The Pension Schemes Act 2021: new duties for trustees and managers of pension fund trusts

Introduction

This article evaluates the new ESG (environment, social, and governance) duties that are created for trustees by the Pension Schemes Act 2021 (hereafter, the "PSA")[1] and the Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021, SI 2021/839 (the "Regulations") on the trustees and managers of UK pension schemes.[2] Broadly speaking, the 2021 Act aims to aid the pension sector by increasing scheme funding,[3] providing greater powers to The Pensions Regulator ("TPR"),[4] and by creating a "pensions dashboard".[5] It is therefore clear that the overarching purpose of these changes is to create greater transparency and oversight within this important sector.

Nevertheless, of particular interest to this article is the section of the PSA 2021 which deals with "climate change risk".[6] It must be noted that the climate change risk governance requirements are stated in detail in the Act's supporting regulations (as above).[7] The 2021 Act amends the previous Pensions Act 1995[8] to 'impose requirements on the trustees and managers of an occupational pension scheme with a view to securing that there is effective governance of the scheme with respect to the effects of climate change.'[9] Before moving on to deeper analysis, it is necessary to state here that the PSA 2021 applies to existing

[1] Pension Schemes Act 2021 ("PSA")
[2] Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021, SI 2021/839
[3] PSA 2021, s 123
[4] ibid, pt 3
[5] ibid, pt 4
[6] ibid, s 124
[7] Regulations 2021, SI 2021/839
[8] Pensions Act 1995
[9] PSA 2021, s 124(1)

workplace pensions, i.e. defined benefit ("DB")[10] and to defined contribution ("DC")[11] schemes.[12] However, under Parts 1 and 2 of the PSA 2021, "collective money purchase schemes" ("CMPS")[13] and "master trusts" [14] are also included in the regulatory framework's ambit.

This article highlights the new statutory duties that are imposed, to better understand how this will impact trustees and managers of pension schemes. The specific application of the new climate duties to schemes is outlined in a later section. However, succinctly, the above-named pieces of legislation, together with statutory guidance,[15] create a regulatory regime for climate change and pension trustees, creating specific governance requirements for measuring, reporting, and managing "climate change risk".[16] The regime's enforcement is highly important for meeting 'the government's decarbonisation agenda.'[17] The government's rationale for developing climate duties for trustees is well summed up by Baroness Stedman-Scott's, the Minister for Work and Pensions (Lords), letter to the House of Lords on the Pension Schemes Bill 2020, *viz*:

> These amendments take powers to mandate effective oversight and disclosures by occupational pension schemes in relation to climate risk – with an immediate focus on

[10] 'Types of private pensions' (*gov.uk*, no date) <https://www.gov.uk/pension-types> accessed 24 August 2021: "defined benefit schemes" are 'usually a workplace pension based on your salary and how long you've worked for your employer.'
[11] ibid: "defined contribution schemes" are 'a pension pot based on how much is paid in.'
[12] Pensions Act 1995
[13] PSA 2021, pts 1 and 2; see also, Djuna Thurley and Rod McInnes, *Pension Schemes Bill 2019-21* (HC CBP-8693) 20 January 2021 <https://researchbriefings.files.parliament.uk/documents/CBP-8693/CBP-8693.pdf> accessed 24 August 2021 16-29
[14] Regulations 2021, reg 2; Pension Schemes Act 2017, s 1
[15] Department for Work & Pensions, 'Governance and reporting of climate change risk: guidance for trustees of occupational schemes' (June 2021, DWP) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1006024/statutory-guidance-final-revised.pdf> accessed 24 August 2021. Hereafter, for footnote purposes, "SG 2021".
[16] ibid, para 8
[17] 'Climate risk governance and reporting duties: new obligations for occupational pension schemes' (*Osborne Clarke*, 23 Feb 2021) <https://www.osborneclarke.com/insights/climate-risk-governance-reporting-duties-new-obligations-occupational-pension-schemes/> accessed 24 August 2021

> disclosures in line with the recommendations of the Taskforce on Climate-related Financial Disclosures (TCFD). This allows Government to build on the expectation set out in last year's Green Finance Strategy, that large asset owners would carry out TCFD-aligned disclosures by 2022, by moving mandating such disclosures at the appropriate time.[18]

