



STATUTORY INSTRUMENTS.

**S.I. No. 128 of 2021**

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EUROPEAN UNION (OCCUPATIONAL PENSION SCHEMES)  
REGULATIONS 2021

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I, HEATHER HUMPHREYS, Minister for Social Protection, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016<sup>1</sup>, hereby make the following regulations:

**Part 1**  
**Preliminary and General**

**Citation**

1. These Regulations may be cited as the European Union (Occupational Pension Schemes) Regulations 2021.

**Interpretation**

2. (1) In these Regulations –

“Directive” means Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016<sup>1</sup>;

“enactment” has the meaning assigned to it by the Interpretation Act 2005 (No. 2005);

“Principal Act” means the Pensions Act 1990 (No. 25 of 1990).

(2) A word or expression that is used in these Regulations (or in any enactment amended by these Regulations) and is also used in the Directive shall, unless the context otherwise requires, have the same meaning in these Regulations (or that enactment) as it has in the Directive.

**Application of Regulations**

3. These Regulations shall apply to a scheme or trust RAC within the meaning of the Principal Act other than any such scheme or trust RAC that is a scheme or trust RAC to which Article 2(2) of the Directive applies.

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<sup>1</sup> OJ No. L 354, 23.12.2016, p.37

**Part 2**  
**Amendment of Principal Act**

**Amendment of section 2 of Principal Act**

4. (1) Section 2 of the Principal Act is amended in subsection (1) by –
  - (a) the insertion of the following definitions:
 

“ ‘competent authority’ means –

    - (a) in relation to the State, the Pensions Authority, and
    - (b) in relation to another Member State, the competent authority designated by that Member State to perform the functions of the competent authority under the Directive of 2016 for that Member State;

‘Directive of 2016’ means Directive (EU) 2016/2341<sup>1</sup> of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (recast);

‘EIOPA’ means the European Insurance and Occupational Pensions Authority established by Regulation (EU) No. 1094/2010 of the European Parliament and of the Council<sup>2</sup>;

‘enactment’ has the same meaning as it has in the Interpretation Act 2005;”

‘External Report’ shall be construed in accordance with section 26N;

‘External Report reviewer’ shall be construed in accordance with section 26O;

‘key function holder’ has the meaning assigned to it by section 64AA;

'prudential supervision' shall be construed in accordance with Part II A;”,
  - (b) by the substitution of the following definition for the definition of “Member State”:
 

“ ‘Member State’ means –

    - (a) a Member State of the European Union, other than the State, and
    - (b) not being such a Member State, a state which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993;”,

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<sup>2</sup> OJ No. L 331, 15.12.2010, p.48

- (c) by the substitution of the following definition for the definition of “one-member arrangement”:
- “‘one-member arrangement’ means –
- (a) a scheme which is established solely for one person and for that person permanently to be the sole member and that member has discretion in respect of the manner in which the resources of that scheme are invested,
  - (b) a trust RAC which is established solely for one person and for that person permanently to be the sole member and that member has discretion in respect of the manner in which the resources of that trust RAC are invested, or
  - (c) a scheme referred to in paragraph (a) or a trust RAC referred to in paragraph (b) which is the subject of a pension adjustment order and which, pursuant to that order, includes, in addition to the member referred to in paragraph (a), or as the case may be paragraph (b), a person referred to in that order;”, and
  - (d) in the definition of “outsourcing arrangement”, by substituting “shall, other than in Parts VIB and IIA, be construed accordingly” for “shall be construed accordingly”.

(2) Section 2 of the Principal Act is amended by the insertion of the following subsections after subsection (5):

“(6) A reference to the Directive or a reference to any Article or sub-Article of that Directive shall be construed as a reference to the Directive of 2016 and shall be read in accordance with the correlation table in Annex II of that Directive (EU).

(7) A word or expression that is used in this Act as amended by the *European Union (Occupational Pension Schemes) Regulations 2021* has, unless the contrary intention appears, the same meaning in this Act as so amended, as it has in the Directive of 2016.

(8) References in this Act to the provision of information by a trustee to a member or a beneficiary shall, unless otherwise specified in another Part or section of this Act, be construed as including references to the provision of the information to a member or a beneficiary by means of any electronic method.”.

### **Amendment of section 3 of Principal Act**

5. Section 3 of the Principal Act is amended –

- (a) in subsection (1) by the insertion of the following paragraph after paragraph (c):

- “(ca) In a prosecution for an offence under paragraph (a) insofar as it relates to a contravention of a provision of Part VIB, it shall be a defence for a trustee of a scheme or trust RAC or a person who is, or was, a key function holder against whom the proceedings are brought to prove that he or she took all reasonable steps and exercised all due diligence to avoid the commission of the offence.”, and
- (b) by the insertion of the following new subsection after subsection (3A):
- “(3B) A person who obstructs or impedes an External Report reviewer in the preparation of an External Report shall be guilty of an offence.”.

#### **Amendment of section 3A of Principal Act**

6. Section 3A of the Principal Act is amended in subsection (1A), in paragraph (a), by the insertion of “26T,” after “25,”.

#### **Amendment of section 10 of Principal Act**

7. Section 10 of the Principal Act is amended –

- (a) in subsection (1) by the insertion of the following paragraphs after paragraph (fa):
- “(fb) to be the competent authority in the State for the purposes of the Directive of 2016,
- (fc) for the purposes of paragraph (fb), to perform the functions of the competent authority in the State for the purposes of the Directive of 2016.”, and
- (b) by the insertion of the following subsection after subsection (1):
- “(1A) Without prejudice to subsection (1), the Pensions Authority shall carry out the prudential supervision under Part IIA in order to protect the rights of members and beneficiaries, and ensure the stability and soundness, of schemes and trust RACs.”.

#### **Amendment of section 18 of Principal Act**

8. Section 18 of the Principal Act is amended –

- (a) in subsection (3) by the insertion of “or section 26V(8)” after “by this section”, and
- (b) in subsection (6), by the insertion of the following paragraph after paragraph (a):
- “(aa) in relation to a scheme or trust RAC, any person who –
- (i) is a key function holder, or

(ii) is a service provider referred to in section 64AM and who has entered into an arrangement referred to in that section,  
for that scheme or trust RAC.”.

**Part 3**  
**Chapter 1**  
**Small scheme and one-member arrangements**

**Amendment of section 53F of Principal Act**

9. (1) Section 53F of the Principal Act is amended by –
- (a) the designation of the section as subsection (1),
  - (b) the deletion of paragraph (d), and
  - (c) the insertion of the following subsection after subsection (1):

“(2) Notwithstanding the amendment of this section by the *European Union (Occupational Pension Schemes) Regulations 2021* (S.I. No. 128 of 2021), as respects a one-member arrangement established before the coming into operation of those Regulations, the provisions of this section shall only on and from the expiry of 5 years from the date of the coming into operation of those Regulations apply to such one-member arrangement.”.

**Amendment of section 54 of Principal Act**

10. (1) Section 54 of the Principal Act is amended by –
- (a) the deletion of subsection (7), and
  - (b) the insertion of the following subsection after subsection (7):

“(8) Notwithstanding the amendment of this section by the *European Union (Occupational Pension Schemes) Regulations 2021*, a small trust RAC to which subsection (7) applied immediately before the coming into operation of those Regulations shall comply with this section not later than 31 December 2021.”.

**Amendment of section 55 of Principal Act**

11. Section 55 of the Principal Act is amended –
- (a) in subsection (1A), by the deletion of “(other than a one-member arrangement or a small trust RAC which is not a regulatory own funds trust RAC)”,
  - (b) in subsection (2), by the deletion of paragraph (d), and

(c) by the insertion, after subsection (7), of the following subsection:

“(8) Notwithstanding the amendment of this section by the *European Union (Occupational Pension Schemes) Regulations 2021 –*

- (a) a small trust RAC to which the exemption in subsection (1A) applied before the day on which those Regulations come into operation, shall make the appointment referred to in subsection (1A) not later than 31 December 2021,
- (b) a one-member arrangement to which the exemption in subsection (1A) applied before the day on which those Regulations come into operation, this section shall only on and from the expiry of 5 years from the date of such coming into operation, apply to such one-member arrangement, and
- (c) for the purposes of the preparation of the first annual report following the coming into operation of those Regulations –
  - (i) in the case of a small trust RAC referred to in paragraph (a), the first annual report shall be prepared in respect of a year specified in paragraph (a), (b) or (c) of subsection (1) which falls after the expiration 31 December 2021, and
  - (ii) in the case of a one-member arrangement referred to in paragraph (b), the first annual report shall be prepared in respect of a year specified in paragraph (a), (b) or (c) of subsection (1) which falls after the expiration of the 5 year period referred to in paragraph (b).”.

#### **Amendment of section 56 of Principal Act**

12. Section 56 of the Principal Act is amended by the deletion of subsection (7).

#### **Amendment of section 58 of Principal Act**

13. Section 58 of the Principal Act is amended by the deletion of subsection (4).

#### **Amendment of section 59 of Principal Act**

14. Section 59 of the Principal Act is amended –

- (a) in subsection (1), in paragraph (f), by the deletion of “other than in the case of the trustees of a small trust RAC,”, and

(b) by the insertion of the following subsection after subsection (4):

“(5) Notwithstanding the amendment of this section by the *European Union (Occupational Pension Schemes) Regulations 2021*, the trustees of a small trust RAC established before the coming into operation of those Regulations shall comply with section 59(1)(f) not later than 31 December 2021.”.

#### **Amendment of section 61B of Principal Act**

15. Section 61B of the Principal Act is amended by the insertion of the following subsection after subsection (2):

“(3) This section shall not apply in respect of borrowing arrangements entered into by the trustees of a one-member arrangement before the coming into operation of the *European Union (Occupational Pension Schemes) Regulations 2021*.”.

#### **Amendment of section 64D of Principal Act**

16. Section 64D of the Principal Act is amended in subsection (1) by the deletion of “(other than a small trust RAC which is not a regulatory own funds trust RAC)”.

## **Chapter 2**

#### **Amendment of Part XII of Principal Act**

#### **Amendment of section 148 of Principal Act**

17. Section 148 of the Principal Act is amended in subsection (1) by –

(a) the insertion of the following definitions:

“ ‘cross-border activity’ means operating a scheme or trust RAC where the relationship between the sponsoring undertaking, and the members and beneficiaries concerned, is governed by the social and labour law of a Member State other than the State;

‘main administration’, without prejudice to section 2(7), shall be construed in accordance with the Directive of 2016;

‘receiving IORP’ means an IORP, within the meaning of the Directive of 2016, registered or authorised in a Member State other than the State, receiving all or part of a scheme or trust RAC’s liabilities, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, from a scheme or trust RAC registered in the State;

‘receiving scheme or trust RAC’ means a scheme or trust RAC which receives or seeks to receive all or part of a pension scheme’s liabilities, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent

thereof, from a transferring IORP (within the meaning of the Directive of 2016) registered or authorised in a Member State other than the State;

‘transferring IORP’ means an IORP (within the meaning of the Directive of 2016) registered or authorised in a Member State other than the State, transferring all or part of a pension scheme’s liabilities, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, to a receiving scheme or trust RAC;

‘transferring scheme or trust RAC’ means a scheme or trust RAC transferring all or part of its liabilities, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, to a receiving IORP;”;

- (b) the substitution of the following definition for the definition of “social and labour law”:

“ ‘social and labour law’, in relation to a Member State, means the social and labour law (within the meaning of Article 11 of the Directive of 2016) of that Member State relevant to occupational pension schemes (within the meaning of that Article);”;

- (c) the substitution of the following definition for the definition of “undertaking”:

“ ‘undertaking’, in relation to a scheme or trust RAC, means a sponsoring undertaking (within the meaning of the Directive of 2016) whose relationship with its members and beneficiaries is governed by the social and labour law of another Member State, which makes, or proposes to make, contributions to the scheme or trust RAC;”, and

- (d) the insertion of the following subsection after subsection (2):

“(3) Without prejudice to section 2(7), a word or expression that is used in this Part and is also used in the Directive of 2016 shall, unless the context otherwise requires, have the same meaning in this Part as it has in the Directive.”.

### **Service of documents for purpose of Part**

18. The Principal Act is amended by the insertion of the following section after section 148:

**“148A.(1)** A notice or other document that is required to be given, or sent, to, or served on, a person under this Part shall be addressed to the person by name and shall be given, sent or served to the person in one of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or carries on business or, in a case in which an address for service has been furnished, to that address;

- (c) by sending it by post in a pre-paid registered letter or by any other form of recorded delivery to the address at which the person ordinarily resides or carries on business, or in a case in which an address for service has been furnished, to that address;
  - (d) by electronic means, in a case in which the person has given notice in writing to the person serving or giving the notice or document concerned of his or her consent to the notice or document (or notices or documents of a class to which the notice or document belongs) being served on, or given or issued to, him or her in that manner.
- (2) For the purposes of subsection (1), a company within the meaning of the Companies Acts or the Companies Act 2014, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.”.

#### **Amendment of section 149 of Principal Act**

19. Section 149 of the Principal Act is amended –

- (a) in subsection (1), by the substitution of the following subsection for subsection (1):

“(1) The trustees of a scheme or trust RAC shall not accept any contributions to a scheme or trust RAC from an undertaking unless –

  - (a) in respect of the scheme or trust RAC concerned –
    - (i) the trustees are authorised by the Pensions Authority under this section, and
    - (ii) approval has been granted, or deemed to have been granted, under section 151 in relation to the undertaking concerned, or
  - (b) in the case of a scheme or trust RAC which is a receiving scheme or trust RAC referred to in section 151A(13) –
    - (i) the trustees of that scheme or trust RAC are deemed, under section 151A(13)(a), to be authorised under this section, and
    - (ii) approval in respect of section 151 has been deemed, under section 151A(13)(b), to have been granted in relation to the undertaking concerned.”, and
- (b) by the insertion of the following subsections after subsection (6):

“(7) Where the Pensions Authority is not satisfied that –

  - (a) the trustees of the scheme or trust RAC, or
  - (b) the scheme or trust RAC,

comply, or complies, with the conditions of authorisation under subsection (4), it shall refuse authorisation under this section and shall notify the trustees of the scheme or trust RAC, in writing, of that decision and of the right of appeal within the period referred to in subsection (8).

(8) Where the Pensions Authority has refused to make an authorisation under this section, the trustees of the scheme or trust RAC may, not later than 21 days from the date of the notification, referred to in subsection (7), of that decision appeal to the High Court against that decision to refuse authorisation under this section.

(9) On the hearing of an appeal referred to in subsection (8), the High Court may make one of the following orders –

- (a) an order confirming the decision to refuse authorisation, or
- (b) an order quashing the decision to refuse authorisation.

(10) The Court may also make such ancillary orders as it considers appropriate.”.

### **Amendment of section 150 of Principal Act**

20. Section 150 of the Principal Act is amended in subsection (1) by the insertion of “or an authorisation deemed, under section 151A(13)(a), to have been granted under section 149” after “revoke an authorisation under section 149”.

