

In Touch technical update

June 2018

DWP consults on trustees' investment duties

- SIP to set out how trustees take account of 'financially material risks' and policies on stewardship.
- Trustees to prepare a separate "statement on members' views".
- Money Purchase Schemes will need to disclose this information on line and also produce an implementation report each year.

In recent years there has been growing interest in social investment for pension funds and in environmental, social and governance (ESG) considerations. Various consultations and reports have been released, including a report by the Law Commission which concluded that there are no legal or regulatory barriers to pension schemes making social investments. Draft regulations have now been released to help dispel trustee confusion and to give institutional investors renewed confidence, if they so choose, to begin or increase the allocation of capital to investment opportunities such as unlisted firms, green finance and social impact investment.

Background

The draft regulations are intended to reassure trustees that they can (and should):

- Take account of 'financially material risks' which include but are not limited to ESG considerations including climate change;
- Fulfil the responsibilities associated with holding the investments in members' best interests;
- Have an agreed approach on the extent, if at all, to which they will take account of members' concerns, not only about financially material risks, but the scheme's investment strategy as a whole; and
- Use the Statement of Investment Principles (SIP) as a real, effective and regularly-reviewed guide to investment strategy.

None of the proposals seek to direct pension scheme trustees to invest in line with scheme members' wishes. Existing guidance notes that the ability to take account of member wishes is permissive, and then only when a two stage test is met:

- Firstly, trustees should have good reason to think the scheme members hold the concern; and
- Secondly, the decision should not involve a significant financial detriment.

Specific details are set out below.

SIP content, preparation and disclosure

Under the draft regulations, by 1 October 2019, all schemes that are required to produce a SIP will need to expand this to set out:

- How they take account of financially material risks, including climate change
- Their policies in relation to the stewardship of investments, including engagement, monitoring and exercising voting rights associated with investments.

When trustees next prepare or update their SIP after 1 October 2019, they will need to have prepared a separate "statement on members' views".

This statement must set out how the trustees will take account of the views which, in their opinion, members hold (including views on non-financial matters, such as ethical matters, social impact matters and matters on the "present and future quality of life of members"), in preparing or revising the SIP.

The new items must also be included in the annual report, available on request to members.

Additional Money Purchase requirements

Additional requirements apply to 'relevant schemes' (broadly, subject to a few exemptions, schemes offering money purchase benefits other than just AVCs).

From 1 October 2020, where these schemes are required to produce a SIP, trustees will in addition be required to produce an implementation report for the year setting out how they acted on the principles set out in the SIP, and how they acted on the statement of members' views, and explaining any changes made to the SIP and the reasons for the change. If no review of the SIP has taken place, the trustees must state the date of the last review.

From October 2019, relevant schemes will also need to prepare or update their default strategy, to set out how they take account of financially material considerations.

Such schemes will have to publish the following on a website, so that it can be found by scheme members and interested members of the public:

- SIP
- Statement on members' views
- Implementation report (once this is prepared)

Members will need to be informed of the online availability of this information in their annual benefit statement. This approach is similar to that recently adopted for disclosure of costs and charges for these schemes.

Timescales

16 July 2018: The consultation closes.

1 October 2019: The draft regulations assume the new requirements for SIPs and a statement on members' views will come into force, based on regulations being laid in autumn 2018 (however the consultation notes that if the regulations are not laid until later, the implementation timetable will be pushed back to maintain around a year's notice).

1 October 2020: The requirements for implementation reports are proposed to come into force 12 months later than the main SIP requirements.

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