

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4528 of 13 December, 2018

LEGAL NOTICE NO.277 OF 2018.

**FINANCIAL SERVICES (OCCUPATIONAL PENSIONS
INSTITUTIONS) ACT 2006**

INTERPRETATION AND GENERAL CLAUSES ACT

**FINANCIAL SERVICES (OCCUPATIONAL PENSIONS
INSTITUTIONS) ACT 2006 (AMENDMENT) REGULATIONS 2018**

In exercise of the powers conferred upon it by the Financial Services (Occupational Pensions Institutions) Act 2006, as read with section 23(g)(ii) of the Interpretation and General Clauses Act, and in order to give effect in Gibraltar to Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs), the Government has made the following Regulations–

Title and commencement.

1.(1) These Regulations may be cited as the Financial Services (Occupational Pensions Institutions) Act 2006 (Amendment) Regulations 2018.

(2) These Regulations come into operation on 13th January 2019.

Amendment of the 2006 Act.

2.(1) The Financial Services (Occupational Pensions Institutions) Act 2006 is amended as follows.

(2) In the long title–

- (a) for “DIRECTIVE 2003/41/EC OF THE EUROPEAN PARLIAMENT AND THE COUNCIL” substitute “DIRECTIVE (EU) 2016/2341 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 14 DECEMBER 2016”; and

(b) for “PENSIONS” Substitute “PROVISION (IORPs)”.

(3) Before section 1 insert–

**“PART 1
PRELIMINARY AND GENERAL PROVISIONS”.**

(4) For sections 2 to 19 substitute–

“Overview.

2. This Act regulates the taking-up and pursuit of activities carried on by institutions for occupational retirement provision (IORPs).

Interpretation.

3. In this Act–

“the AIFM Directive” means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers, as amended from time to time;

“beneficiary” means a person receiving retirement benefits;

“biometric risks” mean risks linked to death, disability and longevity;

“the Capital Requirements Directive” means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending directive 2002/87/EC and repealing directives 2006/48/EC and 2006/49/EC, as amended from time to time;

“competent authority” means–

(a) in Gibraltar, the FSC; or

- (b) in another EEA State, the authority designated in that State to carry out the duties provided for in the IORP 2 Directive;

“cross-border activity” means operating a pension scheme where the relationship between the sponsoring undertaking and the members and beneficiaries concerned is governed by the social and labour law relevant to the field of occupational pension schemes of an EEA State other than the home State;

“durable medium” means an instrument which enables a member or beneficiary to store information addressed personally to that member or beneficiary in a way that is accessible for future reference and for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

“EEA State” means a Member State of the European Economic Area listed in Schedule 3 to the European Communities Act and, where the context requires, includes Gibraltar;

“the FSC” means the Financial Services Commission established under section 3 of the Financial Services Commission Act 2007;

“home State” means the EEA State in which an IORP is registered or authorised and in which its main administration is located within the meaning of section 9(2);

“host State” means the EEA State whose social and labour law relevant to the field of occupational pension schemes applies to the relationship between the sponsoring undertaking and members or beneficiaries;

“institution for occupational retirement provision” or “IORP” means an institution, irrespective of its legal form, operating on a funded basis, established separately from any sponsoring undertaking or trade for the purpose of providing retirement benefits in the context of an occupational activity on the basis of an agreement or a contract agreed–

- (a) individually or collectively between the employers and employees or their respective representatives; or

- (b) with self-employed persons, individually or collectively, in compliance with the law of the home and host States;

and which carries out activities directly arising therefrom;

“IORP 2 Directive” means Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs), as amended from time to time;

“key function”, within a system of governance, means a capacity to undertake practical tasks comprising the risk management function, the internal audit function, and the actuarial function;

“member” means a person, other than a beneficiary or a prospective member, whose past or current occupational activities entitle or will entitle the person to retirement benefits in accordance with the provisions of a pension scheme;

“the MiFID 2 Directive” means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, as amended from time to time;

“the Minister” means the Minister with responsibility for financial services;

“multilateral trading facility” or “MTF” has the meaning given in Article 4.1(22) of the MiFID 2 Directive;

“organised trading facility” or “OTF” has the meaning given in Article 4.1(23) of the MiFID 2 Directive;

“pension scheme” means a contract, agreement, trust deed or rules stipulating which retirement benefits are granted and under which conditions;

“prospective member” means a person who is eligible to join a pension scheme;

“receiving IORP” means an IORP receiving all or part of a pension scheme's liabilities, technical provisions and other obligations and rights, as well as corresponding assets or the cash equivalent, from an IORP registered or authorised in another EEA State;

“regulated market” has the meaning given in Article 4.1(21) of the MiFID 2 Directive;

“retirement benefits” means–

- (a) benefits paid by reference to reaching, or the expectation of reaching, retirement; or
- (b) where they are supplementary to those benefits and provided on an ancillary basis, benefits in the form of–
 - (i) payments on death, disability, or cessation of employment; or
 - (ii) support payments or services in case of sickness, indigence or death;

whether in the form of payments for life, for a temporary period, as a lump sum or any combination of those forms;

“small institution” has the meaning given in section 5(1);

“the Solvency 2 Directive” means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), as amended from time to time;

“sponsoring undertaking” means any undertaking or other body, regardless of whether it includes or consists of one or more legal persons or individuals, which acts as an employer, in a self-employed capacity or a combination of those capacities

and which offers a pension scheme or pays contributions to an IORP;

“transferring IORP” means an IORP transferring all or part of a pension scheme's liabilities, technical provisions and other obligations and rights, as well as corresponding assets or the cash equivalent, to an IORP registered or authorised in another EEA State; and

“the UCITS Directive” means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities, as amended from time to time.

Scope.

4.(1) This Act applies to institutions for occupational retirement provision.

(2) This Act does not apply to—

- (a) social security or assistance provided by the Government;
- (b) any pension scheme provided, administered or guaranteed by the Government;
- (c) institutions which are licensed or authorised under—
 - (i) the Financial Services (Collective Investment Schemes) Act 2011;
 - (ii) the Financial Services (Insurance Companies) Act and to which the Financial Services (Insurance Companies) (Solvency II Directive) Act 2015 applies;
 - (iii) the Financial Services (Alternative Investment Fund Managers) Regulations 2013;
 - (iv) the Financial Services (Capital Requirements Directive IV) Regulations 2013; or

- (v) the Financial Services (Markets in Financial Instruments) Act 2018;
- (d) institutions which operate on a pay-as-you-go basis;
- (e) institutions where employees of the sponsoring undertaking have no legal rights to benefits and where the sponsoring undertaking can redeem the assets at any time and not necessarily meet its obligations for payment of retirement benefits; or
- (f) companies using book-reserve schemes with a view to paying out retirement benefits to their employees.

Small institutions.

- 5.(1) Subject to subsections (2) and (3), this Act does not apply to an IORP that operates pension schemes which together have fewer than 100 members in total (a “small institution”).
- (2) Sections 20(1), 22(1) and (2) and 33 and any regulations made under section 34 apply to a small institution that operates pension schemes which together have more than 15 members in total.
 - (3) A small institution to which subsection (2) applies must be registered under section 10.
 - (4) A small institution may opt to be subject to the provisions of this Act by making an application to the FSC in the form and manner it may require.
 - (5) The FSC, on receiving an application under subsection (4), must give the small institution a written notice which states that—
 - (a) the small institution has voluntarily opted to be subject to the provisions of this Act; and
 - (b) with effect from the date specified in the notice, this Act applies to the small institution as it applies to any other IORP which is subject to its provisions.

Revocation of opt-in by small institution.

- 6.(1) A small institution to which this Act applies by virtue of section 5(5) may apply to the FSC for its opt-in under that section to be revoked.
- (2) An application under subsection (1) must be made in the form and manner the FSC may require.
- (3) If the FSC considers that it is necessary or desirable to refuse the application for the protection of members or beneficiaries or otherwise in the public interest, the FSC must inform the small institution of its decision by a notice in writing stating the reasons for refusal.
- (4) If the FSC decides to grant the application, it must give the small institution a written notice which states that—
 - (a) the small institution has applied for the revocation of its option to be subject to the provisions of the Act; and
 - (b) subject to section 5(2) and (3), this Act is to cease to apply to the small institution with effect from the date specified in the notice.

Activities of an IORP.

- 7.(1) An IORP must limit its activities to retirement-benefit related operations and activities arising from them.
- (2) As a general principle IORPs must, where relevant, have regard to the aim of having an equitable spread of risks and benefits between generations in their activities.

Separation of IORPs and sponsoring undertakings.

8. An IORP must be—
 - (a) legally separate from the sponsoring undertaking; and

- (b) established under arrangements which ensure that the IORP's assets are safeguarded in the interests of members and beneficiaries in the event that the sponsoring undertaking becomes the subject of any of the insolvency events specified in section 3 of the Insolvency Act 2011.

Authorisation.

- 9.(1) An IORP, the main administration of which is located in Gibraltar, must not operate in or from Gibraltar without an authorisation granted by the FSC.
 - (2) For the purposes of subsection (1) the location of the main administration of an IORP means the place where the main strategic decisions of the IORP are made.
 - (3) The FSC must only grant an authorisation if it is satisfied that—
 - (a) every person who—
 - (i) is a manager, trustee or effectively runs the IORP;
 - (ii) carries out key functions; and,
 - (iii) to which a key function has been outsourced,
are fit and proper to hold that position and carry out their tasks; and
 - (b) the IORP will comply with the other requirements of this Act.
 - (4) The FSC, in granting an authorisation or at any time after doing so, may by notice in writing served on the IORP—
 - (a) impose any conditions that the FSC considers appropriate for the protection of members or beneficiaries; or
 - (b) vary or revoke any conditions so imposed.

(5) Without limiting subsection (4), a condition imposed under this section may–

- (a) prohibit an IORP from–
 - (i) entering into transactions of a specified description, in specified circumstances, to a specified extent or with persons of a specified description;
 - (ii) soliciting pensions business in a specified place, from persons of a specified description or otherwise than from persons of a specified description;
 - (iii) carrying on pensions business in a specified manner or otherwise than in a specified manner; or
 - (iv) disposing of, or otherwise dealing with any, or with specified, property assets, in a specified manner or otherwise than in a specified manner; or
- (b) require an IORP to maintain in Gibraltar property or assets of a value and description that appears to the FSC to be desirable with a view to ensuring that the IORP will be able to meet its liabilities in respect of the pensions business carried on.

(6) A prohibition or requirement under subsection (5) may relate to property or assets outside Gibraltar.

(7) It is a condition of every authorisation that an IORP must at all times comply with–

- (a) any conditions imposed by the FSC under this section; and
- (b) the requirements imposed by or under this Act.

The Register.