### **Amendment of section 151 of Principal Act**

21. Section 151 of the Principal Act is amended –

- (a) in subsection (2) –
  - (i) in paragraph (a), by the insertion of “main administration of the sponsoring” after “location of the”, and
  - (ii) in paragraph (b), by the substitution of “the host Member State which shall, where applicable, be identified by the sponsoring undertaking” for “any host Member State”,
- (b) by the substitution of the following subsection for subsection (4):

“(4) The Pensions Authority shall assess the administrative structure, the financial situation of the scheme or trust RAC and the trustees compliance with the requirements specified in section 59A and where it is of the opinion that such administrative structure, such financial situation and such trustee compliance are compatible with the proposed cross-border activity, the Pensions Authority shall, within 3 months after the date of receipt of the notification under subsection (1), notify in writing –

- (a) the competent authority of the host Member State of any relevant information contained in the notification, and
- (b) the trustees of the scheme or trust RAC that approval has been granted by it in relation to the undertaking specified in the notification.”,
- (c) by the insertion of the following subsections after subsection (4):
  - “(4A) Where the Pensions Authority decides not to grant approval under subsection (4), the Pensions Authority shall, within 3 months of the date of the receipt of the notification under subsection (1), issue a decision in writing to the trustees of the scheme or the trust RAC with the reasons for this decision.
  - (4B) Where –
    - (a) the Pensions Authority has issued a decision under subsection (4A), the trustees of the scheme or trust RAC may within 21 days after the date of issue of the decision under subsection (4A), appeal to the High Court against the decision of the Pensions Authority, or
    - (b) the Pensions Authority has not communicated the relevant information contained in the notification under subsection (1) to the competent authority of the host Member State within 3 months from the date of the receipt by it of that notification, the trustees of the scheme or trust RAC may within 21 days of the expiry of that 3 month period, appeal to the High Court against the failure of the Pensions Authority to act.”,
- (d) by the substitution of the following subsection for subsection (5):
  - “(5) If no notification is received from the Pensions Authority under subsection (4) within the period specified in that subsection or as the case may be, subsection (4A) within the period specified in that subsection, approval is deemed to have been granted in relation to the undertaking specified in the notification under subsection (1) at the end of that period.”,
- (e) by the substitution of the following subsection for subsection (6):
  - “(6) Where the Pensions Authority has notified the competent authority of the host Member State under subsection (4)(a) and that competent authority notifies the Pensions Authority of –
    - (a) pursuant to paragraph 7 of Article 11 of the Directive of 2016 –
      - (i) the requirements of social and labour law, and
      - (ii) the information requirements referred to in Title IV of the Directive of 2016,

of the host Member State which apply to the cross-border activity, and

- (b) pursuant to Article 33 of the Directive of 2016, a requirement, if any, under the law of the host Member State to appoint one or more depositaries for the safekeeping of assets and oversight duties,

the Pensions Authority shall, as soon as reasonably practicable following receipt of such notification, by that competent authority, of the matters specified in paragraphs (a) and (b), notify the trustees of the scheme or trust RAC concerned of those matters.”,

- (f) by the insertion of the following subsections after subsection (6):

“(6A) Where the competent authority of the host Member State referred to in subsection (6), informs the Pensions Authority, pursuant to paragraph 9 of Article 11 of the Directive of 2016, of significant changes to –

- (a) the requirements referred to in subsection (6)(a) which may affect the characteristics of the scheme or trust RAC concerned insofar as it concerns the cross-border activity, or
- (b) where the requirements referred to in subsection (6)(b) apply, those requirements,

the Pensions Authority shall, as soon as reasonably practicable following receipt of such changes, notify the trustees of the scheme or trust RAC of those changes.”, and

- (g) in subsection (7)(a) by the substitution of “6 weeks” for “2 months” in each place where it occurs.

### **Insertion of new sections 151A and 151B**

22. The Principal Act is amended by the insertion of the following sections after section 151:

#### **“Transfer from IORP in another Member State to receiving scheme or trust RAC**

**151A.** (1) The trustees of a scheme or trust RAC may, in accordance with this section, receive all or part of a pension scheme’s liabilities, technical provisions and other obligations and rights as well as corresponding assets or cash equivalent thereof, from a transferring IORP.

(2) The trustees of a receiving scheme or trust RAC seeking to receive a transfer from a transferring IORP shall submit an application for authorisation of a transfer to the Pensions Authority.

(3) An application under subsection (2) shall include the following information:

- (a) the written agreement between the transferring IORP and the trustees of the receiving scheme or trust RAC setting out the conditions of the transfer;
- (b) a description of the main characteristics of the transferring IORP's pension scheme;
- (c) a description of the liabilities or technical provisions to be transferred, and other obligations and rights, as well as corresponding assets or cash equivalent thereof;
- (d) the name and the location of the main administration of the transferring IORP and the Member State in which it is registered or authorised;
- (e) the name and the location of the main administration of the receiving scheme or trust RAC and the Member State in which it is registered or authorised;
- (f) the location of the main administration of the sponsoring undertaking and the name of the sponsoring undertaking;
- (g) evidence that the transfer has been approved by a majority of the members and a majority of the beneficiaries of the pension scheme of the transferring IORP or their representatives in compliance with the requirements of the national law of the Member State concerned, and, where applicable, the approval of the sponsoring undertaking;
- (h) where the transfer results in cross-border activity, the name of the Member State whose social and labour law is applicable to the members and beneficiaries concerned.

(4) The Pensions Authority may request the trustees to provide further information in relation to any of the matters specified in paragraphs (a) to (h) of subsection (3).

(5) On receipt of the information under subsection (3), the Pensions Authority shall, as soon as practicable and not later than 7 days, send a copy of that information to the competent authority of the transferring IORP.

(6) The trustees of a receiving scheme or trust RAC shall not accept a transfer of all or part of a pension scheme's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, from a transferring IORP unless –

- (a) the transfer is authorised by the Pensions Authority under this section, and
- (b) the prior consent of the competent authority of the transferring IORP has been obtained.

(7) The Pensions Authority shall assess whether –

- (a) all of the information referred to in paragraphs (a) to (h) of subsection (3) has been provided to it by the receiving scheme or trust RAC,

- (b) the administrative structure, the financial situation of the receiving scheme or trust RAC and the trustees' compliance with section 59A are compatible with the proposed transfer,
- (c) the long term interests of the members and beneficiaries of the receiving scheme or trust RAC, and the transferred part of the transferring IORP pension scheme, are adequately protected during and after the transfer,
- (d) where the transfer results in cross-border activity, the technical provisions of the receiving scheme or trust RAC are fully funded at the date of the transfer, and
- (e) the assets to be transferred are sufficient and appropriate in accordance with the provisions of this Act to cover the liabilities, technical provisions and other obligations and rights to be transferred,

and where the Pensions Authority is satisfied that the matters referred to in paragraphs (a) to (e) have been complied with, the Pensions Authority shall authorise the transfer of the pension scheme's liabilities, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, from the transferring IORP to the receiving scheme or trust RAC.

(8) The Pensions Authority shall send a notification of the authorisation in writing to –

- (a) the trustees of the receiving scheme or trust RAC, within 3 months of receiving the application referred to in subsection (2), and
- (b) the competent authority of the transferring IORP, within 2 weeks of the date of granting the authorisation under this section.

(9) Where the Pensions Authority is not satisfied that any of the matters referred to in paragraphs (a) to (e) of subsection (7) have been complied with, it shall refuse to authorise the transfer and shall –

- (a) send, to the trustees of the receiving scheme or trust RAC, a notification in writing of –
  - (i) the refusal, and
  - (ii) the reasoning for that refusal,
 within 3 months of the date of the receipt of the application under subsection (2), and
- (b) send a notification in writing of the refusal to the competent authority of the transferring IORP within 2 weeks of the date of the refusal of the authorisation under this subsection.

(10) Where –

- (a) the Pension Authority refuses to authorise the transfer to the receiving scheme or trust RAC under subsection (9), or

- (b) the Pension Authority fails to act within the 3 month period referred to in subsection (8)(a),

the trustees of the receiving scheme or trust RAC may appeal to the High Court in the case of a refusal to authorise the transfer referred to in paragraph (a), within 21 days from the date on which the Pensions Authority notifies the trustees of its refusal under subsection (9), or in the case of a failure to act referred to in paragraph (b), the expiry of the 3 month period referred to in subsection (8)(a).

(11) On the hearing of an appeal referred to in subsection (10), the High Court may make –

- (a) an order confirming the refusal to authorise the transfer referred to in subsection (10)(a) or confirming that the Pension Authority has failed to act within the period referred to in subsection (10)(b), or
- (b) an order quashing the refusal to authorise the transfer referred to in subsection (10)(a),

and may make such ancillary orders as it considers appropriate.

(12) Where the Pensions Authority has authorised a transfer under subsection (7) and the transfer results in cross-border activity and the competent authority of the home Member State of the transferring IORP notifies the Pensions Authority of –

- (a) pursuant to Article 12(11) of the Directive of 2016 –
  - (i) the requirements of social and labour law, and
  - (ii) the information requirements referred to in Title IV of the Directive of 2016,
 of the home Member State of the transferring IORP which will apply to the cross-border activity, and
- (b) pursuant to Article 33(1) of the Directive of 2016, a requirement, if any, under the law of the home Member State of the transferring IORP to appoint one or more depositaries for the safekeeping of assets and oversight duties,

the Pensions Authority shall within one week of receipt of such notification, by that competent authority, of the matters specified in paragraphs (a) and (b), notify the trustees of the receiving scheme or trust RAC of those matters.

(13) Where, in accordance with subsection (7), the Pensions Authority has authorised the transfer of a pension scheme's liabilities, technical provisions, other obligations, rights, any assets, or cash equivalent referred to in subsection (7) from a transferring IORP to a receiving scheme or trust RAC and the transfer results in cross-border activity, the trustees of the receiving scheme or trust RAC concerned shall be deemed –

- (a) to be authorised under section 149 for cross-border activity, and
- (b) to have been granted approval under section 151 to accept contributions from the undertaking to which the transfer relates,

and sections 149(4), 150 and 152 shall apply in respect of that scheme or trust RAC.

(14) The trustees of the receiving scheme or trust RAC may effect the transfer and begin to operate the scheme or trust RAC where –

- (a) a transfer is authorised under subsection (7), on receipt of the notification referred to in subsection (8)(a), or
- (b) no information on the decision is received from the Pensions Authority by the trustees of the receiving scheme or trust RAC on the expiry of the period referred to in subsection (12), at the expiry of the period.

(15) In the case of a disagreement about the procedure or content of an action or inaction of the Pensions Authority or the competent authority of the transferring IORP, including a decision to refuse a cross-border transfer, the Pensions Authority may request EIOPA to carry out non-binding mediation in accordance with point (c) of the second paragraph of Article 31 of Regulation (EU) No. 1094/2010.

(16) The trustees of the receiving scheme or trust RAC shall ensure that the costs of the transfer under this section shall not be borne by the incumbent members and beneficiaries of the scheme or trust RAC.

(17) In the case of the trustees of a small scheme or small trust RAC deemed, under subsection 13(a), to be authorised under section 149 for cross-border activity, the trustees of that small scheme or small trust RAC shall comply with the provisions of this Act that are prescribed from time to time for the purposes of section 149.

### **Transfers from scheme or trust RAC to IORP in another Member State**

**151B.** (1) The trustees of a scheme or trust RAC may, in accordance with this section, transfer all or part of the liabilities, technical provisions and other obligations and rights as well as corresponding assets or cash equivalent thereof, of that scheme or trust RAC to a receiving IORP.

(2) The trustees of a transferring scheme or trust RAC who intend to transfer all or part of a scheme's, or trust RAC's, liabilities, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, to a receiving IORP shall not make that transfer unless the trustees have obtained the prior approval to the transfer by –

- (a) a majority of –
  - (i) the members, and
  - (ii) the beneficiaries,
 of that scheme or trust RAC, and
- (b) the sponsoring undertaking, where applicable.

(3) The trustees referred to in subsection (2) shall, for the purpose of obtaining the prior approval referred to in subsection (2) –

- (a) notify, in writing, the members and beneficiaries of the transferring scheme or trust RAC of the intention to transfer, and
- (b) provide information in that notification concerning the conditions of the transfer.

(4) A transfer referred to in subsection (1) shall require –

- (a) the prior consent of the Pensions Authority, and
- (b) when the prior consent referred to in paragraph (a) has been obtained, the authorisation of the competent authority of the receiving IORP.

(5) Where the Pensions Authority receives an application for authorisation under this section of a transfer from the competent authority of the receiving IORP, the Pensions Authority shall assess whether –

- (a) in the case of a partial transfer of the scheme's or trust RAC's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, the long term interests of the members and beneficiaries of the remaining part of the transferring scheme or trust RAC are adequately protected,
- (b) the individual entitlements of the members and beneficiaries are at least the same after the transfer, and
- (c) the assets corresponding to the scheme or trust RAC to be transferred are, in accordance with this Act, sufficient and appropriate to cover the liabilities, technical provisions and other obligations and rights to be transferred.

(6) Where the Pensions Authority is satisfied of the matters set out in paragraphs (a) to (c) of subsection (5), it shall, within 8 weeks of the date of receipt of the application for authorisation of a transfer from the competent authority of the receiving IORP, communicate to that competent authority that it consents to the transfer.

(7) Where the Pensions Authority is not satisfied of any of the matters set out in paragraphs (a) to (c) of subsection (5), it shall, within 8 weeks of the date of receipt of the application for authorisation of a transfer from the competent authority of the receiving IORP, communicate to that competent authority that it does not consent to the transfer.

(8) Where the Pensions Authority receives a notification pursuant to Article 12(11) of the Directive of 2016 from the competent authority of a receiving IORP and the transfer results in cross-border activity, the Pensions Authority shall inform the competent authority of the receiving IORP of the relevant statutory requirements within 4 weeks from the date of receipt of that notification.

(9) Where a transfer authorised by the competent authority of the receiving IORP results in cross-border activity, section 153(3) to (7) shall apply in respect of the supervision by the Pensions Authority of the receiving IORP within the State.

(10) In the case of a disagreement about the procedure or content of an action or inaction of the Pensions Authority or the competent authority of the receiving IORP, including a decision to authorise or refuse a cross-border transfer, the Pensions Authority may request EIOPA to carry out non-binding mediation in accordance with point (c) of the second paragraph of Article 31 of Regulation (EU) No. 1094/2010.

(11) The trustees of the transferring scheme or trust RAC shall ensure that the costs of the transfer under this section shall not be borne by the remaining members and beneficiaries of the scheme or trust RAC.”.

### **Amendment of section 152 of Principal Act**

23. Section 152 of the Principal Act is amended –

(a) in subsection (1) –

- (i) by the deletion of “, investment”, and
- (ii) by the insertion of “and a requirement, if any, under the law of any relevant Member State to appoint a depositary” after “host Member State”, and

(b) in subsection (2) by the substitution of the following for paragraph (a):

“(a) the competent authority of the host Member State, in pursuance of Article 11(10) of the Directive of 2016, inform the Pensions Authority that the trustees of the scheme or trust RAC are operating the scheme or trust RAC in a manner which is not consistent with –

- (i) the requirements of social and labour law,
- (ii) the information requirements, referred to in Title IV of the Directive of 2016, or
- (iii) a requirement, if any, to appoint a depositary under the law,

of that host Member State, or”.

### **Amendment of section 153 of Principal Act**

24. Section 153 of the Principal Act is amended –

(a) by the substitution of the following subsection for subsection (1):

“(1) Where –

- (a) an employer or self-employed person makes or proposes to make contributions to an institution for occupational retirement provision that has its main administration in another Member State, and

- (b) the relationship between the employer and the members and beneficiaries concerned is governed by the social and labour law of the State,
- any function which Article 11 of the Directive of 2016 requires or authorises to be exercised by the competent authorities of the State is exercisable by the Pensions Authority.”, and
- (b) in subsection (2) by –
  - (i) the substitution of “Article 11(4) of the Directive of 2016” for “Article 20(4) of the Directive”, and
  - (ii) the substitution of “6 weeks” for “2 months”.