Hence, the need to instigate a new regulatory framework was greatly driven by the recommendations of the TCFD.[19] A central goal for the TCFD report was to 'provide a foundation to improve investors' and others' ability to appropriately assess and price climate-related risk and opportunities.'[20] While the above statement shows that pension trustees are now under greater regulatory interference than ever before, this should nevertheless be seen as a necessary legislative development given the burgeoning demands to tackle climate change. In the words of Egede and Lee, the economy and environment are 'inevitably interrelated'.[21] And, with the pension sector being a multi-trillion-pound industry in the UK alone,[22] trustee investment decisions are capable of causing significant harm to the environment, and *vice versa*.[23] The nature of the trustees' fiduciary duty of investment has already been considered in other *Trust and Trustees* publications by this author.[24] While the fiduciary duty is highly interesting, a deep evaluation of the impact of the statutory changes

[18] Letter from Baroness Stedman-Scott to the House of Lords (11 February 2020) <http://data.parliament.uk/DepositedPapers/Files/DEP2020-0090/Pensions_Dear_Colleague.pdf> accessed 24 August 2021
[19] Taskforce on Climate-related Financial Disclosures (TCFD), 'Final Report – Recommendations of the Task Force on Climate-related Financial Disclosures' (June 2017, TCFD) <https://assets.bbhub.io/company/sites/60/2020/10/FINAL-2017-TCFD-Report-11052018.pdf> accessed 24 August 2021
[20] ibid, (v)
[21] Tamara Egede and Robert Lee, 'Bank Lending and the Environment: Not Liability but Responsibility' (2007) Nov JBL 868; BJ Richardson, 'Ethical Finance in Britain: A Neglected Prerequisite for Sustainability' (2003) 5 ELR 109
[22] n 17
[23] n 19
[24] See, for instance, Lloyd Brown, 'Towards "Green" Trusteeship: new statutory amendments for occupational pension trustees' (2019) 10 Trust & Trustees 978

on this equitable concept is unnecessary for this article; but this should not rule out the possibility of future research being undertaken on such a topic, however. Indeed, an evaluation of the cases of *Cowan v Scargill* [1985][25] and the *R (Palestine Solidarity Campaign Ltd & Anor) v Secretary of State for Communities and Local Government* [2020][26] has already demonstrated the important role that the fiduciary duty of investment has in ESG considerations by pension schemes' trustees.[27] This article simply believes that the regulatory regime's new duties strengthen the fiduciary duty's ability to deal with ESG issues, and this is particularly so in respect to climate change risk.

Therefore, in the light of the above, it is hereby argued that the climate duties under the PSA 2021's regulatory regime should be seen as a welcomed piece of regulation in an area that is greatly lacking an appropriate governance framework to manage and mitigate climate change risk. Indeed, greater regulatory intervention of this kind is highly necessary to prevent the future impacts that climate change may bring on pension schemes' portfolios. The emerging threat is evident from the fact that some pension funds are already beginning to divest from certain environmentally suspect investments.[28] Furthermore, this article posits that the new regulatory framework is a way that the pension sector may better align with the important concept of the "greening of finance".[29] Additionally, it is stipulated that while the regulatory changes are important for driving greater climate risk reporting, compliance will also be instigated by the reputational risk that comes from protecting the beneficiaries of

[25] *Cowan v Scargill* [1985] Ch 270
[26] *R (Palestine Solidarity Campaign Ltd & Anor) v Secretary of State for Communities and Local Government* [2020] UKSC 16, [2020] 1 WLR 1774
[27] Lloyd Brown, '*Cowan v Scargill* and the fiduciary duty of investment: has the nature of the investment duty changed and what is currently driving "socially responsible investing" in pension schemes?' (2020) 26 Trusts & Trustees 756
[28] Patrick Collinson and Jillian Ambrose, 'UK's biggest pension fund begins fossil fuels divestment' *The Guardian* (London, 29 July 2020) <https://www.theguardian.com/environment/2020/jul/29/national-employment-savings-trust-uks-biggest-pension-fund-divests-from-fossil-fuels> accessed 24 August 2021
[29] Elizabeth Cooperman, 'The Greening of Finance: A Brief Overview' (2013) 5(1) International Review of Accounting, Banking & Finance 47

pension trust funds in an ever greening marketplace.[30] As pension trustees' knowledge and understanding of climate change grows, the need to appease beneficiaries will become and increasing factor to consider when undertaking the fiduciary duty of investment.[31]