- 10.(1) The FSC must maintain a register of the IORPs–
- (a) authorised under section 9; and
 - (b) small institutions to which section 5(3) applies.
- (2) Where an IORP undertakes cross-border activities in accordance with section 12, the register must also indicate the EEA States in which the IORP is operating.
- (3) The FSC must ensure that EIOPA is informed of the information in the register.

Operating requirements.

11. The FSC must ensure that–
- (a) an IORP has implemented properly constituted rules regarding the operation of any pension scheme; and
 - (b) where the sponsoring undertaking guarantees the payment of the retirement benefits, it is committed to regular financing.

Cross-border activities and procedures.

- 12.(1) The FSC may authorise an IORP authorised or registered in Gibraltar to carry out cross-border activity.
- (2) A small institution may only carry out cross-border activity if it has opted to be subject to the provisions of this Act in accordance with section 5(4).
- (3) An undertaking located in Gibraltar may sponsor an IORP which carries out cross-border activity or proposes to do so.
- (4) An IORP that intends to carry out cross-border activity and accept sponsorship from a sponsoring undertaking must notify the FSC of that intention, in the form and manner it may direct, and provide the FSC with the following information–

- (a) the host State, which must, where applicable, be identified by the sponsoring undertaking;
 - (b) the name of the sponsoring undertaking and the location of its main administration; and
 - (c) the main characteristics of the pension scheme to be operated for the sponsoring undertaking.
- (5) Where the FSC receives a notification under subsection (4) it must–
- (a) communicate that information to the host State competent authority within three months of receiving all the information required under that subsection; and
 - (b) inform the IORP that it has done so,

unless the FSC has issued a reasoned decision to the IORP concerned that the administrative structure or financial situation of the IORP or the good repute or professional qualifications or experience of the persons running the IORP are not compatible with the proposed cross-border activity.

- (6) Where the FSC fails to communicate the information set out in subsection (4) to the host State competent authority, the FSC must give notice of its reasons for not doing so to the IORP concerned.
- (7) The FSC must provide the IORP concerned with a reasoned decision under subsection (5) or a notice of reasons under subsection (6), which must be issued by the FSC within three months of receiving all of the information set out in subsection (4).
- (8) A person aggrieved by a reasoned decision or notice of reasons issued under subsection (7) may appeal to the Supreme Court.
- (9) An IORP carrying out cross-border activity is subject to the information requirements in Title IV of the IORPS 2 Directive, as it applies in the host State, in respect of the prospective

members, members and beneficiaries which that cross-border activity concerns.

- (10) Where the FSC has communicated the information set out in subsection (4) to the host State competent authority and receives from that competent authority, in accordance with Article 11.10 of the IORP 2 Directive, information concerning–
- (a) the requirements of social and labour law relevant to the field of occupational pension schemes under which a pension scheme sponsored by an undertaking in the host State must be operated; and
 - (b) the information requirements of the host State referred to in Title IV of the IORP 2 Directive which apply to cross-border activity,

the FSC must communicate that information to the IORP concerned.

- (11) An IORP may start to carry on cross-border activity in accordance with the requirements referred to in subsection (10)(a) and (b)–
- (a) on receiving the information referred to in subsection (10); or
 - (b) if that information is not received, six weeks after the FSC has sent the IORP's notification to the host State competent authority in accordance with subsection (5).
- (12) The FSC must communicate to the IORP concerned any information that the FSC receives from the host State competent authority concerning significant change in the host State's requirements referred to in subsection (10)(a) or (b) and which may affect cross-border activity in respect of the IORP's pension scheme.
- (13) An IORP undertaking cross-border activity is subject to on-going supervision by the host State competent authority in respect of the compliance of its activities with the host State's requirements referred to in subsection (10)(a) or (b) and, in the

event that the host State competent authority informs the FSC of a breach of those requirements, the FSC in coordination with that competent authority must take the necessary steps to ensure that the IORP ends that breach.

- (14) Where the FSC, as host State competent authority receives a notice of the kind in subsection (4) from a home State competent authority, indicating that an IORP intends to carry out cross-border activity in Gibraltar, the FSC must within six weeks of receiving that notice provide the home State competent authority with information concerning–
- (a) the requirements of social and labour law relevant to the field of occupational pension schemes under which a pension scheme sponsored by an undertaking in Gibraltar must be operated; and
 - (b) the information requirements in Part 4 which apply to cross-border activity.
- (15) The FSC must inform the host State competent authority of any significant change in the requirements referred to in subsection (14)(a) or (b) and which may affect cross-border activity in respect of the IORP's pension scheme.
- (16) Where an IORP carrying on cross-border activity in Gibraltar persists in breaching any requirement in subsection (14)(a) or (b) despite any measures taken by its home State competent authority or because appropriate measures are lacking in the home State, the FSC may, after informing the home State competent authority, take appropriate measures to prevent or penalise further irregularities, including, so far as is strictly necessary, preventing the IORP from operating in Gibraltar for the sponsoring undertaking.

Cross-border transfers.

- 13.(1) An IORP may transfer all or part of a pension scheme's liabilities, technical provisions, other obligations and rights and corresponding assets or their cash equivalent to a receiving IORP.

- (2) The costs of any transfer must not fall upon the remaining members and beneficiaries of the transferring IORP or by the incumbent members and beneficiaries of the receiving IORP.
- (3) A transfer is subject to prior approval by—
 - (a) a majority of members and a majority of the beneficiaries concerned or, where applicable, by a majority of their representatives; and
 - (b) the sponsoring undertaking, where applicable.
- (4) The information on the conditions of the transfer must be made available by the transferring IORP to the members and beneficiaries concerned and, where applicable, their representatives, in a timely manner and before the application is submitted under subsection (6).
- (5) A transfer between transferring and receiving IORPs also requires the prior consent of the receiving IORP's home State competent authority, which may only grant that consent with the prior agreement of the transferring IORP's home State competent authority.
- (6) An application for consent to a transfer must be submitted by the receiving IORP to its home State competent authority, which must grant or refuse consent and communicate its decision to the receiving IORP within three months of receipt of the application.
- (7) An application under subsection (6) must contain the following information—
 - (a) the written agreement between the transferring and receiving IORPs setting out the conditions of the transfer;
 - (b) a description of the main characteristics of the pension scheme;
 - (c) a description of the liabilities or technical provisions to be transferred, and other obligations and rights, corresponding assets or their cash equivalent;

- (d) the names and the locations of the main administrations of the transferring and receiving IORPs and the EEA States in which each IORP is registered or authorised;
 - (e) the name of the sponsoring undertaking and the location of its main administration;
 - (f) evidence of prior approval in accordance with subsection (3); and
 - (g) where applicable, the EEA States whose social and labour law relevant to the field of occupational pension schemes applies to the pension scheme concerned.
- (8) The receiving IORP's home State competent authority must, without delay, forward any application it receives to the transferring IORP's home State competent authority.
- (9) The receiving IORP's home State competent authority must only assess whether—
- (a) all the information referred to in subsection (7) has been provided by the receiving IORP;
 - (b) the administrative structure, the financial situation of the receiving IORP and the good repute or professional qualifications or experience of the persons running the receiving IORP are compatible with the proposed transfer;
 - (c) the long-term interests of the members and beneficiaries of the receiving IORP and the transferred part of the scheme are adequately protected during and after the transfer;
 - (d) the technical provisions of the receiving IORP are fully funded at the date of the transfer, where the transfer results in a cross-border activity; and

- (e) the assets to be transferred are sufficient and appropriate to cover the liabilities, technical provisions and other obligations and rights to be transferred, in accordance with applicable rules in the receiving IORP's home State.
- (10) The transferring IORP's home State competent authority must only assess whether–
- (a) in the case of a partial transfer of the pension scheme's liabilities, technical provisions, other obligations and rights, and corresponding assets or their cash equivalent, the long-term interests of the members and beneficiaries of the remaining part of the scheme are adequately protected;
 - (b) the individual entitlements of the members and beneficiaries are at least the same after the transfer;
 - (c) the assets corresponding to the pension scheme to be transferred are sufficient and appropriate to cover the liabilities, technical provisions and other obligations and rights to be transferred, in accordance with the applicable rules in the transferring IORP's home State.
- (11) The transferring IORP's home State competent authority must communicate the results of its assessment under subsection (10) within eight weeks of receipt of the application under subsection (8), in order to allow the receiving IORP's home State competent authority to take a decision in accordance with subsection (6).
- (12) Where consent is refused, the receiving IORP's home State competent authority must provide the reasons for refusal within the three month period specified in subsection (6).
- (13) Where Gibraltar is the home State of the receiving IORP, refusal of consent or a failure to act by the FSC is subject to a right of appeal to the Supreme Court.
- (14) The receiving IORP's home State competent authority must inform the transferring IORP's home State competent

authority of the decision within two weeks of taking that decision.

- (15) Where a transfer results in a cross-border activity—
- (a) the transferring IORP's home State competent authority must inform the receiving IORP's home State competent authority, within four weeks, of—
 - (i) the requirements of social and labour law relevant to the field of occupational pension schemes under which the pension scheme must be operated; and
 - (ii) of the host State's information requirements under Title IV of the IORP 2 Directive and which apply to the cross-border activity; and
 - (b) the receiving IORP's home State competent authority must communicate the information to the receiving IORP within one week of its receipt.
- (16) The receiving IORP may start to operate the pension scheme—
- (a) upon receipt of a decision to grant consent; or
 - (b) if no information on the decision is received from the receiving IORP's home State competent authority, on the expiry of the period specified in subsection (15)(b).
- (17) A disagreement between competent authorities about the procedure or content of a decision to which this section applies may be referred to non-binding mediation by EIOPA under Article 12.13 of the IORP 2 Directive.
- (18) Where the receiving IORP carries out a cross-border activity, Article 11.9 to 11.11 of the IORP 2 Directive applies.

PART 2
QUANTITATIVE REQUIREMENTS

Technical provisions.

- 14.(1) An IORP operating occupational pension schemes must establish at all times in respect of the total range of its pension schemes an adequate amount of liabilities corresponding to the financial commitments which arise out of its portfolio of existing pension contracts.
- (2) Where an IORP operating occupational pension schemes provides cover against biometric risks or guarantees an investment performance or a given level of benefits, it must establish sufficient technical provisions in respect of the total range of those schemes.
- (3) The calculation of technical provisions must take place—
- (a) each year; or
 - (b) once every three years if—
 - (i) the IORP provides members and the FSC with a certificate or report of adjustments for the intervening years; and
 - (ii) the certificate or report reflects the adjusted development of the technical provisions and changes in risks covered.
- (4) The calculation of the technical provisions must be carried out and certified by an actuary, registered auditor or other specialist in that field, on the basis of actuarial methods which accord with the following principles—
- (a) the minimum amount of the technical provisions must be—
 - (i) calculated by a sufficiently prudent actuarial valuation, taking account of all commitments for

- benefits and for contributions in accordance with the pension arrangements of the IORP; and
- (ii) sufficient both for pensions and benefits already in payment to beneficiaries to continue to be paid, and to reflect the commitments which arise out of members' accrued pension rights;
- (b) the economic and actuarial assumptions chosen for the valuation of the liabilities must be chosen prudently taking account, if applicable, of an appropriate margin for adverse deviation;
 - (c) the maximum rates of interest used must be chosen prudently and those prudent rates of interest must be determined by taking into account—
 - (i) the yield on the corresponding assets held by the IORP and the projected future investment returns;
 - (ii) the market yields of high-quality bonds, government bonds, European Stability Mechanism bonds, European Investment Bank (EIB) bonds or European Financial Stability Facility bonds, or;
 - (iii) a combination of sub-paragraphs (i) and (ii);
 - (d) the biometric tables used for the calculation of technical provisions must be based on prudent principles, having regard to the main characteristics of the group of members, the pension schemes and, in particular, the expected changes in the relevant risks; and
 - (e) the method and basis of calculation of technical provisions must in general remain constant from one financial year to another unless discontinuities are justified by change in the legal, demographic or economic circumstances underlying the assumptions.