**Part 4**  
**Chapter 1**  
**Quantitative requirements**

**Amendment of section 59 of Principal Act**

25. Section 59 of the Principal Act is amended –
- (a) in subsection (1), in paragraph (b), by the substitution of “in accordance with section 59AB and, subject to that section,” for “in accordance with regulations and, subject to those regulations”,
  - (b) by the deletion of subsection (1A),
  - (c) in subsection (1B) –
    - (i) by the deletion of “, other than a small scheme or small trust RAC as the case may be,”, and
    - (ii) in paragraph (c), by the insertion of “significant” after “following any”, and
  - (d) by the insertion of the following subsections after subsection (1C):
    - “(1D) A member or a beneficiary, or the Pensions Authority, may request a copy of the statement referred to in subsection (1B).
    - “(1E) The trustees of a scheme or trust RAC shall make the statement referred to in subsection (1B) available on request and without prejudice to the generality of the foregoing, following a request under subsection (1D), shall provide that statement –
      - (a) in the case of a request by a member or beneficiary, not later than 4 weeks from the date on which the request was made, or

- (b) in the case of a request made by the Pensions Authority, within such time as the Pensions Authority may specify.”.

### **Investment rules**

26. The Principal Act is amended by the insertion of the following section after section 59AA:

**“59AB.** (1) The trustees of a scheme or trust RAC shall invest in accordance with the prudent person rule (within the meaning of the Directive of 2016) and without prejudice to the generality of the foregoing shall invest in accordance with this section.

- (2) When investing, the trustees of a scheme or trust RAC –
  - (a) shall invest the resources of the scheme or trust RAC in the best long term interests of members and beneficiaries as a whole, and in the case of a potential conflict of interest, shall ensure that the investment is made in the sole interest of members and beneficiaries,
  - (b) in accordance with the prudent person rule referred to in subsection (1), may take into account the potential long-term impact of investment decisions on environmental, social and governance factors,
  - (c) shall invest the resources of the scheme or trust RAC in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole,
  - (d) shall invest the resources of the scheme or trust RAC predominantly in regulated markets and, where there is investment in assets which are not admitted to trading on a regulated financial market, shall keep any such investment to prudent levels,
  - (e) shall comply with subsection (3) if investing in derivative instruments,
  - (f) shall invest in such a manner that the resources shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and accumulations of risk in the portfolio as a whole,
  - (g) for the purposes of paragraph (f), where they invest in assets issued by the same issuer or by issuers belonging to the same group, shall invest in a manner that shall not expose the scheme or trust RAC to excessive risk concentration,
  - (h) if they have invested in the employer, shall not invest more than 5% of the resources of the scheme as a whole and, where the employer belongs to a group, they shall not invest more than 10% of those resources in the undertakings belonging to the same group as the employer, and

- (i) for the purposes of paragraph (h), shall, where a scheme is sponsored by a number of employers, invest in those employers prudently and shall take into account the need for proper diversification.

(3) In the case of investment in derivative instruments referred to in subsection (2)(e) and for the purposes, by the trustees of a scheme or trust RAC, of such investment, such investment by trustees of a scheme or trust RAC shall be possible insofar as such instruments contribute to a reduction in investment risks or facilitate efficient portfolio management and –

- (a) they shall be valued on a prudent basis, taking into account the underlying asset,
- (b) they shall be included in the valuation of the assets of the scheme or trust RAC, and
- (c) the trustees shall avoid excessive risk exposure to a single counterparty and to other derivative operations.

(4) The Pensions Authority shall –

- (a) monitor the adequacy of the credit assessment processes of schemes, and
- (b) assess the use of references to credit ratings issued by credit rating agencies as defined in point (b) of Article 3(1) of Regulation (EC) No. 1060/2009 of the European Parliament and of the Council<sup>3</sup>, in their investment policies and, where appropriate encourage mitigation of the impact of such references, with a view to reducing sole and mechanistic reliance on such credit ratings.

(5) For the purposes of subsection (2) –

- (a) investment in a collective investment undertaking shall be treated as being invested in a regulated market in accordance with subsection (2)(d) and diversified in accordance with subsection (2)(f) to the extent that the investments held by that undertaking are themselves so invested,
- (b) investment in an insurance policy falling within the class of insurance specified at paragraph III of Annex II of Directive 2009/138/EC of the European Parliament and of the Council<sup>4</sup> shall be treated as invested on a regulated market in accordance with subsection (2)(d) and diversified in accordance with subsection (2)(f) to the extent that the selection, by the trustees referred to in subsection (2), of the investments by which the return on the insurance policy will be determined complies with those subsections,
- (c) investment in an insurance policy the terms of which provide that the proceeds of the insurance policy at maturity will be equal to or greater than the amount of the investment over the term of the

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<sup>3</sup> OJ No. L302, 17.11.2009, p.1

<sup>4</sup> OJ No. L 335, 17.12.2009, p.1

insurance policy, shall be treated as invested on a regulated market in accordance with subsection (2)(d) and diversified in accordance with subsection (2)(f),

- (d) investment in an insurance policy of a type to which Article 2(3)(a)(ii) of Directive 2009/138/EC of the European Parliament and of the Council relates shall be treated as invested on a regulated market in accordance with subsection (2)(d) and diversified in accordance with subsection (2)(f), and
- (e) investment in bonds issued by the government of any Member State shall be treated as diversified in accordance with subsection (2)(f).

(6) Subsection (2)(d) applies in respect of the proportion of the assets of the scheme or trust RAC attributable to each individual member of the scheme or trust RAC in the same manner as they apply to the assets of the scheme or trust RAC as a whole.

(7) For the purposes of subsection (4) and the monitoring by the Pensions Authority referred to in that subsection, the trustees of a scheme shall –

- (a) notify the Pensions Authority, in such form as the Pensions Authority may specify, where all or part of the resources of the scheme are directly invested in debt instruments, excluding investments in collective investment undertakings and investments in an insurance policy, and
- (b) on request by the Pensions Authority, furnish it with all relevant information on the credit assessment process applied by a scheme.

(8) For the purposes of subsection (2)(h) and (2)(i) and subject to subsection (9), in the case of a scheme investment of all or part of the resources of the scheme in the employer or, where the employer belongs to a group, that group, such investment –

- (a) shall be deemed to include investment in –
  - (i) property, other than land or buildings, which is used for the purpose of any business carried on by the employer, or as the case may be, that group,
  - (ii) loans to the employer or as the case may be, that group,
  - (iii) moneys due to the scheme held by the employer or as the case may be, that group, or
  - (iv) shares or other securities issued by a person in that group, and
- (b) shall not include –
  - (i) investment in a cash deposit with any person in that group who, in accordance with, or pursuant to, any enactment, is an authorised deposit taking institution, or
  - (ii) investment in –

- (I) an insurance policy or contract of assurance issued by a person in that group who is the holder of an authorisation within the meaning of Article 2 of the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994),
- (II) a segregated fund or a managed fund, or other collective investment fund, managed by a person in that group who is the holder of an authorisation issued by the Central Bank of Ireland pursuant to –
  - (A) the Investment Intermediaries Act 1995,
  - (B) the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017), or
  - (C) any other enactment,
- (III) a unit trust scheme authorised by the Central Bank of Ireland under the Unit Trusts Act 1990 and managed by a person in that group,
- (IV) an investment company authorised by the Central Bank of Ireland under Part 24 of the Companies Act 2014,
- (V) a collective investment scheme authorised by the Central Bank of Ireland under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011),
- (VI) an undertaking for collective investment in transferable securities authorised by a competent authority in another Member State in accordance with Council Directive 2009/65/EC<sup>5</sup> of the European Parliament and of the Council, or
- (VII) bonds issued by the government of any Member State.

(9) For the purposes of subsection (8)(a), a reference to ‘investment’ shall be deemed to include the proportion attributable to the resources of the scheme (whether directly or through any intervening fund) of any investment in the group referred to in that subsection –

- (a) by the manager of –
  - (i) a segregated fund,
  - (ii) a managed fund,
  - (iii) any other collective investment fund,
  - (iv) a unit trust scheme,

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<sup>5</sup> OJ No. L 302, 17.11.2009, p.32

- (v) an investment company, or
- (vi) a collective investment scheme, or
- (b) which is comprised in an investment fund to which an insurance policy or contract of assurance falling within Class III or Class VII of the classes of insurance specified in Annex I to the European Communities (Life Assurance) Framework Regulations, 1994 is connected.

(10) In this section –

‘collective investment undertaking’ means –

- (a) an investment undertaking within the meaning assigned to it by section 739B of the Taxes Consolidation Act 1997,
- (b) a unit trust which neither is, nor is deemed to be, an authorised unit trust scheme within the meaning of the Unit Trust Act 1990,
- (c) an undertaking for collective investment in transferable securities within the meaning assigned to it by Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009, situate in any Member State,
- (d) a common contractual fund within the meaning of section 739I(1)(a)(i) of the Taxes Consolidation Act 1997, or
- (e) an alternative investment fund within the meaning assigned to it by Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011<sup>6</sup>, situated in any Member State;

‘insurance policy’ means an insurance policy or contract of assurance issued by any person who is the holder of an authorisation –

- (a) granted by the Central Bank of Ireland under the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015), or
- (b) granted by the authority charged with the duty of supervising the activities of insurance undertakings in a Member State other than the State in accordance with Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009.

(11) This section shall not apply in respect of investments made by the trustees of a one-member arrangement before the coming into operation of the *European Union (Occupational Pension Schemes) Regulations 2021*.”.

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<sup>6</sup> OJ No. L 174, 1.07.2011, p. 1

**Part 5**  
**Governance requirements**

**Amendment of section 59A of Principal Act**

27. Section 59A of the Principal Act is amended by –

(a) the substitution of the following subsection for subsection (1):

“(1) A person shall not act as a trustee of a scheme or trust RAC unless the person –

- (a) is, having regard to section 64AE, of good repute and integrity,
- (b) has the qualifications and knowledge which, together with the qualifications and knowledge of the other trustees, are collectively adequate to enable all the trustees of the scheme or trust RAC to ensure the sound and prudent management of that scheme or trust RAC, and
- (c) has experience which, together with the experience of the other trustees, is collectively adequate having regard to the requirement in subsection (1A), to enable all the trustees to ensure the sound and prudent management of that scheme or trust RAC.”, and

(b) the insertion of the following subsections after subsection (1):

“(1A) At least one of the trustees of the scheme or trust RAC shall have not less than 2 years’ experience as a trustee of a scheme or trust RAC within the immediately preceding 3 years which is of a type that is adequate for him or her to ensure the sound and prudent management of that scheme or trust RAC.

(1B) Where, as referred to in section 64AC(2), a body corporate is appointed as the sole trustee of a scheme or trust RAC

- 
- (a) each of the directors of that body corporate shall be, having regard to section 64AE, of good repute and integrity,
  - (b) the directors of that body corporate shall have the qualifications, knowledge and, subject to paragraph (c), experience which, together with the qualifications, knowledge and experience of the other directors, are collectively adequate to enable them to ensure the sound and prudent management of that scheme or trust RAC, and
  - (c) at least one of the directors who effectively run the scheme or trust RAC shall have, within the immediately preceding 3 years, not less than 2 years’ experience as a trustee or as a director of a body

corporate appointed as trustee of a scheme or trust RAC, which is of a type that is adequate for him or her to ensure the sound and prudent management of the scheme or trust RAC.”.

### **Insertion of Part VIB into Principal Act**

28. The Principal Act is amended by the insertion of the following Part after Part VIA:

**“Part VIB**  
**Conditions governing activities**  
**General**

#### **Interpretation for Part**

**64AA.** (1) In this Part –

‘key function holder’ means a person who carries out a key function specified in section 64AH;

‘outsourced’ has, notwithstanding section 2(1), the same meaning as it has in the Directive of 2016.

(2) Without prejudice to section 2(7), a word or expression that is used in this Part and is also used in the Directive of 2016 shall, unless the context otherwise requires, have the same meaning in this Part as it has in the Directive.

#### **System of governance: general provisions**

#### **General governance requirements**

**64AB.** (1) Without prejudice to any other provision of this Act, the trustees of a scheme or trust RAC shall put in place an effective system of governance which provides for sound and prudent management of the activities of that scheme or trust RAC and those trustees shall provide that such system of governance includes –

- (a) an adequate and transparent organisational structure with a clear allocation and appropriate segregation of responsibilities which shall –
  - (i) set out the functions and activities required to manage the scheme or trust RAC, and
  - (ii) specify the person who is responsible for performing each such function and carrying out any such activity, and
- (b) an effective system for ensuring the transmission of information.

(2) The system of governance referred to in subsection (1) shall include consideration of environmental, social and governance factors related to investment assets in investment decisions.

(3) The trustees referred to in subsection (1) shall regularly review the system of governance referred to in subsection (1).

(4) The trustees of a scheme or trust RAC shall ensure that the system of governance referred to in subsection (1) is proportionate to the size, nature, scale and complexity of the scheme or trust RAC concerned.

(5) The trustees of a scheme or trust RAC shall, subject to subsection (6), establish, and apply, written policies in relation to –

- (a) risk management,
- (b) internal audit, and
- (c) where relevant, actuarial and outsourced activities.

(6) The trustees referred to in subsection (1) shall approve the written policies referred to in subsection (5) before those policies are established and applied.

(7) The trustees referred to in subsection (5) shall –

- (a) review the policies referred to in that subsection at least once every 3 years, and
- (b) adapt any of the policies referred to in paragraph (a) where there is, or has been, any significant change in the system or area with which any of those policies is concerned including any change provided by, or under, any enactment.

(8) The trustees of a scheme or trust RAC shall put in place an effective internal control system which shall include –

- (a) administrative procedures,
- (b) accounting procedures,
- (c) an internal control framework, and
- (d) appropriate reporting arrangements at all levels of the scheme or trust RAC concerned.

(9) The trustees of a scheme or trust RAC shall, subject to subsection (10), take reasonable steps to ensure continuity and regularity in the performance of the scheme or trust RAC of its activities, including the development of contingency plans.

(10) For the purposes of subsection (9), the trustees referred to in that subsection shall employ appropriate and proportionate systems, resources and procedures.

### **Governance: requirements in respect of number of trustees**

**64AC.** (1) A scheme or a trust RAC shall, subject to subsection (2), have at least 2 persons appointed as trustees of the scheme or trust RAC who effectively run that scheme or trust RAC.

(2) Where a body corporate is appointed as the sole trustee of a scheme or trust RAC, the requirement under subsection (1) to appoint at least 2 trustees who effectively run the scheme or trust RAC shall, in the case of such body corporate, be deemed to be satisfied where the body corporate, subject to subsection (3), has at least 2 directors who effectively run that scheme or trust RAC and the requirements of section 59A(1B) are satisfied.

(3) Where immediately before the coming into operation of the *European Union (Occupational Pension Schemes) Regulations 2021* –

- (a) a scheme or trust RAC referred to in subsection (1) had less than 2 persons appointed as trustees of the scheme or trust RAC who effectively run that scheme or trust RAC, another person shall be appointed as a trustee of that scheme or trust RAC not later than 31 December 2021, or
- (b) a body corporate referred to in subsection (2) had less than 2 directors appointed as directors of that body corporate who effectively run that scheme or trust RAC, another person shall be appointed as a director to effectively run that scheme or trust RAC not later than 31 December 2021.

