



Department
for Work &
Pensions

Clarifying and strengthening trustees' investment duties

Government response

The Occupational Pension Schemes (Investment and Disclosure) (Amendment) Regulations 2018 (now the Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes (Investment and Disclosure) (Amendment and Modification) Regulations 2018)

September 2018

Ministerial Foreword	3
Chapter 1: Summary	5
Background.....	5
The Law Commission’s report on pension funds and social investment	5
The Government’s responses to the Law Commission.....	6
Our proposals	6
Responses to the consultation	8
Summary of changes	8
What schemes have to do now	10
European Directives.....	11
Chapter 2: Government Response	13
Timing of the Legislation	13
Financially material considerations	15
Members’ views	18
Impact investment.....	21
Stewardship of the investments	23
Implementation statement.....	28
Publishing the Statement of Investment Principles	30
Penalties, impacts and other matters	32
Guidance.....	34
Chapter 3: Summary of individual responses	39
Annex 1: Consultation respondents.....	49
Annex 2: Consultation questions	52
Annex 3: Keeling Schedule.....	54

Ministerial Foreword

I am very pleased to be publishing the Government's response to this important consultation on Clarifying and Strengthening Trustees' Investment Duties. I wish to thank the 89 individuals and organisations who responded to the consultation and the 3432 pension scheme members who offered their views through a questionnaire. Their input has been supportive, challenging, considered and passionate – but always invaluable.

It remains Government policy not to direct the investment decisions or strategies of trustees of pension schemes. We will never exhort or direct private sector schemes to invest in a particular way. Trustees have absolute primacy in this area. I would also like to confirm that it was not our intention to give the impression in our original consultation proposals that trustees must survey pension scheme members or must act on members' views about how their scheme is invested. Feedback on this point was helpful and we have amended the regulations to make the position clearer.

Nevertheless, in line with the conclusions reached by the Law Commission, I do believe it is possible and appropriate for trustees to take account of members' views in certain circumstances. I therefore wish to offer clarity to trustees that they can do so; and offer clarity to members of the circumstances in which their view might be considered.

The vast majority of respondents supported the proposed change to regulations to clarify trustees' duty to consider financially material risks and opportunities - whether those are traditional, such as company performance, interest or exchange rates; or broader such as those resulting from environmental, social and governance considerations including climate change.

A few dissenting voices expressed scepticism about the effectiveness of this measure. But for me the situation is simple – if there is confusion that these issues are to do with personal ethics, or optional extras, or can be dealt with through the addition of a 'environmentally friendly' chosen fund, then we need to address that misperception by ensuring that the law is clear. This is about the hard-headed fact that – given the time horizons of pension saving – broader considerations are likely to present long-term financial risks and opportunities to the solvency of DB schemes and the value of members' DC (and in time Collective DC) pensions.

I was glad to see a widespread consensus that all pension schemes have a role to play in the oversight of firms in which they invest and to whom they lend. We therefore have maintained our proposals on stewardship, and in one area extended them, to put trustees' responsibilities beyond doubt. I accept that the scope for smaller schemes to make changes will be more limited, but even where the range of actions is as narrow as switching between asset managers or between funds, trustees have a crucial role to play. Choosing a manager who can demonstrate high quality engagement, who partners effectively with co-investors and who votes

accordingly where they see poor or questionable practices should improve returns for all.

Similarly, we intend to continue with our proposals to require schemes of 100 or more members with DC sections to produce a report on how they implemented their investment strategy, and to publish it alongside other material. These measures again received broad support.

I recognise that we are working here with private trusts. But private trusts can learn from one another, and transparency can lead to more effective competition and better outcomes for the members to whom trustees have loyalty. It is also right that DC scheme members, who bear the investment risk, and for whom employer contributions are normally conditional on remaining invested in the employer's chosen scheme, can compare policies and raise issues of concern. Pension schemes and their service providers receive significant contributions through tax relief, and have a key role in corporate governance, as I have explained. So it is right that they have broader public accountability.

Finally, stakeholders confirmed our view that requiring a policy on impact investing at the present time could be confusing and counter-productive. Therefore we will maintain the current position that the preparation of such a policy should be wholly voluntary for pension schemes.

Nevertheless, investing for social, environmental and economic impact remains a subject I am passionate about. I will continue to engage across and beyond Government to identify how we might remove barriers and make it easier to invest in a way that supports the sort of world we want to live in.



Guy Opperman MP
Minister for Pensions and Financial Inclusion

Chapter 1: Summary

Background

1. One of the recommendations of the 2012 Kay Review of UK Equity Markets and Long-Term Decision Making¹ was that the Law Commission should be asked to review the legal concept of fiduciary duty as applied to investment. This was intended to address the belief that this duty required trustees to maximise returns over a short timescale, precluding consideration of long-term factors which might impact on company performance.
2. The Law Commission's report², published in July 2014 concluded that trustees should take into account factors which are financially material to the performance of an investment, whatever their source. It also concluded that trustees could make investment decisions based on members' views, subject to a 2-step test being met.
3. The Occupational Pension Schemes (Investment) Regulations 2005³ ("the Investment Regulations") require trustees to prepare a Statement of Investment Principles (SIP) which sets out the scheme's investment strategy, including the approach to financially material factors. The Law Commission proposed some changes to the Investment Regulations, for the purposes of clarification. The Government's 2015⁴ consultation did not find a compelling case for legislation at that time. Instead the view was taken that guidance issued by The Pensions Regulator might be sufficient to ensure trustees were aware of their responsibilities.

The Law Commission's report on pension funds and social investment

4. The Law Commission was subsequently asked by the then Minister for Civil Society, Rob Wilson MP in 2016, to carry out a review of social investment by pension funds, including the extent to which the law allows pension funds to

¹ The Kay Review of UK Equity Markets and Long-Term Decision Making: Final Report - July 2012 - <https://www.gov.uk/government/consultations/the-kay-review-of-uk-equity-markets-and-long-term-decision-making>

² Fiduciary Duties of Investment Intermediaries (LC350) - July 2014 - <https://www.lawcom.gov.uk/project/fiduciary-duties-of-investment-intermediaries/>

³ SI 2005/3378 - <http://www.legislation.gov.uk/ukxi/2005/3378/contents>

⁴ Better Workplace Pensions: Reducing regulatory burdens, minor regulation changes, and response to consultation on the investment regulations – November 2015 - <https://www.gov.uk/government/consultations/occupational-pensions-reducing-regulatory-burdens-and-minor-regulation-changes>

select an investment because it is thought that it would make a positive social impact.

5. The Law Commission found that the barriers to social investment were, in most cases, structural and behavioural rather than legal or regulatory⁵. However, the Law Commission also made some recommendations where the law could be improved so as to reduce the impact of these barriers. These recommendations were broadly similar to those identified in the 2014 report but were updated in light of developments within the pensions landscape.

The Government's responses to the Law Commission

6. In its interim response to the Law Commission⁶, published in December 2017, the Government indicated that it was minded to accept the Law Commission's proposals for changes to the Investment Regulations, and would consult on those proposed changes to policy and relevant regulations in 2018.
7. In the final Government response⁷, published in June 2018, we concluded that despite The Pensions Regulator's guidance, confusion and misapprehension over trustees' responsibilities persisted. Whilst there were cases of trustees understanding the issues and updating their investment strategies accordingly, good practice appeared to be far from universal.
8. Therefore alongside the final Government response, we published a consultation proposing changes to the Investment Regulations and to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013⁸ ("the Disclosure Regulations").

Our proposals

9. We proposed to allow around a year between the laying of the regulations, which are subject to the negative resolution procedure, and the coming into force of the majority of the regulations, to help trustees familiarise themselves with the changes before they take effect.
10. Subject to the assumption of a September laying date, which has now been confirmed, we proposed to require trustees to, by 1 October 2019:

⁵ Pension Funds and Social Investment (LC374) – June 2017 -

<https://www.lawcom.gov.uk/project/pension-funds-and-social-investment/>

⁶ Pension funds and social investment: interim response – December 2017 -

<https://www.gov.uk/government/publications/pension-funds-and-social-investment-interim-response>

⁷ Pension funds and social investment: final response – June 2018 -

<https://www.gov.uk/government/publications/pension-funds-and-social-investment-final-response>

⁸ SI 2013/2734 - <http://www.legislation.gov.uk/ukSI/2013/2734/contents>

- where they are required to produce a Statement of Investment Principles (SIP), update or prepare it to set out:
 - how they take account of financially material considerations, including (but not limited to) those arising from Environmental, Social and Governance considerations, including climate change;
 - their policies in relation to the stewardship of investments, including engagement with investee firms and the exercise of the voting rights associated with the investment;
- in relation to relevant schemes⁹ – broadly, schemes offering money purchase benefits, subject to a few exceptions:
 - to publish their Statement of Investment Principles on a website so that it can be found and read by both scheme members and interested members of the public, and inform scheme members of its availability via the annual benefit statement;
- in relation to the default arrangement, prepare or update their default strategy to set out how they take account of financially material considerations, including (but not limited to) those arising from Environmental, Social and Governance risks, including climate change.

11. Secondly, we proposed that from 1 October 2019:

- when they next prepare or update their Statement of Investment Principles, they prepare a separate ‘statement on member’s views’, setting out how they will take account of the views which, in their opinion, members hold, in relation to the matters covered in the Statement of Investment Principles. In addition, we proposed to require trustees of relevant schemes to publish that statement.

12. Finally, from 1 October 2020, we proposed to require trustees of relevant schemes which are required to produce a Statement of Investment Principles to:

- produce an implementation statement setting out how they acted on the principles they set out, and how they acted on the statement which covered how they would take account of the views which, in their opinion, members hold;

⁹ “relevant schemes” is defined in the Occupational Pension Schemes (Scheme Administration) Regulations (S.I. 1996/1715) (“the Administration Regulations”) and cover occupational pension schemes offering money purchase benefits, other than the following:

- executive pension schemes and relevant small schemes (which will rarely, if ever, be required to produce a SIP anyway);
- schemes that do not fall within paragraph 1 of Schedule 1 (description of schemes) to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (S.I. 2013/2734) (“the Disclosure Regulations”) – which principally excludes schemes which are not tax registered, and schemes which only provide death benefits;
- funded and unfunded public service pension schemes, as defined by section 318 of the Pensions Act 2004. In practice, we are aware of no such schemes which are required to produce a SIP or would be caught by this definition, were this inclusion not to apply;
- schemes which provide no money purchase benefits other than benefits which are attributable to additional voluntary contributions.

- publish that implementation statement online in the same way as the Statement of Investment Principles, and inform scheme members of its availability via the annual benefit statement.

Responses to the consultation

13. The consultation on policy proposals and on changes to the Investment Regulations and the Disclosure Regulations was launched on 18 June and ran for 4 weeks.
14. In addition we published a short consultation and questionnaire for pension scheme members which covered similar areas, but in the context of members' experience of finding out how their pension scheme was invested and how it communicated this information to them.
15. The questions asked in both parts of the consultation are shown in Chapters 3 and Annex 2.
16. In support of the consultation we met with approximately 30 stakeholders, including trustees, consultants, investment managers, law firms, actuaries, campaign groups and trade bodies and associations.
17. We received 89 formal responses to the consultation itself from a similar spectrum of stakeholders. The responses to the proposals are summarised in Chapter 2.
18. We received 3432 responses to the questionnaire for pension scheme members. A summary of responses is shown in Chapter 3.

Summary of changes

19. To save Parliamentary time, we have combined these regulations into a single package with changes to the Pension Protection Fund (PPF) compensation regulations. Government separately consulted on these regulations¹⁰ and its response to that consultation is published separately.
20. We have also made the following changes:
 - We have slightly modified the requirements in relation to the policy on financially material considerations, to make clear that it applies to considerations over the appropriate time horizon for the scheme and its members.¹¹ The rest of the policy is unchanged.
 - We have removed the requirement to prepare a separate 'statement on member's views'. We have replaced it with an optional policy on non-financial

¹⁰ <https://www.gov.uk/government/consultations/changes-to-the-pension-protection-fund-ppf-compensation-regulations>

¹¹ Regulation 4(2)(b)(ii) of these final Regulations inserts new paragraph (3)(b)(vi) into the Investment Regulations.

factors, including not only members' ethical concerns, but also social and environmental impact matters and quality of life considerations¹².

- We have extended the stewardship requirement to require trustees of relevant schemes with 100 or more members to state a policy in relation to the stewardship of the investments in relation to their default arrangement¹³. The rest of the policy on stewardship is unchanged.

21. We have not made any changes to the following proposals.

- The coming into force date for the majority of the measures will remain 1 October 2019. The coming into force date for the remainder of the measures will remain 1 October 2020¹⁴.
- We will not require pension scheme trustees to state a policy in relation to social impact investment.
- We will require trustees of relevant schemes to publish their Statement of Investment Principles¹⁵ and include a link to this information in the members' annual benefit statement¹⁶.
- When trustees of relevant schemes produce their annual report, they will be required to:
 - prepare a statement setting out how they have implemented their investment policies, and explaining and giving reasons for any change made to them¹⁷;
 - include this implementation statement in the annual report¹⁸;
 - ensure that the link included in the annual benefit statement sent to members also refers to this implementation statement¹⁹.

22. We have also amended and corrected a small number of technical drafting points in the Regulations.

23. For the avoidance of doubt, as this caused a minority of respondents significant concerns, it is our policy – and will remain our policy – that trustees have primacy in investment decisions. Whilst they should not necessarily rule out the ability to take account of members' views, they are never obliged to do so.

24. These measures are not intended to give any support to campaign groups for boycotts of certain countries or divestment from certain assets. Trustees have

¹² Regulation 4(2)(a)(iii) and (b) of these final Regulations inserts paragraphs (3)(b)(vii) and (4) into the Investment Regulations.

¹³ Regulation 4(3) of these final Regulations amends Regulation 2A(1)(b) of the Investment Regulations.

¹⁴ Regulation 1(1) and (3) of these final Regulations.

¹⁵ Regulation 5(4)(b) of these final Regulations inserts paragraph (2A)(a) into Regulation 29A of the Disclosure Regulations.

¹⁶ Regulation 5(6) of these final Regulations amends paragraph 5B of Schedule 6 to the Disclosure Regulations.

¹⁷ Regulation 5(5)(c) of these final Regulations inserts paragraph 30(f) of Schedule 3 into the Disclosure Regulations.