The below section outlines the regulatory regime before going on to discuss the impact that the climate change duties may have upon trustees and the pension sector.

The Regulatory Regime

Climate-related financial risks are said to exist in both "physical" and "transitional" forms for many financial institutions, including, but not limited to, banks, insurers, and trust funds.[32] Therefore, the regulatory regime under the PSA 2021 has been implemented at a time when the management of ESG considerations is becoming increasingly importance for the financial sector, and for the government to comply with its international treaty obligations.[33]

The below section provides an outline of the PSA 2021, from its embryonic existence as a parliamentary bill to its eventual Royal Assent on 11 February 2021. Of particular importance to this article is section 124,[34] being the relevant section on climate change risk. Following this, a detailed examination of the Regulations is provided. The reason why it is necessary to analyse the Regulations as well as the PSA 2021 is because they offer the specific legal detail that is required to understand the regime in practice. In consequence of the PSA's need to deal with many different factors relating to pension schemes the 2021 Act

[30] n 27
[31] ibid
[32] Bank of England, 'The 2021 biennial exploratory scenario on the financial risks from climate change – A discussion paper' (2019, Bank of England) 3 <https://www.bankofengland.co.uk/-/media/boe/files/paper/2019/the-2021-biennial-exploratory-scenario-on-the-financial-risks-from-climate-change.pdf?la=en&hash=73D06B913C73472D0DF21F18DB71C2F454148C80> accessed 24 August 2021
[33] Josephine Cumbo, 'Labour calls for UK pension funds to be carbon neutral by 2050' *The Financial Times* (London, 12 November 2020) <https://www.ft.com/content/3a1e7816-22a7-477c-86ed-853c48c0877a> accessed 24 August 2021; Patricia Bailey, 'Now is the Climate for Change' (2020) 10(356) The National Law Review <https://www.natlawreview.com/article/now-climate-change> accessed 24 August 2021
[34] PSA 2021, s 124 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1006024/statutory-guidance-final-revised.pdf

devolves its powers to the Regulations. Department for Work and Pensions (DWP) statutory guidance titled, *Governance and reporting of climate change risk: guidance for trustees of occupational schemes* (2021)[35] is also utilised in the below analysis.

Contentious beginnings

The 2021 Act was first introduced as the Pension Schemes Bill 2019-21[36] in the House of Lords by its sponsors, Baroness Stedman-Scott and Dr Thérèsa Coffey on 7 January 2020.[37] This bill was 'substantively the same as the Pensions Schemes Bill introduced in the 2019 session',[38] which was dissolved on account of the general election of that same year.[39]

The demand to combat climate change meant that there was, as Baroness Stedman-Scott noted during the Bill's second reading at the House of Lords, 'a genuine desire across the House to tackle the matters addressed by the Bill.'[40] However, as with most climate-related issues, the Bill's passage through parliament was a rather contentious affair. The source of this contention stemmed from the fact that, on 16 November 2020, the present government refused to pass an important amendment tabled by Labour that would have sought to bring the bill's objectives more in line with the Paris Agreement.[41] In particular, Labour's amendment recommended that pension schemes should 'align with the Paris agreement on climate change by 2050 "or sooner".'[42] Together with meeting the TCFD