### **Requirements for fit and proper management: key function holder and persons to whom key function outsourced**

**64AD.** (1) The trustees of a scheme or trust RAC shall not appoint a person to carry out a key function in relation to the scheme or trust RAC unless they are satisfied that the person –

- (a) is, having regard to section 64AE of good repute and integrity,
- (b) where the key function concerned is the actuarial key function, or the internal audit key function, possesses the professional qualifications, knowledge and experience that are adequate to properly carry out that key function, and
- (c) where the key function concerned is a key function other than those specified in paragraph (b), possesses the qualifications, knowledge and experience that are adequate to properly carry out that key function.

(2) Where a key function is to be outsourced under section 64AM, the trustees of the scheme or trust RAC shall not appoint a service provider referred to in that section to carry out an outsourced key function unless they are satisfied that the contract provider –

- (a) is, having regard to section 64AE, of good repute and integrity, and

- (b) where the key function to be outsourced is the actuarial key function, or the internal audit key function, possesses the professional qualifications, knowledge and experience that are adequate to properly carry out that key function when outsourced, and
- (c) where the key function to be outsourced is a key function other than those specified in paragraph (b), possesses the qualifications, knowledge and experience that are adequate to properly carry out that key function when outsourced.

(3) The Pensions Authority may require, by notice in writing, information from the trustees referred to in subsections (1) and (2) as to whether any person

- - (a) who carries out a key function, or
  - (b) to whom a key function is outsourced under section 64AM,
- satisfies the requirements of subsection (1) or, as the case may be, subsection (2).

(4) The trustees referred to in subsection (3) shall provide the information requested by the Pensions Authority under subsection (3).

**Requirements for fit and proper management: requirements in respect of good repute and integrity for appointment as trustee, key function holder; and for person to whom key function outsourced**

**64AE.** For the purposes of satisfying the requirement of good repute and integrity referred to in sections 59A and 64AD a person, or as the case may be, a body corporate does not satisfy that requirement if —

- (a) the person, or as the case may be, the body corporate or any director of that body corporate has been convicted of —
  - (i) an offence involving fraud or dishonesty,
  - (ii) an offence of money laundering under the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2018, or
  - (iii) an offence in respect of conduct in a place other than the State that would constitute an offence of the kind referred to in subparagraph (i) or (ii),
- (b) the person —
  - (i) is an undischarged bankrupt,
  - (ii) has made a composition or arrangement with his or her creditors and has not discharged his or her obligations under that composition or arrangement,
  - (iii) is, or is deemed to be, the subject of an order under section 160 of the Companies Act 1990, or a disqualification order within the meaning of Chapter 4 of Part 14 of the

- Companies Act 2014, whether by virtue of that Chapter or any other provision of that Act, or
- (iv) is a person to whom a declaration under section 150 of the Companies Act 1990 Act applies or is a restricted person within the meaning of Chapter 3 of Part 14 of the Companies Act 2014,
- (c) in the case of a body corporate, the body corporate –
    - (i) has commenced a voluntary winding-up,
    - (ii) is subject to a winding-up order or is the subject of proceedings for such an order, or
    - (iii) has proposed a compromise or arrangement that is sanctioned under section 453(2) of the Companies Act 2014, or
  - (d) in the case of a body corporate, a director of that body corporate –
    - (i) is subject to a declaration under section 819 of the Companies Act 2014 made against him or her or deemed to be the subject of such declaration by virtue of Chapter 5 of Part 14 of that Act,
    - (ii) is the subject of, or is deemed to be subject to, a disqualification in respect of conduct in a place other than the State that would constitute a disqualification order within the meaning of Chapter 4 of Part 14 of the Companies Act 2014.

**Section 64AE: supplementary provisions relating to evidence of compliance with proper requirements**

**64AF.** (1) Where –

- (a) the Pensions Authority requires proof of good repute, proof of no previous bankruptcy, or both, in respect of a person who is a national of another Member State where such person, in respect of a scheme or trust RAC, acts, or proposes to act, as a trustee or carries out, or proposes to carry out, a key function, and
- (b) notwithstanding any other requirements that may be specified in this Part in relation to proof of such matters,

the Pensions Authority may, by notice in writing, request the trustees of the scheme or trust RAC to furnish it with any record or document specified in subsection (2).

(2) For the purposes of subsection (1) and subject to subsection (3), the Pensions Authority shall accept –

- (a) an extract from the judicial record of the other Member State, or
- (b) in the absence of a judicial record in the other Member State an equivalent record or document, issued by a competent judicial or

administrative authority designated to issue such records or documents in the Member State of which the person is a national or in the State which demonstrate compliance with the required proofs.

(3) In the event that no equivalent document referred to in paragraph (b) of subsection (2) is issued by a competent judicial or administrative authority in the Member State of which the person is a national or the State, he or she may provide the Pensions Authority with –

- (a) a declaration on oath made in accordance with the law of the other Member State, or
- (b) a statutory declaration under the Statutory Declarations Act 1938 in the form prescribed,

stating that the requirements of good repute, no previous bankruptcy, or both, are satisfied by him or her.

(4) Where the Pensions Authority makes a request referred to in subsection (1), the trustees of the scheme or trust RAC shall present the record or document, referred to in subsection (2) or (3), to the Pensions Authority within 3 months of the date of issuance, or date of making, of that record or document.

### **Remuneration Policy**

**64AG.** (1) The trustees of a scheme or trust RAC shall establish and apply a sound remuneration policy determined in accordance with the principles set out in subsection (4) in respect of –

- (a) the trustees of the scheme or trust RAC,
- (b) persons who carry out key functions,
- (c) other categories of staff employed by the trustees of the scheme or trust RAC whose professional activities have a material impact on the risk profile of the scheme or trust RAC, and
- (d) a service provider referred to in section 64AM to whom a key function or other activity referred to in that section is outsourced unless such service provider is covered by the Directives specified in subsection (4)(e).

(2) Without prejudice to section 54(1)(b), unless otherwise provided in Regulation (EU) 2016/679<sup>7</sup>, the trustees of a scheme or a trust RAC shall regularly disclose publicly relevant information regarding their remuneration policy.

(3) The trustees of a scheme or a trust RAC shall comply with paragraphs (a) to (g) of subsection (4) when, pursuant to subsection (1), establishing and applying the remuneration policy for the scheme or trust RAC.

(4) The remuneration policy established and applied in accordance with subsection (1) shall:

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<sup>7</sup> OJ No. L 119, 4.5.2016, p.1

- (a) be established, implemented and maintained in line with the activities, risk profile, objectives, and the long-term interest, financial stability and performance of the scheme or trust RAC as a whole, and shall support the sound, prudent and effective management of the scheme or trust RAC;
- (b) be in line with the long-term interests of members and beneficiaries of the scheme or trust RAC;
- (c) include measures aimed at avoiding conflicts of interest;
- (d) be consistent with sound and effective risk management and shall not encourage risk-taking which is inconsistent with the risk profiles and rules of the scheme or trust RAC concerned;
- (e) apply to the scheme or trust RAC and to the service providers referred to in section 64AM, unless those service providers are covered by Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU<sup>8</sup> and 2014/65/EU<sup>9</sup> of the European Parliament and of the Council;
- (f) establish and set out the general principles of the remuneration policy and provide that the trustees of the scheme or trust RAC shall review and update that policy at least once every 3 years;
- (g) provide for clear, transparent and effective governance with regard to remuneration and the manner in which it is overseen.

(5) The trustees referred to in subsection (3) shall, pursuant to paragraph (f) of subsection (4) –

- (a) review and update the general principles of the remuneration policy within the period referred to in that paragraph, and
- (b) implement the remuneration policy.

(6) The trustees of a scheme or a trust RAC, when establishing and applying the remuneration policy under subsection (1), shall establish and apply that policy in a manner that is proportionate to –

- (a) the size and internal organisation of the scheme or trust RAC, and
- (b) the size, nature, scale and complexity of the activities of the scheme or the trust RAC.

(7) The trustees of a scheme or trust RAC shall establish and apply the remuneration policy for the scheme or trust RAC where a scheme or trust RAC is established immediately before the day on which the *European Union (Occupational Pension Schemes) Regulations 2021* come into operation, not later than 31 December 2021.

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<sup>8</sup> OJ No. L 176, 27.6.2013 p. 338

<sup>9</sup> OJ No. L 173 12.6.2014 p. 349

## System of governance: key functions

### Key functions: general provisions

**64AH.** (1) The trustees of a scheme or trust RAC shall put in place the following key functions for that scheme or trust RAC:

- (a) a risk management function;
- (b) an internal audit function;
- (c) where applicable, an actuarial function.

(2) The trustees of a scheme or trust RAC shall enable the holders of key functions to undertake their duties effectively in an objective, fair and independent manner.

(3) Subject to subsection (4), the trustees of a scheme or trust RAC may allow a person or persons to carry out more than one of the key functions.

(4) Subsection (3) shall not apply to the internal audit function referred to in subsection (1) of section 64AJ which shall be independent from the other key functions referred to in subsection (1) and shall be carried out by a person who does not carry out another key function in respect of the scheme or trust RAC.

(5) Subject to subsections (6) and (7), the trustees of a scheme or trust RAC shall not allow a person who carries out a key function referred to in subsection (1) for a scheme or trust RAC to carry out the same key function for the employer.

(6) Subject to subsection (7), the trustees of a scheme or trust RAC may, taking into account the size, nature, scale and complexity of the activities of the scheme or trust RAC, allow the same person, or persons, to carry out the same key function in both the scheme or trust RAC and the employer.

(7) The trustees referred to in subsection (6) shall not allow the same person, or persons, referred to in subsection (6) to carry out the same key function referred to in that subsection unless they have put in place a written protocol which explains how any conflicts of interest between the scheme or trust RAC and the employer are prevented or managed.

(8) A person who carries out a key function shall report any material findings and recommendations in respect of the key function concerned to the trustees of the scheme or trust RAC concerned.

(9) Where a report is made under subsection (8), the trustees of a scheme or trust RAC shall determine what action is to be taken in respect of that report.

### Key function: risk management function

**64AI.** (1) The trustees of a scheme or trust RAC shall establish and maintain an effective risk management function which shall comply with this section.

(2) For the purposes of subsection (1), the trustees referred to in that subsection shall establish and maintain the risk management function in a manner that is proportionate to –

- (a) the size of that scheme or trust RAC and its internal organisation, and
- (b) the size, nature, scale and complexity of the activities of that scheme or trust RAC.

(3) The trustees referred to in subsection (1) shall ensure that the risk management function referred to in that subsection is structured in such a way that facilitates the functioning of a risk management system for which those trustees shall adopt strategies, processes and reporting procedures necessary to ensure that the risks, at an individual and at an aggregated level, to which the scheme or trust RAC is or could be exposed and their interdependencies can be identified, measured, monitored, managed and be regularly reported on to those trustees.

(4) The trustees referred to in subsection (1) shall ensure the risk management system referred to in subsection (3) is effective and well integrated into –

- (a) the organisational structure, and
- (b) the decision-making processes of the scheme or trust RAC.

(5) The risk management system referred to in subsection (3) shall cover, in a manner that is proportionate to the size and internal organisation of the scheme or trust RAC concerned, as well as to the size, nature, scale and complexity of the activities of the scheme or trust RAC, risks which can occur in a scheme or trust RAC, or in undertakings to which tasks or activities of a scheme or trust RAC has been outsourced, at least in the following areas, where applicable:

- (a) underwriting and reserving;
- (b) asset-liability management;
- (c) investment, in particular derivatives, securitisations, and similar commitments;
- (d) liquidity and concentration risk management;
- (e) operational risk management;
- (f) insurance and other risk mitigation techniques; and
- (g) environmental, social and governance risks relating to the investment portfolio and the management thereof.

(6) Where in accordance with the rules of the scheme or trust RAC, the members and beneficiaries of the scheme or trust RAC bear risks, the risk management system referred to in subsection (3) shall also assess those risks from the perspective of the members and beneficiaries.

(7) Where the person carrying out the risk management key function makes a report or recommendation to the trustees referred to in subsection (1), the trustees shall have regard to that report or recommendation.

(8) The trustees referred to in subsection (1) shall, as a general principle, have regard to the objective of having an equitable spread of risks and benefits between generations in their activities.

### **Internal Audit function**

**64AJ.** (1) The trustees of a scheme or trust RAC shall establish and maintain an effective internal audit function which shall comply with this section.

(2) The internal audit function referred to in subsection (1) shall include an evaluation of the adequacy and effectiveness of the internal control system and other elements of systems of governance including, where relevant, outsourced activities.

(3) Where the person carrying out the internal audit key function provides a report or makes a recommendation to the trustees of a scheme or trust RAC, the trustees shall have regard to that report or recommendation.

(4) The scope and detail of the internal audit function shall be proportionate to –

- (a) the size and internal organisation of the scheme or trust RAC, and
- (b) the size, nature, scale and complexity of the activities of the scheme or the trust RAC.

### **Key function: actuarial function for regulatory own funds scheme and regulatory own funds trust RAC**

**64AK.** (1) This section applies to –

- (a) a regulatory own funds scheme referred to in section 53E, or
- (b) a regulatory own funds trust RAC referred to in section 53E,

which provides cover for biometric risk, or guarantees an investment performance or a given level of benefits.

(2) Without prejudice to any other provision of this Act, the trustees of a regulatory own funds scheme to which this section applies, or a regulatory own funds trust RAC to which this section applies, shall establish and maintain an effective actuarial function to –

- (a) co-ordinate and oversee the calculation of technical provisions,
- (b) assess the appropriateness of methodologies and underlying models used in the calculation of the technical provisions referred to in paragraph (a) and the assumptions made for that purpose,
- (c) assess the sufficiency and quality of the data used in the calculation of the technical provisions referred to in paragraph (a),
- (d) compare the assumptions underlying the calculation of the technical provisions referred to in paragraph (b) with the experience,
- (e) report to the trustees of that regulatory own funds scheme or regulatory own funds trust RAC on the reliability and adequacy of the calculation of technical provisions referred to in paragraph (a),

- (f) express an opinion on the overall underwriting policy in the event of that regulatory own funds scheme or regulatory own funds trust RAC having such a policy,
  - (g) express an opinion on the adequacy of insurance arrangements in the event of that regulatory own funds scheme or regulatory own funds trust RAC having such arrangements, and
  - (h) contribute to the effective implementation of the risk management system.
- (3) For the purposes of subsection (2), the trustees of a regulatory own funds scheme or regulatory own funds trust RAC referred to in that subsection, shall appoint at least one independent person, who satisfies the requirements of section 51, as an actuary to carry out the actuarial function referred to in subsection (2).
- (4) For the purpose of making an appointment under subsection (3), the trustees of the regulatory own funds scheme or regulatory own funds trust RAC may appoint an independent person who –
- (a) has been appointed to perform –
    - (i) in the case of a regulatory own funds scheme, the functions specified in sections 42(2) or 53J, or
    - (ii) in the case of a regulatory own funds trust RAC, the functions specified in section 53G or 53J, or
  - (b) is a person other than a person referred to in paragraph (a).
- (5) Where, pursuant to subsection (2) –
- (a) a report referred to in subsection (2)(e) is made to the trustees referred to in that subsection, the trustees shall have regard to that report, and
  - (b) an opinion referred to in subsection (2)(f) or subsection (2)(g) is expressed, the trustees shall have regard to that opinion.

### **Governance requirements: documents concerning governance**

#### **Own-risk assessment**

**64AL.** (1) The trustees of a scheme or trust RAC shall carry out and document an own-risk assessment of the scheme or trust RAC in accordance with this section.