- (5) The Minister may by regulations–
- (a) prescribe the actuarial methods which are to apply for the purposes of subsection (4); or
 - (b) with a view to ensuring that the interests of members and beneficiaries are adequately protected, specify additional or more detailed requirements which apply to the calculation of technical provisions.

Funding of technical provisions.

- 15.(1) An IORP must have at all times sufficient and appropriate assets to cover the technical provisions in respect of the total range of pension schemes operated.
- (2) Subject to subsection (3), the FSC may allow an IORP, for a limited period, to have insufficient assets to cover the technical provisions.
- (3) In any case to which subsection (2) applies, the FSC must require the IORP to must adopt a concrete and realisable recovery plan with a timeline in order to ensure that the requirements of subsection (1) are met again.
- (4) A recovery plan must be subject to the following conditions–
- (a) the IORP must set up a concrete and realisable plan to re-establish the required amount of assets to cover fully the technical provisions in due time, which must be–
 - (i) approved by the FSC; and
 - (ii) made available to members or, where applicable, their representatives;
 - (b) in drawing up the plan, the specific situation of the IORP must be taken into account and, in particular, the asset/liability structure, risk profile, liquidity plan, the age profile of the members entitled to receive retirement benefits, start-up schemes and schemes

changing from non-funding or partial funding to full funding;

- (c) in the event of a pension scheme winding up during the period permitted by the FSC under subsection (2), the IORP must—
 - (i) inform the FSC;
 - (ii) establish a procedure for the transfer of the assets and corresponding liabilities of that scheme to another IORP, an insurance undertaking or other appropriate body;
 - (iii) disclose details of the procedure to the FSC; and
make a general outline of the procedure available to members or, where applicable, their representatives in accordance with the principle of confidentiality.

- (5) Where an IORP engages in cross-border activity, the technical provisions must at all times be fully funded in respect of the total range of pension schemes operated and, if this condition is not met, the FSC must promptly intervene and require the IORP to immediately draw up appropriate measures and implement them without delay in a way that adequately protects members and beneficiaries.

Regulatory own funds.

- 16.(1) An IORP operating pension schemes, where the IORP itself (rather than the sponsoring undertaking) underwrites the liability to cover against biometric risk or guarantees a given investment performance or given level of benefits, must hold on a permanent basis additional assets above the technical provisions to serve as a buffer.
- (2) The amount of additional assets held must reflect the type of risk and the portfolio of assets in respect of the total range of schemes operated and those assets must be free of all foreseeable liabilities and serve as a safety capital to absorb

discrepancies between the anticipated and the actual expenses and profits.

- (3) Sections 17 to 19 apply for the purposes of calculating the minimum amount of additional assets.

Available solvency margin.

- 17.(1) In order to ensure the long-term sustainability of occupational retirement provision, an IORP to which section 16(1) applies must at all times and in respect of its entire business have an adequate available solvency margin which is at least equal to that required by this Act.
- (2) The available solvency margin must consist of the assets of the IORP free of any foreseeable liabilities, less any intangible items, including—
- (a) the paid-up share capital or, in the case of an IORP taking the form of a mutual undertaking, the effective initial fund plus any accounts of the members of the mutual undertaking which fulfil the following criteria—
- (i) the memorandum and articles of association must stipulate that payments may be made from those accounts to members of the mutual undertaking only if this does not cause the available solvency margin to fall below the required level or, after the dissolution of the undertaking, where all the undertaking's other debts have been settled;
- (ii) the memorandum and articles of association must stipulate, with respect to any payments to which sub-paragraph (i) applies (other than in respect of the individual termination of membership in the mutual undertaking) that the FSC must be notified at least one month in advance and can prohibit the payment within that period; and

- (iii) the relevant provisions of the memorandum and articles of association may be amended only after the FSC has declared that they have no objection to the amendment, but without affecting the criteria in sub-paragraphs (i) and (ii);
 - (b) reserves (statutory and free) not corresponding to underwriting liabilities; and
 - (c) the profit or loss brought forward after deduction of dividends to be paid.
- (3) The available solvency margin must be reduced by the amount of own shares directly held by the IORP.
- (4) The available solvency margin may also comprise–
 - (a) cumulative preferential share capital and subordinated loan capital up to 50% of the lesser of the available solvency margin and the required solvency margin, no more than 25% of which consists of subordinated loans with a fixed maturity or fixed-term cumulative preferential share capital, where binding agreements exist under which, in the event of the insolvency of the IORP, the subordinated loan capital or preferential share capital ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time have been settled;
 - (b) securities with no specified maturity date and other instruments, including cumulative preferential shares other than those referred to in paragraph (a), to a maximum of 50% of the available solvency margin, or the required solvency margin, whichever the lesser, for the total of such securities, and the subordinated loan capital referred to in that paragraph, if they fulfil the following conditions–
 - (i) they must not be repaid on the initiative of the bearer or without the prior consent of the FSC;

- (ii) the contract of issue must enable the IORP to defer the payment of interest on the loan;
 - (iii) the lender's claims on the IORP must rank entirely after those of all non-subordinated creditors;
 - (iv) the documents governing the issue of the securities must provide for the loss-absorption capacity of the debt and unpaid interest, while enabling the IORP to continue its business; and
 - (v) only fully paid-up amounts must be taken into account.
- (5) For the purposes of subsection (4)(a), subordinated loan capital must also fulfil the following conditions–
- (a) only fully paid-up funds may be taken into account;
 - (b) for loans with a fixed maturity, the original maturity must be at least five years. No later than one year before the repayment date, the IORP shall submit to the competent authorities for their approval a plan showing how the available solvency margin will be kept at or brought to the required level at maturity, unless the extent to which the loan may rank as a component of the available solvency margin is gradually reduced during at least the five years before the repayment date. The competent authorities may authorise the early repayment of such loans provided application is made by the issuing IORP and its available solvency margin will not fall below the required level;
 - (c) loans the maturity of which is not fixed must be repayable only subject to five years' notice unless–
 - (i) the loans are no longer considered as a component of the available solvency margin; or
 - (ii) the prior consent of the FSC is specifically required for early repayment;

and in the latter event the IORP must notify the FSC at least six months before the date of the proposed repayment, specifying the available solvency margin and the required solvency margin both before and after that repayment and the FSC may only authorise repayment where the IORP's available solvency margin will not fall below the required level;

- (d) the loan agreement must not include any clause providing that in specified circumstances, other than the winding-up of the IORP, the debt will become repayable before the agreed repayment dates; and
 - (e) the loan agreement may be amended only after the FSC has confirmed that it has no objection to the amendment.
- (6) Where an IORP makes an application to the FSC, in the form it directs and supported by the evidence it may reasonably require, the FSC may agree that the available solvency margin may also comprise–
- (a) where Zillmerising is not practised or where, if practised, it is less than the loading for acquisition costs included in the premium, the difference between a non-Zillmerised or partially Zillmerised mathematical provision and a mathematical provision Zillmerised at a rate equal to the loading for acquisition costs included in the premium;
 - (b) any hidden net reserves arising out of the valuation of assets, if those hidden net reserves are not of an exceptional nature;
 - (c) one half of the unpaid share capital or initial fund, once the paid-up part amounts to 25% of that share capital or fund, up to 50% of the available or required solvency margin, whichever is the lesser.
- (7) The figure referred to in subsection (6)(a) must not exceed 3.5% of the sum of the differences between the relevant capital

sums of life insurance and occupational retirement provision activities and the mathematical provisions for all policies for which Zillmerising is possible and the difference must be reduced by the amount of any undepreciated acquisition costs entered as an asset.

Required solvency margin.

18.(1) The required solvency margin must be determined as set out in subsections (2) to (6) according to the liabilities underwritten.

(2) The required solvency margin is equal to the sum of the following results–

(a) the first result:

a 4% fraction of the mathematical provisions relating to direct business and reinsurance acceptances gross of reinsurance cessions must be multiplied by the ratio, which must not be less than 85%, for the previous financial year, of the mathematical provisions net of reinsurance cessions to the gross total mathematical provisions;

(b) the second result:

for policies on which the capital at risk is not a negative figure, a 0.3% fraction of the capital underwritten by the IORP must be multiplied by the ratio, which must not be less than 50%, for the previous financial year, of the total capital at risk retained as the IORP's liability after reinsurance cessions and retrocessions to the total capital at risk gross of reinsurance;

for temporary assurances on death–

(i) of a maximum term of three years, that fraction must be 0.1%; and

(ii) of a term of more than three years but not more than five years, that fraction must be 0.15%.

- (3) For supplementary insurances referred to in Article 2.3(a)(iii) of the Solvency 2 Directive, the required solvency margin must be equal to the required solvency margin for IORPs set out in section 19.
- (4) For capital redemption operations referred to in Article 2.3(b)(ii) of the Solvency 2 Directive, the required solvency margin must be equal to a 4% fraction of the mathematical provisions calculated in accordance with subsection (2)(a).
- (5) For operations referred to in Article 2.3(b)(i) of the Solvency 2 Directive, the required solvency margin must be equal to 1% of their assets.
- (6) For assurances linked to investment funds to which Article 2.3 (a)(i) and (ii) of the Solvency 2 Directive applies and for operations referred to in Article 2.3(b)(iii) to (v) of that Directive, the required solvency margin must be equal to the sum of the following—
 - (a) in so far as the IORP bears an investment risk, a 4% fraction of the technical provisions, calculated in accordance with subsection (2)(a);
 - (b) in so far as the IORP bears no investment risk but the allocation to cover management expenses is fixed for a period exceeding five years, a 1% fraction of the technical provisions, calculated in accordance with subsection (2)(a);
 - (c) in so far as the IORP bears no investment risk and the allocation to cover management expenses is not fixed for a period exceeding five years, an amount equivalent to 25% of the net administrative expenses of the previous financial year pertaining to that business;
 - (d) in so far as the IORP covers a death risk, a 0,3% fraction of the capital at risk calculated in accordance with subsection (2)(b).