[35] n 15
[36] Pension Schemes HL Bill (2019-21)
[37] Djuna Thurley and Rod McInnes, *Pension Schemes Bill 2019-21* (HC CBP-8693) 20 January 2021 <https://researchbriefings.files.parliament.uk/documents/CBP-8693/CBP-8693.pdf> accessed 24 August 2021 16-29
[38] Emily Haves, 'Pension Schemes Bill [HL] Bill 4 of 2019-20' (UK Parliament, 20 January 2020) <https://lordslibrary.parliament.uk/research-briefings/lln-2020-0018/> accessed 24 August 2021
[39] ibid
[40] HL Deb 28 January 2020, vol 801, col 1352
[41] Elliot Chappell, 'Government votes down Labour pension schemes bill climate change amendment' (*Labour List*, 16 November 2020) <https://labourlist.org/2020/11/government-votes-down-labour-pension-schemes-bill-climate-change-amendment/> accessed 24 August 2021
[42] ibid

recommendations, this amendment would have brought the PSA 2021 more in line with the Paris Agreement, which was ratified by the UK government in 2016.[43]

While Labour's proposal would have certainly provided even greater significance to the PSA 2021,[44] the climate change risk section of the Act can still be seen as an essential legislative development, given that it attempts to bring pension trust funds under greater regulatory scrutiny and improve the sector's appetite for ESG appreciation.

Section 124: A 'tiered' legislative structure

The PSA 2021 is based upon a tiered structure of legislative technique.[45] Being an Act of Parliament, the 2021 Act is the most significant piece of law within the regime's structure. Section 124 of the Act inserts section 41A into the Pensions Act 1995.[46] The PSA requires that 'effective governance'[47] of the pension sector be secured by imposing further requirements '…upon trustees or managers of an occupational pension scheme of a prescribed description' by way of the enactment of specific regulations.[48] Therefore, the purpose of section 124 is largely 'to allow regulations to be made which address the issue of climate change risk within occupational schemes.'[49] While the Act is of significant importance to the effective enforcement and governance of this area, it is nonetheless

[43] Roger Harrabin, 'UK signs up for Paris climate agreement' BBC (London, 17 November 2016) <https://www.bbc.co.uk/news/science-environment-38014611> accessed 24 August 2021
[44] n 41
[45] This type of structure is typically seen in the regulation of environmental issues. For instance, a classical illustration of another 'tiered structure of regulation' can be seen in the contaminated land regime under Part IIA of the Environmental Protection Act 1990. As here, the enforcing statute, Part IIA, is further fleshed out by a statutory instrument (regulations) and statutory guidance.
[46] Pensions Act 1995
[47] PSA 2021, s.124(1)
[48] ibid
[49] Julian Richards, 'Government publishes regulations and guidance on climate risk governance for pension scheme trustees' (*Shoosmiths*, no date) <https://www.shoosmiths.co.uk/insights/articles/government-publishes-regulations-and-guidance-on-climate-risk-governance-for-pension-scheme-trustees> assessed 24 August 2021

necessary to turn to the above-stated Regulations to gauge the specific ‘further requirements’ that will be imposed upon trustees and managers of occupational pension funds.[50]

The Regulations

The above Regulations come into force on 1 October 2021[51] and extend to England and Wales and Scotland.[52] Together with the necessary regulatory provisions, Part 1 of the Schedule to the Regulations further explains the climate change “governance requirements”.[53] These requirements are separated out into the following: governance, strategy, risk management, and metrics and targets.[54] The 2021 Regulations amend the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013.[55]

In line with other recent legislation in this area,[56] the statutory guidance importantly states that climate-related risks are ‘financially material to the pension scheme’,[57] and suggests that ‘trustees must embed management of these into the scheme’s wider risk-monitoring and management processes.’[58] It has already been argued by this author in another publication that encouraging trustees to view climate change risk as “financially material” is highly important for moving this particular risk from a purely “non-financial” footing.[59] It is therefore encouraging to see this repeated in the regime. The guidance further stipulates that a “proportionate” approach must be taken to achieve the aims of the regulatory regime.[60] Proportionality is assured in the regime through the need for trustees to integrate

[50] Regulations 2021
[51] ibid, reg 1(1)
[52] ibid, reg 1(2)
[53] ibid, sch 1 pt 1, 1
[54] ibid
[55] SG, para 2; see also, the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013, SI 2013/2734
[56] Pension Protection Fund (Pensionable Service) and the Occupational Pension Schemes (Investment and Disclosure) (Amendment and Modification) Regulations 2018, SI 2018/988
[57] SG, para 30
[58] SG, para 95
[59] n 27
[60] SG, para 95

climate-related risks into their ‘existing risk management processes’;[61] this must be done while looking at the scheme’s investment and funding strategies.[62]