¹⁸ *ibid*

¹⁹ Regulation 5(6) of these final Regulations amends paragraph 5B of Schedule 6 to the Disclosure Regulations.

primacy in investment decisions, and their prime focus is to deliver a return to members.

25. The Law Commission's advice is clear. Where the concerns are not financially material – for example, primarily ethical – trustees are only permitted to take these concerns into account when there is a broad consensus. Where an investment issue is contested, as divestment from fossil fuels or from some regimes will generally be, the trustees should focus exclusively on financially material risks and opportunities, rather than seek to weigh up the relative strengths of views.

What schemes have to do now

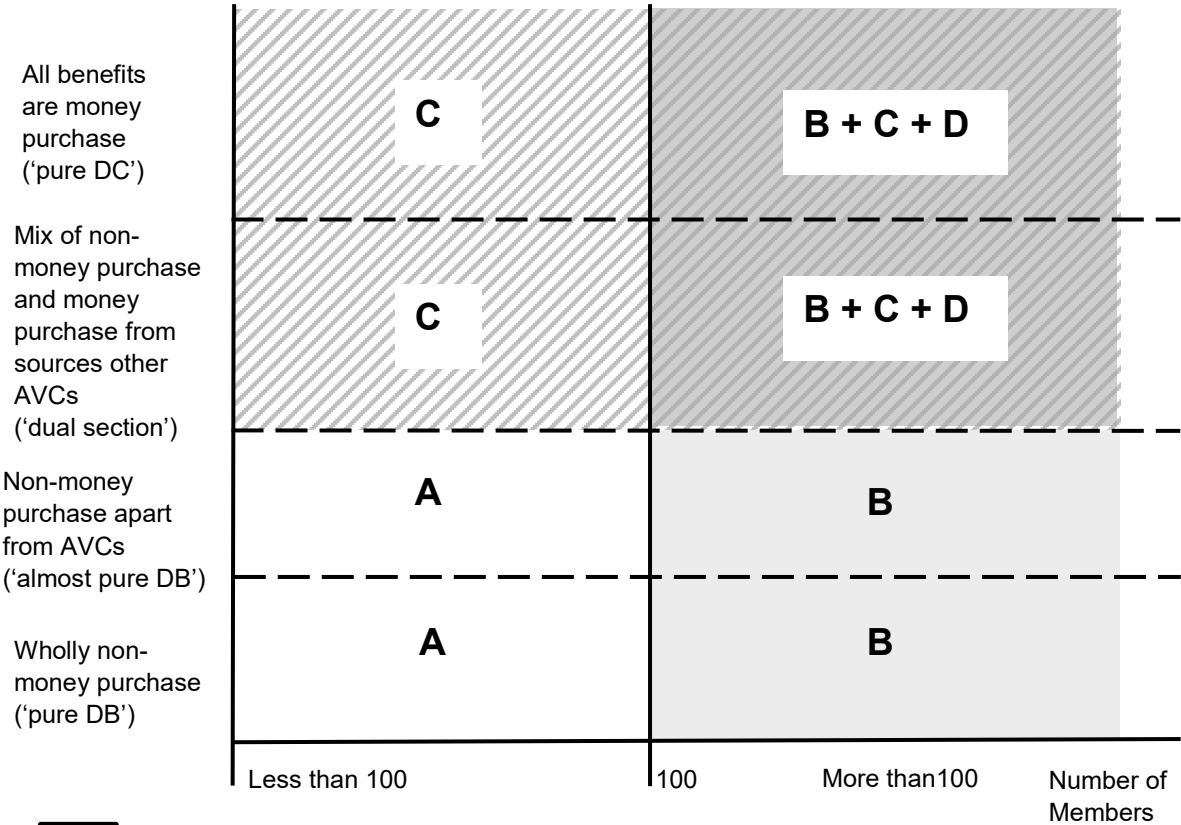
26. By 1 October 2019 some schemes will be required to do some or all of:

- Updating their Statement of Investment Principles
- Updating the Statement of Investment Principles in respect to their default arrangement
- Publishing their Statement of Investment Principles.

27. From 1 October 2020 some schemes will be required to produce and publish their implementation statement.

28. To identify the necessary actions for their own scheme, trustees and their advisers may find the diagram overpage helpful.

Illustration of the effect of these regulations on different scheme types



No new requirements



By 1 October 2019 - Update policies on financially-material considerations, stewardship and non-financial matters.



By 1 October 2019 - Update default investment strategy to take account of financially-material considerations and any policy on non-financial matters.



By 1 October 2019 – Update default investment strategy to take account of policy on stewardship, and publish Statement of Investment Principles
From 1 October 2020 – Produce and publish implementation statement.

European Directives

29. Several stakeholders requested clarification on whether further changes should be expected to domestic investment and disclosure legislation as a result of the upcoming transposition of the EU Institutions for Occupational Retirement Provision (IORP) II Directive²⁰ and the measures relating to occupational pension

²⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L2341>

schemes in the Shareholder Rights Directive²¹. Since the consultation, Government has begun to make its approach to future transposition of IORP II clear.

30. As the transposition date for the Shareholder Rights Directive does not fall until June 2019, it is premature to offer full details on the transposition approach at this stage²².

²¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L0828>

²² On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period, the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

Chapter 2: Government Response

1. This chapter sets out the Government's response, following the consultation on taking forward the recommendations from the Law Commission's 2017 report.

Timing of the Legislation

Background

2. The consultation proposed to allow approximately one year between the laying of the regulations and the coming into force of the majority of the regulations, to help trustees familiarise themselves with the changes.
3. We proposed²³ to require trustees (depending on their scheme type and size) to, by 1 October 2019:
 - update the Statement of Investment Principles (SIP) to take account of financially material considerations and stewardship;
 - update the default SIP to take account of financially material considerations;
 - publish the SIP; and
 - (next revision of the SIP on or after 1 October 2019) produce a statement on how members' views are taken into account and publish it.

And from 1 October 2020:

- produce and publish an implementation statement on the SIP.

Stakeholder responses

4. Around two thirds of respondents supported the proposed timescales for coming into force. Many respondents noted that following the Law Commission's conclusions and guidance issued by The Pensions Regulator, it was already clear to trustees that they had a legal duty to consider such factors, and a year was more than sufficient to document their policies. With that in mind, a minority of respondents did suggest that the timescales could be accelerated.

We...view the proposal as an amendment to the existing SIP, rather than a requirement to draft a new SIP from no existing base. We propose to require the SIP to be published and included in annual benefit statements by April 2019 and for it to include how trustees take account of financially material considerations (including for the default strategy).

Smart Pension

5. A few respondents however suggested that the proposed time period for requiring trustees to comply with the proposed Regulations was too short, particularly in

²³ See regulation 1(1) and 1(3) of these final Regulations for coming into force dates.

relation to smaller schemes – this may therefore result in some schemes producing revised statements quickly but not as effectively as they might.

We are concerned that the proposed time period is too short and may result in some schemes producing revised SIPs quickly, but not necessarily well. We would encourage that schemes are allowed greater time to revise these statements in respect of financially material considerations and stewardship.

Institute and Faculty of Actuaries

Government response

6. Whilst we have given these minority concerns careful consideration, we do not plan to change the coming into force date of the Regulations.
7. The consultation responses showed that there was widespread support for the proposed timings. Many respondents highlighted that, although trustees may need to change their main and/or default Statement of Investment Principles to meet the new requirements of the regulations, the changes relate to points which trustees should already be considering as part of their existing fiduciary duties.
8. Legislating with a single common timeline of implementation across all schemes was seen as an important and significant driver of change by other respondents. It provides clarity for schemes, over any more complex alternative under which regulations would come into force in stages based on scheme assets or scheme membership. It also ensures that members of smaller schemes are not disadvantaged by delays to the improvements in scheme governance which we expect to follow.
9. Furthermore it was acknowledged by respondents that significant delays to the timings would take duties on occupational pensions out of broad alignment with corresponding proposals to be issued by the Financial Conduct Authority (FCA) for workplace personal pensions. These are currently expected to be published in the first quarter of 2019²⁴. Delays to the application of the measures for occupational schemes would cause the timetables to diverge.
10. Having carefully considered the responses, we have concluded that the timeline gives a sufficiently wide window in which trustees can develop the revised and additional documentation to be compliant with the new requirements.
11. Many stakeholders suggested that timely updating and expansion of guidance issued by The Pensions Regulator would assist trustees in meeting the proposed timescales. We cover this under Guidance in paragraphs 119-121 later in this Chapter.

We do not propose to make any changes to our coming into force proposals.

²⁴ The FCA confirmed its intention to consult in its responses to recommendations 3, 4 and 5 in *Pension funds and social investment: the Government's final response* - <https://www.gov.uk/government/publications/pension-funds-and-social-investment-final-response>

Financially material considerations

Background

12. Regulations²⁵ have historically required trustees to report their policy on “the extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of investments”. In practice, this drafting has proven to be confusing and misleading.
13. We proposed that trustees should be required to state their policy on the evaluation of financially material considerations. This includes but is not limited to environmental, social and governance considerations, including climate change, in the selection, retention and realisation of investments. The regulations would amend the requirements of the main and also the default Statement of Investment Principles, where a scheme has one, to include the consideration of financially material matters²⁶.

Stakeholder responses

14. There was acceptance of the need for clarification of the existing regulations from a large majority, around 80%, of respondents.
15. Views differed on the exact wording to be used. Several respondents suggested that the requirement for a policy on matters which includes but is “not limited to environmental, social and governance considerations, including climate change” might be too broad. There were concerns it could encourage pension schemes to adopt a tick box approach and produce a long list of generic policies on very many considerations. Several of these respondents suggested that a policy on environmental, social, governance (and potentially climate change) considerations alone would discourage this practice.

Taken literally, we think there is a risk that some trustees may seek to comply with this by providing long generic lists of all matters that might affect a scheme’s investments. This could significantly detract from two of the policy intentions expressed in the consultation of encouraging trustees to focus on financially material ESG and climate change risks and making SIPs less generic.

Association of Pensions Lawyers

16. There was broad support for the inclusion of climate change, with only a small number of stakeholders suggesting that specifically referencing it would be inappropriate. A very small number of respondents suggested other items that

²⁵ Regulation 2(3)(b)(vi) of the Investment Regulations, <http://www.legislation.gov.uk/ukxi/2005/3378/regulation/2>

²⁶ Regulation 4(2)(a)(ii) and (b) of these final Regulations inserts paragraphs (2)(3)(b)(vi) and (4) into regulation 2 of the Investment Regulations.

might specifically be name-checked, principally workforce practices or separate references to climate change adaptation and mitigation²⁷.

This wording makes it clear to trustees that they must report on ESG and climate change as a minimum.

HR Trustees Limited

Is it right to give climate change pre-eminence over other corporate governance issues which are – in a wider ESG sense – equally compelling? Might that not relegate other issues to a sub-list?

Atlas Master Trust

17. Several commenters noted that whilst our consultation reasoned that there would be limited circumstances in which environmental, social, governance or climate change considerations were not financially material, the regulations as drafted appeared to suggest that they were non-existent.

18. Finally, a range of respondents revisited the question of whether a timespan ought to be referenced in the regulations. A particular concern was that environmental, social and governance risks, including climate change, tended to be longer term risks and opportunities than were commonly considered. Therefore some form of prompting to look further into the future might well be helpful.

The time horizons over which member's benefits will be invested demands that long term considerations which may impact the value of scheme investments should be fully examined by trustee boards. We suggest the DWP considers adopting the approach...that risks and financially material considerations are considered consistently with the profile and duration of the scheme's liabilities.

Aviva

Government response

19. As the consultation made clear, the risks and opportunities presented by environmental, social and governance considerations, including climate change, are not exclusively long-term.

20. However, we acknowledge that they very often will be, and that the risks from mispricing assets increases over the long term. Therefore, in line with several responses, we have amended our proposals to require schemes to have a policy over the appropriate investment time horizon²⁸. We have defined this as the length of time that the trustees consider is needed for the funding of future benefits by the investments of the scheme.

21. We intend that this addition will both prompt schemes which are approaching buy-out or wind-up to consider financially material short-term risks, whilst encouraging

²⁷ Climate adaptation is the response to climate change which is already 'baked in' by existing levels of greenhouse gases. Climate mitigation is action to limit future climate change.

²⁸ Regulation 4(2)(a)(ii) and (b) inserts paragraphs (3)(b)(vi) and (4) into Regulation 2 the Investment Regulations.

other schemes to also look towards the longer term in a way which reflects the demographics of members and beneficiaries.

22. The length of time is intended to refer to the scheme, not to the durations of individual investments. So a growing DC master trust with some younger members would still have a time horizon of 40 years or more, regardless of whether some of the portfolio is turned over every very rapidly, or whether some assets, such as government or corporate bonds, have a fixed redemption date.
23. We have considered the differing benefits of a broader or narrower approach to the financially material risks and opportunities on which trustees must have a policy, but we have opted to retain the approach as set out. Many respondents favoured this less prescriptive approach and the flexibility this would offer.
24. We accept that there is a risk that trustees' interpretation will be that they should meet this requirement through a long exhaustive shopping list of risks with accompanying generic mitigations. We anticipate that publication of the Statement of Investment Principles by relevant DC schemes will help industry practice as a whole to gravitate towards a practical and proportionate approach. Trustees and their advisers may wish to note that the regulations do not refer to a requirement to document 'all' risks, and that there is no need to recycle the trustees' policy on risks and the way in which these are measured and managed from elsewhere in the document ²⁹.
25. We have also amended the drafting in response to feedback that it appeared to suggest that every environmental, social, governance and climate change consideration was always financially material.
26. We have concluded that the systemic and cross-cutting nature of climate change means that it should be retained as a named factor for consideration. Workforce practices are potentially a significant financially material issue, but they are largely captured as a "social" consideration. Similarly we believe a single overarching reference to climate change in regulations will help trustees express policies on strategies which are both better able to adapt to climate change and which are better placed to respond to future regulatory efforts to mitigate it. We therefore do not propose to list any other items at this present time.

We have slightly modified the requirements in relation to the policy on financially material considerations, to make clear that it applies to considerations over the appropriate time horizon for the scheme and its members.

Other than clarifications in the drafting, we have made no other changes.

²⁹ Regulation 2(3)(b)(iii) of the Investment Regulations.