Required solvency margin for the purpose of section 18(3).

- 19.(1) The required solvency margin must be determined on the basis of–
- (a) the annual amount of premiums or contributions; or
 - (b) the average burden of claims for the past three financial years.
- (2) The amount of the required solvency margin must be equal to the higher of the two results as set out in subsections (3) and (4).
- (3) The premium basis must be calculated using the higher of gross written premiums or contributions, calculated as follows, and gross earned premiums or contributions–
- (a) the premiums or contributions (inclusive of charges ancillary to premiums or contributions) due in respect of direct business in the previous financial year must be aggregated;
 - (b) to that sum there must be added the amount of premiums accepted for all reinsurance in the previous financial year;
 - (c) from that sum there must then be deducted the total amount of premiums or contributions cancelled in the previous financial year, as well as the total amount of taxes and levies pertaining to the premiums or contributions entering into the aggregate;
 - (d) the amount so obtained must be divided into two portions, the first extending up to EUR 50,000,000 and the second portion comprising the excess, and 18% of the first portion and 16% of the second portion must be added together; and
 - (e) the sum so obtained must be multiplied by the ratio existing in respect of the sum of the previous three financial years between the amount of claims

remaining to be borne by the IORP after deduction of amounts recoverable under reinsurance and the gross amount of claims, but that ratio must be no less than 50%.

(4) The claims basis must be calculated as follows–

- (a) the amounts of claims paid in respect of direct business (without any deduction of claims borne by reinsurers and retrocessionaires) in the periods specified in subsection (1) must be aggregated;
- (b) to that sum there must be added the amount of claims paid in respect of reinsurances or retrocessions accepted during the same periods and the amount of provisions for claims outstanding established at the end of the previous financial year both for direct business and for reinsurance acceptances;
- (c) from that sum there must be deducted the amount of recoveries effected during the periods specified in subsection (1);
- (d) from the sum then remaining, there must be deducted the amount of provisions for claims outstanding established at the commencement of the second financial year preceding the last financial year for which there are accounts, both for direct business and for reinsurance acceptances;
- (e) one third of the amount so obtained must be divided into two portions, the first extending up to EUR 35,000.000 and the second comprising the excess, and 26% of the first portion and 23% of the second portion must be added together; and
- (f) the sum so obtained must be multiplied by the ratio existing in respect of the sum of the previous three financial years between the amount of claims remaining to be borne by the IORP after deduction of amounts recoverable under reinsurance and the gross amount of claims, but that ratio must be no less than 50%.

- (5) Where the required solvency margin calculated in accordance with subsections (2) to (4) is lower than the required solvency margin of the preceding year, the required solvency margin must be at least equal to the required solvency margin of the preceding year, multiplied by the ratio of the amount of the technical provisions for claims outstanding at the end of the previous financial year and the amount of the technical provisions for claims outstanding at the beginning of the previous financial year and, in those calculations, technical provisions must be calculated net of reinsurance but the ratio may be no higher than 1.

Investment rules.

- 20.(1) An IORP must invest in accordance with the ‘prudent person’ rule and, in particular, in accordance with the following requirements–
- (a) the assets must be invested in the best long-term interests of members and beneficiaries as a whole and, in the event of a potential conflict of interest, an IORP or the entity which manages its portfolio must ensure that the investment is made in the sole interest of members and beneficiaries;
 - (b) acting within the prudent person rule, IORPs may take account of the potential long-term impact of investment decisions on environmental, social, and governance factors;
 - (c) the assets must be invested in a manner which ensures the security, quality, liquidity and profitability of the portfolio as a whole;
 - (d) the assets must be predominantly invested on regulated markets and investment in assets which are not admitted to trading on a regulated financial market must in any event be kept to prudent levels;
 - (e) investment in derivative instruments is permitted where those instruments contribute to a reduction in investment risks or facilitate efficient portfolio

management, but they must be valued on a prudent basis, taking into account the underlying asset, and included in the valuation of an IORP's assets and IORPs must avoid excessive risk exposure to a single counterparty and to other derivative operations;

- (f) the assets must be properly diversified, in way which avoids excessive reliance on any particular asset, issuer or group of undertakings and accumulations of risk in the portfolio as a whole and investments in assets issued by the same issuer or by issuers belonging to the same group must not expose an IORP to excessive risk concentration;
 - (g) investment in the sponsoring undertaking must be no more than 5% of the portfolio as a whole and, when the sponsoring undertaking belongs to a group, investment in the undertakings belonging to that group must not be more than 10% of the portfolio; and
 - (h) Where an IORP is sponsored by a number of undertakings, investment in those sponsoring undertakings must be made prudently, taking into account the need for proper diversification.
- (2) The requirements in subsection (1)(f) to (h) do not apply to investment in government bonds.
- (3) Taking account of the size, nature, scale and complexity of an IORP's activities, the FSC must–
- (a) monitor the adequacy of an IORP's credit assessment processes;
 - (b) assess its use of references to agency credit ratings in its investment policies; and
 - (c) where appropriate, encourage mitigation of the impact of those references, with a view to reducing sole and mechanistic reliance on those ratings.

- (4) In subsection (3) “agency credit ratings” means credit ratings issued by credit rating agencies within the meaning of Article 3.1(b) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council.
- (5) Subject to subsection (6), an IORP must not borrow or act as a guarantor on behalf of any third party.
- (6) The FSC may authorise an IORP to borrow on a temporary basis for liquidity purposes.
- (7) With the Minister’s consent, the FSC may issue Rules which set out additional and more detailed requirements to those in subsections (1) to (6), including quantitative rules where they are prudentially justified, to reflect the total range of pension schemes operated by IORPs authorised in Gibraltar.
- (8) Subject to subsection (10), nothing in this section or in Rules issued under subsection (7)–
 - (a) requires an IORP to invest in particular categories of assets.
 - (b) without limiting section 31, requires the investment decisions of an IORP or its investment manager to be subject to any form of prior approval or systematic notification; or
 - (c) prevents an IORP from–
 - (i) investing up to 70% of the assets covering the technical provisions or, for schemes in which the members bear the investment risks, of the whole portfolio, in shares, negotiable securities treated as shares and corporate bonds admitted to trading on regulated markets or through MTFs or OTFs, and deciding on the relative weight of those securities in its investment portfolio;
 - (ii) investing up to 30% of the assets covering technical provisions in assets denominated in currencies other than those in which the liabilities are expressed;

- (iii) investing in instruments that have a long-term investment horizon and are not traded on regulated markets, MTFs or OTFs; or
 - (iv) investing in instruments that are issued or guaranteed by the EIB provided in the framework of the European Fund for Strategic Investments, European Long-term Investment Funds, European Social Entrepreneurship Funds and European Venture Capital Funds.
- (9) Where it is prudentially justified, the Minister may by regulations specify a lower investment limit (but no lower than 35%) which is to apply for the purposes of subsection (8)(c)(i) in respect of IORPs which operate pension schemes with a long-term interest rate guarantee, bear the investment risk and provide for the guarantee.
- (10) Nothing in section (8) prevents the application of more stringent investment rules to IORPs on an individual basis where doing so is prudentially justified, in particular, in light of the liabilities entered into by the IORP.
- (11) The FSC, where it is the host State competent authority of an IORP carrying out cross-border activity in Gibraltar, must not impose investment rules in addition to those set out in subsections (1) to (8) for the part of the assets which cover technical provisions for cross-border activity.

PART 3 **CONDITIONS GOVERNING ACTIVITIES**

System of governance– general provisions

Responsibility of management or supervisory body.

- 21.(1) The management or supervisory body of an IORP has ultimate responsibility for the IORP's compliance with this Act.
- (2) Subsection (1) applies without limiting the role of social partners in the management of IORPs.

General governance requirements.

- 22.(1) An IORP must have an effective system of governance which provides for sound and prudent management of its activities, including–
- (a) an adequate and transparent organisational structure with a clear allocation and appropriate segregation of responsibilities;
 - (b) an effective system for ensuring the transmission of information; and
 - (c) arrangements which enable investment decisions to take account of environmental, social and governance factors related to investment assets.
- (2) An IORP's system of governance must be–
- (a) proportionate to the size, nature, scale and complexity of its activities; and
 - (b) subject to regular internal review.
- (3) An IORP must establish and apply written policies in relation to–
- (a) risk management;
 - (b) internal audit; and
 - (c) where relevant–
 - (i) actuarial activities; and
 - (ii) outsourced activities.
- (4) The policies established under subsection (3) must be approved by the IORP's management or supervisory body, reviewed at least once every three years and adapted to take account of any significant change in the system or area concerned.

- (5) An IORP must have in place an effective internal control system which includes administrative and accounting procedures, an internal control framework and appropriate reporting arrangements at all levels of the IORP.
- (6) An IORP must take reasonable steps to ensure continuity and regularity in the performance of its activities, including the development of contingency plans, and an IORP must employ appropriate and proportionate systems, resources and procedures for that purpose.
- (7) An IORP must effectively be run by at least two persons.

Requirements for fit and proper management.

- 23.(1) An IORP must ensure that individuals who effectively run the IORP, individuals who carry out key functions and, where applicable, individuals or entities to which a key function has been outsourced in accordance with section 32 are fit and proper to carry out their tasks.
- (2) For the purposes of subsection (1)–
 - (a) the requirement to be “fit” means–
 - (i) for those who effectively run the IORP, that their qualifications, knowledge and experience are collectively adequate to enable them to ensure the sound and prudent management of the IORP;
 - (ii) for those who carry out the actuarial or internal audit key functions, that their professional qualifications, knowledge and experience are adequate to properly carry out their key functions; or
 - (iii) for those who carry out other key functions, that their qualifications, knowledge and experience are adequate to properly carry out their key functions; and

- (b) the requirement to be “proper” means that they are of good repute and integrity.
- (3) Without limiting subsection (2)(b), in determining whether a person is of good repute and integrity the FSC may take account of–
- (a) the person’s probity;
 - (b) the person’s competence and soundness of judgement for fulfilling the responsibilities of the relevant position;
 - (c) the diligence with which the person is fulfilling or likely to fulfil those responsibilities; and
 - (d) the person’s holding of the relevant position would, or would be likely to, prejudice–
 - (i) the interests of members or potential members of the pension scheme operated by the IORP; or
 - (ii) the reputation of Gibraltar;
 - (e) the person’s previous conduct and activities in business or financial matters and, in particular, any evidence that the person has–
 - (i) committed an offence involving fraud or other dishonesty or violence;
 - (ii) contravened any provision made by or under any enactment which appears to the FSC to be intended to protect members of the public from financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies;
 - (iii) engaged in any business practice which appears to the FSC to be deceitful, oppressive or otherwise improper (whether unlawful or not) or

which otherwise reflects discredit on the person's method of conducting business;

- (iv) engaged in or been associated with any other business practice or conduct which casts doubt on the person's competence and soundness of judgment;
- (v) contravened any internal rules of, or exceeded any limit of authority in, any current or previous or employment; or
- (vi) misled or attempted to mislead any person in any current or previous employment or any investigation or inquiry.

