENSIONS

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

Made - - - - *3rd June 2019*

Laid before Parliament *6th June 2019*

Coming into force in accordance with regulation 1

The Secretary of State, being a Minister 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 section 2(2) of that Act, sections 113(1), (6) and (7), 181(1), 182(2) and (3) and 183(1) of the Pension Schemes Act 1993(c) and sections 35(4), 36(1), (1A)(a) and (9), 124(1) and 174(2) and (3) of the Pensions Act 1995(d).

In accordance with section 113(9) of the Pension Schemes Act 1993(e), the Secretary of State has consulted with the Financial Conduct Authority and the Treasury, and in accordance with section 185(1) of that Act(f) and section 120(1) of the Pensions Act 1995, the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

Citation and commencement

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Investment and Disclosure) (Amendment) Regulations 2019.

(2) These Regulations come into force, except as provided for below, on 30th September 2019.

(3) On 1st October 2019 the following regulations come into force—

- (a) regulation 2;
- (b) regulation 3(1), (2) and (3)(a);

(a) See article 2 of 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 by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
(c) 1993 c. 48; Section 113(1) was amended by section 52(1) of the Child Support, Pensions and Social Security Act 2000 (c. 19); section 113(6) and (7) was inserted by section 44(1) of the Pensions Act 2014 (c. 19) (“the 2014 Act”); section 181(1) is cited for the meaning given to “prescribe” and “regulations”; section 183(1) was amended by Parts 3 and 4 of Schedule 7 to the Pensions Act 1995 (c. 26).
(d) 1995 c. 26; Section 35 was substituted by section 244 of the Pensions Act 2004 (c. 35) (“the 2004 Act”); section 36(1) and (1A) was substituted by section 245(2) of the 2004 Act and section 36(9) was inserted by section 245(6) of that Act; section 124(1) is cited for the meaning given to “prescribed” and “regulations”.
(e) Section 113(9) was inserted by section 44(1) of the 2014 Act.
(f) Section 185(1) was amended by sections 122 and 151 of, and paragraph 46 of Schedule 3 to, the 1995 Act and by paragraph 80(a) of Schedule 5 to that Act.

- (c) regulation 3(3)(b), in so far as it inserts paragraph (2B)(a) in regulation 29A of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013(a); and
 - (d) regulation 5.
- (4) On 1st October 2020, the following regulations come into force—
- (a) regulation 3(3)(b), for all remaining purposes; and
 - (b) regulation 3(4).

Amendment of the Occupational Pension Schemes (Investment) Regulations 2005

2.—(1) The Occupational Pension Schemes (Investment) Regulations 2005(b) are amended as follows.

- (2) In regulation 2 (statement of investment principles)(c)—
- (a) after paragraph (3)(c), insert—
 - “(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.”; and
 - (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) after the definition of “relevant persons” insert—
 - ““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; and
 - “turnover range” means the minimum and maximum frequency within which the assets of the scheme are expected to be bought or sold.”.

(a) S.I. 2013/2734.
 (b) S.I. 2005/3378.
 (c) Regulation 2 is amended as from 1st October 2019 by S.I. 2018/988.

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

3.—(1) The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 are amended as follows.

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

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

(a) after paragraph (1) insert—

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

(b) after paragraph (2A)(d) insert—

“(2B) The specified information is—

(a) the latest statement of investment principles governing decisions about investments prepared for the scheme under section 35 of the 1995 Act; and

(b) the information which must be included in the most recent document prepared under regulation 12(e) in accordance with paragraph 30(ca)(f) 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) of the Occupational Pension Schemes (Investment) Regulations 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 2018

4.—(1) The Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes (Investment and Disclosure) (Amendment and Modification) Regulations 2018(g) are amended as follows.

(2) In regulation 4 (amendments to the Occupational Pension Schemes (Investment) Regulations 2005—

(a) in paragraph (2)—

(i) in sub-paragraph (a)—

(aa) in paragraph (iii), at the end of the inserted sub-paragraph (b)(vii), omit “and”; and

(bb) in paragraph (iv), at the end of the inserted sub-paragraph (c)(ii), insert “and”; and

(ii) in sub-paragraph (b) in the inserted paragraph (4)—

(a) Regulation 4 was amended by S.I. 2015/482 and 2018/233.