Members' views

Background

27. The Investment Regulations have historically made no explicit reference to taking account of scheme members' views, although it is implicitly referred to by the option to have a policy on ethical considerations³⁰. This generally should be taken to mean the beneficiaries of the trust, rather than those who are not beneficiaries, such as the employer sponsor, or the trustees, who are expected to act for the purposes of the trust.
28. The Law Commission concluded that, although financial return should be trustees' predominant concern, the law is sufficiently flexible to allow other, subordinate, non-financial concerns to be taken into account, subject to a 2-stage test being met. Trustees are never obliged to take account of these non-financial factors, and need not take account of members' views in any circumstances. The 2-stage test which must be satisfied is that:
- trustees should have good reason to think the scheme members hold the concern; and
 - the decision should not involve a significant financial detriment.
29. In its 2017 report, the Law Commission offered guidance on how trustees can deal with differences of opinion when considering member survey results³¹. They indicated that it is not always necessary for trustees to survey scheme members to understand their concerns. It should be possible to make assumptions based on the information they already know about the membership of the scheme or the population as a whole.
30. We proposed that trustees should consider and prepare a statement on how they will take account of the views which they consider scheme members to hold in the preparation or revision of the Statement of Investment Principles. This could include members' views on both financial and non-financial matters that may be relevant to the trustees' investment and stewardship decisions.
31. We anticipated that by linking this requirement to the development of the investment policies, rather than including it as a policy within the document, we would avoid giving trustees any impression that investments should be made in line with scheme members' preferences.

Stakeholder responses

32. A majority of respondents did not support the proposed approach. They raised a range of concerns.

³⁰ Regulation 2(3)(b)(vi) of the Investment Regulations.

³¹ See paragraphs 5.39-5.41 of the Law Commission's 2017 report - <https://www.lawcom.gov.uk/project/pension-funds-and-social-investment/>

33. Many stakeholders supported the idea in principle of members having more say, but understood – contrary to our intention – that they were being expected to survey members, which some thought could be costly and may be inconclusive.

By having a formal approach to canvassing scheme members' views, it is more likely that a cross-section of views will be heard rather than simply the most actively vocal members.

Hermes Investment Management

The intent of the policy to ensure that members' views are considered when setting an investment strategy is both reasonable and desirable. However, we believe there could be a number of issues - particularly in relation to agreeing what the underlying member views are... Our preference would be for some clear worked examples on how the proposal is likely to work in practice.

Association of Consulting Actuaries

34. This interpretation appears to have stemmed from the drafting, which referred to "the views which, in the reasonable opinion of the trustees, members of the scheme hold". In order to have that reasonable opinion, respondents concluded that trustees would need to survey scheme members and, given the likely low response rate, would probably find it difficult to establish that any particular view was shared. Our intention in referring to "the reasonable opinion" was in fact the opposite – to show that the trustees could in fact draw reasonable conclusions based on the views of the wider public without costly and potentially inconclusive surveys.
35. Trustees and advisers of defined benefit schemes expressed particular concerns, given that the investment risk was underwritten by the employer. Although the second stage in the Law Commission's 2-stage test was clearly intended to mitigate against this outcome, several of these respondents highlighted that the sponsor of a DB would be 'on the hook' for any underperformance.

The proposals in this paper are silent on the potential for conflict between members', trustees' and sponsors' potentially differing views. Given that sponsors bear all of the financial risk in DB schemes, failing to include their views would seem to be a serious omission.

Independent Trustee Services

36. It was also clear that agreement with the conclusions of the Law Commission was not unanimous. Some respondents pointed out that there was relatively little case law to inform the Law Commission's proposed 2-stage test, and some of what is available concerned charities rather than pension schemes.
37. Some stakeholders expressed concerns about the longer-range outcomes which might undermine the effectiveness of the policy. For example, expectations might be raised amongst a minority of engaged members that their own sincerely and strongly-held views would be taken on board – only to have them dashed by trustees who were either not wholly confident that those views were widely held (or even that there were not objections to them). Alternatively members might be

angered by trustees exercising their wholly legitimate right not to take account of members' views.

Since the proposals do not direct trustees to invest in accordance with member views but only to consider their views, it is important that this process is managed carefully in order to avoid any further disenfranchisement of scheme members from the investment process.

Investment Association

Where trustees do canvass views, it may create a member expectation that they will influence trustee investment decisions and may give rise to member complaints where they do not.

Eversheds Sutherland

38. Some respondents were also concerned that the 'significant financial detriment' test would leave them exposed to criticism or legal challenge if they sought to take account of members' views but the strategies adopted subsequently underperformed.

Legally, trustees should be extremely cautious about taking non-financial matters into account in any circumstances other than as a "tie-breaker" between two financially equal choices. It also remains difficult for trustees to determine the risks of financial detriment – and whether or not such financial detriment is 'significant'.

PLSA

39. Finally, our intention of linking this requirement to the development of the investment policies, rather than having it as an integrated policy, led some stakeholders to understand that the goal was to place members alongside the employer as consultees. This was not the intention – as our consultation sought to make clear, there was no expectation that trustees must consult with members, whereas there is a legal requirement for trustees to consult with employers.

Government response

40. A significant proportion of respondents raised concerns about this part of the policy intent, or believed that our proposed approach would be misunderstood by others, such as members. We have therefore sought to express the policy much more clearly and simply in the final version of the regulations.
41. To correct the misapprehension that trustees must survey or take account of members' views, or any other non-financial factor, we have added "if at all" to the drafting³², and removed the reference to "the reasonable opinion of trustees".
42. We have also moved the optional policy out of the section on consultation during preparation and revision of the Statement of Investment Principles, into the list of

³² Regulation 4(2)(a)(iii) of these final regulations inserts paragraph (3)(b)(vii) into Regulation 2 of the Investment Regulations.

prescribed policies, and refer to non-financial matters, deriving from members' ethical or other concerns³³.

43. In this way, we hope that the final regulations more clearly reflect a logical development from the original Investment Regulations which themselves *permit* but do not *require* a policy on ethical considerations. It also more closely reflects the Law Commission's 2017 recommendations.
44. We fully appreciate that many trustees, or their advisers, will not feel comfortable taking members' ethical concerns into account. However, in line with the current requirements, we believe it is reasonable for members to be told about the circumstances in which their views will or might be considered – and that there may be some circumstances in which their views could be taken into account. Therefore we propose that this information should continue to be available, as it is now, to members, spouses, beneficiaries and recognised trade unions of all pension schemes, and in the case of relevant schemes (see paragraphs 90-102), that it should be published as part of the annual report.
45. It is not unreasonable for members to expect to know this, and we have heard limited instances of criticism or challenge, and no instances of court action on this point of the Investment Regulations since the original requirements came into force in 2005.
46. Separately we have slightly extended the range of other non-financial matters which trustees may take into account to include environmental impact as well as social impact concerns, to take account of the fact that impact investment options are no longer limited to those with predominantly social outcomes. We do not intend to repeatedly legislate to list other non-financial matters. The Regulations are deliberately explicit that the non-financial matters which trustees may take into account "include, but are not limited to" those listed.

We have removed the requirement to prepare a separate 'statement on member's views' when the Statement of Investment Principles is revised. We have replaced it with an optional policy on non-financial factors, including not only members' ethical concerns, but also social and environmental impact matters and quality of life considerations.

Impact investment

Background

47. We did not propose to set out any requirements in legislation around trustee consideration of social impact investment or other forms of impact investment.

³³ Regulation 4(2)(a)(iii) and (b) of these final Regulations inserts paragraph (3)(b)(vii) and paragraph (4) into regulation 2 of the Investment Regulations.

48. We noted that there would be a danger in requiring trustees to set out a policy on this subject. Some social impact investments would be compatible with, and indeed desirable from the perspective of delivering the appropriate return, but others could only be selected where it satisfied the 2-stage test referred to above.
49. Including a reference to impact investment might therefore create new confusion. Instead we proposed that the other consulted changes to consideration of financially material risks and opportunities, along with the option in some circumstances to consider scheme members' views, might be sufficient to give trustees the confidence to invest.

Stakeholder responses

50. Around three quarters of respondents agreed with our proposals. Commenters agreed that impact investment did not correspond to any particular aspect of trustees' fiduciary duty and agreed that its inclusion would cause confusion. Many agreed social impact investment was already possible, and that the other proposed changes to the Investment Regulations would increase trustee confidence.

The policies envisaged by the draft Regulations should allow trustees interested in making a social impact investment to do so. If the social impact investment is financially rewarding, trustees can invest regardless of its social impact. And if trustees find that members care strongly about certain social issues, they may (as reflected in their statement on members' views) take these into account through pursuing social impact investment, subject to meeting the two-part test.

ShareAction

51. A sizeable minority of stakeholders believed that the Government should continue to keep the regulations under review and revisit the possible addition of requirements in relation to social or other forms of impact in due course. Others proposed a variety of non-statutory solutions such as improved guidance or sharing of case studies of impact investments by occupational pension schemes.

We support the intention to monitor this market and to revisit at a later point to determine whether intervention would be beneficial. To foster the emergence of best practice, we propose that the government considers encouraging large and public sector schemes to consider how they might increase their impact investing activity.

Institute and Faculty of Actuaries

52. A small number of stakeholders specifically welcomed the inclusion in the regulations of impact as a non-financial matter which trustees might consider. A similar number, though, thought its inclusion might imply that impact investment could only be undertaken on the basis of non-financial consideration.

We support the reference to social impact in the definition of non-financial factors. This should give trustees comfort that they can consider the opportunities posed by social impact investing.

Unison

We strongly recommend removing this wording...as it may lead Trustees to believe that such investments are to be made solely on a 'non-financial' basis, whereas many social and environmental impact funds return comparable investment returns to mainstream funds.

Brunel Pension Partnership

Government response

53. We will maintain the current policy position of not requiring trustees to have a policy in relation to social impact investment.
54. However, we will work with other Government departments, The Pensions Regulator and with external bodies to identify what else might be done to remove barriers to social impact investment by pension schemes, and to increase awareness and understanding. We will also continue to monitor trustee behaviour, trends in terminology and the availability and labelling of social impact investment products.
55. We will retain the reference to social impact – now expanded to social and environmental impact - as a non-financial matter³⁴.
56. Its inclusion does not mean that wider impact will never be financially material. This is similarly the case with the other listed non-financial matters - members might have ethical concerns about risks which trustees also decide are financially material. Likewise, investment strategies which improve quality of life might well also present schemes with financially material opportunities.
57. The Government remains supportive of the impact investment agenda, and does not intend to suggest that such investments are only suitable when they pass the Law Commission's 2-stage test for non-financial matters. Trustees may also choose some impact investments because they deliver an appropriate financial return and are therefore in the financial interests of members.

We have not made any change to our broader policy in the area of impact investment.

We have however expanded the non-exhaustive list of non-financial factors trustees may consider to include environmental, as well as social, impact.

Stewardship of the investments

Background

58. Stewardship is the activity of investors engaging with the managers of the underlying investments in order to promote the investments' long term success. It is up to the people managing the scheme to exercise stewardship and ensure, as

³⁴ Regulation 4(2)(b) of these final Regulations inserts Regulation 2(4) into the Investment Regulations.

far as they are able, that this is done through the whole length of the investment chain.

59. Historically, regulations in this area have been confusing as they only require trustees to report their policy (if any) in relation to the exercise of the rights (including voting rights) attaching to the investments³⁵. We proposed to enhance and extend this requirement for DC and DB schemes with 100 or more members, to encompass a requirement for a broader policy on stewardship.
60. Stewardship is intended to encompass the trustees' policy in relation to voting, engaging, and monitoring. We proposed to capture engagement:
- with 'relevant persons' - explicitly acknowledging that stewardship can include direct engagement with an investee company, indirect engagement via an investment manager and 'peer-to-peer' engagement with fellow shareholders of an investee company.
 - on 'relevant matters' - including issues which are reported via a firm's financial reporting, as well as those found in its non-financial reporting, such as social and environmental impact and corporate governance.
61. We proposed that an approach of not having a policy would not be compliant with trustees' fiduciary duties.

Stakeholder responses

62. There was broad support for the policy proposal from over 80% of respondents, and a consensus that this was a significant advance on the very narrow and optional requirements set out in earlier regulations.
63. Nevertheless there were a number of reflections on the difficulty of doing as much in relation to stewardship as trustees might wish to, especially when trustees ran relatively small schemes, or invested via pooled funds or via unit-linked contracts, as is common in DC schemes.

We also welcome DWP's acknowledgement that for many smaller schemes, their stewardship will involve assessing potential external fund managers' capabilities in implementing an appropriate ESG approach. This will need to be undertaken during the mandate tendering process and should continue after appointment through effective oversight and monitoring of the fund manager's performance in stewardship.

Universities Superannuation Scheme

64. Whilst some respondents from the trustee community saw limited scope to fully carry out a stewardship function, others took a different approach. Some respondents argued that this indicated a need to tackle some of the perceived iniquities of the current system, including asset manager control of pooled fund votes, the lack of consultation with trustees, and weakness in reporting voting practices. Other industry participants, by contrast, noted that some trustees fell

³⁵ Regulation 2(3)(c) of the Investment Regulations.

short of expectations, for example by only seeking assurance that their investment managers voted, rather than asking how they voted.

In the vast majority of cases asset managers of pooled funds do not allow clients in pooled funds to express their voting rights and direct their own voting. The asset owners therefore have to follow the voting policy of the asset manager, even where this contradicts their own views or policies...For the proposals in the consultation paper to have a genuine impact on practice within investee companies, the government needs to ensure that asset managers allow clients to direct voting within pooled funds, should they wish to do so.

Trades Union Council

We note that many pension schemes assume that their investment managers fully exercise their stewardship duties as long as they are compliant to the UK Stewardship Code. However, merely requesting confirmation of managers having voted the clients' shares is not the goal. How they are voting (e.g. are they abstaining) is crucially more important

Legal & General Investment Management

65. As with the policy on members' views, a small number of respondents appeared to believe that taking an active stewardship approach could risk butting up against investment as a regulated activity.

The more that trustees involve themselves in day-to-day investment matters, the more likely it is that they need to be authorised by the Financial Conduct Authority, which the great majority are not.

Travers Smith

66. Several stakeholders were concerned at the lack of a stewardship policy in the default investment strategy document. Some presumed it was Government's view that stewardship of the assets which made up the DC default was not viable. Others recognised that this was not our position but feared that trustees would interpret it in this way.