(4) For the purpose of assessing a person's fitness and propriety the FSC may require the person to provide in with any information that it may reasonably require.

(5) Where, as part of an assessment of fitness and propriety the FSC requires a person to provide proof of good repute, in respect of a national of another EEA State, the FSC must accept as sufficient evidence—

- (a) an extract from the judicial record of that State or equivalent document, issued by a competent judicial or administrative authority in that State; or
- (b) Where no competent judicial or administrative authority in that State is able to provide such a document, a statutory declaration made by the person concerned as to that person's fitness and propriety.

(6) Any document referred to in subsection (5) be provided to the FSC within three months of the date on which it was issued or sworn (as the case may be).

Remuneration policy.

24.(1) An IORP must establish and apply a sound remuneration policy for—

- (a) the individuals who effectively run the IORP;
 - (b) the individuals who carry out key functions; and
 - (c) other categories of staff whose professional activities have a material impact on the IORP's risk profile.
- (2) A remuneration policy must be established and applied in a manner that is proportionate to–
- (a) the size and internal organisation of the IORP; and
 - (b) the size, nature, scale and complexity of its activities.
- (3) Subject to the Data Protection Act 2004 and the GDPR (as defined in that Act), an IORP must regularly disclose publicly relevant information regarding its remuneration policy.
- (4) When establishing and applying its remuneration policy, an IORP must comply with the following principles–
- (a) the remuneration policy must be established, implemented and maintained in line with the activities, risk profile, objectives, and the long-term interest, financial stability and performance of the IORP as a whole, and must support the sound, prudent and effective management of the IORP;
 - (b) the remuneration policy must be in line with the long-term interests of members and beneficiaries of pension schemes operated by the IORP;
 - (c) the remuneration policy must include measures aimed at avoiding conflicts of interest;
 - (d) the remuneration policy must be consistent with sound and effective risk management and must not encourage risk-taking which is inconsistent with the risk profiles and rules of the IORP;
 - (e) the remuneration policy must apply to the IORP and to the service providers referred to in section 32(1),

unless those service providers are entities to which section 4(2)(c) applies;

- (f) the IORP must establish the general principles of the remuneration policy, review and update it at least once every three years, and be responsible for its implementation; and
- (g) there must be clear, transparent and effective governance with regard to remuneration and its oversight.

Key functions

General provisions.

25.(1) An IORP must–

- (a) have the following key functions in place–
 - (i) a risk-management function;
 - (ii) an internal audit function; and
 - (iii) where applicable, an actuarial function; and
 - (b) enable key function holders to undertake their duties effectively in an objective, fair and independent manner.
- (2) An IORP may allow an individual or organisational unit to carry out more than one key function, other than the internal audit function set out in section 27 which must be independent from the other key functions.
- (3) Subject to subsection (4), the individual or organisational unit carrying out a key function must be different from the one carrying out a similar key function in the sponsoring undertaking.
- (4) The FSC may authorise an IORP to carry out key functions through the same individual or organisational unit as in the sponsoring undertaking, where the FSC considers that–

- (a) it is appropriate to do so, taking account of the size, nature, scale and complexity of the IORP's activities; and
 - (b) the IORP has provided a satisfactory explanation of how it will prevent or manage any conflicts of interest with the sponsoring undertaking.
- (5) Key function holders must report any material findings and recommendations in the area of their responsibility to the IORP's administrative, management or supervisory body, which must determine what action is to be taken.
- (6) A key function holder must inform the FSC if an IORP's administrative, management or supervisory body does not take appropriate and timely remedial action where the person or organisational unit carrying out the key function—
 - (a) has detected a substantial risk that the IORP will not comply with a materially significant statutory requirement, of the IORP which could have a significant impact on the interests of members and beneficiaries and has reported it to the IORP's administrative, management or supervisory body; or
 - (b) has observed a significant material breach of the laws, regulations or administrative provisions which to the IORP and its activities in the context of that key function and has reported it to the IORP's administrative, management or supervisory body.
- (7) Subsection (6) applies without limiting the key function holder's privilege against self-incrimination.
- (8) A key function holder who, under subsection (6) reports a failure to take remedial action to the FSC—
 - (a) is not to be considered to be in breach of any restriction on disclosure of information imposed by contract or by any law and any provision in an agreement is void in so far as it purports to preclude an employee from making such a report; and

(b) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that the employee has made such a report.

(9) An employee who has been subjected to a detriment contrary to subsection (8)(b) may present a complaint to the Employment Tribunal as if the making of a report under subsection (6) was a protected disclosure within the meaning of Part IVA of the Employment Act.

Risk-management.

26.(1) An IORP must have in place an effective risk-management function which is proportionate to its size, internal organisation and the size, nature, scale and complexity of its activities.

(2) The risk-management function must be structured in a way which facilitates the functioning of the risk-management system which the IORP must adopt, being the strategies, processes and reporting procedures necessary to identify, measure, monitor, manage and report to the IORP's administrative, management or supervisory body regularly the risks, at an individual and aggregated level, to which the IORP and the pension schemes it operates are or could be exposed, and their interdependencies.

(3) The risk-management system must be effective and well-integrated into the IORP's organisational structure and decision-making processes.

(4) The risk-management system must cover, in a manner that is proportionate to the IORP's size and internal organisation and the size, nature, scale and complexity of its activities, risks which can occur in IORPs or in undertakings to which tasks or activities of an IORP have been outsourced, at least in the following areas, where applicable—

(a) underwriting and reserving;

(b) asset-liability management;

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

- (5) Where, in accordance with the conditions of a pension scheme, members and beneficiaries bear risks, the risk management system must also consider those risks from the perspective of members and beneficiaries.

Internal audit function.

- 27.(1) An IORP must provide for an effective internal audit function in a manner that is proportionate to its size and internal organisation and to the size, nature, scale and complexity of its activities.
- (2) The internal audit function must include an evaluation of the adequacy and effectiveness of the internal control system and other elements of the system of governance, including, where applicable, outsourced activities.

Actuarial function.

- 28.(1) Where an IORP itself provides cover against biometric risks or guarantees either an investment performance or a given level of benefits, the IORP must provide for an effective actuarial function to–
- (a) coordinate and oversee the calculation of technical provisions;
 - (b) assess the appropriateness of the methodologies and underlying models used in the calculation of technical

provisions and the assumptions made for this purpose;

- (c) assess the sufficiency and quality of the data used in the calculation of technical provisions;
- (d) compare the assumptions underlying the calculation of the technical provisions with the experience;
- (e) inform the IORP's administrative, management or supervisory body of the reliability and adequacy of the calculation of technical provisions;
- (f) express an opinion on the overall underwriting policy (where the IORP has such a policy);
- (g) express an opinion on the adequacy of insurance arrangements (where the IORP has such arrangements); and
- (h) contribute to the effective implementation of the risk management system.

- (2) An IORP must designate at least one independent person, inside or outside the IORP, who is responsible for the actuarial function.

Documents concerning governance

Own-risk assessment.

- 29.(1) An IORP must carry out and document its own-risk assessment in a manner that is proportionate to its size and internal organisation and the size, nature, scale and complexity of its activities.

- (2) That risk assessment must be carried out–

- (a) at least once every three years; or
- (b) without delay following any significant change in the risk profile of the IORP or the pension schemes it operates;

but where the significant change is limited to the risk profile of a specific pension scheme, for the purposes of paragraph (b) the risk assessment may be limited to that pension scheme.

- (3) The risk assessment must include the following, having regard to the IORP's size and internal organisation and the size, nature, scale and complexity of its activities—
- (a) a description of how own-risk assessment is integrated into the management process and into the decision-making processes of the IORP;
 - (b) an assessment of the effectiveness of the risk-management system;
 - (c) a description of how the IORP prevents conflicts of interest with the sponsoring undertaking, where the IORP outsources key functions to the sponsoring undertaking in accordance with section 25(4);
 - (d) an assessment of the overall funding needs of the IORP, including a description of any applicable recovery plan;
 - (e) an assessment of the risks to members and beneficiaries relating to the paying out of their retirement benefits and, where applicable, the effectiveness of any remedial action taking account of—
 - (i) indexation mechanisms; or
 - (ii) benefit reduction mechanisms, including the extent to which accrued pension benefits can be reduced, under which conditions and by whom;
 - (f) a qualitative assessment of the mechanisms protecting retirement benefits, including, as applicable—
 - (i) guarantees, covenants or any other type of financial support by the sponsoring undertaking;

- (ii) insurance or reinsurance by an undertaking covered by the Solvency 2 Directive; or
 - (iii) coverage by a pension protection scheme;
in favour of the IORP or the members and beneficiaries;
 - (g) a qualitative assessment of the operational risks; and
 - (h) where environmental, social and governance factors are considered in investment decisions, an assessment of new or emerging risks, including risks related to climate change, use of resources and the environment, social risks and risks related to the depreciation of assets due to regulatory change.
- (4) For the purposes of subsection (3), an IORP must have in place methods to identify and assess the risks that it is or could be exposed to in the short and long term and which may have an impact on the IORP's ability to meet its obligations and those methods must–
- (a) be described in its own-risk assessment; and
 - (b) be proportionate to the size, nature, scale and complexity of the risks inherent in its activities.
- (5) The own-risk assessment must be taken into account in the strategic decisions of the IORP.

Annual accounts and annual reports.

- 30.(1) An IORP must prepare and publish–
- (a) annual accounts and annual reports which take account of each pension scheme it operates; and
 - (b) where applicable, annual accounts and annual reports for each of those pension schemes.

- (2) The annual accounts and the annual reports must give a true and fair view of the IORP's assets, liabilities and financial position and include disclosure of significant investment holdings.
- (3) The annual accounts and information in the reports must be consistent, comprehensive, fairly presented and approved by a statutory auditor or audit firm, in accordance with the Companies Act 2014.

Statement of investment policy principles.

- 31.(1) An IORP must prepare a written statement of investment policy principles which must be reviewed and, if applicable, revised–
 - (a) at least once every three years; or
 - (b) without delay following any significant change in the investment policy.
- (2) An investment policy statement must contain–
 - (a) the investment risk measurement methods;
 - (b) the risk-management processes implemented and the strategic asset allocation with respect to the nature and duration of pension liabilities; and
 - (c) an explanation of how the investment policy takes environmental, social and governance factors into account.
- (3) An IORP's investment policy statement must be made publicly available.

Outsourcing and investment management

Outsourcing.

- 32.(1) An IORP may entrust any activity in whole or part, including a key function or the management of the IORP, to a service provider operating on the IORP's behalf.

