

# Overview of main changes under regulations signed by the Minister for Social Protection on 25 November 2021

## Introduction

This information note provides an overview of the recent changes to existing regulations under the Pensions Act 1990, as amended (the Act).

### 1. Main changes by S.I. No. 637 of 2021 to the Occupational Pension Schemes (Disclosure of Information) Regulations

- 1.1. The Annual Benefit Statement (ABS) and (for DC schemes) Statement of Reasonable Projection provisions will no longer apply once a scheme makes the first Pension Benefit Statement (PBS) available to members in accordance with regulations 31 to 37 of the European Union (Occupational Pension Schemes) Regulations 2021 (the 2021 Regulations). These provisions require schemes which commenced on or before 22 April 2021 to make the first PBS available by 31 December 2022. One-member arrangements (OMAs) which commenced on or before 22 April 2021 must make the first PBS available from 22 April 2026. Pay-as-you-go schemes will continue to provide the ABS.
- 1.2. The exemptions for OMAs in respect of audited accounts and valuation reports (for DC schemes) have been removed. Transitional measures are inserted so that the requirements apply to OMAs commenced on or before 22 April 2021, in line with the transitional measures applied to these schemes in relation to annual reports.
- 1.3. Other changes include:
  - (a) different disclosure obligations for schemes to which Directive (EU) 2016/2341 (IORP II) applies, including how and when information is provided, and to whom,
  - (b) revised signing requirements for audited accounts, to reflect the two-trustee rule under section 64AC of the Act, and
  - (c) a new requirement for audited accounts to include disclosure of significant investment holdings.

## **2. Main changes by S.I.s No. 634 and 636 of 2021 to the Occupational Pension Schemes (Investment) Regulations and Trust RACs (Investment) Regulations**

- 2.1. The existing investment regulations are revoked in full and replaced by two new sets of regulations (S.I. No. 636/2021 and 634/2021). This change reflects that the investment rules are now set out in section 59AB of the Act.
- 2.2. The definition of 'regulated market' is not contained in section 59AB of the Act (inserted by the 2021 Regulations), therefore, section 2(7) of the Act applies the definition from IORP II to the use of that term in section 59AB. The requirement under section 59AB of the Act to invest predominantly in regulated markets therefore means investment in assets which are admitted to trading on a regulated market as defined in point (21) of Article 4(1) of Directive 2014/65/EU, i.e., MiFID II.
- 2.3. The new regulations replicate, for the purposes of section 61B of the Act, the limited permission for trustees to borrow for short term liquidity reasons. However, the permission for trustees of OMAs to borrow without restriction is not replicated.
- 2.4. The Statement of Investment Policy Principles content requirements are also replicated, with an added requirement to include information on how the investment policy takes environmental, social and governance factors into account.

## **3. Main changes by S.I.s No. 628 and 629 of 2021 to the Occupational Pension Schemes (Registration) Regulations and Trust RACs (Registration) Regulations**

- 3.1. The timeframe for trustees to notify the Pensions Authority of any change in the information provided for registration under section 60 of the Act is reduced, from within 12 months of when such change occurs, to within one month.
- 3.2. Following the revocation in 2007 of the Occupational Pension Schemes (External Schemes) (United Kingdom) Regulations 2000, certain provisions no longer apply and are deleted.

#### **4. Main changes by S.I.s No. 626 and 627 of 2021 to the Occupational Pension Schemes (Trustee) Regulations and Trust RACs (Trustee) Regulations**

- 4.1. The definition of ‘investment manager’ is amended so that the EU directives referenced therein are consistent with those listed in article 32 of IORP II and section 64AO(1) of the Act.

#### **5. Main changes by S.I. No. 635 of 2021 to the Occupational Pension Schemes (Funding Standard) Regulations**

- 5.1. The exemption for small member-controlled schemes to include up to 20% self-investment in the calculation of scheme resources in an actuarial funding certificate (AFC) is removed. This is to align with the changes made to the investment rules inserted into section 59AB of the Act, i.e., removal of the permission for such schemes to self-invest up to 20% of scheme resources in the employer group.
- 5.2. Article 4(1)(a) to (e) and related Schedules (which prescribed the form of the AFC), and article 4(2), are removed on the basis that they no longer have operational effect.
- 5.3. There are some minor changes to definitions, such as updating legislative references and replacing the definition for ‘insurance policy’ with a cross-reference to the definition in section 59AB of the Act.

#### **6. Main changes by S.I. No. 631 of 2021 to the Occupational Pension Schemes (Funding Standard Reserve) Regulations**

- 6.1. The list of assets prescribed for the purposes of the funding standard reserve is updated. For example, references to bonds that are nearing maturity are replaced; and UK government bonds are included, to capture schemes with sterling liabilities that are matched by UK sterling bonds.
- 6.2. There are some minor changes to definitions, such as replacing the definition for ‘insurance policy’ with a cross-reference to the definition in section 59AB of the Act.

## **7. Main changes by S.I.s No. 632 and 633 of 2021 to the Occupational Pension Schemes (Cross-Border) Regulations and Trust RACs (Cross-Border) Regulations**

- 7.1. The PBS provisions of the 2021 Regulations are added to the 'relevant statutory requirements' prescribed by the cross-border regulations, i.e., the Irish social and labour law and information requirements applicable to cross-border activity where Ireland is the host Member State. Trustees must also certify that they comply with the PBS provisions when applying for cross-border authorisation under section 149 of the Act.
- 7.2. New notifications are required from trustees where a scheme or trust RAC receives a cross-border transfer that is authorised by the Pensions Authority and cross-border activity follows. These new notifications must contain similar information to that already required where trustees ordinarily seek authorisation or approval under (respectively) section 149 or section 151 of the Act.
- 7.3. The prescribed provisions of the Act with which small schemes/trust RACs must comply to operate cross-border are updated.

## **8. Main changes by S.I. No. 630 of 2021 to the Occupational Pension Schemes (Duties of Trustees in Connection with Bulk Transfer) Regulations**

- 8.1. The timeframe for notifying transferring members of a proposed bulk transfer is reduced, from at least two months before the proposed transfer date, to at least one month.
- 8.2. The one-month period for consideration of any transferring members' written observations is removed (trustees are still required to give the observations 'due' consideration).
- 8.3. A minor amendment confirms that trustees can use electronic methods to provide the requisite notification to transferring members. Where trustees cannot, following all reasonable steps, find an address for any transferring member(s), and cannot send the notification electronically, they must publish a newspaper notice giving seven days to request the prescribed notification information.