

EXPLANATORY MEMORANDUM TO
THE OCCUPATIONAL PENSION SCHEMES (INVESTMENT AND DISCLOSURE)
(AMENDMENT) REGULATIONS 2019

2019 No. 982

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 The European Union (EU) Directive (EU) 2017/828¹, the Shareholders' Rights Directive, (more commonly known as 'SRD II') must be transposed by the UK on 10 June 2019. This instrument will implement Articles 3g and 3h of SRD II which relate to workplace pension scheme stewardship and governance into UK law.

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 We anticipate Northern Ireland will be making separate, parallel provisions.

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 The UK is obliged to transpose this Directive into domestic law now that the UK and EU have agreed to extend Article 50 period until 31 October 2019. The Directive has a transposition deadline of 10 June 2019.

6.2 This instrument implements SRD II's provisions concerning schemes' investment principles and disclosure of information by way of amendments to the Occupational Pension Schemes (Investment) Regulations 2005² ("the Investment Regulations"), the

¹ [EUR-Lex - 32017L0828 - EN - EUR-Lex](#) - (OJ No. L 132, 20.05.2017, p.1)

² [The Occupational Pension Schemes \(Investment\) Regulations 2005](#)

Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013³ (“the Disclosure Regulations”) and the Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes (Investment and Disclosure) (Amendment and Modification) Regulations 2018⁴ (“the 2018 Regulations”) using the powers under sections 113, 181, 182 and 183 of the Pension Schemes Act 1993⁵ and sections 35, 36, 124 and 174 of the Pensions Act 1995⁶ and section 2(2) of the European Communities Act 1972⁷ (these changes are outlined in the policy background section). For example, this instrument updates regulation 29A of the Disclosure Regulations to require schemes to make their policy on the arrangements with asset managers available free of charge on a website to the public. The provisions of regulation 29A require schemes to make specified information available to the world at large free of charge.

6.3 The provisions of regulation 26, unlike the provisions of regulation 29A, of the Disclosure Regulations require schemes to make certain information available to specified individuals or categories of individuals, as opposed to the world at large free of charge. Where information is to be provided under regulation 26 there is nothing to prevent schemes from requiring the payment of a charge to provide the information or from restricting access by requiring a user name or password. Consequently, updating regulation 29A of the Disclosure Regulations ensures that trustees of occupational pension schemes provide the policy on the arrangements with asset managers to the public at large for free.

6.4 SRD II is a ‘recast’, or revision, of the SRD I Directive. The recast Directive places greater emphasis on effective stewardship.

6.5 A Transposition Note is submitted with this Explanatory Memorandum.

7. Policy background

What is being done and why?

7.1 The 2008 financial crisis revealed many shortcomings both in corporate governance of investee companies, and in shareholder engagement and stewardship by the institutional investors who own them. Stewardship is the responsible allocation and oversight of investments by pension schemes, asset managers and insurers, to create sustainable value for beneficiaries, and promote the *long-term* success of companies, the economy and society.

7.2 SRD II amends the original Shareholders’ Directive (EU) 2007/36/EC, and must be transposed into UK law by 10 June 2019. The amended Directive encourages investors to adopt a more long-term focus in their investment strategies, not only considering social and environmental issues, but also being transparent about how they invest and approach their engagement as shareholders. SRD II closely aligns with the UK’s domestic agenda to improve the stewardship and governance of schemes.

7.3 UK trustees of occupational pension schemes have an important role to play in the oversight of the companies in which they invest and to whom they lend. It is important that trustees fulfil the responsibilities associated with holding the

³ [The Occupational and Personal Pension Schemes \(Disclosure of Information\) Regulations 2013](#)

⁴ <http://www.legislation.gov.uk/uksi/2018/988/contents/made>

⁵ [Pension Schemes Act 1993](#)

⁶ [Pensions Act 1995](#)

⁷ [European Communities Act 1972](#)

investments in members' best interests – whether directly or by others on their behalf - through the full range of stewardship activities.

7.4 Following the Law Commission's recommendations in their reports 'Fiduciary Duties of Investment Intermediaries' published in 2014⁸ and 'Pension Funds and Social Investment' published in 2017⁹, DWP introduced legislation in 2018 (the 2018 Regulations) amending the Investment Regulations and the Disclosure Regulations to help clarify and strengthen trustees' investment duties including their policies in relation to the stewardship of investments. This legislation was not specifically designed to implement SRD II. Nevertheless, there is a clear link between, and consistency with, the aim of those changes and that of the SRD II requirements. This ensures that the UK is well-placed to implement the remainder of this Directive in a proportionate and appropriate way.