- (2) An IORP that outsources any activity under subsection (1) must enter into a legally enforceable written agreement with the service provider which clearly defines the rights and obligations of the IORP and the service provider.
- (3) An IORP must notify the FSC promptly of—
 - (a) any outsourcing under subsection (1); and
 - (b) any important development with respect to an outsourced activity.
- (4) Notice under subsection (3) must be given to the FSC in the form and manner that it directs and, where the outsourcing relates to a key function or management of an IORP, before the agreement in respect of the outsourcing comes into effect.
- (5) An IORP remains fully responsible for compliance with its obligations under this Act in respect of any key function or other activity which it outsources.
- (6) Outsourcing of any key function or other activity must not be undertaken in a way which—
 - (a) impairs the quality of the system of governance of the IORP concerned;
 - (b) unduly increases the operational risk;
 - (c) impairs the ability of competent authorities to monitor the IORP's compliance its obligations; or
 - (d) undermines continuous and satisfactory service to members and beneficiaries.
- (7) An IORP must ensure the proper functioning of any outsourced activity through the process of selecting a service provider and the ongoing monitoring of the activities of that service provider.

- (8) The FSC may at any time require an IORP and any service provider to which it has outsourced any activity to provide the FSC with any information it may reasonably require.

Investment management.

33. Nothing in this Act prevents an IORP from appointing, for the management of its investment portfolio—
- (a) an investment manager established in another EEA State and which is authorised to undertake that activity in accordance with—
 - (i) the UCITS Directive;
 - (ii) the Solvency 2 Directive;
 - (iii) the AIFM Directive;
 - (iv) the Capital Requirements Directive; or
 - (v) the MiFID 2 Directive; or
 - (a) an entity which is—
 - (i) responsible for operating or acting on behalf of an IORP in an EEA State where IORPs do not have legal personality; and
 - (ii) authorised under the law of that State as provided for in Article 2.1 of the IORP 2 Directive.

Depositary

Requirement to appoint depositary, etc.

- 34.(1) The Minister may, by regulations, require IORPs to appoint one or more depositaries for the safe-keeping of the assets of a pension scheme and for conducting oversight duties in respect of those assets.

- (2) Any regulations made under subsection (1) must incorporate any provision that is necessary to give effect to any mandatory requirements in respect of depositaries in Articles 33 to 35 of the IORP 2 Directive.

PART 4
INFORMATION TO BE GIVEN TO PROSPECTIVE
MEMBERS, MEMBERS AND BENEFICIARIES

General provisions

Principles.

- 35.(1) An IORP, taking account of the nature of the pension scheme it operates, must provide—
- (a) prospective members with the information set out in section 36;
 - (b) members with the information set out in sections 37 to 41 and 43; and
 - (c) beneficiaries with the information set out in sections 37, 42 and 43.
- (2) The information referred to in subsection (1) must be—
- (a) regularly updated;
 - (b) written in a clear manner—
 - (i) using clear, succinct and comprehensible language;
 - (ii) avoiding the use of jargon; and
 - (iii) avoiding technical terms where everyday words can be used instead;
 - (c) not misleading, with consistency in the vocabulary and content;
 - (d) presented in a way that is easy to read;

- (e) available in English or an official language of the EEA State whose social and labour law relevant to the field of occupational pension schemes applies to the pension scheme concerned; and
- (f) made available to prospective members, members and beneficiaries free of charge through electronic means, including on a durable medium or by means of a website, or on paper.

Information to be given to prospective members.

36.(1) An IORP must ensure that prospective members who are not automatically enrolled in a pension scheme are informed, before they join that pension scheme, about–

- (a) any relevant options available to them including investment options;
- (b) the relevant features of the pension scheme including the kind of benefits;
- (c) information on whether and how environmental, climate, social and corporate governance factors are considered in the investment approach; and
- (d) where further information is available.

(2) Where members bear investment risk or can take investment decisions, prospective members must be provided with information–

- (a) on the past performance of investments related to the pension scheme–
 - (i) for a minimum of five years; or
 - (ii) where the scheme has been operating for less than five years, for all the years that it has operated; and

- (b) on the structure of costs borne by members and beneficiaries.
- (3) An IORP must ensure that prospective members who are automatically enrolled in a pension scheme are, after their enrolment, promptly informed about–
- (a) any relevant options available to them including investment options;
 - (b) the relevant features of the pension scheme including the kind of benefits;
 - (c) information on whether and how environmental, climate, social and corporate governance factors are considered in the investment approach; and
 - (d) where further information is available.

General information on the pension scheme.

- 37.(1) An IORP must ensure that members and beneficiaries are sufficiently informed about the respective pension scheme operated by the IORP, in particular concerning–
- (a) the name of the IORP, the EEA State in which it is authorised or registered and the name of its competent authority;
 - (b) the rights and obligations of the parties involved in the pension scheme;
 - (c) information on the investment profile;
 - (d) the nature of financial risks borne by the members and beneficiaries;
 - (e) the conditions regarding full or partial guarantees under the pension scheme or of a given level of benefits or, where no guarantee is provided under the pension scheme, a statement to that effect;

- (f) the mechanisms protecting accrued entitlements or the benefit reduction mechanisms, if any;
 - (g) where members bear investment risk or can take investment decisions, information on the past performance of investments related to the pension scheme—
 - (i) for a minimum of five years; or
 - (ii) where the scheme has been operating for less than five years, for all the years that it has operated;
 - (h) the structure of costs borne by members and beneficiaries, for schemes which do not provide for a given level of benefits;
 - (i) the options available to members and beneficiaries in receiving their retirement benefits; and
 - (j) in case a member has the right to transfer pension rights, further information about the arrangements relating to such a transfer.
- (2) For schemes in which members bear an investment risk and which provide for more than one option with different investment profiles, the members must be informed of the conditions regarding the range of investment options available, and, where applicable, the default investment option and the pension scheme's rule to allocate a particular member to an investment option.
- (3) Members and beneficiaries or their representatives must receive within a reasonable time any relevant information regarding changes to the pension scheme rules and, in addition, an IORP must make available to them an explanation of the impact on members and beneficiaries of significant changes to technical provisions.
- (4) An IORP must make available the general information on the pension scheme set out in this section.

General provisions.

- 38.(1) An IORP must draw up a concise document containing key information for each member, taking account of the specific nature of national pension systems and of relevant national social, labour and tax law (a “pension benefit statement”) and the title of the document must contain the words “Pension Benefit Statement”.
- (2) A pension benefit statement must state prominently the date to which the information in the statement refers.
- (3) The information contained in a pension benefit statement must be accurate, updated and made available to each member free of charge at least once each year—
- (a) by electronic means, including on a durable medium or by means of a website; or
 - (b) on paper;
- and a paper copy must be provided to a member on request in addition to any information provide to that member by electronic means.
- (4) A pension benefit statement must clearly indicate any material change to the information contained in the statement as compared to the statement for the previous year.
- (5) The Minister may make rules for determining the assumptions of the projections referred to in section 39(1)(d) and any rules made under this subsection must be applied by IORPs to determine, where relevant—
- (a) the annual rate of nominal investment returns;
 - (b) the annual rate of inflation; and
 - (c) the trend of future wages.

Pension benefit statements and supplementary information

Pension benefit statements.

39.(1) A pension benefit statement must include the following key information for members—

- (a) personal details of the member, including a clear indication of the statutory retirement age, the retirement age set out in the pension scheme or estimated by the IORP, or the retirement age set by the member, as applicable;
- (b) the name of the IORP, its contact address and identification of the pension scheme of the member;
- (c) where applicable, information on full or partial guarantees under the pension scheme and, if relevant, where further information can be found;
- (d) information on pension benefit projections based on the retirement age as specified in paragraph (a), a disclaimer that those projections may differ from the final value of the benefits received and, if the pension benefit projections are based on economic scenarios, a best estimate scenario and an unfavourable scenario, taking into consideration the specific nature of the pension scheme;
- (e) information on the accrued entitlements or accumulated capital, taking into consideration the specific nature of the pension scheme;
- (f) information on the contributions paid by the sponsoring undertaking and the member into the pension scheme, at least over the last 12 months, taking into consideration the specific nature of the pension scheme;
- (g) a breakdown of the costs deducted by the IORP at least over the last 12 months; and
- (h) information on the funding level of the pension scheme as a whole.

- (2) In accordance with section 67, the FSC must exchange best practice with the competent authorities in other EEA States in respect of the format and content of pension benefit statements.

Supplementary information.

- 40.(1) A Pension Benefit Statement must specify where and how to obtain supplementary information including—
- (a) further practical information about the member's options provided under the pension scheme;
 - (b) the information specified in sections 30 and 31;
 - (c) where applicable, information about the assumptions used for amounts expressed in annuities, in particular with respect to the annuity rate, the type of provider and the duration of the annuity; and
 - (d) information on the level of benefits, in case of cessation of employment.
- (2) For pension schemes where members bear investment risk and where an investment option is imposed on the member by a specific rule specified in the pension scheme, the pension benefit statement must indicate where additional information is available.

Other information and documents to be provided

Information to be given to members during the pre-retirement phase.

41. An IORP must each member (in addition to a pension benefit statement) in due time before the retirement age specified under section 39(1)(a), or at the member's request, with information about the benefit pay-out options available in taking their retirement benefits.

Information to be given to beneficiaries during the pay-out phase.

- 42.(1) An IORP must provide beneficiaries with information periodically about the benefits due and the corresponding pay-out options.
- (2) An IORP must inform beneficiaries without delay after a final decision has been taken resulting in any reduction in the level of benefits due, and three months before that decision is implemented.
- (3) When a significant level of investment risk is borne by beneficiaries in the pay-out phase, an IOROP must ensure that beneficiaries receive appropriate information regularly.

Additional information to be given on request to members and beneficiaries.

43. An IORP must provide the following additional information to a member, a beneficiary or their representative upon request—
- (a) the annual accounts and the annual reports referred to in section 30, or where the IORP is responsible for more than one scheme, the accounts and reports relating to the pension scheme concerned;
- (b) the statement of investment policy principles, referred to in section 31; and
- (c) any further information about the assumptions used to generate the projections referred to section 39(1)(d).

**PART 5
PRUDENTIAL SUPERVISION**

General rules on prudential supervision

Main objective of prudential supervision.

44. The main objective of prudential supervision is to protect the rights of members and beneficiaries and to ensure the stability and soundness of the IORPs.

General principles and scope of prudential supervision.

- 45.(1) The FSC is responsible for the prudential supervision of IORPs including, where applicable, the supervision of the following—

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

- (2) The FSC must exercise its supervisory powers in a manner which is timely and proportionate to the size, nature, scale and complexity of the activities of an IORP.

- (3) Supervision must be—

- (a) based on a forward-looking and risk-based approach; and

- (b) comprise an appropriate combination of off-site activities and on-site inspections;
- (4) The FSC, in exercising its supervisory powers, must duly consider the potential impact of its actions on the stability of the financial systems in the EEA, in particular, in emergency situations.