Given the importance of stewardship to minimise risk, maximise returns, and for the good functioning of equity markets, and given that the majority of members are in the default arrangement, trustees of the default should also be required to include their policy on stewardship (subject to the 100 member threshold).

UN PRI

67. One respondent also noted the absence of a requirement for a stewardship policy in relation to wholly-insured schemes³⁶. However trustees of fully insured schemes would still have the opportunity to choose between providers of long-term contracts of insurance who carried out effective engagement and voting practices on the trustees' behalf, and those who carried out these activities less well. Therefore excluding wholly-insured schemes would undermine the policy

³⁶ See regulation 8 of the Investment Regulations - <http://www.legislation.gov.uk/ukxi/2005/3378/regulation/8>

intent, which is to guide trustees who can carry out a stewardship role to state their policy on it.

68. We received a range of drafting suggestions, including extending the range of relevant persons to include consultants, insurers, policymakers, government and regulators. Others suggested that whilst the policy was appropriate, the drafting could be significantly shortened, and might simply refer to exercise of the rights and engagement activities in respect of the arrangement.
69. At roundtables, a concern was expressed that the wording of 'investee' might be taken to refer only to equity investment. Respondents also expressed concern that the original wording of the regulations suggested that a person needed to simultaneously be an investee firm, a fellow investor and an asset manager in order to be considered a 'relevant person'.

Government response

70. Whilst we recognise that smaller schemes will have less direct influence over firms in whom they invest or to whom they lend, we re-iterate here that a stewardship policy is still viable, even if it is limited to the recruitment, monitoring and where necessary switching of investment managers. That is why the regulations³⁷ refer to engagement activities with investment managers. The same considerations apply in relation to trustees who invest via unit-linked contracts or via pooled funds. We therefore do not intend to reduce the scope of this requirement.
71. We acknowledge the concern that trustees have relatively limited influence over voting in pooled funds. However, there does not appear to be any intrinsic or insurmountable reason preventing trustees or other institutional investors from influencing or exercising the votes in pooled funds, and we will continue to monitor developments in this market. Trustees already have a role to play in ensuring that they monitor their managers' voting behaviour and that the way in which these votes are cast is consistent with delivering an appropriate long-term return.
72. The FCA has issued guidance³⁸ on its view that the practices by occupational pension scheme trustees of voting, of giving investment managers voting instructions, expressing an interest or engagement with asset managers' voting behaviour, would not generally constitute the regulated activity of managing investments. Trustees therefore do not usually need apply for FCA authorisation for these activities.

³⁷ Regulation 4(2)(a)(iv) and (b) of these final Regulations inserts paragraphs (3)(c) and paragraph (4) into Regulation 2 of the Investment Regulations.

³⁸ The Perimeter Guidance Handbook, PERG 10 see Q16, <https://www.handbook.fca.org.uk/handbook/PERG/10/?view=chapter>

73. Voting would only become a regulated activity if the exercise of voting rights included the buying, selling, subscribing or underwriting of securities or contractually based investments.
74. In relation to pension schemes which invest via pooled funds, the Financial Services and Markets Act 2000³⁹, sets out that one of the requirements of Collective Investment Schemes is that the participants do not have “day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions”. Therefore “right to be consulted or to give directions” alone is not intended to imply day-to-day control⁴⁰.
75. Trustees may of course wish to consider seeking their own legal advice on their regulatory position, as the interpretation of statutory requirements is ultimately a matter for the courts who are not bound by FCA guidance.
76. To address confusion over the expectation of stewardship in relation to the investments which make up the default arrangement, the regulations have been redrafted to explicitly require such a policy as part of the default investment strategy document⁴¹. This also addresses the loophole through which wholly-insured relevant schemes did not need to produce a stewardship policy at all.
77. The confusion over whether small or medium-sized schemes can have an effective stewardship policy has persuaded us that there is merit in retaining the longer-form of drafting in the consultation version of the regulations. This has the benefit of spelling out that engagement and monitoring of the scheme’s investment managers can be a valid and important form of stewardship.
78. We have considered enlarging the list of relevant persons⁴² in line with some or all of the suggestions made by respondents. However such a change might encourage trustees to believe it is necessary to develop standard policies on engagement with long lists of industry participants – including those with whom, because of the nature of the scheme, they will rarely engage to the members’ benefit. We have therefore amended the definition of relevant persons to indicate that it “includes, but is not limited to”⁴³ three types of relevant person, and that a person need only meet one of the criteria to be considered relevant.
79. Finally, we have amended the reference to “investee firm” to indicate that trustees might also have policies on engagement with issuers of bonds or private debt. The final versions of the regulations therefore refer to “issuers of equity or debt”, and fellow holders of either type of asset⁴⁴.

³⁹ Financial Services and Markets Act 2000 s235(2) -

<http://www.legislation.gov.uk/ukpga/2000/8/section/235>

⁴⁰ The Perimeter Guidance Handbook, PERG 11 see Q9,

<https://www.handbook.fca.org.uk/handbook/PERG/11/?view=chapter>

⁴¹ Regulation 4(3) of these final Regulations amends regulation 2A(1)(b) of the Investment Regulations.

⁴² Regulation 4(2)(b) of the final Regulations.

⁴³ *ibid*

⁴⁴ *ibid*

We have extended the stewardship requirement to require trustees of relevant schemes with 100 or more members to state a policy in relation to the stewardship of the investments in their default investment strategy.

We have made minor drafting amendments to clarify that the people with whom trustees might undertake engagement activities can include

- organisations whose debt they hold

- is not limited to those specifically cited in the regulations

Implementation statement

Background

80. Regulations⁴⁵ have historically required only that trustees must report against their investment policies if they have been breached. We proposed to expand this requirement so that trustees of relevant schemes⁴⁶ should proactively consider and set out how they have implemented the policies, explaining any change made during the scheme year and the reason for the change⁴⁷. This report should be published online by trustees of relevant schemes⁴⁸ (see ‘Publishing the Statement of Investment Principles’ below).

81. The intention is that requiring trustees to report on how they have followed their investment principles will ensure that the text reflects what pension schemes aim to do, and that schemes act on the principles they set out.

82. We suggested that the production and publication of the implementation statement should follow the updating and publication of the Statement of Investment Principles. This point is covered in ‘Timing of the legislation’ above.

Stakeholder responses

83. The proposal of an implementation statement received support from around 60% of respondents. Many stakeholders agreed that the requirement to report on the Statement of Investment Principles would encourage trustees to draft more realistic and less generic statements, which would act as a genuine guide to action.

84. A minority of respondents argued that the report would result in generic boilerplate text. There were concerns that the more prescriptive an

⁴⁵ Regulation 12 of (and Parts 2 and 5 of Schedule 3 to) the Disclosure Regulations, <http://www.legislation.gov.uk/uksi/2013/2734/regulation/12>

⁴⁶ See footnote 9 above for the definition of relevant schemes.

⁴⁷ Regulation 5(5)(c) of these final Regulations inserts paragraph 30(f) into Schedule 3 to the Disclosure Regulations.

⁴⁸ Regulation 5(2) and (4) of these final Regulations inserts Regulations 12(5) and 29A(2A) into the Disclosure Regulations.

implementation statement became, the greater the likelihood of adoption of standard reporting templates.

We suspect that a requirement to produce an annual Statement of Investment Principles implementation report will only lead to more generic text...the more the content of the annual report is specified, the greater will be the pressure on trustees to make sure of complying through the use of generic templates.

RBS pension trustee

85. A few stakeholders did not support the production or publication of an implementation statement because they believed that the benefits of doing so were unproven.

This may be an unnecessary and unproductive increase in workload for trustees. The SIP will generally set out how the trustees comply with issues such as ensuing balance, risk and return. We are therefore not convinced of the value that a statement setting out compliance with the principles set out in the SIP would have for members.

NOW:Pensions

Government response

86. We note the broad support for the implementation statement and do not intend to make any changes to the original proposal described above.

87. Whilst we recognise the concerns over more generic text, we believe that the publication requirements will be reasonably effective in curbing use of identikit boilerplate explanations. The regulations will remain unrestrictive on the contents of the implementation statement, although The Pensions Regulator will provide further guidance (see paragraphs 119-121).

88. We also note the concerns from a few respondents that the implementation statement may not be effective. However, the principle of reporting back on the delivery of a strategy, policy or investment is well-established and practiced in many circumstances – including in the relationships between trustees and their own service providers.

89. It is reasonable to propose that such a requirement will deliver benefits, and difficult to identify how else these might be achieved other than through guidance – which has already been shown to be ineffective in relation to long-term financially material considerations and stewardship.

<p>We have not made any change to the requirements for the implementation statement.</p>

Publishing the Statement of Investment Principles

Background

90. The consultation proposed that trustees of relevant schemes should be required to publish the Statement of Investment Principles⁴⁹, and the implementation statement⁵⁰. It also proposed that relevant schemes would be required to set out any optional policy on how they would take account of members' views online – this policy has now been folded into the Statement of Investment Principles.
91. As with cost and charges disclosure, trustees would also be required to inform members about the published documents in the annual benefit statement⁵¹.
92. Making Statements of Investment Principles and implementation statements for relevant schemes publicly available will enable interested parties to scrutinise and compare across the market. Trustees will be able to share best practice, and members and others will be more able to question poor policies or implementation. Our informal engagement with stakeholders prior to formal consultation suggested that this proposal was supported by a broad range of stakeholders, including trustees, asset managers, commentators and regulators.

Stakeholder responses

93. Over half of respondents agreed with the proposals for relevant schemes to publish the Statement of Investment Principles and the implementation statement online, and the requirement to inform members about the published documents in the annual benefit statement.
94. This was seen as a positive step towards transparency. Some stakeholders commented that this approach should reduce costs by avoiding the need to attend to every request for information, and that easier access to this information should also foster further interest and engagement by members in relation to how their funds are invested.
95. In addition, enabling comparisons to be made between different publicly available documents should encourage more engagement by trustees on the decisions that go into producing a Statement of Investment Principles. This would improve their policies through discouraging the use of standard language, which should in turn raise pension schemes' reporting standards.
96. A majority of stakeholders also agreed that publishing the implementation statement would give members better access to the decisions being made on

⁴⁹ Regulation 5(4)(b) of these final Regulations inserts Regulation 29A(2A)(a) into the Disclosure Regulations.

⁵⁰ Regulation 5(4)(b) of these final Regulations inserts Regulation 29A(2A)(b) into the Disclosure Regulations.

⁵¹ Regulation 5(6) of these final Regulations amends paragraph 5B of Schedule 6 to the Disclosure Regulations.

their behalf, and could enhance the alignment between members and trustees in their decision making. It was also suggested that peer review of published reports could lead to a better overall standard throughout the industry, as pension schemes can learn from each other when producing the reports.

97. One stakeholder suggested that dual section hybrid schemes (for example, with an open DC section, and a DB section which is closed to future accruals) should only be required to publish the documents in respect of the money purchase benefits (broadly, the DC section) offered by the scheme.

98. Finally, a few stakeholders were concerned about the inclusion of an additional link to the published information in members' annual benefit statements, as there was potential for this to drown out other more immediately important information in these communications.

We do not support the signposting to this information in the annual benefit statement as we believe that the statement is a vital tool for member engagement and should therefore be kept as simple and concise as possible.

PLSA

Government response

99. In relation to hybrid schemes, we do not intend to modify the policy to limit the publication requirements to just the money purchase benefits offered by the scheme.

100. The publication of these items differs from the publication requirements of member-borne costs and charges, and parts of the Chair's Statement – the regulations for which were made in February 2018. The Chair's Statement is solely used for reporting on the governance of money purchase schemes, and the money purchase benefits offered by hybrid schemes.

101. In the case of the Statement of Investment Principles, however, a single product must cover both sections of the scheme. It would be inappropriate to permit trustees to excise DB-specific sections of the product. Many members will have benefits in both sections – they, other trustees and others will gain from seeing the policies in the round.

102. On the point of adding further links to the annual benefit statement – our intention is that the Statement of Investment Principles and the implementation statement can be co-located with the costs and charges information available on the web. Trustees can include a single link in the annual benefit statement to point to where all the above information can be found. We believe that the regulations achieve this. Therefore there need be no substantive increase in the length or complexity of the annual benefit statement⁵² from this change.

⁵² The legal requirements for references in the annual benefit statement to the publication of the information online and the availability of hard copies of the published information are in regulation 17 of (and paragraph 5B of Schedule 6 to) the Disclosure Regulations.

We do not propose to make any changes to the original proposals on publication

Penalties, impacts and other matters

Penalties

103. We did not propose the introduction of any new penalty regime for failure to comply with the requirements of the Investment Regulations or the Disclosure Regulations. The penalties for breaches of the Investment Regulations are set out in section 10 of the Pensions Act 1995⁵³. The penalties for failure to comply with requirements under the Disclosure Regulations are set out in Regulation 5⁵⁴ of those Regulations. In both instances the Pensions Regulator may impose a penalty of up to £5,000 for an individual and up to £50,000 for an organisation.
104. Stakeholders had few comments about the proposed penalty regime. A few respondents queried the extent to which penalties would be automatic, for example in instances where breaches were inadvertent, minor or purely technical. The Pensions Regulator will have full discretion in relation to the application and level of any financial penalties.

We have made no changes to the proposed penalty regime

Impacts

105. A draft impact assessment estimating the direct and indirect financial impacts on business and on others was published alongside this consultation⁵⁵. We requested evidenced comments on all aspects of the impact assessment.
106. Around half of those who commented on the draft impact assessment stated that the assumed costs to business appeared reasonable. A significant number of respondents argued that the costs would be more than outweighed by the improvements to returns which would follow from clear consideration of the full range of financially material matters, rather than a subset. These would improve returns to members of DC schemes, reduce the liability of sponsors of DB schemes and increase income for service providers who charge on an *ad valorem* (funds under management) basis.
107. Several respondents noted the absence of any stated costs for surveying members, analysing their responses and formulating a policy. As we have sought to make clear in this consultation response and in the revised regulations, this

⁵³ Section 10 of the Pensions Act 1995

<http://www.legislation.gov.uk/ukpga/1995/26/section/10/enacted>

⁵⁴ Regulation 5 of the Disclosure Regulations,

<http://www.legislation.gov.uk/uksi/2013/2734/regulation/5>

⁵⁵ Impact assessment: Clarifying and strengthening trustees' investment duties

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/716975/impact-assessment-clarifying-and-strengthening-trustees-investment-duties.pdf

approach is intentional because there is no requirement to survey members or take to their views into account.

