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THE 100 GROUP
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Sinead Donnelly and Vicky Bird
Department for Work and Pensions
Strategy Policy and Analysis Group
Private Pensions and Arm's Length Bodies Directorate
Ground Floor North
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13 July 2018

Dear Ms Donnelly and Ms Bird

Consultation on clarifying and strengthening trustees' investment duties

I am writing on behalf of the Pensions Committee of the 100 Group of Finance Directors with regard to the above-named consultation.

The 100 Group

The 100 Group represents the finance directors of the FTSE 100, several large UK private companies and some UK operations of multinational groups. Our member companies represent the vast majority of the market capitalisation of the FTSE 100, collectively employing 7% of the UK workforce, and in 2016 paid, or generated, taxes equivalent to 13% of total UK government receipts. Our overall aim is to promote the competitiveness of the UK for UK businesses, particularly in the areas of tax, reporting, pensions, regulation, capital markets and corporate governance. The 100 Group represents companies sponsoring defined benefit (DB) pension schemes with assets of approximately £500bn and membership of 3.6m.

Whilst this letter expresses the views of the 100 Group of Finance Directors as a whole, these views are not necessarily those of our individual members or their respective employers.

General Comments

We are not opposed to the overall thrust of these regulations and recognise the importance of trustees taking account of financially material environmental social and governance (ESG) considerations in their investment strategy as well as having an effective stewardship policy. However, it is important that Government ensures that the new requirements are implemented proportionately.

We have particular concerns about the public statements that accompanied this consultation, which could easily have been interpreted as meaning that members will be able to direct the trustees' investment strategy or that trustees will be required by Government to invest in a particular way. The policy needs to be communicated to members accurately to avoid confusion or disappointment.

It would also be helpful if the Government could make clear the extent to which this new legislation will be joined up with the ESG requirements in the IORP II directive. If it is the Government's intention that these provisions will comply with the investment aspects of IORP II and that there will be no additional legislation needed to do so, it would be useful if that could be clarified so sponsors are not left wondering whether there will be further obligations imposed on them.

1. 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?

We do not think that this timescale will prove problematic for schemes sponsored by 100 Group companies, whose trustee boards are likely to have well-developed policies on stewardship and ESG considerations in their Statement of Investment Principles (SIP) already. However, the one-year timescale may present some challenges for those trustee boards (especially of smaller schemes) that have not previously considered these matters.

We believe it is for other organisations to comment on the detail of the draft regulations.

2. 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 our proposals?

b) Do you agree that the draft Regulations meet the policy intent?

As noted above, we would expect most pension schemes sponsored by 100 Group companies to have such a policy already in place. Where this is not already the case, we agree that it is proportionate to require them to include ESG considerations in their SIP where financially material.

We do, however, note that the press release accompanying the consultation overstates the potential impact of the consultation, when it says 'Billions invested by pension schemes to be used for social good under new regulations'. This suggests some sort of requirement to invest in social impact investments, whereas in fact the consultation makes clear that the Government is not seeking to direct trustees' investment or divestment decisions.

3. 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 our proposals?

b) Do you agree that the draft Regulations meet the policy intent?

The current consultation appears to give mixed messages as to what this policy is intended to achieve. The consultation itself makes clear that trustees are not required to invest in line with the members' views and that investment decisions remain the sole responsibility of the trustees. We would certainly agree that trustees' investment powers should not be fettered by members' views.

However, the accompanying press release may have given a very different impression, saying 'members will be given powers to hold their pension schemes to account over how social and environmental factors impact their investments', which suggests that members may have powers to direct investment strategy. It is important that false expectations of the level of influence members will have are not allowed to become widespread: members should understand that, whilst their views will be considered, they will not necessarily be taken into account when trustees set their investment strategy.

The wording of the draft regulations refers only to the 'reasonable opinion of the trustees' as to members' views on investment strategy. This (rightly) imposes no obligation on trustees to undertake any direct engagement with their members. The consultation notes that it is not always necessary for trustees to survey scheme members, and that assumptions can be based on the information already known about the membership of the scheme or the population as a whole.

For very large schemes, such as those sponsored by 100 Group companies, it may well be impractical to survey the pension scheme membership as a whole. The consultation contains some useful suggestions of proportionate ways in which members' views could be sought, such as focus groups or member AGMs, as an alternative to a full survey of members. However, there may be significant challenges for those very large schemes with a disparate population where the scale is due to acquisitions or mergers. In such cases, member forums are unlikely to be in place, and there may be no easy mechanism for assessing member views unless the workforce is unionised.

4. 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?

We agree with the proposal not to require a policy on non-financially material matters, such as social impact investment.

5. 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 our proposals?

b) Do you agree that the draft Regulations meet the policy intent?

We do not expect that this requirement would be particularly onerous for schemes sponsored by 100 Group companies, who will often be doing this already.

However, we do think that this may be challenging for the trustees of some smaller schemes who may never have engaged in stewardship activity before.

6. 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 the trustees will take account of members' views in the annual report

a) Do you agree with our proposals?

b) Do you agree that the draft Regulations meet the policy intent?

We do not object to this proposal in principle. However, it is important that a proportionate approach should be applied to these implementation statements: it would be unhelpful if prescriptive guidance were to be developed as to what such statements should contain.

7. 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 our proposals?

b) Do you agree that the draft Regulations meet the policy intent?

We do not object to this proposal. However, it does mean that yet more information will be added to annual benefit statements, which may lead to less member engagement with the most important content of those statements, i.e. the actual value of their benefits. Benefit statements serve a different purpose and to include ever more information on them is likely to be a distraction for many members.

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

As noted above, we think it is important that these new requirements are applied proportionately, with the minimum amount of prescription, to reduce the additional burdens on business.

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

No.

10. 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?

We have no comments on this question.

11. 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?

We have no comments on this question.

We hope that you find these comments useful. Please do not hesitate to contact me if you would like to discuss any of the points raised.

Yours sincerely,

Alan Stewart
Chairman
The 100 Group Pensions Committee