Part 2 of the Regulations concerns the different schemes that must comply with the governance requirements. Regulation 2(1), for example, states that the regulations are effective from 1 October 2021 for trustees of schemes of over £5 billion.[63] Moreover, where a scheme is ‘equal to, or exceeding, £1 billion’ the Regulations are effective from 1 October 2022.[64] Regulation 2(4)(b) states that a scheme that does not meet the above description of a scheme but then in the next year has assets equal to, or exceeding, £1 billion must thereafter comply with the regulations.[65] Additionally, it is noteworthy that the climate duties apply also to master trusts and collective money purchase schemes, which, if in existence, are bound to meet the 1 October 2021 deadline.[66] The new requirements are not applicable to schemes worth less than £1 billion.[67] However, one commentator has suggested that, while not currently being in the scope of the climate rules, in the case of schemes with less than £1 billion assets: ‘the government intends to hold an interim review in the second half of 2023, and consult again in 2024 on extending the duties to them from late 2024 or early 2025. It is also urging these schemes to start to take action now.’[68] The schemes that have to currently comply with the regulatory regime ‘must produce and publish a report (“TCFD report”), containing the information required by Part 2 of the Schedule to the Climate Change Governance and Reporting Regulations’.[69]

[61] ibid
[62] ibid
[63] reg 2(1)(a)
[64] reg 2(2)(a)
[65] SG, para 12
[66] ibid, para 9
[67] ibid, para 12
[68] n 17
[69] SG, para 13

Regulation 3 deals with the climate change and publication requirements of trustees of a trust scheme.[70] The Regulations state that, 'Trustees must establish and maintain oversight of the climate-related risks and opportunities which are relevant to the scheme.'[71] A report must be produced[72] and published on 'a publicly available website, accessible free of charge',[73] within seven months of the scheme year.[74] Furthermore, the trustees must 'establish and maintain processes for the purpose of satisfying themselves that' the governance requirements are complied with.[75] This is so in cases where an adviser to the scheme, who is not a legal adviser, 'takes adequate steps to identify, assess and manage climate-related risks and opportunities'[76] which are relevant to the scheme[77] or other relevant matters.[78]

In respect to "strategy" trustees must 'identify climate-related risks and opportunities which they consider will have an effect over the short term, medium term and long term on the scheme's investment strategy and where the scheme has a funding strategy'.[79] This must be done on an 'ongoing basis'.[80] Paragraph 5 of the relevant schedule states that trustees of schemes have a duty to assess the impact of climate-related risks and opportunities on their investments and funding.[81] 'As far as they are able',[82] trustees are required to take a 'scenario analysis'[83] of the following:

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[70] Regulations 2021, reg 3
[71] ibid, sch 1 pt 1, reg 1
[72] ibid, reg, 3(1)(a)
[73] ibid, reg, 3(1)(b)
[74] ibid, reg, 3(1)
[75] ibid, sch 1 pt 1, para 1
[76] ibid, para 2(a)
[77] ibid
[78] ibid, para 2(b)
[79] ibid, para 3
[80] ibid, para 3
[81] ibid, para 5
[82] ibid, para 6; see also, SG, paras 1-14
[83] Regulations 2021, sch 1 pt 1, para 6

- ‘the potential impact on the scheme’s assets and liabilities of the effects of the global average increase in temperature and of any steps which might be taken (by governments or otherwise) because of the increase in temperature in such scenarios;
- the resilience of the scheme’s investment strategy in such scenarios; and
- where the scheme has a funding strategy, the resilience of the funding strategy in such scenarios’[84]

The scenario analysis of the above factors must have been undertaken in the first year of the scheme,[85] and thereafter every three years.[86]