(2) For the purposes of subsection (1), the trustees referred to in that subsection shall carry out and document the own-risk assessment in a manner which is proportionate to –

- (a) the size and internal organisation of the scheme or trust RAC concerned, and
- (b) the size, nature, scale and complexity of the activities of the scheme or trust RAC concerned.

(3) The trustees referred to in subsection (1) shall carry out the own-risk assessment referred to in that subsection –

- (a) at least once every 3 years, and
- (b) without delay following any significant change in the risk profiles of the scheme or trust RAC.

(4) The trustees of a scheme or trust RAC shall, when carrying out and documenting the own-risk assessment referred to in subsection (1), have regard to the size and internal organisation of the scheme or trust RAC concerned as well as to the size, nature, scale and complexity of its activities and include the following:

- (a) a description of how own-risk assessment is integrated into the management process and into the decision-making processes of the scheme or trust RAC;
- (b) an assessment of the effectiveness of the risk management system;
- (c) a description of how the scheme or trust RAC prevents conflicts of interest with the employer, where the scheme or trust RAC outsources key functions to the employer in accordance with section 64AH(5);
- (d) an assessment of the overall funding needs of the scheme or trust RAC, including a description of the recovery plan where applicable;
- (e) an assessment of the risks to members and beneficiaries relating to the paying out of their retirement benefits and the effectiveness of any remedial action considering, where applicable –
  - (i) indexation mechanisms, and
  - (ii) benefit reduction mechanisms, including the extent to which accrued pension benefits can be reduced, under which conditions and by whom;
- (f) a qualitative assessment of the mechanisms protecting retirement benefits, including, as applicable, guarantees, covenants or any other type of financial support by the employer, insurance or reinsurance by an undertaking covered by Directive 2009/138/EC or coverage by a pension protection scheme, in favour of the scheme or trust RAC or the members and beneficiaries;
- (g) a qualitative assessment of the operational risks;
- (h) where environmental, social and governance factors are considered in investment decisions, an assessment of new or emerging risks, including risks related to climate change, use of resources and the environment, social risks and risks related to the depreciation of assets due to regulatory change.

(5) For the purposes of subsection (4), the trustees of a scheme or trust RAC shall, subject to subsections (6) and (7), have in place methods to identify and assess the risks –

- (a) to which the scheme or trust RAC is, or could be, exposed to in the short term and the long term, and
- (b) which may have an impact on the ability of that scheme or trust RAC to meet its obligations.

(6) The trustees referred to in subsection (4) shall ensure that the methods referred to in subsection (5) are proportionate to the size, nature, scale and complexity of the risks inherent in the activities of the scheme or a trust RAC concerned.

(7) The methods referred to in subsections (5) shall be described in the own-risk assessment.

(8) The trustees of a scheme or trust RAC shall take into account an own-risk assessment carried out under this section in respect of the scheme or trust RAC concerned when making a strategic decision in respect of the scheme or trust RAC.

## Chapter 2

### Outsourcing and investment management

#### **Outsourcing**

**64AM.**(1) Subject to subsections (2) to (5) and section 64AN, the trustees of a scheme or trust RAC may enter into an arrangement to entrust any activity, including –

- (a) a key function, and
- (b) the management of that scheme or trust RAC,

whether in whole or in part, to a service provider operating on behalf of the scheme or trust RAC concerned in respect of such activity, key function and management.

(2) Where the trustees referred to in subsection (1) enter into an arrangement referred to in that subsection, in respect of a key function or any other activity referred to in that subsection, the trustees of the scheme or trust RAC concerned shall, notwithstanding that arrangement, be fully responsible for compliance with their obligations under this Act in respect of any such key function or such activity.

(3) Where the trustees referred to in subsection (1) enter into an arrangement referred to in that subsection, in respect of a key function or any other activity referred to in that subsection, the trustees of that scheme or trust RAC shall satisfy themselves that the arrangement entered into by them shall not be undertaken in a manner that would lead to any of the following:

- (a) impairing the quality of the system of governance of the scheme or trust RAC concerned;
- (b) unduly increasing the operational risk to the scheme or trust RAC concerned;

- (c) impairing the ability of the Pensions Authority to monitor the compliance of the scheme or trust RAC with its obligations under this Act;
- (d) undermining the continuous and satisfactory service to members and beneficiaries of the scheme or trust RAC.

(4) The trustees referred to in subsection (1) shall ensure the proper functioning of any key function or activity, referred to in subsection (1), which is the subject of an arrangement referred to in that subsection and shall –

- (a) in the process of selecting a service provider, have regard to the requirements of this subsection when selecting the service provider, and
- (b) monitor, during the course of the period of the arrangement, the activities of that service provider.

(5) The trustees referred to in subsection (1) shall –

- (a) when outsourcing pursuant to subsection (1), a key function, an activity or the management referred to in that subsection, enter into a written agreement with the service provider in respect of the arrangement under subsection (1), and
- (b) provide that the agreement referred to in paragraph (a) clearly defines –
  - (i) the rights and obligations of the scheme or trust RAC concerned, and
  - (ii) the rights and obligations of the service provider,

and subsections (6) to (9) shall apply to that agreement.

(6) An agreement referred to in subsection (5) shall be legally enforceable in a court of competent jurisdiction.

(7) Subject to subsection (8), the trustees referred to in subsection (1) shall notify the Pensions Authority of the making of an arrangement under subsection (1) not later than 4 weeks from the making of that arrangement.

(8) Where an arrangement concerns the outsourcing of a key function or the management of a scheme or trust RAC, the trustees of that scheme or trust RAC shall notify the Pensions Authority before the agreement in respect of that arrangement enters into force.

(9) The trustees referred to in subsection (1) shall, as soon as practicable, notify the Pensions Authority of any subsequent important developments with respect to any outsourced activities.

#### **Request by Pensions Authority in relation to section 64AM arrangement**

**64AN.** (1) Where the trustees of a scheme or a trust RAC have entered into an arrangement referred to in section 64AM, the Pensions Authority may, by notice in writing, request –

- (a) the trustees of the scheme or trust RAC concerned,

- (b) the service provider concerned, and
  - (c) without prejudice to the generality of paragraph (b), a person who, on behalf of a service provider, performs, or carries out, any matter which is required to be performed or carried out pursuant to that arrangement,
- to furnish it with any information, document or material relating to that arrangement within a period as the Pensions Authority may specify in the notice.

(2) A person to whom a notice under subsection (1) is given shall comply with the request set out in the notice.

### **Investment management**

**64AO.** (1) Nothing in this Act shall operate to restrict the trustees of a scheme or trust RAC from appointing, for the management of the investment portfolio of the scheme or trust RAC concerned, an investment manager established in another Member State which is duly authorised for carrying out such management in accordance with –

- (a) Directive 2009/65/EC,
- (b) Directive 2009/138/EC,
- (c) Directive 2011/61/EU,
- (d) Directive 2013/36/EU, and
- (e) Directive 2014/65/EU.

(2) Nothing in this Act shall operate to restrict the trustees of a scheme or trust RAC from appointing, for the management of the investment portfolio of the scheme or trust RAC concerned, an authorised entity referred to in Article 2(1) of Directive of 2016.

## **Chapter 3**

### **Depository**

#### **Appointment of depository**

**64AP.** (1) Where the trustees of a scheme or trust RAC appoint a depository, any such appointment may be made in respect of a depository established in another Member State and the depository is –

- (a) duly authorised in accordance with Directive 2013/36/EU or Directive 2014/65/EU, or
  - (b) accepted as a depository for the purposes of Directive 2009/65/EC or Directive 2011/61/EU.
- (2) Where the trustees of a scheme or trust RAC appoint a depository –
- (a) the trustees shall appoint the depository by means of a written contract, and

- (b) the contract referred to in paragraph (a) shall state that the trustees shall furnish the depositary with all the information that is necessary for the depositary to perform its functions provided for under this Part.

(3) Where the trustees of a scheme or trust RAC appoint a depositary, when carrying out the functions set out in sections 64AQ and 64AR the trustees and the depositary appointed shall act honestly, fairly, professionally, independently and in the interests of the members and beneficiaries of the scheme or trust RAC.

(4) A depositary referred to in subsection (2) shall not carry out activities with regard to the scheme or trust RAC which may create conflicts of interest between the trustees of that scheme or trust RAC, the members and beneficiaries of that scheme or trust RAC and itself, unless –

- (a) the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and
- (b) the potential conflicts of interest are properly identified, managed, monitored and disclosed, in accordance with subsection (5), to the members and beneficiaries of that scheme or trust RAC and to the trustees of the scheme or trust RAC concerned.

(5) For the purposes of the disclosure referred to in subsection (4)(b), to members and beneficiaries, where the depositary discloses, in accordance with subsection (4)(b), a conflict of interest to the trustees of the scheme or trust RAC concerned, the trustees shall –

- (a) disclose that conflict of interest to the members and beneficiaries as soon as practicable after it is made to them, and
- (b) as soon as practicable, notify the depositary, in writing, that it has made the disclosure to the members and beneficiaries under paragraph (a).

### **Depositary: safekeeping of assets and depositary liability**

**64AQ.** (1) Where the assets of a scheme or trust RAC consisting of financial instruments that can be held in custody are entrusted to a depositary for safekeeping, the depositary shall –

- (a) hold in custody all financial instruments which can be registered in a financial instruments account opened in the depositary's books and all financial instruments that can be physically delivered to the depositary, and
- (b) ensure that the financial instruments which can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts in accordance with the rules laid down in Directive 2014/65/EU, opened in the name of the trustees of the scheme or trust RAC, so that they can be clearly identified as vested in those trustees on behalf of the members and beneficiaries of that scheme or trust RAC at all times.

(2) Where the assets of a scheme or trust RAC consist of other assets that are not referred to in subsection (1), the depositary shall –

- (a) verify, in accordance with subsection (3), that the trustees of the scheme or trust RAC are the owners, on behalf of the members and beneficiaries of the scheme or trust RAC, of the assets,
- (b) maintain a record of those assets, and
- (c) keep its records up-to-date.

(3) The verification required under subsection (2) shall be carried out on the basis of information or documents provided by the trustees of the scheme or trust RAC and, where available, on the basis of external evidence.

(4) A depositary shall be liable to the trustees of the scheme or trust RAC and the members and beneficiaries for any loss suffered by them as a result of its unjustifiable failure to perform its obligations or its improper performance of them.

(5) The liability of a depositary, referred to in subsection (4), shall not be affected by the fact that the depositary has entrusted to a third party all or some of the assets in its safe-keeping.

### **Depositary: oversight duties**

**64AR.** Where the trustees of a scheme or trust RAC have appointed a depositary for oversight duties, the depositary appointed for those duties, in addition to the obligations set out in section 64AQ(1), 64AQ(2) and 64AQ(3) shall –

- (a) carry out instructions of the trustees of the scheme or trust RAC, unless those instructions conflict with any requirement under any enactment or rule of law or the rules of the scheme or trust RAC,
- (b) ensure that in any transaction involving the assets of the scheme or trust RAC any consideration is remitted to the scheme or trust RAC within the usual time limits, and
- (c) ensure that income produced by assets is applied in accordance with the rules of the scheme or trust RAC.

### **Certain requirements where no depositary appointed by trustees of scheme or trust RAC**

**64AS.** Where no depositary is appointed by the trustees of a scheme or trust RAC, for the purpose of –

- (a) the safe-keeping of assets of the scheme or trust RAC and oversight duties or, as the case may be, the safe-keeping of assets, the trustees of that scheme or trust RAC shall make arrangements to prevent or resolve (or both) any conflict of interest in the course of performing tasks that are otherwise performed by a depositary and an asset manager,

- (b) the safe-keeping of assets under section 64AQ, the trustees of that scheme or trust RAC shall –
  - (i) ensure that financial instruments are subject to due care and protection,
  - (ii) keep records that enable them to identify all assets of the scheme or trust RAC at all times and without delay,
  - (iii) take the necessary measures to avoid conflicts of interest in relation to the safekeeping of assets of that scheme or trust RAC, and
  - (iv) inform the Pensions Authority, on request, about the manner in which assets are being kept, and
- (c) oversight duties referred to in section 64AR the trustees of the scheme or trust RAC shall implement procedures which ensure that tasks, otherwise subject to oversight by a depositary, are being duly performed within the scheme or trust RAC concerned.

### **Conflict between Part and scheme or trust RAC**

**64AT.** (1) The provisions of this Part shall override any rule of a scheme or trust RAC to the extent that that rule conflicts with those provisions.

(2) Any question as to whether any provision of this Part conflicts with any rule of a scheme or trust RAC, shall be determined by the Pensions Authority on application to it in writing in that behalf by a person referred to in subsection (3).

(3) The following persons shall be entitled to make an application under this section in respect of a scheme or trust RAC –

- (a) in the case of a scheme –
  - (i) the trustees of the scheme,
  - (ii) any member or prospective member of the scheme, and
  - (iii) any employer of persons in relevant employment to which the scheme applies, and
- (b) in the case of a trust RAC, the trustees or any member of the trust RAC.

(4) An appeal to the High Court on a point of law from a determination of the Pensions Authority under subsection (2) in relation to a scheme or trust RAC may be brought by the person who made, or a person who was entitled to make, the application concerned under subsection (2) not later than 6 months after the date of that determination of the Pensions Authority.

### **Application of Part to one-member arrangement: transitional provisions**

**64AU.** As respects a one-member arrangement established before the coming into operation of this Part, the provisions of this Part shall only on and from the expiry of 5 years from the date of such coming into operation apply to such one-member arrangement.”.

### **Amendment of section 82 of Principal Act**

29. Section 82 of the Principal Act is amended –

- (a) in paragraph (k), by the substitution of “section 121, or” for “section 121.”, and
- (b) by the insertion, after paragraph (k), of the following paragraphs:
  - “(l) is a key function holder, or
  - “(m) is a depositary referred to in Part VIB.”.

### **Amendment of section 83 of Principal Act**

30. Section 83 of the Principal Act is amended by the insertion of the following subsection after subsection (2G):

“(2H) Where a relevant person referred to in paragraph (l) of section 82 has reason to believe that –

- (a) there is a substantial risk that the scheme or trust RAC will not comply with a materially significant requirement under this Act or any other enactment which could have a significant impact on the interests of the members and beneficiaries, or
- (b) a significant material breach of requirements under this Act or any other enactment applicable to the scheme or trust RAC and its activities has occurred in the context of the key function of that relevant person,

and –

- (i) the relevant person has reported his or her belief in respect of paragraphs (a) or (b), or both, to the trustees of the scheme or trust RAC, and
- (ii) the trustees of the scheme or trust RAC have failed to take appropriate action to remedy the risk or breach within 21 days of the report made to them in accordance with paragraph (i),

the relevant person shall inform the Pensions Authority of that substantial risk or significant material breach as soon as reasonably practicable from the expiry of the period referred to in paragraph (ii).”.

**Part 6**  
**Chapter 1**  
**Pension Benefit Statement**

**Interpretation**

31. In this Part –

“employer” has the same meaning as it has in the Principal Act;

“Pensions Authority” means the body established under section 9 of the Principal Act;

“registered administrator” has the same meaning as it has in the Principal Act;

“scheme” has the same meaning as it has in the Principal Act;

“trust RAC” has the same meaning as it has in the Principal Act;

“trustees” has the same meaning as it has in the Principal Act.

**Pension Benefit Statement: appointment of registered administrator**

32. (1) For the purposes of facilitating the discharge by the trustees of a scheme or trust RAC of their obligations under this Part, the trustees shall appoint a registered administrator to prepare on their behalf the Pension Benefit Statement required under this Part.