108. Where respondents disagreed with some of the assumptions, their concerns were focused on:

- Additional costs of advice and engagement which had not been factored in (3 respondents);
- The assumption that trustees of DB schemes would simply bring forward a planned review of the Statement of Investment Principles – instead schemes might wish to continue to tie its updating into the triennial evaluation, thereby requiring an additional ‘out of cycle’ update (2 respondents);
- The average number of trustees in a scheme (1 respondent);
- The implementation statement costing more than £1000 (1 respondent).

109. We acknowledge that trustees of DB schemes might choose to carry out an additional ‘out of cycle’ update. Whilst our legislation imposes no requirement for this, our revised assumptions estimate that schemes which are not due to carry out a review before October 2019 will perform an additional review to maintain alignment with the triennial review. The average cost of these reviews, based on a range of industry respondents, is £3,166.

110. Where trustees carry out a full ‘in cycle’ review before October 2019, we estimate that in line with respondent estimates, this will cost an additional £1250 to collectively document the two policies across main and/or default Statement of Investment Principles. As the Law Commission made clear, trustees should already be taking account of financially material considerations and practising stewardship of their investments. We therefore do not believe significant levels of advice and engagement are required to document a policy which trustees should already be carrying out.

111. Our evidence on trustee numbers is based on 2015 TPR research across both DC and DB schemes⁵⁶. Based on the balance of responses, we have maintained the cost of the annual implementation statement at £1000.

In the light of stakeholder feedback, we have adjusted some of the estimated costs to business used in the Impact Assessment.

We have updated the benefits of the policy based on other respondents’ evidence.

We have also updated other parts of the Impact Assessment to reflect the changes to policy announced in this consultation response.

⁵⁶ Trustee Landscape Quantitative Research: A report on the 2015 Trustee Landscape research, <http://webarchive.nationalarchives.gov.uk/20170712122409/http://www.thepensionsregulator.gov.uk/docs/trustee-landscape-quantitative-research-2015.pdf>

Any other comments

112. We received a small number of additional comments. These included comments on the desirability of amending certain FCA rules, the suggestion that occupational schemes should sign up to the stewardship code and concerns about transparency requirements for hybrid benefit schemes.
113. Most of the above comments we have addressed in other sections of this Government Response. We have passed relevant comments to the FCA and we will continue to consider implications for hybrid schemes.

Guidance

Statutory Guidance

114. We consulted on amendments to Statutory Guidance, which had previously been published in February 2018⁵⁷.
115. Government has previously made regulations⁵⁸ which (amongst other things) require trustees to have regard to statutory guidance in relation to the publication of information⁵⁹, as well as in relation to the levels of charges and transaction costs, and how these compound over time⁶⁰. We consulted on a minor amendment to the Statutory Guidance to apply the same guidance on publication of parts of the Chair's Statement to publication of the Statement of Investment Principles and the Implementation Statement.
116. Several respondents suggested additions to the statutory guidance, such as cross-references to the guidance issued by the Taskforce on Climate-Related Financial Disclosures⁶¹, of the Stewardship code issued by the Financial Reporting Council⁶².
117. However, DWP cannot put such guidance on a statutory footing, as we only have powers to issue guidance in relation to publication, and the reporting of charges and costs. We have passed these suggestions to The Pensions Regulator, who will consider them as part of the next iteration of its own guidance (see next section).

⁵⁷ Draft guidance: Cost, charge and related information reporting: guidance for trustees and managers of occupational schemes

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/716952/cost-and-charge-reporting-guidance-for-trustees-and-managers-of-occupational-schemes.pdf

⁵⁸ The Occupational Pension Schemes (Administration and Disclosure) (Amendment) Regulations 2018 (SI 2018/233) - <http://www.legislation.gov.uk/uksi/2018/233/contents/made>

⁵⁹ Regulation 29A(3)(b) of the Disclosure Regulations

⁶⁰ Regulation 23(1A) of the Occupational Pension Schemes (Scheme Administration) Regulations SI 1996/1715.

⁶¹ Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures and Annex: Implementing the Recommendations of the TCFD - <https://www.fsb-tcfd.org/publications/>

⁶² UK Stewardship Code - <https://www.frc.org.uk/investors/uk-stewardship-code>

118. A few respondents also highlighted areas in the Statutory Guidance which were unclear.

We have amended paragraphs 12, 14, 60, 63, 66, and 68-70 of the statutory guidance to make the policy intention clear and made some minor corrections. We have made no other changes to the statutory guidance.

Non-Statutory Guidance

119. Respondents to the consultation noted a range of areas where they would welcome further guidance. This covered a wide range of areas. The most commonly cited areas where clearer indication of our expectations would be helpful were:

- financially material considerations – understanding financial materiality, and how risks and opportunities should be identified;
- stewardship – further guidance on expectations around monitoring, and actions that smaller schemes, or schemes investing via pooled funds, can still take;
- implementation statement - greater clarity over what this might cover and the level of detail involved.

120. Other, less frequently identified areas where further clarification was suggested to be helpful included:

- Statement of Investment Principles (SIP) and the Investment Implementation product – guidance on what level of detail needs to be included in the SIP and what information could be left to a lower level implementation document;
- Members' ethical concerns – guidance on collecting, analysing and summarising members' views, where schemes chose to do this, and on what ethical views could be taken into account;
- Social impact - guidance on when and what kinds of social impact investment might be considered;
- Publication - guidance on the publication requirements.
- Best practice examples – such as good statements on financially material considerations or stewardship policies; or case studies, such as examples of effective stewardship.

121. The Pensions Regulator has been notified of these suggestions. The Regulator will produce high level guidance on the key changes by the end of November 2018 to give trustees adequate time to prepare.

Wider consideration of the Statement of Investment Principles

122. The final section of the consultation included a Call for Evidence on the remainder of the Statement of Investment Principles. Regulation 2(3)(b) of the Investment Regulations sets out that the Statement of Investment Principles, where produced, should as a minimum, set out the trustees' policy in relation to, amongst other things, the following:

- the kinds of investments to be held;
- the balance between different kinds of investments;
- risks, including the ways in which risks are to be measured and managed;
- the expected return on investments; and
- the realisation of investments.

123. The Investment Regulations are supported by codes⁶³ and guidance^{64,65} published by The Pensions Regulator, which contain further suggestions of issues trustees might voluntarily cover in their Statement of Investment Principles.

124. We sought evidence or views on how well the other requirements in the statement are working, and suggested areas for further consideration and possible future change.

Stakeholder responses

125. We received relatively few suggestions for change. A number of stakeholders put forward the view that the current relatively un-prescriptive list worked well. One respondent suggested a wider review of policy requirements to limit overlap, for example between the Statement of Investment Principles and the Chair's Statement.

Next time there are changes, there should be a wider review of requirements with a view to streamlining. This might remove the overlap between the Statement of Investment Principles and the Chair's statement and would combine the Statement of Investment Principles with a Defined Benefit statement of funding principles to reflect the Pensions Regulator's emphasis on Integrated Risk Management.

Lane, Clark & Peacock

126. The most popular suggestion for change was to require a separate Statement of Investment Principles for DB and for DC schemes. For example, the DB

⁶³ Code of practice 13 - Governance and administration of occupational trust-based schemes providing money purchase benefits - <http://www.thepensionsregulator.gov.uk/codes/code-governance-administration-occupational-dc-trust-based-schemes.aspx> - paragraphs 85-106.

⁶⁴ DB Investment guidance - <http://www.thepensionsregulator.gov.uk/guidance/db-investment-one-governance.aspx>

⁶⁵ DC Investment guidance - <http://www.thepensionsregulator.gov.uk/trustees/investment-management-in-your-dc-scheme.aspx>

statement might include more explanation on integrated risk management, and assessment of the scheme's funding goal and covenant.

It would be helpful if the Statement of Investment Principles requirements for Defined Benefit and Defined Contribution could be separated, in order to acknowledge different approaches required.

HSBC Bank Pension Trust

127. There was a diversity of views on the existing requirement for consultation with the employer, with some stakeholders suggesting that consultation might be limited to only significant changes of strategy, whilst others argued that consultation should be expanded. We noted during our stakeholder engagement that many schemes have dealt with employer consultation by keeping the statement itself (which trustees must consult on) relatively high level, so it does not need regular updating, whilst a lower level document (on which trustees do not need to consult with employers) captures more granular details of the investment strategy. One respondent suggested that the content of this lower level document might also be prescribed.
128. One stakeholder noted that, despite the requirement for a policy on risks and on the expected return on investments, relatively few statements appeared to include a quantifiable objective on risk and return.

The number of schemes without quantifiable objectives on risk or return is surprising. Given that funding regimes are becoming increasingly prescriptive, it is odd that trustees don't have a target. A Statement of Investment Principles should include more explanation on Integrated Risk Management, and assessment of funding goals, covenant risks.

Cardano

129. This observation pre-figures the provisional decision reached by the Competition and Markets Authority (CMA) following its market investigation of investment consultants⁶⁶, which was published after the consultation closed. The CMA observed that trustees do not set sufficiently clear objectives against which their providers can demonstrate their performance, and proposed that pension schemes should be required to set their consultant a set of strategic objectives. This would enable trustees to be better informed about their investment consultancy provider's performance and thereby to drive competition between providers.
130. Other suggestions included policies on the security of assets, the degree of hedging (particularly interest and inflation), the expected evolution of asset allocation over time and (for DB schemes) cash flow management policies.

Some additional requirements of the Statement of Investment Principles would increase its effectiveness: the measurement and attribution of risk (e.g. inclusion of value at risk); degree of hedging; time horizons on different bases; expected evolution of asset allocation over time, cash flow management

⁶⁶ Investment consultants market investigation, <https://www.gov.uk/cma-cases/investment-consultants-market-investigation#provisional-decision-report>

policies for DB schemes).
KPMG

Government response

131. We acknowledge that there have been a number of changes to the Investment, Administration and Disclosure regulations in recent years, and there are benefits from allowing changes which have already been made to bed in before suggesting further changes.
132. It was not our intention to make any further immediate changes to the Statement of Investment Principles. We will consider the suggested additions for a future consultation, alongside the provisional decisions report issued by the CMA.
133. We will also continue to monitor the effects of the revisions to the requirements of the Statement of Investment Principles and default investment strategy introduced by these final Regulations. We may propose further changes in future if we find that these diverge from our policy intentions.

Chapter 3: Summary of individual responses

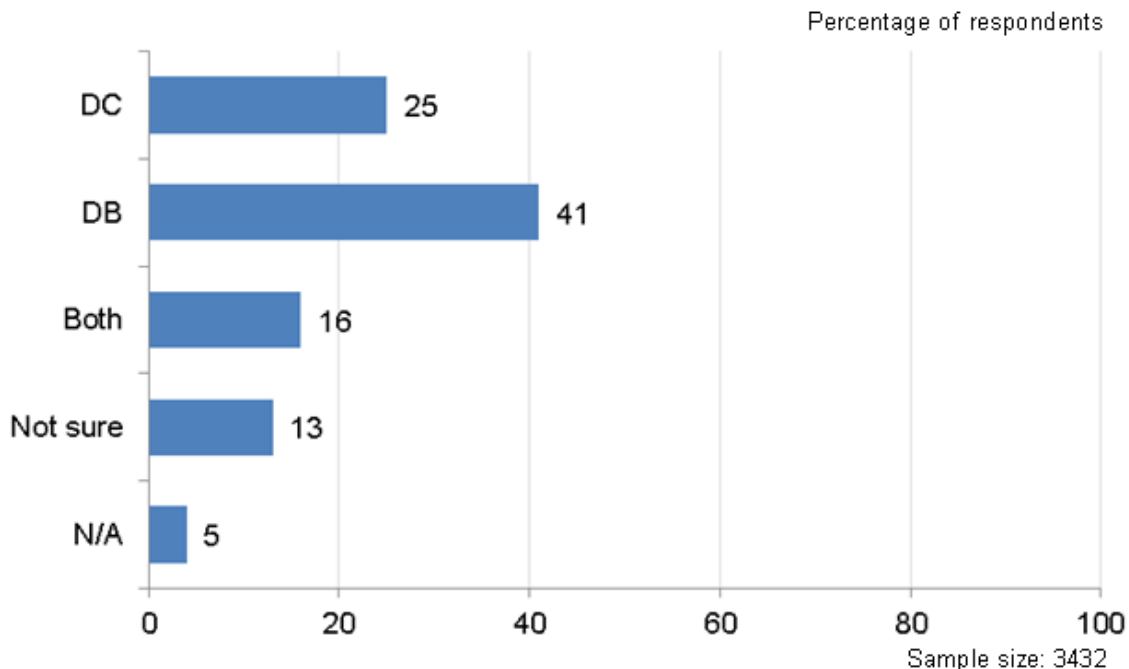
1. Alongside the main consultation, we published a questionnaire for pension scheme members, and other interested individuals.
2. We wanted to understand their experience of pension schemes' investment and stewardship practices – what schemes were doing, what engaged members thought they should be doing, how members had found out information and how they thought that might be improved. The remainder of this chapter summarises the responses received.

Q1. Do you have a pension through a current or previous employer?

3. 3181 of the 3432 respondents have a pension through a current or previous employer.