FSC's intervention powers.

- 46.(1) The FSC must require an IORP to have sound administrative and accounting procedures and adequate internal control mechanisms and an IORP must comply with that requirement.
- (2) The FSC may impose conditions upon, suspend or revoke an IORP's authorisation if the IORP–
 - (a) fails to protect adequately the interests of scheme members and beneficiaries;
 - (b) fails to comply with this Act;
 - (c) fails to comply with any conditions of its authorisation;
 - (d) no longer fulfils the conditions of operation; or
 - (e) in undertaking cross-border activity, does not comply with the social and labour laws relating to occupational pension provision of the host State.
 - (3) The steps which the FSC may take under subsection (2) include restricting or prohibiting the free disposal of an IORP's assets, in particular, when the IORP–
 - (a) has failed to establish sufficient technical provisions in respect of the entire business or has insufficient assets to cover the technical provisions; or
 - (b) has failed to hold the regulatory own funds.
 - (4) The FSC may transfer the powers which persons running an IORP hold to another person who is fit to exercise those

powers (a “special representative”), where the FSC considers that doing so is necessary in order to safeguard the interests of members and beneficiaries.

- (5) In the case of small institutions to which section 5(2) applies, the FSC may suspend or revoke a small institution’s registration if it–
 - (a) fails to protect adequately the interests of scheme members and beneficiaries; or
 - (b) fails to comply with this Act.
- (6) The FSC must provide the IORP or other person concerned with detailed reasons for any steps which it proposes or decides to take under this section, in accordance with sections 53 and 54.
- (7) The FSC must notify EIOPA of any action taken under this section.

Sanctions for contraventions.

- 47.(1) The FSC may take any of the following actions if it is satisfied that a contravention of this Act is being or has been committed–
 - (a) to publish a statement under section 48
 - (b) to issue a cease and desist order under section 49;
 - (c) to impose a prohibition order under section 50; or
 - (d) to impose a civil penalty under section 51
- (2) The FSC’s powers under this section apply in addition to its intervention powers under section 46.

Public statement.

- 48.(1) The FSC may publish a statement specifying–
 - (a) the nature of the contravention; and

(b) the identity of the person who has committed it.

(2) Publication under this section may take any form, or combination of forms, that the FSC thinks appropriate.

Cease and desist order.

49. The FSC may order a person—

(a) to cease any conduct which constitutes a contravention; and

(b) to desist from any repetition of that conduct.

Prohibition order.

50. The FSC may by order (“a prohibition order”) prohibit a specified individual from exercising specified functions in respect of IORPs.

(2) A prohibition order—

(a) must specify a period during which it has effect; and

(b) may specify an indefinite period in respect of repeated contraventions.

Civil penalties.

51.(1) The FSC may by order impose a penalty for a contravention of an amount not exceeding £10,000.

(2) A penalty imposed under this section may be enforced as if it was a civil debt owed to the FSC.

Effective application of sanctions and other measures.

52. When determining the type of administrative sanctions or other measures and the level of any civil penalty, the FSC must take account of all relevant circumstances, including where appropriate—

- (a) the gravity and the duration of the contravention;
- (b) the degree of responsibility of the person responsible;
- (c) the financial strength of the person responsible, for example, as indicated by a legal person's total turnover or an individual's annual income;
- (d) in so far as they can be determined, the importance of profits gained or losses avoided by the person responsible;
- (e) in so far as they can be determined, the losses for customers and third parties caused by the contravention;
- (f) the level of cooperation of the responsible person with the FSC;
- (g) previous contraventions by the responsible person; and
- (h) measures taken by the person responsible to prevent repetition of the contravention.

Warning notices.

- 53.(1) Before taking action under sections 46 to 51, the FSC must give the person concerned a warning notice, stating the action proposed and the reasons for it.
- (2) Subsection (1) does not apply if the FSC is satisfied that a warning notice–
- (a) cannot be given because of urgency;
 - (b) should not be given because of the risk that steps would be taken to undermine the effectiveness of the action to be taken; or
 - (c) is superfluous having regard to the need to give notice of legal proceedings or for some other reason.

- (3) A warning notice–
 - (a) must give the recipient not less than 14 days to make representations; and
 - (b) must specify a period within which the recipient may decide whether to make oral representations.
- (4) The period for making representations may be extended by the FSC.

Decision notices.

- 54.(1) This section applies where the FSC has–
 - (a) issued a warning notice; or
 - (b) dispensed with the requirement to do so under section 53(2).
- (2) After considering any representations made in accordance with section 53, the FSC must issue–
 - (a) a decision notice stating that the FSC will take the action specified in the warning notice;
 - (b) a discontinuance notice stating that the FSC does not propose to take that action; or
 - (c) a combined notice consisting of a decision notice stating that the FSC will take certain action specified in the warning notice and a discontinuance notice in respect of the remaining action.
- (3) A decision notice takes effect, and the specified action may be taken–
 - (a) at the end of the period for bringing an appeal if no appeal is brought; or
 - (b) when any appeal is finally determined or withdrawn.

- (4) The person on whom a decision notice is served may appeal to the Supreme Court in accordance with section 70.

Interim orders.

55. The FSC may apply to the Supreme Court for permission to take action under this Act where a decision notice has been given and has not yet taken effect (whether or not a warning notice has been given).

Publication of sanctions and other measures.

- 56.(1) The FSC must promptly publish on its website details of any administrative sanction or other measure that has been imposed for a contravention of this Act.

- (2) The information published under subsection (1) must include—

- (a) the type and nature of the contravention; and
- (b) the identity of the person responsible for it.

- (3) The FSC must take one of the steps in subsection (4) where—

- (a) following an obligatory prior assessment, it considers that it would be disproportionate to publish in accordance with subsection (1)—
 - (i) the identity of the legal person involved; or
 - (ii) the personal data of the individual involved; or
- (b) it considers that publication in accordance with that subsection would jeopardise the stability of financial markets or an ongoing investigation.

- (4) Those steps are—

- (a) to defer publication until the reasons for non-publication cease to exist;

- (b) to publish the decision on an anonymous basis if doing so ensures effective protection of the personal data concerned; or
 - (c) not to publish the decision if the steps in paragraphs (a) and (b) are considered to be insufficient to ensure—
 - (i) that the stability of the financial markets would not be put in jeopardy; or
 - (ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.
- (5) In the case of a decision to publish on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication will cease to exist.
- (6) Subsection (1) does not apply while an appeal could be brought or is pending.
- (7) Despite subsection (6), the FSC may apply to the Supreme Court for permission to publish a decision which is or may be subject to an appeal and, if permission is granted, the FSC must without undue delay—
- (a) publish the decision together with a statement which—
 - (i) states that the decision may be the subject of an appeal and the time in which any appeal must be made; and
 - (ii) confirms whether it is the subject of an appeal; and
 - (b) amend the information published under paragraph (a)—
 - (i) if an appeal is submitted after its initial publication; or

- (ii) to reflect the outcome of any appeal.

Supervisory review process.

- 57.(1) The FSC must review the strategies, processes and reporting procedures which are established by IORPs to comply with any provision made by or under this Act.
- (2) A review under this section must take account of—
 - (a) the size, nature, scale and complexity of the IORP's activities;
 - (b) the circumstances in which the IORP is operating; and
 - (c) where relevant, the parties carrying out outsourced key functions or any other activities for the IORP.
 - (3) A review must comprise the following elements—
 - (a) an assessment of the qualitative requirements relating to the system of governance;
 - (b) an assessment of the risks the IORP faces; and
 - (c) an assessment of the IORP's ability to assess and manage those risks.
 - (4) The FSC must develop and apply monitoring tools, including stress tests, that enable it to—
 - (a) identify deteriorating financial conditions in an IORP; and
 - (b) monitor how any deteriorating financial conditions are remedied.
 - (5) The FSC may direct an IORP to remedy any weaknesses or deficiencies identified by the supervisory review process.

- (6) The FSC must establish the scope and minimum frequency of a review, having regard to the size, nature, scale and complexity of the activities of the IORP concerned.

Information to be provided to the FSC.

58.(1) The FSC may at any time require—

- (a) an IORP;
- (b) its administrative, management or supervisory body;
or
- (c) any person who—
 - (i) effectively runs the IORP; or
 - (ii) carries out any of its key functions,

to provide the FSC with any information that the FSC may reasonable require.

(2) The information which the FSC may require under subsection (1) includes—

- (a) information about any business matter, including any business document;
- (b) information to enable the FSC to supervise the relationship between the IORP and any company or other IORP to which it has outsourced or re-outsourced)—
 - (i) any key function; or
 - (ii) any other activity which may influence the IORP's financial situation or be of material relevance to its effective supervision;
- (c) any of the following documents—
 - (i) the own-risk assessment;

- (ii) the statement of investment-policy principles;
 - (iii) the annual accounts and the annual reports, and
 - (iv) all other documents necessary for the purposes of supervision.
- (3) The FSC may specify the documents which are necessary for the purposes of supervision, including–
- (a) internal interim reports;
 - (b) actuarial valuations and detailed assumptions;
 - (c) asset-liability studies;
 - (d) evidence of consistency with the investment-policy principles;
 - (e) evidence that contributions have been paid in as planned; and
 - (f) reports by the persons responsible for auditing the annual accounts referred to in section 30(3).
- (4) A person authorised by the FSC may at any reasonable time enter premises (other than a dwelling) of an IORP or where outsourced activities are conducted on the IORP's behalf, for the purpose of verifying that activities are being conducted in accordance with this Act.

Transparency and accountability.

- 59.(1) The FSC must discharge its functions under this Act and the IORP 2 Directive in a transparent, independent and accountable manner with due respect for the protection of confidential information.
- (2) The FSC must take appropriate steps to ensure that the following information is publicly disclosed–
- (a) the texts of laws, regulations, administrative rules and general guidance in the field of occupational pension

schemes, and information about how Articles 4 and 5 of the IORP 2 Directive have been applied in Gibraltar;

- (b) information regarding the supervisory review process as set out in section 57;
- (c) aggregate statistical data on key aspects of the application of the prudential framework;
- (d) the main objective of prudential supervision and information on the FSC's main functions and activities; and
- (e) the administrative sanctions and other measures applicable to breaches of this Act.

Professional secrecy and exchange of information

Professional secrecy.

- 60.(1) Any person who works or has worked for the FSC, as well as any auditor or expert acting on its behalf, is bound by the obligation of professional secrecy.
- (2) A person to whom subsection (1) applies must not divulge confidential information received by them in the course of their duties to any person or authority, except in summary or aggregate form which ensures that individual IORPs cannot be identified.
 - (3) Nothing in this section prohibits the disclosure of information for the purpose of—
 - (a) any criminal investigation or prosecution; or
 - (b) any civil or commercial proceedings in respect of the winding up of a pension scheme.

Use of confidential information.