(2) The appointment of a registered administrator under paragraph (1) does not relieve the trustees referred to in paragraph (1) of their obligations under this Part.

(3) Where a registered administrator is appointed by the trustees of a scheme or trust RAC under paragraph (1), the registered administrator shall –

- (a) prepare the Pension Benefit Statement in accordance with this Part, and
- (b) provide the Pension Benefit Statement to the trustees not later than one month prior to the date by which the Pension Benefit Statement is to be made available, under Regulation 32(6), by the trustees of the scheme or trust RAC to the members of the scheme or trust RAC.

**General Provisions**

33. (1) The trustees of a scheme or trust RAC shall cause to be prepared, in accordance with this Part, a concise document, containing key information for each member of the scheme or trust RAC concerned (in these Regulations referred to as “Pension Benefit Statement”).

(2) The title of the Pension Benefit Statement shall contain the words Pension Benefit Statement.

(3) The exact date to which the information in the Pension Benefit Statement refers shall be stated prominently in the Pension Benefit Statement.

(4) The trustees of a scheme or trust RAC shall ensure that the information contained in the Pension Benefit Statement is –

- (a) accurate,
- (b) updated,
- (c) written in a clear manner, using clear, succinct and comprehensible language, avoiding the use of jargon and avoiding technical terms where everyday words can be used instead,
- (d) not misleading, and consistency shall be ensured in the vocabulary and content,
- (e) presented in a way that is easy to read,
- (f) available in the English language, and
- (g) made available in accordance with paragraph (5) and, where appropriate, paragraph (7).

(5) The trustees of a scheme or trust RAC shall make available to each member of the scheme or trust RAC concerned a Pension Benefit Statement free of charge through electronic means, including on a durable medium or by means of a website, or on paper, at least annually in accordance with paragraph (6).

(6) The trustees of a scheme or trust RAC shall, for the purposes of paragraph (5), make the Pension Benefit Statement available to each member not later than 6 months from the exact date specified in the Statement.

(7) The trustees of a scheme or trust RAC shall, on request by a member of the scheme or trust RAC concerned, provide that member free of charge with a paper copy of the Pension Benefit Statement not later than 4 weeks from the date the request is made.

(8) Where there is any material change to the information contained in the Pension Benefit Statement in comparison to the information contained in the immediately preceding Pension Benefit Statement, the trustees of the scheme or trust RAC concerned shall clearly indicate that material change to the information in that Pension Benefit Statement.

### **Information to be provided in Pension Benefit Statement**

34. (1) The trustees of a scheme or trust RAC shall provide the following key information for members in the Pension Benefit Statement –

- (a) personal details of the member concerned including a clear indication of his or her retirement age,
- (b) the name of the scheme or trust RAC and its contact address and identification of the scheme or trust RAC of the member,

- (c) where applicable, information on full or partial guarantees under the scheme or trust RAC and if relevant, where further information can be found,
- (d) information on pension benefit projections based on the retirement age as specified in subparagraph (a), and a disclaimer that those projections may differ from the final value of the benefits received and, if the pension benefit projections are based on economic scenarios, that information shall also include a best estimate scenario and an unfavourable scenario, taking into consideration the specific nature of the scheme or trust RAC,
- (e) information on the accrued entitlements or accumulated capital taking into consideration the specific nature of the scheme or trust RAC,
- (f) information on the contributions paid by the employer and the member into the scheme or trust RAC, at least over the last 12 months, taking into consideration the specific nature of the scheme or trust RAC,
- (g) a breakdown of the costs deducted by the scheme or trust RAC at least over the last 12 months, and
- (h) information on the funding level of the scheme or trust RAC as a whole.

(2) The trustees referred to in paragraph (1) may provide additional information to the key information specified in that paragraph.

(3) In subparagraphs (f) and (g) of paragraph (1), “the last 12 months” means the 12 months immediately preceding the exact date stated in the Pension Benefit Statement concerned.

(4) The Pensions Authority shall set out rules to determine the assumptions of the projections referred to in paragraph (1)(d).

(5) The trustees of a scheme or trust RAC shall apply the rules referred to in paragraph (4) to determine, where relevant, the annual rate of nominal investment returns, the annual rate of inflation and the trend of future wages.

### **Pension Benefit Statement: supplementary information**

35. (1) The Pension Benefit Statement shall specify where and how to obtain supplementary information including:

- (a) further practical information about the member’s options provided under the scheme or trust RAC;
- (b) information relating to the –
  - (i) annual reports referred to in section 55 of the Principal Act,
  - (ii) annual accounts referred to in section 56 of the Principal Act, and
  - (iii) statement of investment policy principles referred to in section 59(1B) of the Principal Act;

- (c) where applicable, information about the assumptions used for amounts expressed in annuities, in particular with respect to the annuity rate, the type of provider and the duration of the annuity; and
  - (d) information on the level of benefits, in case of cessation of employment.
- (2) In addition to the information referred to in paragraph (1), where members bear investment risk and where an investment option is imposed on the member by a specific rule specified in the scheme or trust RAC, the Pension Benefit Statement shall indicate where additional information is available.

### **Offences and penalties**

36. (1) A person who –
- (a) fails to comply with paragraph (1) or (3) of Regulation 32,
  - (b) fails to comply with paragraph (1), (6) or (8) of Regulation 33,
  - (c) charges a sum of money for the provision of a Pension Benefit Statement under paragraph (5) or (7) of Regulation 33, or
  - (d) fails to comply with paragraph (1) or (5) of Regulation 34,
- shall be guilty of an offence.
- (2) A person guilty of an offence under paragraph (1) shall be liable –
- (a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding one year or both, or
  - (b) on conviction on indictment to a fine not exceeding €25,000 or imprisonment for a term not exceeding 2 years or both.
- (3) In proceedings for an offence under these Regulations, it shall be a defence for a person against whom such proceedings are brought to show that he or she made all reasonable efforts to ensure compliance with the provisions of these Regulations as are alleged to have been contravened.
- (4) Where an offence under these Regulations is committed by a body corporate and is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate, or a person purporting to act in such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.
- (5) Proceedings for a summary offence under these Regulations may be brought and prosecuted by the Pensions Authority.
- (6) A fine imposed by a court in respect of an offence under these Regulations shall not be paid out of the resources of a scheme or trust RAC.

### **Transitional provisions for Part**

37. (1) Where a scheme or trust RAC has commenced on or before the coming into operation of this Part, for the purpose of making available the first Pension Benefit Statement after the coming into operation of this Part, the scheme or trust RAC shall, subject to paragraph (2), make that Statement available, in accordance with Regulation 33(6), not later than 31 December 2022.

(2) In the case of a one-member arrangement commenced on or before the coming into operation of this Part, the provisions of this Part shall only on and from the expiry of 5 years from the date of such coming into force apply to such one-member arrangements.

(3) In subsection (2), “one-member arrangement” has the same meaning as it has in the Principal Act.

## **Chapter 2**

### **Amendment of Principal Act**

#### **Amendment of section 50 of Principal Act**

38. (1) Section 50 of the Principal Act is amended by the insertion of the following subsections after subsection (2B):

“(2C) Subject to subsection (2D), where –

- (a) the Pensions Authority gives a direction under subsection (1A) or (1B), whether on application by the trustees of a scheme or otherwise, and
- (b) a final decision has been taken that results in a reduction of benefits payable to, or in respect of, persons referred to in subsection (3)(a)(i)(III),

the trustees of the scheme shall inform those persons –

- (i) of the reduction in benefits referred to in subsection (1A) or (1B) without delay after the final decision has been taken and not later than one month from the date on which that final decision was taken, and
- (ii) 3 months before that final decision is implemented.

(2D) For the purposes of subsection (2C), where the Pensions Authority gives a direction referred to in that subsection which –

- (a) specifies the measures to be taken by the trustees of the scheme to reduce the benefits, the date of the final decision referred to in subsection (2C) shall be the date of the notification of the direction given under subsection (1A) or (1B), or
- (b) does not specify the measures to be taken by the trustees of the scheme to reduce the benefits, the date of the final decision referred to in subsection (2C) shall be the date of the decision taken by the trustees of the scheme in respect of the measures that

are necessary to reduce the benefits pursuant to a direction under subsection (1A) or (1B).”.

(2) Section 50(3) of the Principal Act is amended –

- (a) in paragraph (a)(i), in clause (III), by the substitution of “subject to subsection (2C), persons receiving” for “persons receiving”,
- (b) in paragraph (a)(ii), by the deletion of “and other persons who are receiving benefits under the scheme or who have reached normal pensionable age,”,
- (c) in paragraph (b), by the substitution of “4 months” for “3 months”,
- (d) in paragraph (b)(i), by the insertion of “and, where relevant, subsection (2C)” after “complied with paragraph (a)”, and
- (e) in paragraph (b)(ii), by the insertion of “and subsection (2C)” after “of paragraph (a)”.

(3) Section 50(6) of the Principal Act is amended by the insertion of “and subsection (2C)” after “subsection (2B)”.

(4) Section 50(7) of the Principal Act is amended in paragraph (a) by the insertion of “and subsection (2C)” after “subsection (2B)”.

## **Part 7**

### **Prudential supervision**

#### **Insertion of Part IIA into Principal Act**

39. The Principal Act is amended by the insertion of the following Part after Part II:

#### **“Part IIA**

#### **Prudential supervision**

#### **Chapter 1**

#### **General**

#### **Interpretation for Part**

**26C.** (1) In this Part –

‘outsourced’ has, notwithstanding section 2(1), the same meaning as it has in the Directive of 2016;

‘prudential supervision’ shall be construed in accordance with the Directive of 2016.

(2) Without prejudice to section 2(7), a word or expression that is used in this Part and is also used in the Directive of 2016 shall, unless the context otherwise requires, have the same meaning in this Part as it has in the Directive.

### **Conflict between Part and schemes or trust RAC**

**26D.** (1) The provisions of this Part shall override any rule of a scheme or trust RAC to the extent that that rule conflicts with those provisions.

(2) Any question as to whether any provision of this Part conflicts with any rule of a scheme or trust RAC, shall be determined by the Pensions Authority on application to it in writing in that behalf by a person referred to in subsection (3).

(3) The following persons shall be entitled to make an application under this section in respect of a scheme or trust RAC –

- (a) in the case of a scheme –
  - (i) the trustees of the scheme,
  - (ii) any member or prospective member of the scheme, and
  - (iii) any employer of persons in relevant employment to which the scheme applies, and
- (b) in the case of a trust RAC, the trustees or any member of the trust RAC.

(4) An appeal to the High Court on a point of law from a determination of the Pensions Authority under subsection (2) in relation to a scheme or trust RAC may be brought by the person who made, or a person who was entitled to make, the application concerned under subsection (2) not later than 6 months after the date of that determination of the Pensions Authority.

### **Service of documents for purpose of Part**

**26E.** (1) A notice or other document that is required to be given, or sent, to, or served on, a person under this Part shall be addressed to the person by name and shall be given, sent or served to the person in one of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or carries on business or, in a case in which an address for service has been furnished, to that address;
- (c) by sending it by post in a pre-paid registered letter or by any other form of recorded delivery to the address at which the person ordinarily resides or carries on business, or in a case in which an address for service has been furnished, to that address;
- (d) by electronic means, in a case in which the person has given notice in writing to the person serving or giving the notice or document concerned of his or her consent to the notice or document (or notices or documents of a class to which the notice

or document belongs) being served on, or given or issued to, him or her in that manner.

(2) For the purposes of subsection (1), a company within the meaning of the Companies Acts or the Companies Act 2014, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

## Chapter 2

### Prudential supervision

#### **Objective of prudential supervision**

**26F.** The main objective of prudential supervision is to protect the rights of members and beneficiaries and to ensure the stability and soundness of schemes and trust RACs.

#### **Scope of prudential supervision**

**26G.** Without prejudice to any provision of this Act, a scheme or trust RAC shall be subject to prudential supervision by the Pensions Authority including the supervision by the Pensions Authority of the following where applicable:

- (a) the conditions of operation;
- (b) technical provisions;
- (c) funding of technical provisions;
- (d) regulatory own funds;
- (e) available solvency margin;
- (f) required solvency margin;
- (g) investment rules;
- (h) investment management;
- (i) system of governance; and
- (j) information to be provided to members and beneficiaries.

#### **General principles of prudential supervision**

**26H.** (1) Without prejudice to section 10(1A), the Pensions Authority shall be responsible for the prudential supervision of schemes and trust RACs.

(2) The Pensions Authority shall carry out prudential supervision of schemes and trust RACs –

- (a) based on a forward-looking and risk-based approach, and
- (b) in a manner that comprises an appropriate combination of off-site activities and on-site inspections.

(3) The Pensions Authority shall apply the functions under this Part in a manner which is proportionate to the size, nature, scale and complexity of the activities of the scheme or trust RAC.

(4) The Pensions Authority shall take into consideration the potential impact of its actions on the stability of the financial systems in the European Union, particularly in emergency situations when it is performing its functions under this Part and section 10(1A).

**Prudential supervision: functions relating to powers of intervention and duties of Pensions Authority**

**26I.** (1) The Pensions Authority shall require every scheme and trust RAC registered under section 60 to have in place –

- (a) sound administrative procedures,
- (b) sound accounting procedures, and
- (c) adequate internal control mechanisms.

(2) Where the Pensions Authority makes a decision to prohibit or restrict the activities of a scheme or trust RAC, it shall set out in that decision detailed reasons for it and shall notify the scheme or trust RAC concerned of that decision and without prejudice to the generality of the foregoing, such decision includes a direction under section 152.

(3) Without prejudice to the generality of subsection (2), the Pensions Authority shall notify EIOPA where it has –

- (a) revoked an authorisation under section 150, or
- (b) given a direction under section 152(2).

**Chapter 3**  
**Supervisory review process**

**Supervisory review process**

**26J.** (1) The Pensions Authority shall, subject to subsections (2) and (3), review the strategies, processes and reporting procedures established by the trustees of a scheme or trust RAC to comply with this Part, Part VIB and sections 50(2C), 59(1E), 59A(1A), 59A(1B), 59AB, 149(1), 151A, 151B and 152(1) ('supervisory review').

(2) When carrying out a supervisory review the Pensions Authority shall take into account –

- (a) the size, nature, scale and complexity of the activities of the scheme or trust RAC, and
- (b) the circumstances in which the scheme or trust RAC is operating and, where relevant, the person (if any) carrying out the

outsourced key functions or any other activity for the trustees of the scheme or trust RAC.

(3) A supervisory review shall comprise the following:

- (a) an assessment of the qualitative requirements relating to the system of governance;
- (b) an assessment of the risks that the scheme or trust RAC faces;
- (c) an assessment of the ability of the scheme or trust RAC to assess and manage those risks.

(4) The Pensions Authority shall determine the minimum frequency and scope of the supervisory review referred to in this section having regard to the size, nature, scale and complexity of the activities of the scheme or trust RAC concerned.

(5) Where the Pensions Authority carries out a supervisory review of a scheme or trust RAC –

- (a) it may request information for the purposes of carrying out that review from –
  - (i) the trustees of that scheme or trust RAC or an employee of that scheme or trust RAC,
  - (ii) a person who is an agent referred to in section 18(6), and
  - (iii) the employer or an officer or employee of the employer, and
- (b) a person referred to in paragraph (a), to whom a request referred to in that paragraph has been made shall provide information to the Pensions Authority as the Pensions Authority may request in the course of carrying out the supervisory review.