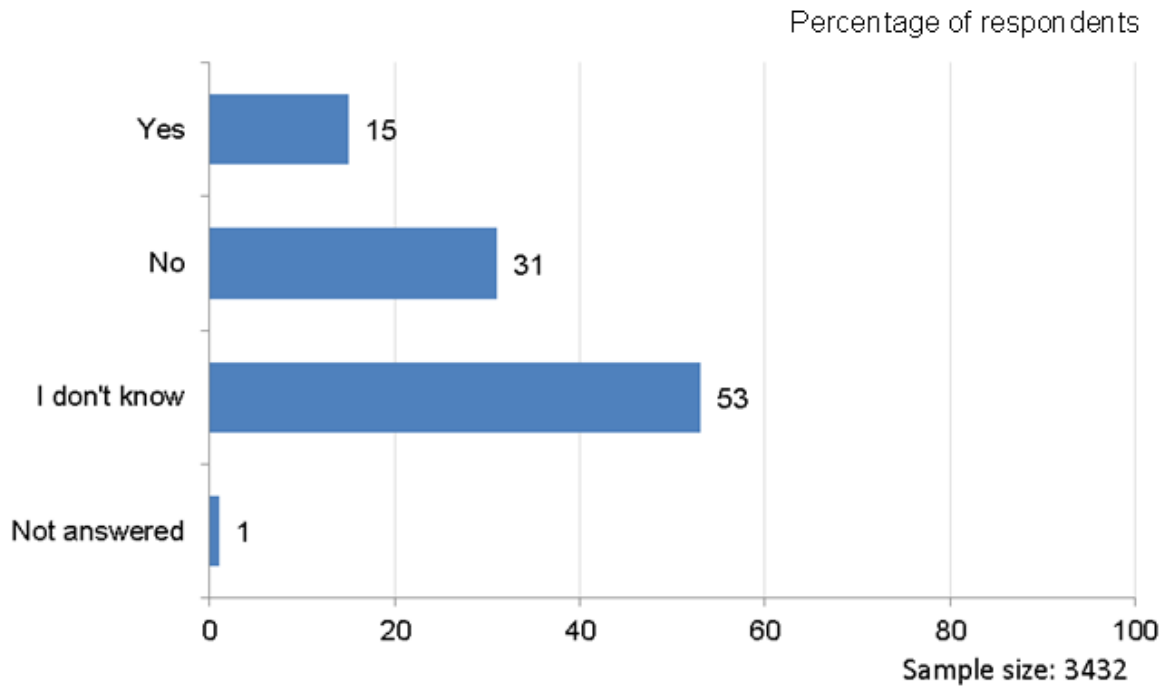
Q2. What type of pension do you have?

4. Out of the 3432 respondents, the majority have some defined benefit (DB) pensions.



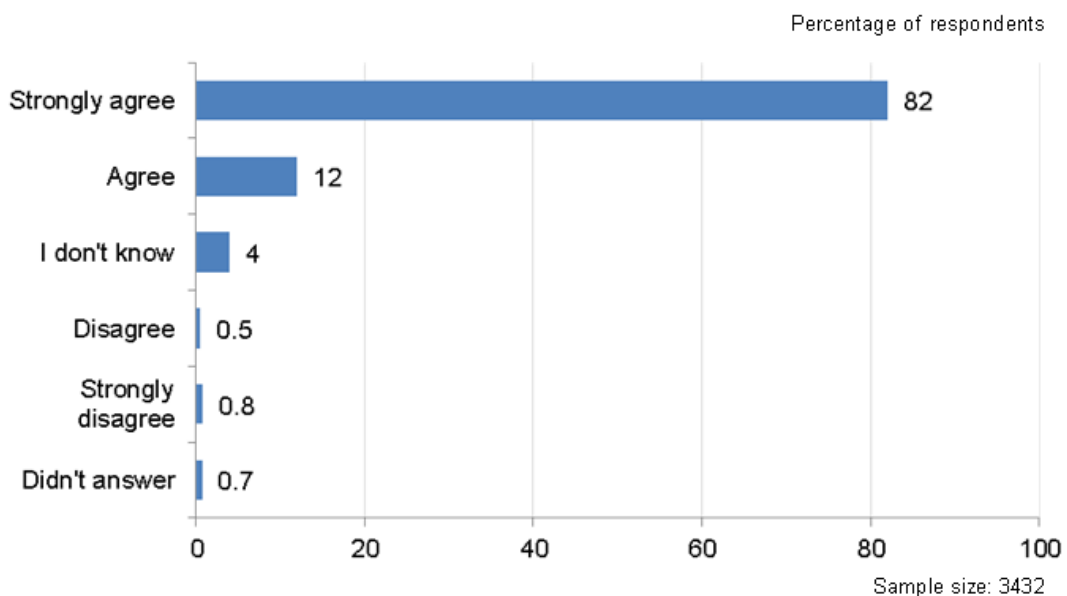
Q3. Do you think that your pension is responsibly invested?

5. The majority of respondents do not know if their pension is responsibly invested. Of those who gave an answer, the prevailing answer was that members did not know how their pension was invested.



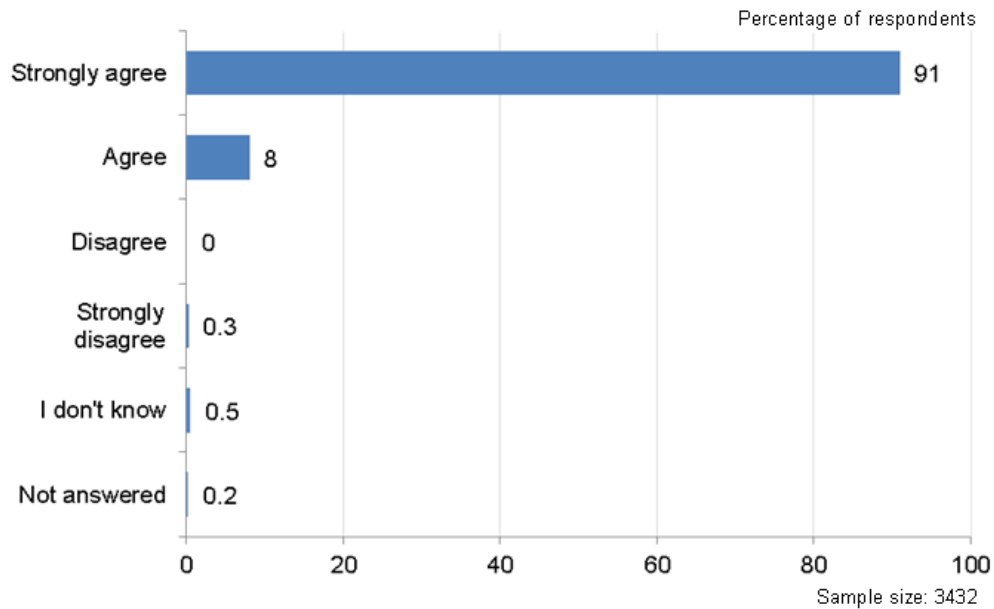
Q4. Do you think your pension should be responsibly invested in the future?

6. A clear majority of respondents were in support of the responsible investment of pensions in the future.



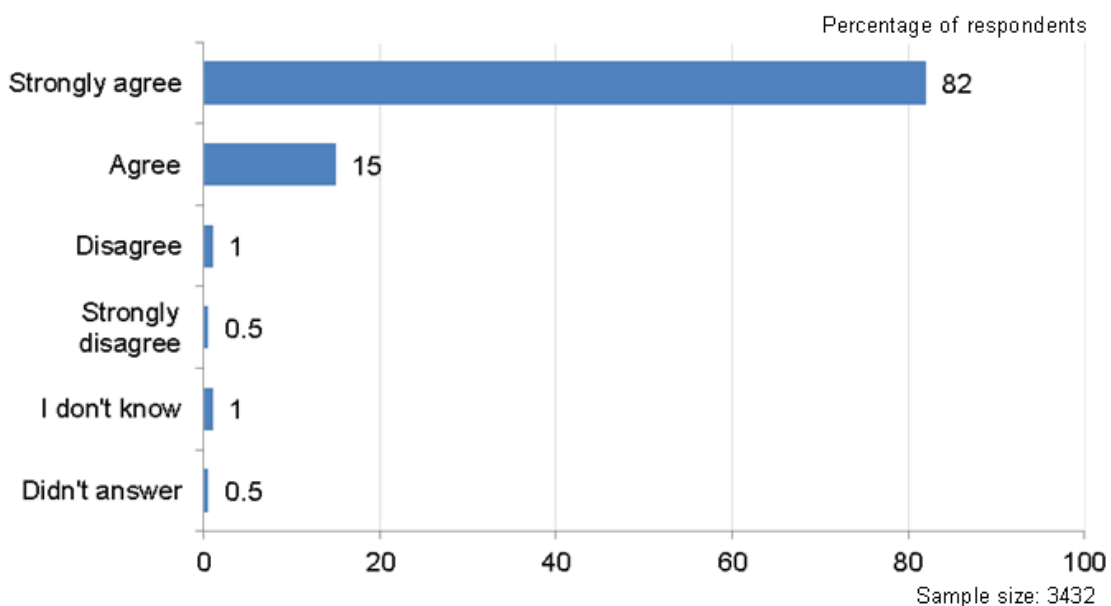
Q5. How strongly do you agree with the following statement: “pension schemes should tell members about how their pension is invested”?

7. Again, the vast majority of respondents strongly agreed that pension schemes should tell members about how their pension is invested.



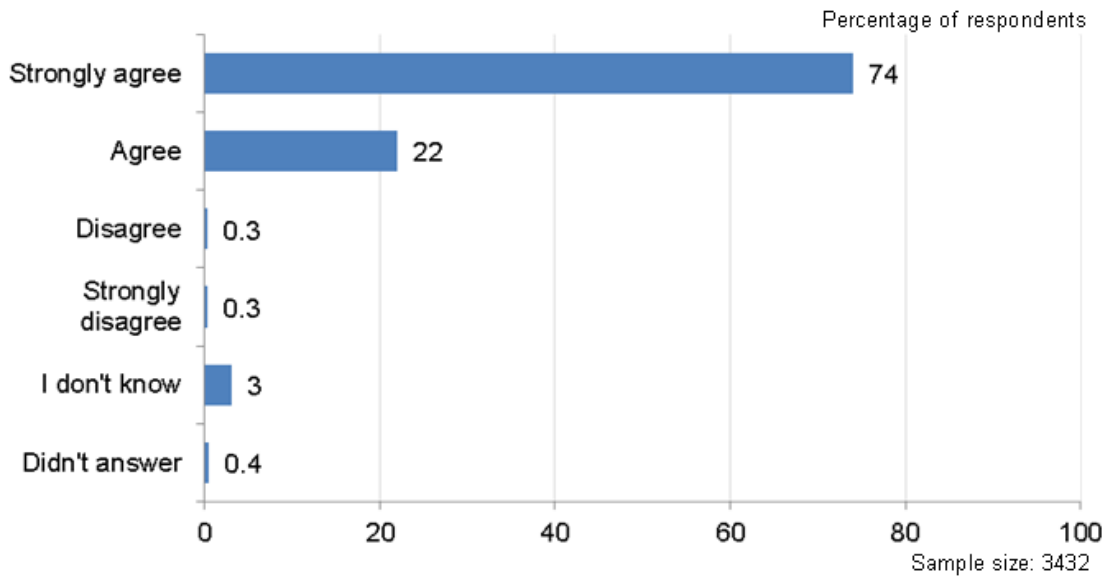
Q6. How strongly do you agree with the following statement: “pension schemes should tell members how they will take account of the views and broader interests of members when making decisions about investments”?

8. Over 95% of respondents agreed that pension schemes should inform members of how members’ views and interests are taken into account when making investment decisions.



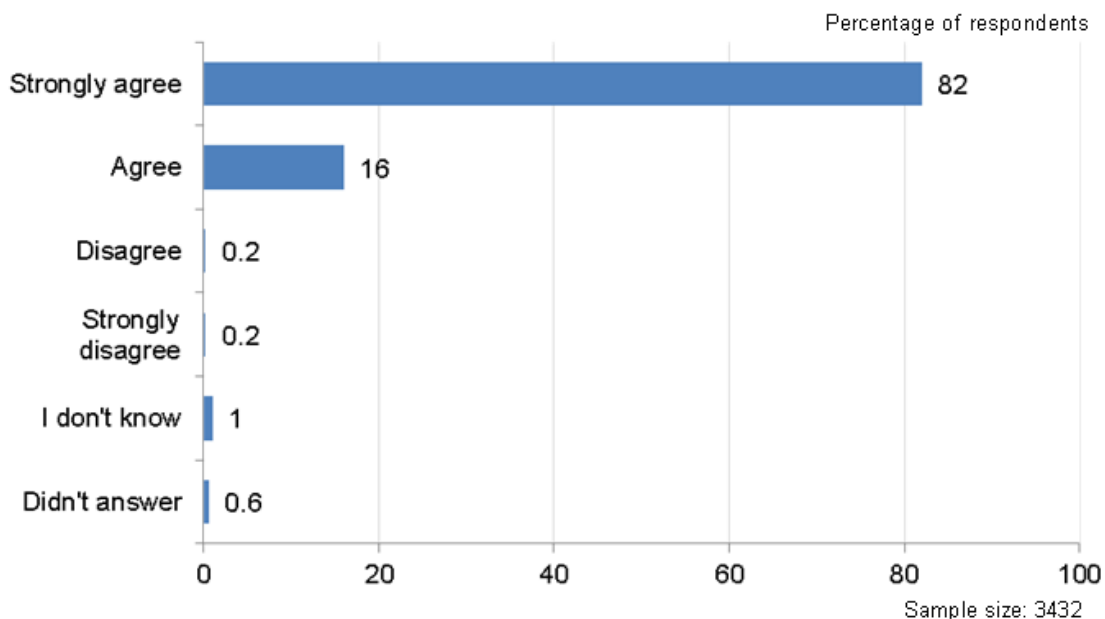
Q7. How strongly do you agree with the following statement: “pension schemes should engage with the companies they are invested in for the benefit of pension scheme members”?

9. Again, a clear majority of respondents are in favour of a requirement for schemes to engage with companies they are invested in for the benefit of members.



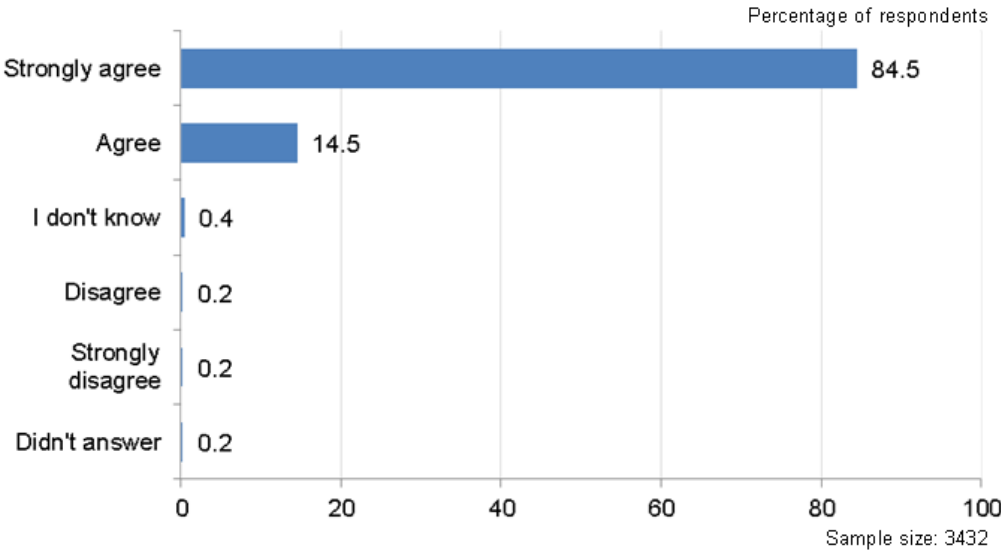
Q8. How strongly do you agree with the following statement: “pension schemes should tell members about how they look after and engage with investments”?

