

PENSIONS

# IORP II regulations

- *The countdown to compliance*

After much anticipation, the biggest change in Irish pension legislation in 15 years is now upon us with the signing into law of the European Union (Occupational Pension Schemes) Regulations 2021 (the Regulations) on 22 April 2021.

The Regulations transpose the requirements of the European Union Directive 2016/2341 on the activities and supervision of Institution for Occupational Retirement Provision (the **IORP II Directive**) and make a number of substantial changes to the Pensions Act 1990 (as amended).

7 MIN READ

Much of what the Regulations contain reflects what is in the IORP II Directive, but there are some surprises especially in relation to new Pensions Authority powers. The 7 key points to note from the Regulations for multi-member schemes are:

1. A new system of governance and internal controls will be required
2. New risk management assessment and processes will need to be put in place
3. New key functions (particularly regarding risk management and internal audit) and outsourcing requirements
4. New written policies will be needed
5. New benefit statements for active and deferred members will need to be issued
6. New fit and proper requirements for trustees and key function holders
7. A new supervisory review process and powers for the Pensions Authority relating to stress-tests, advisory notices and external reports.

A high level summary of the key provisions of the Regulations issued by the Pensions Authority is available [here](#).



Prior to 22 April 2021, many schemes had done a lot of preparatory work in anticipation of the IORP II Directive being implemented in Ireland. This typically took the form of a gap analysis and in some cases the production of certain written policies. While that preparatory work will prove invaluable, there is now some more clarity around the additional work that schemes will be required to carry out to become compliant. As a result, schemes can now start to progress their IORP II implementation proposals further. However, notwithstanding the implementing Regulations, further detail in the form of Pensions Authority guidance (and perhaps further regulations) will be required to fully clarify the Regulations and various requirements.

We will be publishing updates giving more detail on the key areas covered by the Regulations. For the purpose of this update we have set out some pointers regarding the path to compliance.

### What is the timeline for having to comply with the Regulations?

Many of the new requirements technically already apply. Here are some examples of them:

- The fitness and probity requirements of trustees
- Implementing an effective system of governance and internal controls
- The need to put in place risk management and internal audit functions
- The obligation to establish and apply written policies in relation to risk management, internal audit and outsourced activities
- The obligation to notify the Pensions Authority of activities which the trustees outsource.

Other requirements can be complied with from a later date such as:

- Putting in place a remuneration policy – by 31 December 2021



- Having a minimum of two trustees (or two directors of a corporate trustee) – by 31 December 2021
- Issuing the new Pension Benefit Statements – by 31 December 2022
- Carrying out an own risk assessment – before 22 April 2024.

#### What if I can't comply with the requirements which apply from 22 April 2021?

First, don't worry - full compliance isn't yet possible. The Pensions Authority's code of practice on what the Authority expects from schemes and other regulated entities to meet their obligations under the Regulations will not be published in final form until November.

The Regulations will require trustees annually to prepare a statement of compliance with the new governance requirements by 31 January each year. The form of the statement is yet to be published. This would seem to give trustees until 31 January next year which gives some breathing space. The Pensions Authority appears to fully appreciate achieving full

compliance will take some time. In guidance issued on 13 May 2021 it set out its regulatory focus to the end of 2022:

*“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.”*

*“All other schemes [i.e. apart from one member schemes and master trusts] – The Authority will expect to see evidence from these schemes ... 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 ... will be on full compliance with all obligations under the amended Act.”*

## The path to compliance

### Create a plan

Talk to your pensions manager and service providers about creating an implementation plan with specified timelines and progress milestones. This is a priority action. In some cases, schemes may have systems, processes and policies in place which could form the basis for compliance with some of the new requirements. This may help keep costs down. In other cases schemes may need to start from scratch. Key steps in the implementation plan could be to sign off on specified items at each trustee meeting.

You might want to focus on the easier items to comply with first such as putting together a compliant remuneration policy or ensuring that the minimum number of trustees or directors of a corporate trustee are in place and that the minimum experience requirement is met by at least one trustee or trustee



director. Remember, however, that some requirements, such as identifying deferred members so you can send them a Pensions Benefit Statement, may take some time.

***Start to consider who will carry out key functions***

Talk to your service providers and / or your scheme sponsor about who could carry out the risk management and internal audit key functions. In some circumstances it may be possible for the employer to assist in carrying out a key function. This is a new industry so it might take some time to identify an appropriate person or organisation to carry out these functions.

***Delegate***

Trustees should consider appointing a sub-committee or working group to keep implementation work ongoing in between normal trustee meetings. Check the delegation power in the scheme's trust deed and, for good governance, put in place clear and well-thought out terms of reference for the sub-committee.

***Remember to consider the needs of the scheme***

Many of the governance requirements are required to be proportionate to the size, nature, scale and complexity of the scheme and its activities or in some cases proportionate to the size and internal organisation of the scheme. The requirement for proportionality means that whatever arrangements you put in place to comply with a requirement must be enough to meet the aim of the requirement. Proportionality does not mean that trustees have to adopt overly complicated or unjustifiably expensive arrangements; in fact this might be regarded as poor governance. You should therefore take the circumstances of the scheme into account when deciding on the details of the arrangements you implement. Further guidance on how proportionality will be assessed would be welcomed.

***Keep an eye on the Pensions Authority's website***

Keep a close eye on the Pensions Authority's website for new guidance. The Authority has indicated that a code of practice will

be published which will set out what the Authority expects from schemes and other regulated entities to meet their obligations under the Regulations. A draft code, on which there will be a public consultation, will be published in the week of 19 July 2021 with the final code intended to be published in the week of 15 November 2021.

Remember the Pensions Authority has new powers and a more interventionist statutory objective

If the Pensions Authority asks for information or documentation or instigates a supervisory process, take legal advice on your obligations and, subject to that advice, cooperate fully with the Authority.

If you have any questions or queries on the Regulations, please contact any member of the A&L Goodbody Pensions team.



## Key contacts



**David Main**  
*Head of Pensions*  
+353 1 649 2602  
dmain@algoodbody.com



**Chris Comerford**  
*Partner*  
+353 1 649 2923  
ccomerford@algoodbody.com



**David Francis**  
*Partner*  
+353 1 649 2380  
dfrancis@algoodbody.com



**Aoife Malone**  
*Senior Associate*  
+353 1 649 2472  
amalone@algoodbody.com

## Resources



[European Union \(Occupational Pension Schemes\) Regulations 2021](#)

[READ MORE](#)



[IORP II Regulations - Information for Trustees](#)

[READ MORE](#)