### **Monitoring tools for financial condition of scheme or trust RAC**

**26K.** (1) The Pensions Authority shall have in place one or more monitoring tools that enable it to identify deteriorating financial conditions in a scheme or trust RAC and to monitor how that deterioration is remedied.

(2) Where, in the application of a monitoring tool referred to in subsection (1), the Pensions Authority requires information for the purposes of that application in respect of a scheme or trust RAC, the trustees of such scheme or trust RAC shall provide the Pensions Authority with information requested by it for the purposes of that application.

### **Stress-test**

**26L.** (1) Without prejudice to section 26K, the Pensions Authority may, by notice in writing, require the trustees of a scheme or trust RAC to –

- (a) carry out a stress-test, or
- (b) cause a stress-test to be carried out,

in respect of the scheme or trust RAC concerned for the purposes of enabling the identification of deteriorating financial conditions in that scheme or trust RAC and to monitor how that deterioration is remedied.

(2) A notice under subsection (1) shall state –

- (a) information relating to the stress-test that is to be carried out in respect of the scheme or trust RAC,
- (b) having regard to the matters to be assessed under subsection (3)
  - 
  - (i) one or more methodologies to be used in the stress-test,
  - (ii) different sets of economic circumstances, and
  - (iii) the reporting arrangement,
 that are to be applied, by the trustees of the scheme or trust RAC in the stress-test, and
- (c) the date, referred to in subsection (4), on which the trustees shall notify the Pensions Authority of the results of the stress-test.

(3) A stress-test shall assess –

- (a) the adequacy of the methods and practices of the scheme or trust RAC designed to identify possible events or future changes in economic conditions that could have an adverse effect on the overall financial standing of the scheme or trust RAC, and
- (b) the ability of the scheme or trust RAC to withstand those possible events or future changes in economic conditions.

(4) The date on which the results of a stress-test shall be notified to the Pensions Authority shall be –

- (a) not later than 3 months from the date of receipt of the notification under subsection (1), or
- (b) a date specified by the Pensions Authority.

(5) Where the trustees of a scheme or trust RAC have been given a notice under subsection (1), the trustees shall –

- (a) carry out the stress-test, or cause the stress-test to be carried out, and
- (b) notify the Pensions Authority of the results of the stress-test not later than –
  - (i) 3 months from the date of receipt of that notice, or
  - (ii) where a date was specified in that notice, that date.

(6) The Pensions Authority shall review the results of a stress-test provided to it pursuant to subsection (5).

(7) A notice under subsection (2) may also include any other matter relating to the matters to be assessed under subsection (3).

## Chapter 4

### Advisory Notice and External Report

#### **Advisory Notice**

**26M.** (1) The Pensions Authority may for the purposes of prudential supervision, subject to subsection (3), serve a notice ('Advisory Notice') on the trustees of a scheme or trust RAC where –

- (a) in the opinion of the Pensions Authority, the trustees of the scheme or trust RAC concerned are failing to act in a manner that would enable the trustees concerned to satisfy a requirement under –
  - (i) this Part,
  - (ii) Part VIB, or
  - (iii) this Part and Part VIB,
 or
- (b) following a supervisory review under section 26J and having considered that review, it is of the opinion that there are one or more weaknesses or deficiencies (or both) in the scheme or trust RAC concerned for which a remedy is required to address,

for the purpose of advising the trustees concerned of the action that is required to be taken to satisfy a requirement referred to in paragraph (a) or provide a remedy to address the weakness or deficiency (or both) referred to in paragraph (b).

(2) An Advisory Notice shall –

- (a) state the opinion, referred to in paragraph (a), or as the case may be paragraph (b), of subsection (1), of the Pensions Authority,
- (b) specify –
  - (i) the requirements, referred to in subsection (1)(a), or
  - (ii) the weakness or deficiency (or both), referred to in subsection (1)(b),
- (c) specify the reasons for the opinion referred to in paragraph (a),
- (d) advise the trustees concerned of the action that is required to be taken to –
  - (i) satisfy the requirements referred to in paragraph (b)(i), or
  - (ii) provide a remedy to address the weakness or deficiency (or both) referred to in paragraph (b)(ii),
- (e) specify a date by which the action referred to in paragraph (d) is to be taken by the trustees concerned, and
- (f) specify a date on which the trustees concerned shall notify the Pensions Authority as to the steps taken by them to carry out the

action referred to in paragraph (d) having had regard to the date referred to in paragraph (e).

(3) Where the Pensions Authority proposes to serve an Advisory Notice, it shall –

- (a) notify the trustees concerned, in writing, of its intention to serve an Advisory Notice,
- (b) inform the trustees, in respect of such proposal, of –
  - (i) the opinion required under subsection (1) in respect of which it is proposed to serve the Advisory Notice,
  - (ii) the requirements, referred to in subsection(1)(a), that are required to be satisfied, or as the case may be, the weakness or deficiency (or both) referred to in subsection (1)(b),
  - (iii) the reasons for that opinion, and
  - (iv) the actions which would be required to take as a remedy to ensure the satisfaction of the requirements referred to in subsection (1)(a) or address a weakness or deficiency referred to in subsection (1)(b)(or both), and
- (c) inform the trustees concerned that they may make a submission, in writing, on the matters specified in the notification under this subsection, to the Pensions Authority within 21 days of receipt of the notification under this subsection.

(4) Where a submission referred to in subsection (3)(c) –

- (a) is made to the Pensions Authority within the period referred to in that subsection, it shall consider the submission and having had regard to all the circumstances of the scheme or trust RAC concerned, it may –
  - (i) if it is satisfied that it is reasonable to do so, serve an Advisory Notice on the trustees of the scheme or trust RAC concerned, with or without modification of any matter specified in the notification under subsection (3) and the Advisory Notice may include any matter set out in, or arising from, the submission referred to in subsection (3)(c), or
  - (ii) if it is not satisfied that it is reasonable to do so, decide not to serve the Advisory Notice and it shall notify, in writing, the trustees concerned of its decision, or
- (b) has not been made within the period referred to in subsection (3)(c), the absence of the submission shall not operate to prevent the service of the Advisory Notice after that period has elapsed.

(5) Where the Pensions Authority is of the opinion that the trustees of a scheme or trust RAC, on whom an Advisory Notice has been served, have taken the action specified in the Advisory Notice, it shall withdraw the Advisory Notice and notify the trustees accordingly.

(6) Nothing in this section shall operate to prevent, after the Advisory Notice has been served, the institution of proceedings (including proceedings under section 3) in respect of a failure to comply with a provision, specified in the Advisory Notice.

(7) The Advisory Notice and the information, if any, provided by the trustees shall be admissible in evidence in legal proceedings (including proceedings under section 3).

(8) The trustees of a scheme or trust RAC may appeal an Advisory Notice served on them under this section to the High Court.

### **Notice to trustees to provide External Report**

**26N.** (1) Where the Pensions Authority is –

- (a) in the course of a supervisory review under section 26J,
- (b) following receipt of a stress-test under section 26L, or
- (c) following receipt of a Part VIB compliance statement under section 26T,

of the opinion that the information provided to it by, or pursuant to, the supervisory review, stress-test or Part VIB compliance statement –

- (i) is not sufficient for it to determine, for the purposes of the prudential supervision of a scheme or trust RAC, that the scheme or trust RAC is, or the trustees of such scheme or trust RAC are, in compliance with one, or more, of the provisions specified in subsection (2), or
- (ii) has given grounds for concern as to whether the scheme or trust RAC is, or the trustees of such scheme or trust RAC are, for the purposes of prudential supervision of a scheme or trust RAC, in compliance with Part VIB,

the Pensions Authority may, by notice in writing given to the trustees of the scheme or trust RAC concerned, require the trustees, within a period specified in the notice, to provide the Pensions Authority with a report on the matters set out in subsection (3) that is prepared by an External Report reviewer (in this Part referred to as ‘External Report’) for the purposes of the prudential supervision of that scheme or trust RAC.

(2) The External Report shall, for the purposes of prudential supervision, examine the compliance by the scheme or trust RAC concerned or the trustees of such scheme or trust RAC with Part VIB and make a determination of such compliance in respect of one or more provisions of that Part.

(3) A notice under subsection (1) shall state –

- (a) the date of the notice,
- (b) the period within which the trustees of the scheme or trust RAC concerned shall nominate a person to the Pensions Authority for approval under section 26O,
- (c) the purpose of the External Report,

- (d) the scope of the External Report,
- (e) the timetable for completion of the External Report,
- (f) the matters, referred to in subsection (2), that are required to be reported on,
- (g) whether the External Report is to include recommendations,
- (h) the form of the External Report,
- (i) where appropriate, the methodology to be used in the preparation of the External Report, and
- (j) any other matter relating to a provision of Part VIB, to which the Pensions Authority, having regard to the requirements of the prudential supervision of a scheme or trust RAC under this Part, considers appropriate.

### **External Report reviewer**

**26O.** (1) An External Report shall be prepared by a person (in this Part referred to as the ‘External Report reviewer’) who is nominated by –

- (a) the trustees of the scheme or trust RAC concerned, within the period specified in the notice given under section 26N(1) and approved under subsection (4), or
- (b) the Pensions Authority, where –
  - (i) no person is nominated by the trustees under paragraph (a) within the period specified in the notice given under section 26N(1), or
  - (ii) the Pensions Authority is not satisfied with the person nominated under paragraph (a).

(2) The External Report reviewer shall be a person appearing to the Pensions Authority to have the skills that are necessary to prepare an objective report on the matters concerned and, without prejudice to the generality of the foregoing, may be an auditor, actuary, accountant, investment manager, lawyer or any other person with relevant business, technical or technological skills required for the purpose of preparing the External Report.

(3) The trustees of a scheme or trust RAC shall nominate a person to be an External Report reviewer and submit that nomination to the Pensions Authority for approval of that nomination and when considering whether to approve a nomination under subsection (4)(a) or make a nomination under subsection (1)(b), the Pensions Authority shall have regard to the circumstances giving rise to the requirement for the External Report and whether the person it proposes to approve or nominate appears to have –

- (a) the competence and capabilities and knowledge necessary to prepare an External Report on the matters concerned,
- (b) the ability to complete the External Report within the period specified by the Pensions Authority in the notice given under section 26N,

- (c) any relevant specialised knowledge, including specialised knowledge of the operation of a scheme or trust RAC and the matters to be reported on, and
  - (d) any potential conflict of interest in reviewing the matters to be reported on and has sufficient detachment, having regard to any existing professional or commercial relationships, to give an objective opinion.
- (4) The Pensions Authority may approve a nomination referred to in subsection (1)(a) and where –
- (a) it approves the nomination, or
  - (b) makes a nomination under subsection (1)(b),
- it shall notify the trustees of the scheme or trust RAC concerned, in writing, as soon as practicable.

### **Contract with External Report reviewer**

**26P.** (1) Where an External Report reviewer is approved or nominated by the Pensions Authority under section 26O, the trustees of the scheme or trust RAC concerned shall enter into a written contract with the External Report reviewer.

- (2) It shall be a term of the contract referred to in subsection (1) that –
- (a) the External Report reviewer is required to prepare, for the trustees of the scheme or trust RAC concerned, an External Report in accordance with the notice given under section 26N(1) and to provide that External Report to the trustees as soon as practicable after it is completed,
  - (b) that any duty owed by the External Report reviewer to the trustees concerned which might limit the provision of information or opinion by those trustees to the External Report reviewer in preparing an External Report under this Part shall be waived,
  - (c) that the External Report reviewer is required and permitted to provide to the Pensions Authority the following where the Pensions Authority so requests –
    - (i) periodic updates on progress and issues arising,
    - (ii) interim reports,
    - (iii) documents and working papers,
    - (iv) copies of any draft of the External Report given to the trustees concerned, and
    - (v) specific information about the planning and progress of the work to be undertaken (which may include project plans, progress reports including the amount of work completed, details of time spent, costs to date and details of any significant findings and conclusions), and

(d) that the contract is not varied or rescinded in such a way as to extinguish or alter the provisions included in the contract under this subsection.

(3) If the Pensions Authority considers it appropriate, it may request the trustees of the scheme or trust RAC in respect of which the External Report is being made, to give to the Pensions Authority a copy of the draft contract before it is made with the External Report reviewer and the Pensions Authority may require modifications to be made to the draft contract as it considers appropriate.

### **Completion of External Report**

**26Q.** (1) When the External Report reviewer has completed the External Report, he or she shall deliver it to the trustees of the scheme or trust RAC concerned.

(2) The trustees referred to in subsection (1) shall as soon as practicable deliver a copy of the External Report to the Pensions Authority not later than the date specified in the notice given under section 26N(1).

(3) Where the External Report reviewer is unable to deliver the External Report to the trustees on or before the date referred to in subsection (2), the External Report reviewer shall notify the trustees of the scheme or trust RAC concerned and the Pensions Authority as soon as practicable of the delay and provide an estimate of time required to deliver the External Report.

(4) The Pensions Authority shall, on receipt of the External Report, have regard to it and examine the information set out in it and consider whether, in respect of one or more provisions set out in the notice referred to in section 26N, the scheme or trust RAC or the trustees of a scheme or trust RAC –

- (a) is, or are, in compliance with those provisions,
- (b) is, or are, not in compliance with those provisions, or
- (c) is, or are, in compliance with some of those provisions and not in compliance with some of them.

### **External Report: supplemental provisions**

**26R.** (1) The costs of, and any costs incidental to, the preparation of the External Report under this section shall be borne by the scheme or trust RAC.

(2) The trustees of a scheme or trust RAC in respect of which an External Report is prepared shall give all such assistance to the External Report reviewer as he or she may reasonably require for the purposes of the preparation of an External Report.

### **Pensions Authority not bound by External Report nor liable for it**

**26S.** (1) The Pensions Authority shall not be bound by the content of an External Report and an External Report shall not be taken to be a decision or opinion of the Pensions Authority for any purpose.

(2) The Pensions Authority shall not be liable for any acts or omissions of an External Report reviewer.

## Chapter 5

### Part VIB compliance statement

#### **Part VIB compliance statement**

**26T.** (1) Not later than 31 January of each year, the trustees of a scheme or trust RAC shall prepare a statement in relation to the matters specified in subsection (2) ('Part VIB compliance statement') for the immediately preceding year for the purposes of prudential supervision.

(2) A Part VIB compliance statement shall specify information relating to Part VIB.

(3) The form of the Part VIB compliance statement shall be specified by the Pensions Authority following consultation with the Minister.

(4) The trustees referred to in subsection (1) shall submit the Part VIB compliance statement to the Pensions Authority not later than 1 month after that statement is prepared in accordance with subsection (1).

(5) The trustees referred to in subsection (1) shall certify that the information provided in the Part VIB compliance statement has been reviewed for accuracy and completeness and shall be certified by –

- (a) at least 2 trustees of the scheme or trust RAC, or
- (b) where a body corporate is appointed as the sole trustee of that scheme or trust RAC, at least 2 directors of that body corporate.

(6) Where the Part VIB compliance statement has been submitted to the Pensions Authority, the Pensions Authority may, by notice in writing, request the trustees of a scheme or trust RAC to furnish the Authority, within a period as is specified in the notice, with information and documentation in respect of any matter specified in the Part VIB compliance statement.

(7) Where the Pensions Authority has requested further information and documentation under subsection (6), the trustees of the scheme or trust RAC concerned shall provide that information and documentation within the period specified in the notice under subsection (6).