10.98% of respondents agreed with the statement that pension schemes should tell members how they look after and engage with investments.



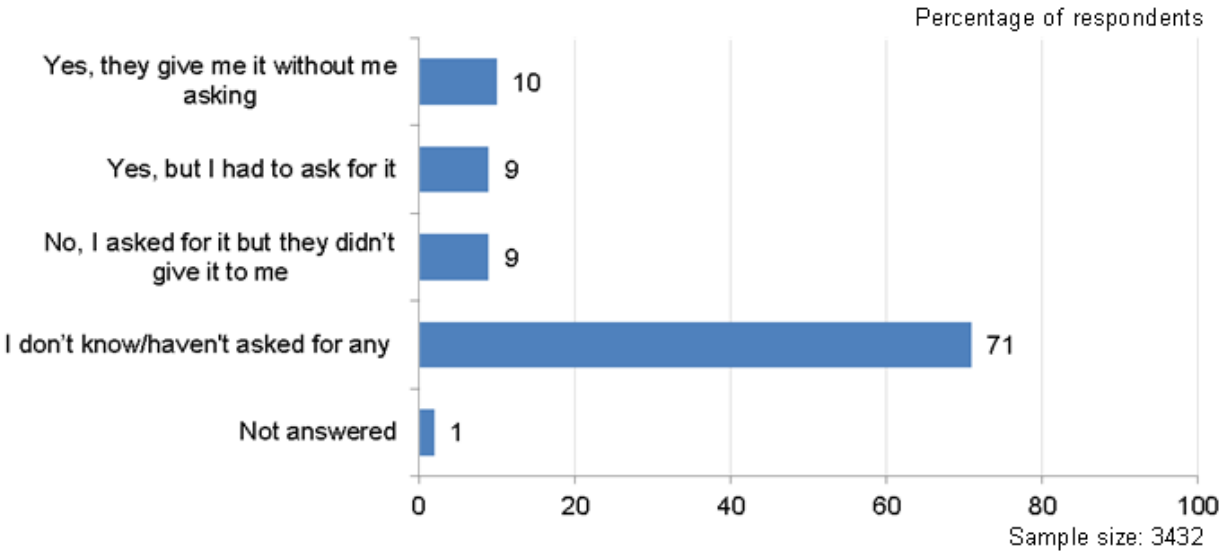
Q9. How strongly do you agree with the following statement: “pension schemes should report on how they have implemented their investment policies (including where they will invest your money), explaining any changes made and the reasons for them”?

11. The vast majority of respondents agreed with the above statement.



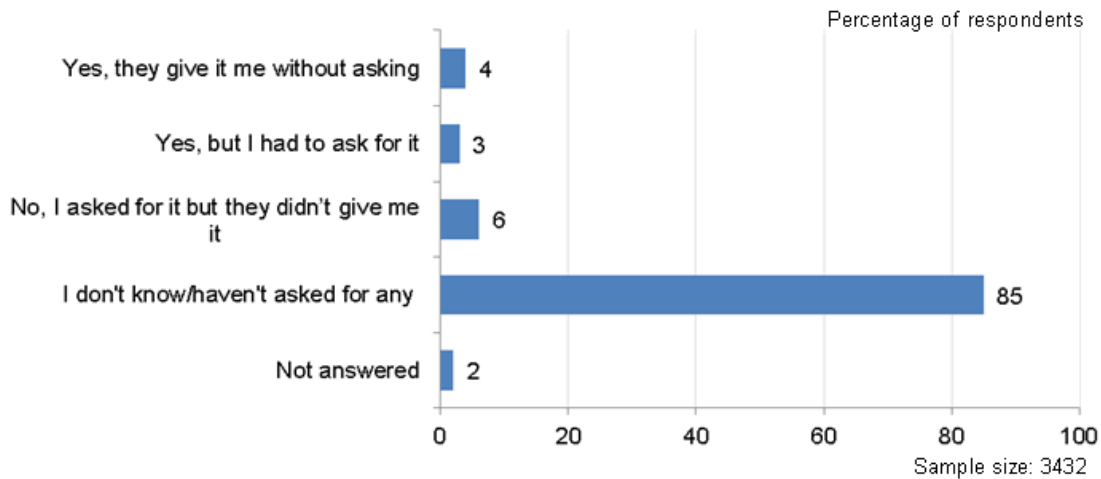
Q10. Does your pension scheme give you information about their approach to responsible investment? This would include how they factor in the effect of things like climate change and corporate governance.

12. The majority of respondents do not know if their pension scheme gives them information about their approach to responsible investment. Of those who knew, 19% were given information, whilst 9% were not.



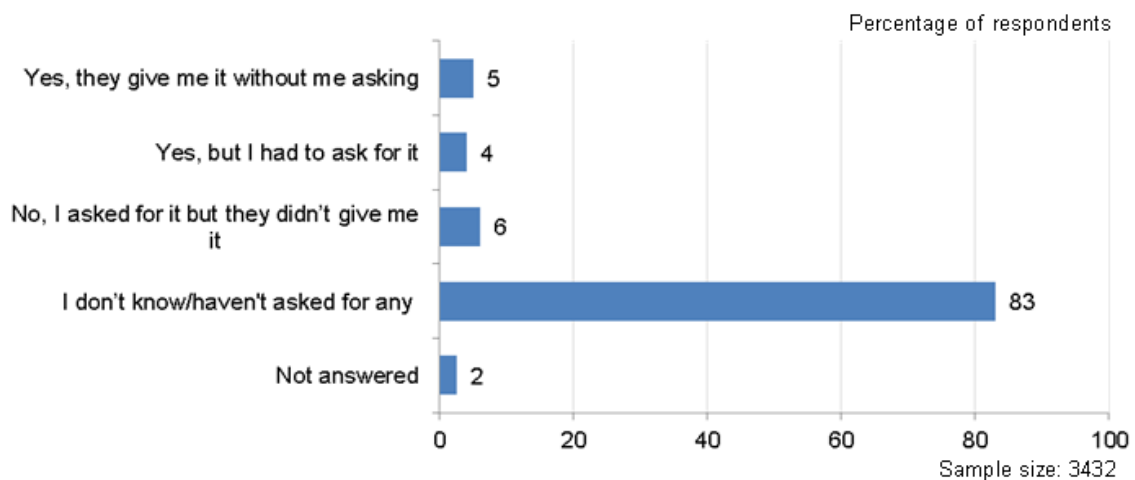
Q11. Does your pension scheme give you information about the voting record in relation to investments?

13. Again, the majority of respondents did not know/hadn't asked if their pension scheme gives them information about the voting record in relation to investments. This may be because many schemes do not proactively tell members that this information might be available.



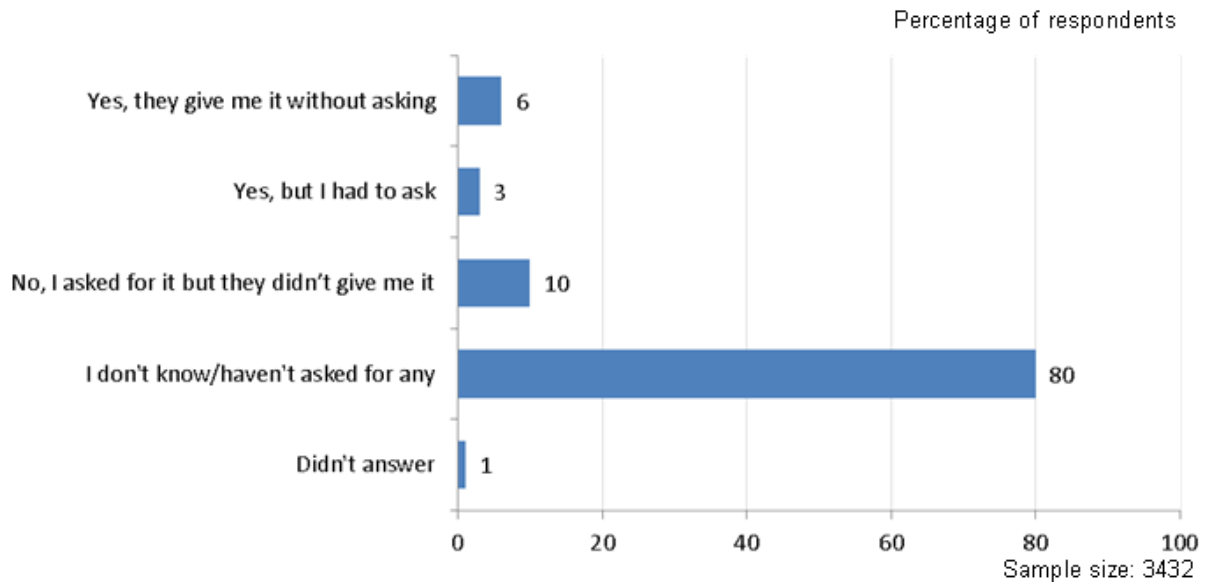
Q12. Does your pension scheme give you information about their approach to other types of stewardship in investments? This would include their policy on voting as well as how well they engage with the companies they invest in.

14. Following the trend, a large majority of respondents do not know/haven't asked about their pension scheme's approach to other types of stewardship in investment.



Q13. Does your pension scheme give you information about their approach to finding out, understanding and responding to the views of members?

15. The majority of respondents also do not know/haven't asked about their pension scheme's approach to finding out, understanding and responding to the views of members.



Q14. How would you like your pension scheme to communicate information about their investment policies to you? - Method of communication

16. The vast majority of responses to question 14 of the questionnaire demonstrated a preference for digital communication. Many respondents expressed interest in a regular email update (for example monthly/quarterly):

“Quarterly reports via digital platforms (either app or email) giving details of current investment value and confirmation that funds are being invested responsibly, especially in regard to the environment.”

17. In addition to this, many respondents felt that investment policies should be published online, and available for members to check at their leisure:

“The information should be available, to review at any time online. There should also be a quarterly or yearly reminder of how the funds consider these issues (and their decision making processes etc.), and updates on major changes by email.”

“The best way to achieve this is for them to do so as they go along, and leave it somewhere easy to access at any time, like a website. Ideally, this should compile into an archive (so the page on this year's [company] AGM sits alongside, rather than replaces, the one for last year's) and be accessible to all, not just policyholders or behind a login.”

18. Other respondents felt that an annual postal update was sufficient, in order not to fatigue members with excessive information, and to remain pragmatic for trustees.

“It will not be practicable for a large fund making multiple changes of investment recipient through the year to be able to account for all changes and choices.”

19. Some respondents favoured an annual digital update following the AGM season, and to only receive additional updates when a notable change occurred:

“I think an update on their voting record from each AGM - including those they didn't attend or votes they abstained from - would be a good and useful quarterly update.”

“I would like to be told about my pension in the first instance when signing up, whenever there maybe any changes, and also annually, by email.”

20. A minority of respondents favoured less frequent postal updates, based on the typical longevity of investment policies as well as expense of more frequent updates:

“By post every few years. These are long term policies and are unlikely to change frequently so frequent information is not required. We also need to be aware that volume and frequency of information costs and that in turn over the long term reduces returns for members.”

21. A few respondents warned of the danger of more frequent updates and the importance of communicating this information clearly:

“The danger is that they communicate in such a way that it is verbose and people have to plough through lots of vague statements to understand what is happening. Concise statements, with numbers and with information clearly attached to different decisions would be helpful.”

Q15. Is there anything else you believe it may be helpful to tell us about any of the topics in this consultation?

22. Some respondents noted that an increased focus on social impact investing, and in consideration of Environmental Social and Governance issues would cause them to take more of an interest in their pension:

“As an early 20 something, my retirement date is in the 2060s. I do not want my pension savings to be built by the destruction of the world I retire into. I think finding out about how my pension is invested responsibly would also make me more engaged with it, and perhaps even be a point of conversation between friends (imagine that!).”

23. Similarly, others noted that increased clarity of pension investing (through publication of investment information) would be likely to increase engagement with pensions:

“It's really good to see change on this issue - I have struggled to find out where my money is going and the whole thing is so boring and difficult to penetrate that I just don't bother.”

24. A minority of respondents suggested that their priority with regard to pension investment was maximum yield, rather than social impact:

“I have no great driver for my pension fund to produce anything other than its maximum yield possible, I don't think that the performance of the fund short of criminal activity should be impaired by a social conscience, the prevailing political correctness of the day or any other impediment to it performing to its maximum potential.”

25. However, many respondents commented that the current investment landscape is overly secretive, leading to distrust of pension schemes by members. This suggests that the increased transparency which will stem from publishing investment policies will encourage members to engage more with their scheme:

“Sometimes pension investments can appear on the surface as being 'responsible' or 'environmental' however deeper digging usually finds this is not the case. There needs to be greater transparency on exactly which organisations are directly receiving money from pension scheme investments and what it is being used for”.

26. Others suggested that this increased transparency, and subsequent increased scrutiny, would have a dual benefit of ensuring quality investments:

“Explaining how the Trustees are engaging with the companies in whom they are investing, and including what they are doing about environmental matters, staff pay (including minimum wage for their staff and the staff of their suppliers) and executive pay within those companies would be a great improvement to ensuring investments are of a better quality.”

“The more transparency that there about the investment policies of large pension schemes and the more that such schemes listen to the views of their members regarding ethical investments, the better for the overall health and direction of the economy both in the UK and abroad.”

27. In contrast, a few respondents again expressed concerns that the requirement to publish information regarding investment policies could instead result in an oversimplification of this information, thus negating its utility.