7.5 Trustees of pension schemes are currently required to set out their investment strategy in a Statement of Investment Principles (SIP). A SIP is a written statement governing decisions about investments for the purposes of an occupational pension. Trustees of most occupational schemes must prepare, maintain and periodically revise the SIP. This instrument places a requirement on both defined contribution and defined benefit pension schemes to explain their policies in relation to:

- how they monitor the investee company on capital structure;
- how targeted portfolio turnover or turnover range is to be defined and monitored;
- how they manage actual and potential conflicts of interest in relation to their engagement;
- details of their arrangements with their asset managers; the duration of the arrangement, how the scheme incentivises the asset manager to align investment strategies and decisions, and how they monitor portfolio turnover costs incurred by the asset manager;
- publishing their revised engagement policies which explain, amongst other things, how they have cast their votes in the general meetings of companies in which they hold shares.

7.6 In addition, this instrument places a new requirement on defined benefit pension schemes to publish their SIP and engagement policy implementation statement online.

7.7 This instrument applies to Institutions of Occupational Retirement Provision falling within the scope of Directive (EU) 2016/2341¹⁰; it does not apply to public service pension schemes within the Public Service Pensions Act 2013¹¹ and schemes with less than 100 members.

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.lawcom.gov.uk/project/fiduciary-duties-of-investment-intermediaries/>

⁹ <https://www.lawcom.gov.uk/project/pension-funds-and-social-investment/>

¹⁰ [EUR-Lex - 32016L2341 - EN - EUR-Lex](#)

¹¹ <https://www.legislation.gov.uk/ukpga/2013/25/contents>

9. Consolidation

- 9.1 Informal consolidated text of instruments is available to the public free of charge via the 'National Archive' website: www.legislation.gov.uk

10. Consultation outcome

- 10.1 We have worked closely with and sought views from a range of stakeholders and affected parties:
- 10.2 **Other Government Departments** - The Department for Business, Energy and Industrial Strategy (BEIS) is the sponsoring Government Department leading the transposition of this Directive with interest from Her Majesty's Treasury (HMT) and DWP. Officials from DWP, BEIS and HMT will develop and implement a cross-Government approach and communication strategy.
- 10.3 **Key Industry Stakeholders** – in order to ensure we have input from across the pensions industry we have met key stakeholders who have a particular interest in stewardship and/or Europe. These included representatives from the Investment Association, leading administrative firms such as Willis Towers Watson, the UK sustainable Investment & Finance Association, Trust Funds such as Brunel Pension Partnership and the Association of Pensions Lawyers. This engagement has enabled those organisations that will need to comply with this instrument to be closely involved in assessing the practical implications. Industry has responded to this targeted consultation approach positively.
- 10.4 **Regulators** – DWP, BEIS and HMT met the Financial Conduct Authority (FCA) and Financial Reporting Council (FRC) at an official level to develop our approach. FRC issued a consultation¹² on their Stewardship code on 30 January 2019 and FCA issued a Discussion Paper¹³ regarding improving the stewardship regime. DWP has also worked with the Pensions Regulator when developing the implementation approach of SRD II.

11. Guidance

- 11.1 DWP does not intend to publish statutory guidance with this instrument. The Pensions Regulator will review and update their guidance¹⁴ to provide more details on what it expects of trustees.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is principally on the pensions industry. As the UK is largely compliant with the majority of the requirements in SRD II we are able to transpose without imposing much additional burden on industry, but there will be costs associated with these changes. Any costs will be principally in relation to familiarisation with the new regulations; adding policy information to the SIP; and defined benefit pension schemes publishing their SIP online.
- 12.2 The total estimated cost in year 1 is £10.1m and every year after that £0.9m. There is no, or no significant, impact on the public sector. The estimated annual net direct cost to business (EANDCB) over a policy period of 10 years is £1.8m.

¹² [Financial Reporting Council](#)

¹³ [DP19/1: Building a regulatory framework for effective stewardship | FCA](#)

¹⁴ <https://www.thepensionsregulator.gov.uk/en/document-library/regulatory-guidance>

12.3 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 We recognise the importance of monitoring and evaluation. The legislation does not include a statutory review clause. The instrument only makes minor amendments to the Regulations governing the investment principles and disclosure requirements for occupational pension schemes therefore no monitoring or review is felt to be necessary. However, it will be easier for Regulators, Government and others to monitor the quality of reporting due to the requirement to publish a range of information.

15. Contact

15.1 Karen Maskill at the Department for Work and Pensions Telephone: 0113 232 4087 or email: Karen.Maskill@dwp.gov.uk can be contacted with any queries regarding the instrument.

15.2 Hilda Massey, Deputy Director for Private Pensions, 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.