#### **Section 26T: supplemental and transitional provisions**

**26U.** For the purposes of the first Part VIB compliance statement under section 26T –

- (a) where a scheme or trust RAC is registered under section 60 on or before the date of the coming into operation of this section, the first Part VIB compliance statement shall be prepared not later than 31 January 2022 in respect of 2021, or

- (b) where a scheme or trust RAC is registered under section 60 after the day on which this section comes into operation, the first Part VIB compliance statement shall be prepared not later than 31 January immediately following the day on which the scheme or trust RAC is registered in respect of the period from the day on which the scheme or trust RAC is registered to 31 December immediately following that day.

## **Chapter 6**

### **Information to be provided to Pensions Authority**

#### **Information to be provided to Pensions Authority**

**26V.** (1) Without prejudice to any other provision of this Act, the Pensions Authority may require –

- (a) the trustees of a scheme or trust RAC, or
- (b) a person who carries out a key function referred to in Part VIB,

to provide the Pensions Authority, at any time, with information concerning all business matters or to forward all business documents to it for the purposes of prudential supervision and the request shall be made by notice in writing and shall specify the date by which the information is to be provided.

(2) The trustees referred to in subsection (1)(a) or a person referred to in subsection (1)(b) shall comply with a request under subsection (1) and not later than the date specified in the notice.

(3) Without prejudice to any other provision of this Act, the Pensions Authority shall supervise relationships between a scheme or trust RAC and –

- (a) a person, or
- (b) another scheme or trust RAC,

when the first-mentioned scheme or trust RAC outsources a key function, or any other activities, to that person or the second-mentioned scheme or trust RAC, and all subsequent re-outsourcing, influencing the financial situation of the scheme or trust RAC or being in a material way relevant for effective supervision.

(4) Without prejudice to any other provision of this Act, the Pensions Authority may require the trustees of a scheme or trust RAC to provide information to it in relation to the supervision of relationships under subsection (3).

(5) Without prejudice to any other provision of this Act, the Pensions Authority may request the trustees of a scheme or trust RAC to furnish it with all or any of the following:

- (a) the own-risk assessment;
- (b) the statement of investment policy principles;
- (c) the annual accounts and annual reports;

- (d) any other documents which the Pensions Authority considers are necessary for the purposes of prudential supervision of the scheme or trust RAC concerned under this Part.
- (6) Without prejudice to any other provision of this Act, the Pensions Authority may specify a document that is necessary for the purposes of the performance by it of its functions, under this Part, in relation to prudential supervision and, shall, in any such specification include the following documents –
- (a) internal interim reports,
  - (b) actuarial valuations and detailed assumptions,
  - (c) asset-liability studies,
  - (d) evidence of consistency with the investment-policy principles,
  - (e) evidence that contributions have been paid in as planned,
  - (f) reports by the persons responsible for auditing the annual accounts referred to in section 56,
- and the Pensions Authority shall publish a list of any document it has specified under this subsection.
- (7) Without prejudice to any other provision of this Act, the Pensions Authority may carry out an on-site inspection for the purposes of the prudential supervision of the scheme or trust RAC under this Part –
- (a) at or on any premises in or at which the trustees of a scheme or trust RAC carries on its business, and
  - (b) where appropriate, at or on any premises where outsourced and all subsequent re-outsourced activities are carried out,
- to check if activities are carried out in accordance with the supervisory rules.
- (8) For the purposes of subsection (7), the Pensions Authority may direct an authorised person to carry out an on-site inspection referred to in subsection (7) and section 18(3) shall apply to the authorised person who carries out the on-site inspection.
- (9) Without prejudice to any other provision of this Act, the Pensions Authority may, at any time, request the trustees of a scheme or trust RAC to provide it with information concerning outsourced activities and any subsequent re-outsourced activities for the purposes of prudential supervision of the scheme or trust RAC under this Part.

### **Transparency and accountability**

**26W.**(1) Without prejudice to any other provision of this Act, the Pensions Authority shall perform the functions in this Part, Part VIB, sections 10(1A), 50(2C), 59(1E), 59A(1A), 59A(1B), 59AB, 149(1), 151A, 151B and 152(1) in a transparent, independent and accountable manner with due respect for the protection of confidential information.

(2) Without prejudice to any other provision of this Act, the Pensions Authority shall publish –

- (a) information regarding the supervisory review process under this Part,
- (b) aggregate statistical data on key aspects of the application of the prudential framework on its website,
- (c) the main objective of prudential supervision and information on its main functions and activities, and
- (d) information in relation to the enforcement of this Part, Part VIB and a measure arising from the Directive of 2016.

## **Chapter 7**

### **Professional secrecy and exchange, and transmission, of information**

#### **Professional secrecy and use, and exchange, of confidential information**

**26X.** (1) Without prejudice to the generality of section 24(1) and subject to subsections (2) and (4), a person referred to in section 24 (including a person who is or was at any time, an auditor or expert acting on behalf of the Pensions Authority) is bound by the obligation of professional secrecy, and shall not divulge confidential information received by him or her in the course of his or her duties to any person or authority except in summary or aggregate form ensuring that a scheme or trust RAC cannot be identified other than in accordance with that section.

(2) Where a scheme or trust RAC is being wound up, subsection (1) shall not operate to prevent the disclosure of information referred to in that subsection under section 24(3) nor in any civil or criminal proceedings.

(3) Without prejudice to any other provision of this Act and subject to subsections (2) and (4), where the Pensions Authority receives confidential information pursuant to this Part, Part VIB or Part XII or section 150(1), 151A, 151B or 152(2), it shall use that information for the following purposes:

- (a) to check that the conditions for taking up occupational retirement provision business are met by a scheme or trust RAC before it commences its activities;
- (b) to facilitate the monitoring of the activities of a scheme or trust RAC including the monitoring of the technical provisions, the solvency, the system of governance, and the information provided to members and beneficiaries;
- (c) to impose corrective measures;
- (d) where there is a requirement, under any enactment, to publish key performance indicators of all individual schemes or trust RACs, which may assist a member and beneficiary in taking a financial decision regarding his or her pension;

- (e) in an appeal, taken in respect of a decision of the Pensions Authority under this Part or Part VIB or section 50, 59A, 149, 150, 151, 151A, 151B, 152 or 153; and
  - (f) in proceedings in respect of a provision of this Act taken where such provision concerns a measure provided for in the Directive or the Directive of 2016.
- (4) Subject to this Part, subsections (1), (2) and (3) shall not operate to prevent the Pensions Authority from –
- (a) exchanging information under section 4(2),
  - (b) disclosing information under section 4(3),
  - (c) exchanging information between it, in the discharge of its supervisory functions, and another competent authority in the State in the discharge of their supervisory functions and any of the following in the State in respect of such discharge –
    - (i) authorities responsible for the supervision of financial sector entities and other financial organisations and the authorities responsible for the supervision of financial markets and without prejudice to the generality of the foregoing includes the Central Bank of Ireland,
    - (ii) authorities or bodies charged with responsibility for maintaining the stability of the financial system through the use of macro-prudential rules, and
    - (iii) reorganisation bodies or authorities aiming at protecting the stability of the financial system,
  - (d) exchanging information with a person who is involved in the winding up of a scheme or trust RAC or other similar procedures,
  - (e) exchanging information with a person who is responsible for carrying out a statutory audit of the accounts of a scheme or trust RAC, an insurance undertaking or other financial institution, and
  - (f) disclosing information to a person who administers the winding up of a pension scheme where the information is necessary for the performance of such administration.
- (5) A person with, or to, whom information, referred to in subsection (4), is exchanged or disclosed shall be bound by the obligation of professional secrecy and shall not divulge such information received by him or her to any person or authority except in summary or aggregate form ensuring that a scheme or trust RAC cannot be identified other than in accordance with this Part.
- (6) Nothing in subsections (1), (2) and (3) shall operate to prevent an exchange, or disclosure of information between the Pension Authority and any of the following:
- (a) the trustees of a scheme or a trust RAC that is being wound up and other similar procedures;
  - (b) a person responsible for the overseeing of the persons responsible for carrying out of a statutory audit of the accounts of a scheme

or trust RAC, insurance undertakings and other financial institutions;

- (c) an actuary and the Society of Actuaries of Ireland.

(7) Subsections (1) to (3) shall be without prejudice to the right of inquiry conferred on the European Parliament by Article 226 of the Treaty on the Functioning of the European Union.

### **Transmission, by Pensions Authority, of information to Central Bank, and other persons**

**26Y.** (1) Section 26X(1) to 26X(3) shall not operate to prevent the Pensions Authority from transmitting information to all or any of the following:

- (a) the Central Bank of Ireland;
- (b) the European Systemic Risk Board;
- (c) EIOPA;
- (d) the European Supervisory Authority (European Banking Authority);
- (e) the European Supervisory Authority (European Securities and Markets Authority).

(2) This section, and sections 26X(4), 26X(5), 26X(6), 26Z and 26AA shall not operate to prevent a person, authority or body referred to in subsection (1) from communicating to the Pensions Authority such information as the Pensions Authority may need for the purposes of section 26X(3).

(3) A person with, or to whom information is exchanged or disclosed pursuant to this section shall be bound by the obligation of professional secrecy and shall not divulge such information received by him or her to any person or authority except in summary or aggregate form ensuring that a scheme or trust RAC cannot be identified other than in accordance with this Part.

### **Disclosure of information to certain persons: financial requirements**

**26Z.** (1) Sections 26X(1), 26X(3) and 26AA shall not operate to prevent the disclosure of confidential information between the Pensions Authority and the Minister, any other Minister of the Government, a supervisory authority referred to in section 4, a body established under an enactment, a credit institution, financial institution, investment services and insurance undertakings, or where appropriate, an inspector acting on behalf of such persons.

(2) A disclosure referred to in subsection (1) shall be made only where necessary for reasons of prudential control and prevention and resolution of a failing scheme or trust RAC.

(3) A person with, or to whom information is exchanged or disclosed pursuant to this section shall not divulge such information received by him or her to any person or authority except in summary or aggregate form ensuring that a scheme or trust RAC cannot be identified other than in accordance with this Part.

(4) Information received under section 26X(4) and obtained by means of on-site verification may only be disclosed with the express consent of the Pensions Authority, or where appropriate, any other competent authority from which the information originated or, as the case may be, the competent authority of the Member State in which the on-site verification was carried out and without prejudice to the generality of the foregoing such information may be disclosed between the Pensions Authority and the Minister, any other Minister of the Government and a supervisory authority referred to in section 4 with such express consent of the Pensions Authority where it carried out that verification, or the competent authority of the other Member State in which that verification was carried out.

### **Conditions for exchange of information**

**26AA.** (1) For the purposes of an exchange of information under section 26X(4), a transmission of information under section 26Y and a disclosure of information under section 26Z, the following conditions shall apply:

- (a) the information shall be exchanged, transmitted or disclosed for the purpose of carrying out oversight or supervision;
- (b) a person with, or to whom information is exchanged or disclosed pursuant to this section shall not divulge such information received by him or her to any person or authority except in summary or aggregate form ensuring that a scheme or trust RAC cannot be identified other than in accordance with this Part;
- (c) where it originates from another Member State, it shall not be disclosed without the express agreement of the competent authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.

(2) Section 26X(3) shall not operate to prevent the exchange of information between the Pensions Authority and Director of Corporate Enforcement referred to in section 945 of the Companies Act 2014 and for the purposes of such exchange –

- (a) the information exchanged must be intended for the purpose of detection, investigation and scrutiny,
- (b) a person with, or to whom information is exchanged or disclosed pursuant to this section shall be bound by the obligation of professional secrecy and shall not divulge such information received by him or her to any person or authority except in summary or aggregate form ensuring that a scheme or trust RAC cannot be identified other than in accordance with this Part, and
- (c) where it originates from another Member State, it shall not be disclosed without the express agreement of the competent authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.

### **Provision of information, etc. to EIOPA**

**26AB.** (1) The Pensions Authority shall, subject to subsection (2), report to EIOPA in respect of the provisions of this Part and 59AB which are –

- (a) of a prudential nature, and
- (b) are not covered by social and labour law on the organisation of pension schemes referred to in Article 11(1) of the Directive of 2016,

in respect of a scheme or trust RAC.

(2) A report under subsection (1) shall be made at least every 2 years.

(3) Nothing in subsection (2) shall operate to prevent a report under subsection (1) from being made from time to time as the Pensions Authority considers appropriate.”.

## **Part 8**

### **Co-operation by Pensions Authority**

#### **Co-operation by Pensions Authority**

40. The Principal Act is amended by the insertion of the following Part after Part XII:

## **“Part XIII**

### **Co-operation by Pensions Authority**

#### **Interpretation**

**155.** A word or an expression that is used in this Part has the same meaning as it has in the Directive of 2016.

#### **Co-operation generally**

**156.** (1) Without prejudice to any other provision of this Act, the Pensions Authority shall collaborate with the Commission in relation to facilitating the supervision of the operation of schemes and trust RACs to which Part IIA applies.

(2) Without prejudice to any other provision of this Act, or any other enactment, the Pensions Authority shall –

- (a) co-operate with EIOPA for the purposes of the Directive of 2016 in accordance with Regulation (EU) No. 1094/2010,
- (b) provide EIOPA, as soon as practicable, with all information required by EIOPA in order for it to carry out its duties under the Directive of 2016 and under Regulation (EU) No. 1094/2010 in accordance with Article 35 of that Regulation, and

- (c) communicate to EIOPA information from the register referred to in section 60.
- (3) The Pensions Authority may request the trustees of a scheme or trust RAC to provide it with information it requires for the purposes of the provision of information referred to in subsection (2)(b) and may, for that purpose, specify a date on which the information is to be provided to it.
- (4) Where the Pensions Authority makes a request under subsection (3), the trustees of the scheme or trust RAC concerned shall provide the information requested by the date specified for its provision.
- (5) Without prejudice to any other provision of this Act, the Pensions Authority shall exchange best practices with regard to the format and content of the Pension Benefit Statement referred to in Regulation 33 of the *European Union (Occupational Pension Schemes) Regulations 2021*.“.

## Part 9

### **Amendment of European Union (Insurance and Reinsurance) Regulations 2015**

#### **Amendment of European Union (Insurance and Reinsurance) Regulations 2015**

41. Regulation 3 of the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015) is amended in the definition of “reinsurance” –

- (a) in paragraph (a), by the deletion of “or”,
- (b) in paragraph (b), by the substitution of “as Lloyd’s, or” for “as Lloyd’s;”, and
- (c) by the insertion of the following paragraph after paragraph (b):  
“(c) the provision of cover by a reinsurance undertaking to an institution that falls within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council<sup>10</sup>;”.



GIVEN under my Official Seal,  
22 April, 2021.

HEATHER HUMPHREYS,  
Minister for Social Protection.

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<sup>10</sup> OJ No. L 354, 23.12.2016, p.37

#### EXPLANATORY NOTE

*(This is not part of the Statutory Instrument and does not purport to be a legal interpretation.)*

These Regulations amend the Pensions Act 1990 (“1990 Act”) to transpose requirements of Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 (IORPs)(recast). While many of the provisions of the Directive were already transposed into Irish law, these Regulations transpose additional requirements of the Directive not already provided for in Irish law.

These Regulations amend the 1990 Act to provide for a range of new requirements concerning governance; management standards in schemes; safekeeping of assets; the provision of clear and relevant information to members; the removal of obstacles to cross-border provision of pension services and the facilitation of cross border transfer of schemes. There are also provisions that will enhance the powers of the Pensions Authority for effective supervision of occupational pensions and to provide for exchanges, disclosures or transmission of information.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ó  
FOILSEACHÁIN RIALTAIS,  
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2,  
D02 DR67.

Tel: 076 110 6834  
r-post: publications@opw.ie

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