“Schemes must work on the basis that all members a) should have an interest in these matters b) should have a means of expressing their views (some may be only too glad to ignore everything and let someone else do the thinking) c) should not be presumed to be less interested in and capable of understanding company activities, policies and behaviours than “professional” investors (some information provided via one scheme's websites is clearly marked “For professional investors only”, despite being no more technical than would be found in a retail equity ISA brochure). While information must be presented in

clear and comprehensible language, this should not mean it is sanitised, nor unduly summarised or redacted.”

Annex 1: Consultation respondents

100 Group Pensions Committee

Aldersgate Group

Aon

Association of British Insurers (ABI)

Association of Consulting Actuaries (ACA)

Association of Pension Lawyers (APL)

Association of Professional Pension Trustees (APPT)

Atlas Master Trust

Aviva

Roger Barnard

Barnett Waddingham

BBS Consultant & Actuaries

Phillip Bennett

Border to Coast Pensions Partnership

British Airways Pensions

Brunel Pension Partnership

BT Pension Scheme

Cardano

Andy Chambers

Church of England Pensions Board

Client Earth

Climate Disclosure Standards Board

Committee on Climate Change

DC Investment Forum (DCIF)

E3G

Environment Agency

Eversheds Sutherland

Experian Retirement Savings Plan

Financial Reporting Council (FRC)

First State Investments

Good Energy

Grant Thornton
Green Finance Initiative
Hermes Investment Management
Reg Hinkley
HR Trustees Limited
HSBC Bank Pension Trust
Hymans Robertson
Institute of Chartered Accountants in England and Wales (ICAEW)
Institute of Chartered Accountants Scotland (ICAS)
Implementation Taskforce
Independent Trustee Services
Institute and Faculty of Actuaries (IFoA)
Investment Association
JLT Group
KPMG
Law Debenture
Lane Clark & Peacock
Legal & General Investment Management (LGIM)
London Borough of Bromley
London Stock Exchange Group
Professor Robert McCorquodale
Mercer
Joel Moreland
NEST
NOW Pensions
One Source
Barry Parr
Pensions and Lifetime Savings Association (PLSA)
Pensions Management Institute (PMI)
People's Pension
Pinsent Masons
Preventable Surprises
Railways Pension Trustee Company

RBS Pension Trustee
Redington
Rights and Accountability in Development
Sackers
Schroders
Scottish Widows
Share Action
Smart Pension
Society of Pension Professionals
Squire Patton Boggs
SRI Services
Superannuation Arrangements of the University of London (SAUL)
Tesco
Trades Union Council (TUC)
Transparency Taskforce
Travers Smith
UK Power Networks Group
UK Sustainable Investment and Finance Association (UKSIF)
Unison
Universities Superannuation Scheme (USS)
United Nations-supported Principles for Responsible Investment (UN PRI)
Willis Towers Watson
XPS Pensions Group
Ben Yeoh
Zurich

Annex 2: Consultation questions

Q1. We propose that the draft Regulations come into force approximately 1 year after laying, with the exception of the implementation report, which would come into force approximately 2 years after laying.

- a) Do you agree with our proposals?
- b) Do you agree that the draft Regulations meet the policy intent?

Q2: We propose to require all trustees of all schemes which are obliged to produce a SIP to state their policy in relation to financially material considerations including, but not limited to, those resulting from environmental, social and governance considerations, including climate change.

- a) Do you agree with the policy proposal?
- b) Do the draft Regulations meet the policy intent?

Q3: When trustees prepare or revise a SIP, we propose that they should be required to prepare a statement, setting out how they will take account of scheme members' views.

- a) Do you agree with the policy proposal?
- b) Do the draft Regulations meet the policy intent?

Q4. Do you agree with our proposal not to require trustees to state a policy in relation to social impact investment? If not, what change in legislation would you propose, and how would you address this risk of trustee confusion on this point?

Q5: We propose that trustees should be required to include their policy in relation to stewardship of the investments, (including monitoring, engagement and voting) in the SIP.

- a) Do you agree with the policy proposal?
- b) Do the draft Regulations meet the policy intent?

Q6: When trustees of relevant schemes produce their annual report, we propose that they should be required to:

- prepare a statement setting out how they have implemented the policies in the SIP, and explaining and giving reasons for any change made to the SIP, and

- include this implementation statement and the latest statement outlining how trustees will take account of members' views in the annual report.

a) Do you agree with the policy proposal?

b) Do the draft Regulations meet the policy intent?

Q7: We propose that trustees of relevant schemes should be required to publish the SIP, the implementation report and the statement setting out how they will take account of members' views online and inform members of this in the annual benefits statement.

a) Do you agree with the policy proposal?

b) Do the draft Regulations meet the policy intent?

Q8: Do you have any comments on the business burdens and benefits, and wider non-monetised impacts we have estimated in the draft impact assessment?

Q9: Do you have any other comments on our policy proposals, or on the draft Regulations which seek to achieve them?

Q10: Do you agree that the revised Statutory Guidance clearly explains what is expected of trustees in meeting their duty to publish the SIP, implementation statement, and statement of members' views?

Q11: What evidence or views do you have of how well the other requirements in the SIP are working? What areas for further consideration and possible future change would you suggest?

Annex 3: Keeling Schedule

**Occupational Pension Schemes (Investment) Regulations 2005
2005/3378**

Amended by

**The Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes
(Investment and Disclosure)(Amendment and Modification) Regulations 2018**

From 1st October 2019

Regulation 2.— Statement of investment principles

(1) The trustees of a trust scheme must secure that the statement of investment principles prepared for the scheme under section 35 of the 1995 Act is reviewed—

- (a) at least every three years; and
- (b) without delay after any significant change in investment policy.

(2) Before preparing or revising a statement of investment principles, the trustees of a trust scheme must—

- (a) obtain and consider the written advice of a person who is reasonably believed by the trustees to be qualified by his ability in and practical experience of financial matters and to have the appropriate knowledge and experience of the management of the investments of such schemes; and
- (b) consult the employer.

(3) A statement of investment principles must be in writing and must cover at least the following matters—

- (a) the trustees' policy for securing compliance with the requirements of section 36 of the 1995 Act (choosing investments);
- (b) their policies in relation to—
 - (i) the kinds of investments to be held;
 - (ii) the balance between different kinds of investments;
 - (iii) risks, including the ways in which risks are to be measured and managed;
 - (iv) the expected return on investments;
 - (v) the realisation of investments;
 - (vi) financially material considerations over the appropriate time horizon of the investments, including how those considerations are taken into account in the selection, retention and realisation of investments; and
 - (vii) the extent (if at all) to which non-financial matters are taken into account in the selection, retention and realisation of investments; and
- (c) their policy in relation to—
 - (i) the exercise of the rights (including voting rights) attaching to the investments; and
 - (ii) undertaking engagement activities in respect of the investments (including the methods by which, and the circumstances under which, trustees would monitor and engage with relevant persons about relevant matters).

(4) For the purposes of this regulation—

“appropriate time horizon” means the length of time that the trustees of a trust scheme consider is needed for the funding of future benefits by the investments of the scheme.

“beneficiaries” means a person, other than a member of the trust scheme, who is entitled to the payment of benefits under the scheme.

“financially material considerations” includes (but is not limited to) environmental, social and governance considerations (including but not limited to climate change), which the trustees of the trust scheme consider financially material;

“non-financial matters” means the views of the members and beneficiaries including (but not limited to) their ethical views and their views in relation to social and environmental impact and present and future quality of life of the members and beneficiaries of the trust scheme;

“relevant matters” includes (but is not limited to) matters concerning an issuer of debt or equity, including their performance, strategy, risks, social and environmental impact and corporate governance; and

“relevant persons” includes (but is not limited to) an issuer of debt or equity, an investment manager or another holder of debt or equity.

Regulation 2A.— Additional requirements in relation to default arrangement

(1) The trustees or managers of a relevant scheme must prepare a statement of the investment principles governing decisions about investments for the purposes of the default arrangement, and that statement must be in writing and must cover at least the following matters—

- (a) the aims and objectives of the trustees or managers in respect of such investments;
- (b) their policies in relation to the matters mentioned in regulation 2(3)(b) and, if that scheme has 100 or more members, regulation 2(3)(c) in respect of the default arrangement; and
- (c) an explanation of how the aims and objectives mentioned in sub-paragraph (a) and the policies mentioned in sub-paragraph (b) (together “the default strategy”) are intended to ensure that assets are invested in the best interests of the group of persons consisting of relevant members and relevant beneficiaries.

(2) The trustees or managers must review both the default strategy and the performance of the default arrangement—

- (a) at least every three years; and
- (b) without delay after any significant change in—
 - (i) investment policy; or
 - (ii) the demographic profile of relevant members.

(3) The trustees or managers must, in particular, review the extent to which the return on investments relating to the default arrangement (after deduction of any charges relating to those investments) is consistent with the aims and objectives of the trustees or managers in respect of the default arrangement.

(4) The trustees or managers must revise the statement prepared in accordance with paragraph (1) after every review unless they decide that no action is needed as a result of the review in paragraph (3).

(5) For the purposes of this regulation and regulation 4A, a person is a relevant member or a relevant beneficiary if assets relating to that member or, as the case may be, that beneficiary (as defined in regulation 4), are invested in the default arrangement.

**The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013
2013/2734**

Amended by

**The Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes
(Investment and Disclosure)(Amendment and Modification) Regulations 2018**

From 1st October 2019 onwards

Regulation 12.— Annual report

(1) A document containing the information listed in Part 2 of Schedule 3 must be prepared within seven months of the end of each scheme year and (subject to paragraph (5)) given in accordance with this regulation.

(2) The document must be given to a relevant person where the relevant person—

(a) makes a request for the document within five years of the end of the scheme year to which the information relates, and

(b) has not been given the document before.

(3) The document must be given within two months of the date the request is made.

(4) The document must be given in accordance with—

(a) regulation 26 or 29(3), where the document relates to the most recent scheme year, or

(b) regulation 29, where the document does not relate to that year.

(5) Where the scheme is a relevant scheme within the meaning of regulation 1(2) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 that falls within section 35 of the 1995 Act, the information listed in paragraph 30(f) of Schedule 3 must be made publicly available free of charge in accordance with regulation 29A.⁶⁷

Regulation 29A.— Publishing charges and transaction costs and other relevant information

(1) Where the scheme is a relevant scheme within the meaning of the Occupational Pension Schemes (Scheme Administration) Regulations 1996, the information specified in paragraph (2) and, where that scheme falls within section 35 of the 1995 Act, paragraph (2A) must be made publicly available free of charge on a website in accordance with this regulation.

(2) The specified information is the information which must be included in the most recent statement prepared under regulation 23 (annual statement regarding governance) of those Regulations in accordance with the following paragraphs of that regulation—

(a) paragraph (1)(a);

(b) paragraph (1)(c); and

(c) paragraph (1)(ca).

(2A) The specified information is—

(a) the latest statement of investment principles governing decisions about investments prepared for the scheme under section 35 (investment principles) of the 1995 Act; and

(b) the information which must be included in the most recent document prepared under regulation 12 in accordance with paragraph 30(f) of Schedule 3.⁶⁸

(3) Where this regulation applies—

⁶⁷ All of the changes made to this regulation 12 will come into force on 1 October 2020.

⁶⁸ This new regulation 29A(2A)(b) will not come into force until 1 October 2020.

(a) a notification need not be given under regulation 27 in relation to the information on the website where information is given to the person in accordance with paragraph 5B(a) of Schedule 6 (statements of benefits: money purchase and cash balance benefits); and

(b) the trustees or managers of the scheme must have regard to guidance prepared from time to time by the Secretary of State concerning the publication of the information.

(4) Where a person requests the trustees or managers of the scheme to provide the information referred to in paragraph (2) or (2A) in hard copy form, the trustees or managers of the scheme must give that information to the person in hard copy form only where the trustees or managers are satisfied that it would be unreasonable for that person to obtain it from the website on which it is published.

(5) Where information is required to be given in hard copy form in accordance with paragraph (4), it must be given within two months of the date the request is made.

Paragraph 30 of Schedule 3 – Information to be given on request

Where the scheme is one to which section 35 of the 1995 Act applies, an investment report containing—

(a) a statement by the trustees or the fund manager providing details of any investments made for the scheme during the year that were not made in accordance with the statement of investment principles governing decisions about investments required under section 35 of the 1995 Act,

(b) where investments for the scheme have been made in the year that do not accord with the statement of investment principles governing decisions about investments required under section 35 of the 1995 Act (or were made in a previous year and continued to be held at the end of the year), a statement by the trustees or the fund manager giving the reasons why and explaining what action, if any, it is proposed to take or has already been taken to remedy the position,

(c) a review of the investment performance of the scheme's fund—

(i) during the year, and

(ii) except where the scheme has existed for less than three scheme years, during a period of not less than 3 and not more than 5 scheme years ending with the year,

including an assessment of the nature, disposition, marketability, security and valuation of the scheme's assets,

(d) the policies specified in the following paragraph of regulation 2 of the Occupational Pension Schemes (Investment) Regulations 2005 (statement of investment principles) (“the Investment Regulations”)—

(i) paragraph (3)(b)(vi),

(ii) paragraph (3)(b)(vii), and

(iii) paragraph (3)(c),

(e) ...

(f) where the scheme is a relevant scheme within the meaning of the Occupational Pension Schemes (Scheme Administration) Regulations 1996, a statement which must—

(i) set out how, and the extent to which, in the opinion of the trustees, the statement of investment principles required under section 35 of the 1995 Act has been followed during the year,

- (ii) describe any review of the statement of investment principles undertaken during the year in accordance with regulation 2(1) of the Investment Regulations and any other review of how the statement of investment principles has been met,
- (iii) explain any change made to the statement of investment principles during the year and the reason for the change, and
- (iv) where no review was undertaken during the year in accordance with regulation 2(1) of the Investment Regulations, give the date of the last review.⁶⁹

Paragraph 5B of Schedule 6 – Statements of benefits: money purchase benefits and cash balance benefits

In relation to the information that must be published on a website in accordance with regulation 29A(2) and (2A) (publishing charges and transaction costs and other relevant information)—

- (a) the information specified in sub-paragraphs (a) to (d) of regulation 27(2) (provision of information on a website); and
- (b) a statement explaining the circumstances in which the information will be provided on request in hard copy form.

⁶⁹ This paragraph 30(f) of Schedule 3 will not come into force until 1 October 2020.