

European Union (Occupational Pension Schemes) Regulations 2021

Information for trustees

Introduction

This note provides information for trustees on the key provisions of the recently transposed Directive (EU) 2016/2341 (the IORP II Directive) through the European Union (Occupational Pension Schemes) Regulations 2021 (the Regulations). It also sets out how the Pensions Authority (the Authority) will oversee compliance with the Regulations.

Part A provides a summary overview of the Regulation's key provisions.

Part B sets out how the Authority will supervise compliance with the Regulations including the effect of derogations and transitional periods.

Part A: Summary of key provisions¹

The Regulations apply to a scheme or trust RAC within the meaning of the Pensions Act, 1990, as amended (the Act), other than pay-as-you-go schemes (generally public sector schemes). The Act now places additional obligations on these schemes and trust RACs as follows:

1. Governance

- (a) Trustees must put in place effective systems of governance and internal control and take reasonable steps to ensure continuity and regularity in the performance of the scheme or trust RAC's activities, including the development of contingency plans.

2. Two trustees

- (a) A scheme or trust RAC must have at least two trustees or, in the case of a sole corporate trustee, two directors.

¹ This is a summary of the new requirements. For further details on the requirements, please refer to the Pensions Act, 1990, as amended.

3. Key functions

- (a) Trustees must establish and maintain effective risk management, internal audit and, for regulatory own funds schemes or regulatory own funds trust RACs, actuarial functions, and appoint a key function holder for each.
- (b) The internal audit function must be carried out by a person who does not carry out any other key function.
- (c) Depending on the size, nature, scale and complexity of the scheme or trust RAC, trustees can allow the person carrying out a key function for the employer to also carry out that function for the trustees, once appropriate conflict of interest protocols are in place.

4. Fit and proper

- (a) Trustees must collectively have adequate qualifications, knowledge and experience, with at least one trustee having trustee experience in two of the previous three years. Similar requirements apply to directors of a sole corporate trustee.
- (b) Each key function holder (KFH) must also have adequate qualifications (professional in the case of internal audit and actuarial functions), knowledge and experience.
- (c) All trustees and KFHs must be of good repute and integrity. The Regulations set out disqualifications that preclude trustees and KFHs being so considered and these are similar to the previous requirements under the Act (e.g., bankruptcy, fraud or dishonesty conviction).
- (d) The Authority can require trustees to provide information to it about how they or the KFHs satisfy the fit and proper requirements.

5. Written policies

- (a) Trustees must establish, apply, and review every three years written policies in relation to:
 - (i) Key functions,
 - (ii) Outsourced activities, and
 - (iii) Remuneration for the trustees, KFHs, other categories of staff employed by the trustees whose professional activities have a material impact on the risk profile of the scheme or trust RAC, and service providers.

6. Own-risk assessment

- (a) Trustees must carry out and document an own-risk assessment at least every three years and for this purpose must put in place risk identification and assessment methods.

7. Outsourcing

- (a) Certain requirements must be met where trustees enter into an outsourcing arrangement with a service provider. These include entering into a written agreement with the service provider and notifying the Authority before the agreement enters into force if it relates to a key function or the management of the scheme or trust RAC.

8. Depositary

- (a) If trustees appoint a depositary, certain requirements are triggered. If they do not, certain requirements in respect of safekeeping and oversight of assets of the scheme or trust RAC must be met.

9. Annual compliance return (ACR)

- (a) Trustees are required to submit an annual compliance return (Part VIB compliance statement) to the Authority. The Authority will issue further guidance on the submission of the ACR when it publishes the final code of practice.

10. Pension benefit statement (PBS)

- (a) A PBS must be prepared by the scheme's Registered Administrator and made available annually by the trustees to both active and deferred scheme members. The PBS must be made available within the same timeframe as an annual benefit statement must be currently supplied.
- (b) The Regulations prescribe the minimum information to be included in the PBS and allow trustees to provide additional information. The PBS must also specify where and how supplementary information can be obtained.

11. Electronic communications

- (a) Section 2 of the Act has been amended to construe references to the provision of information by trustees to members or beneficiaries as including references to provision by electronic means.

- (b) New provisions allow notices or documents to be sent by electronic means where the recipient has given consent.

12. Cross-border activity and transfers

- (a) The cross-border provisions in Part XII of the Act are amended to reflect new procedural requirements.
- (b) Cross-border transfers of all or part of pension schemes are provided for by two new sections in Part XII of the Act.