(b) Regulation 29A was inserted by S.I. 2018/233.

(c) Paragraph (2B) is inserted by regulation 3(3)(b) of these Regulations.

(d) Paragraph (2A) is inserted as from 1st October 2019 by S.I. 2018/988.

(e) Regulation 12 was amended by S.I. 2018/988.

(f) Paragraph 30(ca) was inserted by regulation 3(4) of these Regulations.

(g) S.I. 2018/988.

- (aa) in the definition of “relevant matters”, after “strategy,”, insert “capital structure, management of actual or potential conflicts of interest,”; and
- (bb) in the definition of “relevant persons”, before “or another”, insert “, another stakeholder”; and
- (b) for paragraph (3) substitute—
 - “(3) In regulation 2A(1)(b) (additional requirements in relation to default arrangement)(a), 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 (amendments to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013)—
 - (a) in paragraph (2)(b), for the inserted paragraph (5), substitute—
 - “(5) Where section 35 of the 1995 Act 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) of Schedule 3 but only if the scheme is not a relevant scheme within the meaning of regulation 1(2) (interpretation) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996(c); or
 - (b) the information listed in paragraph 30(f) 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)”.”; and
 - (c) in paragraph (5)—
 - (i) in sub-paragraph (a), in the substituted sub-paragraph (d)—
 - (aa) at the end of paragraph (ii) omit “and”;
 - (bb) at the end of paragraph (iii) omit “and”; and
 - (cc) after paragraph (iii) insert—
 - “(iv) paragraph (3)(d)(d), and”; and
 - (ii) in sub-paragraph (c), in the inserted sub-paragraph (f), after paragraph (iv) insert—
 - “(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 paragraph (3)(d) of regulation 2 of the Occupational Pension Schemes (Investment) Regulations 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 paragraph (3)(c) of regulation 2 of the Occupational Pension Schemes (Investment) Regulations 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 2013 to be published by the

(a) Regulation 29A was inserted by S.I. 2015/879.
 (b) Sub-paragraph (d) is inserted by regulation 2(2)(a) of these Regulations.
 (c) S.I. 1996/1715. The definition of “relevant scheme” was inserted by S.I. 2015/879. There are other amendments to regulation 1(2) but none are relevant.
 (d) Paragraph (3)(d) is inserted by regulation 2(2)(a) of these Regulations.

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 sub-paragraph (ca) of paragraph 30 of Schedule 3 to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 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 sub-paragraph (f)(i) to (iv) of paragraph 30 of Schedule 3 to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 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 sub-paragraph (f)(v) of paragraph 30 of Schedule 3 to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 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) of this regulation do not apply to the trustees of a scheme which begins to operate after 30th September 2020.

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

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

Guy Opperman
Parliamentary Under Secretary of State
Department for Work and Pensions

3rd June 2019

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 (OJ No. L 132, 20.05.2017, p.1) ("the Directive"). They do so by amending the Occupational Pension Schemes (Investment) Regulations 2005 (S.I. 2005/3378) ("the Investment Regulations"), the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (S.I. 2013/2734) ("the Disclosure Regulations") and the Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes (Investment and Disclosure) (Amendment and Modification) Regulations 2018 (S.I. 2018/988).

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 section 35 of the Pensions Act 1995 (c. 26) 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 section 35 of the Pensions Act 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.

An assessment of the impact of these Regulations on business, charities and the voluntary sector has been made and is published with the Explanatory Memorandum and Transposition Note which are available alongside these Regulations on www.legislation.gov.uk. Copies may be obtained from the Better Regulation Unit of the Department for Work and Pensions, Caxton House, Tothill Street, London SW1 9NA.

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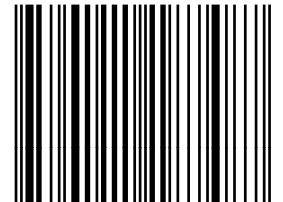
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