IORP II PENSIONS AUTHORITY INFORMATION FOR TRUSTEES

MAY 2021

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Pensions Authority issues information for trustees

Following the transition of the IORP II Directive into law on 22 April 2021 the Pensions Authority have issued a summary of the Regulations key provisions and information as to how the Authority will supervise the compliance with the Regulations.

The Pensions Authority expects that schemes with more than one member will be in full compliance with the new Regulations and obligations under the amended Pensions Act by the beginning of 2023.

There is at present, little detail of what trustees will actually have to do in some key areas as this is dependent on the size, nature, scale and complexity of the particular scheme.

A final code of practice on what the Pensions Authority expects from regulated entities to meet their obligations under IORP II will be published in the week commencing 15 November 2021 and we will have to wait until then to see this detail. The first Annual Compliance Return is due to be submitted by trustees by the 31st January 2022. This does not provide trustees or employers much time to consider the final code of practice and implement the necessary policies and procedures to ensure compliance.

This update sets out suggestions and guidance on what employers and trustees should be doing now to ensure compliance with the guidelines in practice.

Pensions Authority Information for Trustees	**Suggested action and guidance**
Governance 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's activities, including the development of contingency plans.	The Pensions Authority expects trustees to establish a governance plan of action. This is likely to take the form of a trustee manual setting out the written policies the trustees have developed to apply consistent processes and controls in the management of their scheme. The manual will have to cover in detail the process for all of the items listed below. The manual is intended to be a document that is referred to, revised and updated during the scheme year.
Two trustees A scheme must have at least two trustees or, in the case of a sole corporate trustee, two directors.	Most schemes already comply with this requirement however, the additional requirements set out under the fit and proper

	standards may prove onerous for some schemes.
Key functions • Trustees must establish and maintain effective risk management, internal audit and for DB schemes actuarial functions, and appoint a key function holder for each. • The internal audit function must be carried out by a person who does not carry out any other key function. • 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.	The appointment of Key Function holders for risk management and internal audit are new requirements and are likely to add to the cost of managing the scheme. For DB schemes the risk management function is likely to be carried out by the scheme actuary. For DC schemes further clarity is required when taking into account the size, nature, scale and complexity of the scheme. The internal audit function must be independent and does not carry out any other key function. Until we see further guidance from the Pensions Authority it will be difficult for many schemes to put in place the appropriate controls.
Fit and proper • 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. • Each key function holder (KFH) must also have adequate qualifications (professional in the case of internal audit and actuarial functions), knowledge and experience. • 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). • The Authority can require trustees to provide information to it about how they or the KFHs satisfy the fit and proper requirements.	The employer and trustees must ensure that the composition of the trustee board meets these requirements. In practical terms, seeking proof of qualifications may be onerous and trustees may hopefully rely on the appointee to confirm such qualifications. One trustee will be required to hold a professional qualification in trusteeship. If this requirement has not been addressed then at least one trustee should look to achieve the required qualifications before the first annual compliance return is due in January 2022. Further detail will most likely be contained in the final code of practice to be issued by the Pensions Authority in the week commencing the 15th November 2021.

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Written Policies 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 and service providers.	These written policies should form part of the scheme governance manual. In many cases these policies may already exist in a formal or informal way. Policies should now be reviewed to ensure they cover all of the required areas and are fit for purpose.
Own Risk Assessment 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.	As a part of the Risk Management function trustees should familiarise themselves with the new regulations, undertaking an own risk assessment now and identify any breaches in their current governance structures and implement changes where necessary. This is likely to form a significant part of the annual compliance return required in January 2022. A further own risk assessment will have to be undertaken every three years thereafter.
Outsourcing 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.	Current Service Level Agreements (SLA's) should be reviewed to ensure they are fit for purpose. Before any future changes in service providers are undertaken it will be important to document the process and ensure the fit and proper requirements are complied with. The Pensions Authority must be advised before any appointment or agreement is finalised.
Depository Trustees are not required to appoint a depositary but if they do, certain requirements in respect of safekeeping and oversight must be met.	We recommend trustees do not seek to appoint a depository.

Annual Compliance Return 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.	The first Annual Compliance Return is due to be submitted by 31st January 2022. Given that the Pensions Authority have advised that they will publish their final code of practice on what they expect trustees to be doing to meet their obligations under IORP II in the week commencing the 15th November 2021, this leaves very little time for trustees to have full compliance with the requirements.
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.	It appears that the Personal Benefit Statement (PBS) is in addition to the Annual Benefit Statement required under the Disclosure Regulations of the Pensions Act. However, we are expecting that the Disclosure Regulations will be amended before the PBS are required to be issued so that there is no overlap. Trustees will now have to provide deferred members with a PBS annually which may require considerable effort to locate such members in addition to the extra costs associated with producing and issuing this material.
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.	Trustees will have the option to issue documentation electronically to active and deferred members where they have consent to do so. Trustees should consider obtaining consent form all new members via the member application form and undertake an exercise to obtain consent from existing members. Issuing the Personal Benefit Statement and or Annual Benefit Statement electronically will be especially relevant when communicating with deferred members.

Supervisory Review Process
The Pensions Authority must review the strategies, processes and reporting procedures established by the trustees of a scheme. The Pensions 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. The Authority may seek additional information from various persons for the purposes of the supervisory review.

Authority powers
The Regulations also provide the Pensions Authority with the power 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 and to monitor how that deterioration is remedied.

Supervisory focus
The Pensions Authority will expect to see evidence from 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.

What happens next?
The note issued by the Pensions Authority is a summary of the key provisions of the IORP II Directive and its affect on the amendments to the Pensions Act,1990, as amended.

For some schemes the new regulations may be too onerous and they may look to an alternative solutions such as the APT Master Trust which undertakes all of the governance and fiduciary responsibilities on behalf of the sponsoring employer.

If you have any questions on this update, please contact either.

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