Other significant provisions of the regulations are:

Supervisory Review Process

The Authority must review the strategies, processes and reporting procedures established by the trustees of a scheme or trust RAC. The Authority will decide the scope and frequency of the supervisory review and take into account the size, nature, scale and complexity of the activities of the scheme or trust RAC. The Authority may seek additional information from various persons for the purposes of the supervisory review.

Authority powers

The Regulations also provide for additional Authority powers to issue Advisory Notices, to require trustees to provide an External Report (where the Authority is of the opinion that the information provided to it under a supervisory review is insufficient or of concern), and to require trustees to carry out stress tests to identify deteriorating financial conditions in a scheme or trust RAC and to monitor how that deterioration is remedied.

Part B: Compliance with Regulations

Derogations and transitional periods

The Regulations delete provisions which previously exempted small schemes, small trust RACs and one-member arrangements from various provisions of the Act. The Regulations provide for various transitional measures including for existing one-member arrangements so that some provisions will apply to these one-member arrangements from the end of the 5-year derogation period (from 22 April 2026) and to small trust RACs from 31 December 2021.

Pre-Regulations one-member arrangements

For one-member arrangements established before 22 April 2021:

- (a) A derogation from the new requirements applies until 22 April 2026.
- (b) An open-ended derogation from the investment rules and borrowing restrictions applies in respect of investments made or borrowings entered into before the coming into operation of the Regulations.
- (c) There is no derogation for investments made or borrowings entered into by one-member arrangements after the coming into operation of the Regulations.
- (d) Any one-member arrangement established on or after 22 April 2021 will be subject to all requirements from the date of their establishment.

Supervisory focus

Except for the derogations referred to above and some provisions with a transitional period, the new provisions of the Act took effect from 22 April 2021. Below is a summary of the Authority's supervisory focus until the end of 2022. However, at all times, the Authority reserves its right to initiate enforcement action in the event of a breach of the Act.

- **New one-member arrangements (OMAs)** – The immediate focus of the Authority for OMAs established on or after 22 April 2021 will be on compliance with the investment requirements relating to borrowing and to being predominantly invested in regulated markets. In its supervision of compliance with these provisions, the Authority will pay particular attention to a scheme's establishment date and may require evidence to substantiate it. Non-compliance with the relevant requirements of the Act, including any attempt to mislead the Authority by trustees or others may result in a prosecution.

From 1 July 2022, the focus of the Authority for these schemes will be on full compliance with all obligations under the Act.

- **Existing one-member arrangements (OMAs)** – Existing OMAs have until 22 April 2026 to meet the additional requirements, other than the investment and borrowing rules that apply to investments made and borrowings entered into after the coming into operation of the Regulations. During that time, the Authority's focus will be on compliance with the investment rules and restrictions on borrowings as regards arrangements implemented on or after 22 April 2021 and the Authority may require evidence to substantiate this. Non-compliance with the relevant requirements of the Act, including any attempt to mislead the Authority by trustees or others may result in a prosecution.

- **Master trusts** – The immediate focus of the Authority for master trusts will be on direct engagement with them to assess their progress towards compliance with all obligations under the amended Act. This engagement will include a review of master trusts' compliance with the Authority's [DC Master Trust Requirements](#) which were published on 10 June 2019.

From 1 July 2022, the focus of the Authority for master trusts will be on full compliance with all obligations under the Act.

- **All other schemes and trust RACs** – The Authority will expect to see evidence from these schemes and trust RACs of a plan with specified timelines and progress milestones to achieve compliance with all obligations under the Act. Any new scheme established after 1 July 2022 will be expected to be fully compliant from establishment. From the beginning of 2023, the focus of the Authority for these schemes and trust RACs will be on full compliance with all obligations under the amended Act.

Further information

The Authority understands that trustees and their advisers need further information to meet the additional requirements of the Regulations.

The Authority will issue the following further information:

- A draft code of practice which will set out what the Authority expects from regulated entities to meet their obligations under the Regulations. This draft code will be open to public consultation for an eight-week period and will be published the week of 19 July 2021.
- A final code of practice which will be published the week of 15 November 2021.
- Guidance on the submission of the Annual Compliance Return (ACR) will be published the week of 15 November 2021.
- Guidance for the public and employers about the minimum standards they should expect from master trust vehicles which will be published the week of 13 December 2021.

Trustees and their advisers can contact the Authority regarding queries that are not addressed by the planned information, through the normal enquiries mailbox; info@pensionsauthority.ie. Queries related to the new Regulations should be submitted by email with the subject line commencing 'IORP II: [*title of enquiry*]'.