61. Where the FSC receives confidential information under this Act, it must only use it in the course of its functions and for the following purposes–
- (a) to check that the conditions for taking up occupational retirement provision business are met by IORPs before commencing their activities;
 - (b) to facilitate the monitoring of the activities of IORPs, including the monitoring of the technical provisions, the solvency, the system of governance, and the information provided to members and beneficiaries;
 - (c) to impose corrective measures or administrative sanctions;
 - (d) to publish key performance indicators for all individual IORPs, which may assist members and beneficiaries in taking financial decisions regarding their pension; or
 - (e) in court proceedings regarding the provisions of this Act, including appeals against its decisions under this Act.

European Parliament right of inquiry.

62. Nothing in section 60 or 61 limits the European Parliament's right of inquiry under Article 226 of the Treaty on the Functioning of the European Union.

Exchange of information between authorities.

- 63.(1) Nothing in section 60 or 61 precludes any of the following–
- (a) the exchange of information between the FSC and other competent authorities (whether in Gibraltar or another EEA State) in the discharge of their supervisory functions;

- (b) the exchange of information, in the discharge of their supervisory functions, between the FSC and any of the following authorities or bodies in Gibraltar–
 - (i) authorities responsible for the supervision of financial sector entities and other financial organisations and the authorities responsible for the supervision of financial markets;
 - (ii) authorities or bodies charged with responsibility for maintaining the stability of the financial system through the use of macro-prudential rules;
 - (iii) bodies involved in the winding up of a pension scheme and in other similar procedures;
 - (iv) reorganisation bodies or authorities aiming at protecting the stability of the financial system; or
 - (v) persons responsible for carrying out statutory audits of the accounts of IORPs, insurance undertakings and other financial institutions; or
 - (c) bodies which administer the winding up of a pension scheme, of information necessary for the performance of their duties.
- (2) Any information received by the authorities, bodies and persons in subsection (1) is subject to the professional secrecy obligation in section 60.
- (3) Nothing in section 60 or 61 precludes the exchange of information between the FSC and any of the following–
- (a) the authorities responsible for overseeing the bodies involved in the winding up of pension schemes and other similar procedures;
 - (b) the authorities responsible for overseeing the persons charged with carrying out statutory audits of the

accounts of IORPs, insurance undertakings and other financial institutions; or

- (c) independent actuaries of IORPs carrying out supervision of those IORPs and the bodies responsible for overseeing such actuaries.

Transmission of information to central banks, monetary authorities and others.

64. Nothing in section 60 or 61 prevents the FSC from transmitting information to the following entities for the purposes of the exercise of their respective tasks–

- (a) central banks and other bodies with a similar function in their capacity as monetary authorities;
- (b) other public authorities responsible for overseeing payment systems, where appropriate; or
- (c) the European Systemic Risk Board, EIOPA, the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council and the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council.

Conditions for the exchange of information.

65.(1) The following conditions apply to any exchange of information under section 63 or 64–

- (a) the information must be exchanged, transmitted or disclosed for the purpose of carrying out oversight or supervision;
- (b) the information received must be subject to the obligation of professional secrecy set out in section 60; and

- (c) where the information originates from another EEA State, it must not be disclosed without the express agreement of the competent authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.
- (2) Section 61 does not prevent the exchange of information between the FSC and any authority or body responsible for the detection and investigation of breaches of company law as it applies to sponsoring undertakings if the following conditions are met–
- (a) the information must be intended for the purpose of detecting, investigating and scrutinising breaches of that law;
 - (b) the information received must be subject to the obligation of professional secrecy set out in section 60; and
 - (c) where the information originates from another EEA State, it must not be disclosed without the express agreement of the competent authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.
- (3) Where an authority or body to which subsection (2) applies appoints any person who is not an employee to assist in detecting or investigating breaches of company law, information may only be shared with that person to the extent strictly necessary for that purpose and only if that person is subject to professional secrecy requirements at least equivalent to those set out in this Act.

National provisions of a prudential nature.

- 66.(1) The FSC must inform EIOPA of any Gibraltar law provisions of a prudential nature which are relevant to the field of occupational pension schemes, to the extent that they are not covered by national social and labour law on the organisation of pension systems referred to in section 12.

- (2) The FSC must update that information on a regular basis and at least once every two years.

**PART 6
FINAL PROVISIONS**

Cooperation between EEA States, the European Commission and EIOPA.

- 67.(1) The FSC must regularly exchange information and experience with the competent authorities in other EEA States, with a view to achieving the uniform application of the IORP 2 Directive, developing best practices in this sphere, closer cooperation and creating the conditions required for unproblematic cross-border membership.
- (2) The FSC must collaborate closely with the competent authorities of other EEA States and the European Commission with a view to facilitating the supervision of the operations of IORPs.
- (3) The FSC must cooperate with EIOPA for the purposes of the IORP 2 Directive, in accordance with Regulation (EU) No 1094/2010 and without delay provide EIOPA with any information necessary to carry out its duties under that Directive and that Regulation, in accordance with Article 35 of that Regulation.
- (4) The FSC must inform the European Commission and EIOPA of any major difficulties which arise from the application of the IORP 2 Directive and assist them in examining those difficulties as quickly as possible in order to find an appropriate solution.

Processing of personal data.

68. The FSC and IORPs must process personal data for the purposes of this Act in accordance with the Data Protection Act 2004 and the GDPR (as defined in that Act).

Fees.

- 69.(1) The Minister may prescribe the fees to be paid to the FSC in respect of applications for, and the renewal of, authorisation or registration, consent to cross-border activity and other consents or approvals under this Act.
- (2) The FSC may suspend or cancel an authorisation if the prescribed fee is not paid.

Appeals.

- 70.(1) A person aggrieved may appeal to the Supreme Court against—
- (a) a decision of the FSC under this Act to—
 - (i) refuse, vary or revoke an authorisation;
 - (ii) impose any condition on an authorisation;
 - (ii) refuse or revoke registration;
 - (iv) refuse any approval or consent; or
 - (v) issue any direction, determination, prohibition or restriction; or
 - (b) a decision notice issued by the FSC in accordance with section 54.
- (2) An appeal must be brought—
- (a) in a case to which subsection (1)(a) applies, within 28 days of the appellant being notified of the decision; or
 - (b) in a case to which subsection (1)(b) applies, within 28 days of the date of the decision notice.
- (3) The court may—
- (a) confirm or quash the FSC's decision; or

- (b) remit the matter to the FSC for further consideration, in accordance with any directions of the court.
- (4) The court may make any order as to the costs of an appeal as it considers proper.
- (5) An appeal does not operate as a stay of the decision appealed against, but the court may, in its discretion, order a stay.

Regulations.

71. The Minister may by Regulations prescribe anything required or permitted to be prescribed by this Act.

Transitional arrangements.

72.(1) A licence granted under the old section 5 to an institution or the trustees of a trust managing a pension scheme which has effect immediately before section 9 comes into operation is to continue to have effect after that date as if it was an authorisation granted to an IORP under that section.

- (2) An institution operating a pension scheme in Gibraltar with fewer than 100 members in total which—
 - (a) has given notice under the old section 3A opting to be subject to the provisions of this Act; and
 - (b) immediately before section 5 comes into operation has not made an application under the old section 3B to opt out of being subject to its provisions,

is to be treated as if, on the day when section 5 comes into operation, it had given notice under that section opting to be subject to the provisions of this Act.

- (3) A person who, immediately before section 9 comes into operation—
 - (a) is a manager or trustee of an institution to which subsection (1) or (2) applies; and

- (b) under the old section 5(2)(a) has been determined to be a fit and proper person to hold that position,

is, on the day when section 9 comes into operation, to be treated as being fit and proper to continue to occupy that position as if that person's fitness and propriety had been determined in accordance with section 9(3)(a).

- (4) A small institution which is operating a pension scheme immediately before section 5(3) comes into operation, but which from that date must be registered under section 10 is to be treated as so registered—

- (a) for a period of six months beginning with the day on which section 5(3) comes into operation; or
- (b) if an application for the small institution's registration is made during that period, until that application has been determined by the FSC.

- (5) In this section a reference to an "old section" is a reference to the relevant section in this Act before it was amended by the Financial Services (Occupational Pensions Institutions) Act 2006 (Amendment) Regulations 2018."

- (5) Omit the Schedule.

Amendment of the Financial Services (Insurance Companies) (Solvency II Directive) Act 2015.

3.(1) The Financial Services (Insurance Companies) (Solvency II Directive) Act 2015 is amended as follows.

- (2) In section 2, for the definition of "reinsurance" substitute—

““reinsurance” means one of the following—

- (a) the activity consisting in accepting risks ceded by an insurance undertaking or third-country insurance undertaking, or by another reinsurance undertaking or third-country reinsurance undertaking;

- (b) in the case of Lloyd's, the activity consisting in accepting risks, ceded by any member of Lloyd's, by an insurance or reinsurance undertaking other than the association of underwriters known as Lloyd's; or
- (c) the provision of cover by a reinsurance undertaking to an institution that falls within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council;”.

Consequential amendments in respect of fees.

4.(1) The Financial Services Commission (Fees) Regulations 2016 are amended as follows.

(2) In the preamble, for “s. 18 of the Financial Services (Occupational Pensions Institutions) Act 2006” substitute “s.69 of the Financial Services (Occupational Pensions Institutions) Act 2006”.

(3) In regulation 2, after the definition of “Gross technical liabilities” insert ““IORP” means an institution for occupational retirement provision within the meaning of section 3 of the Financial Services (Occupational Pensions Institutions) Act 2006;”.

(4) In Schedule 1, after the entries for Fee Block E2 insert–

“Fee Block	Authorised Person	Base Fee	Method of Calculating Annual Fees
F1	IORP	£2,718	Base Fee + Additional Fee <u>Base Fee</u> A flat fee of £2,718. <u>Additional Fee</u> £105 for each jurisdiction in which cross-border activity is undertaken, up to a maximum fee of £525.
	IORP which is a	£500	Base Fee

	small institution		Base Fee £500.”.
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(5) In Schedule 2, after the entries for Fee Block E2 insert–

“Fee Block	Authorised Person	Nature of application	Application Fee
F1	IORP	Application for authorisation	£3500
		Application for registration of cross-border activity in a new jurisdiction	£100 for each jurisdiction.
	IORP which is a small institution	Application for registration	£500.”.

Revocation.

5. The Financial Services (Occupational Pensions Institutions Fees) Notice 2017 is revoked.

Dated 13th December, 2018.

A J ISOLA,
Minister with responsibility for financial services,
and for the Government.

EXPLANATORY MEMORANDUM

These Regulations amend the Financial Services (Occupational Pensions Institutions) Act 2006, in order to give effect in Gibraltar to Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs). The Regulations also make consequential amendments to the Financial Services (Insurance Companies) (Solvency II Directive) Act 2015 and the Financial Services Commission (Fees) Regulations 2016.