In the light of the Regulations, trustees will now have to establish risk management strategies to ‘identify and assess climate-related risks which are relevant to the scheme.’[87] This should allow them to effectively manage these risks[88] and any overall risk management scheme should integrate climate-related risks into its overall management.[89] Trustees are also required to select metrics ‘in relation to the scheme’s asset’ and review their selection of these metrics ‘from time to time’.[90] For instance, paragraph 14(a) describes the possibility of having an “absolute emission metric” as ‘one metric which gives the total greenhouse gas emissions of the scheme’s assets’.[91] Other metrics include an “emissions intensity metric”[92] and an “additional climate change metric”.[93] The trustees must use the metrics to measure, as far as they are able, the scheme’s performance.[94]

[84] ibid, para 7
[85] ibid, para 8(a)
[86] ibid, para 8(b)
[87] ibid, para 11
[88] ibid, para 12
[89] ibid, para 13
[90] ibid, paras 14-18
[91] ibid, para 14(a)
[92] ibid, para 14(b)
[93] ibid, para 14(c)
[94] ibid, para 17-18

Compliance under the scheme is governed under Part 3 of the regulations.[95] Any person not complying, or has previously not complied, with the regulations may be issued with a compliance notice by the Authority.[96] The notice directs the person to whom it is issued to 'take, or refrain from taking, the steps specified in the notice.'[97] Additionally the Authority may issue a penalty notice on a person that failed to comply with the compliance notice,[98] or someone that is determined to have contravened the provisions within Part 2, which outlines the climate change governance requirements.[99] For an individual, the fine must not exceed £5,000;[100] for a body corporate, the fine must not exceed £50,000.[101] For failing to publish the report on a publicly available website, the penalty notice must be at least £2,500.[102]

Now that the necessary legislative framework has been explored, this article shall now go on to look at why these new duties imposed on trustees is a good thing for the pension sector generally. It begins by discussing how these changes shall better align with the concept of the "greening" of finance.

Will the new duties shift trustees' perceptions of climate change risk?

It should first be argued that this article believes that the regulatory regime now imposed on pension trustees would have been better at meeting the government's decarbonisation agenda had the proposed Labour amendment of the Pension Schemes Bill been passed and the regulatory framework been made to align with the Paris Agreement by 2050 or sooner.[103] More's the pity. It is also likely that the regime would have been more effective if it had

[95] ibid, pt 3
[96] ibid, sch 1 pt 1, para 4(1)
[97] ibid, para 4(2)
[98] ibid, para 4
[99] ibid, para 6
[100] ibid, para 6(4)(a)(i)
[101] ibid, para 6(4)(a)(ii)
[102] ibid, para 6(4)(b)
[103] n 41

been applied more widely and included schemes of less than £1 billion. However, as already established, these schemes are already being asked to, at the very least, consider climate change risk.[104]

Despite the above, the short answer to the question is, yes. It is argued in this section that the new duties imposed on trustees are a good thing for shifting the sector's perceptions towards climate-related risks. Even though the regulations 'place significant new duties on trustees, and requirements for certain advisers',[105] this article believes that the changes under the Pension Scheme Act 2021 and its Regulations are a necessary development for combating the environmental issue of climate change and meeting future carbon targets.

From a legislative perspective, the enactment of the PSA 2021 and its Regulations corresponds with other legislative developments concerning pension trusts and climate change. For instance, another example of a legislative driver that seeks to change the pension sector's appetite for climate change risk can be seen in the Pension Protection Fund (Pensionable Service) and the Occupational Pension Schemes (Investment and Disclosure) (Amendment and Modification) Regulations 2018.[106] These Regulations require pension schemes to manage climate change as a "financially material" risk, and report on their ESG considerations within their "Statement of Investment Principles" (or "SIP").[107] It is submitted here that the additional governance requirements in the PSA 2021 should strengthen the other regulatory regimes that are already in place.

For the financial sector generally, the PSA 2021 offers a great means to bring the UK's economy and its institutions more closely in line with climate change policy.

[104] ibid
[105] Julian Richards, 'Government publishes regulations and guidance on climate risk governance for pension scheme trustees' (*Shoosmiths*, no date) https://www.shoosmiths.co.uk/insights/articles/government-publishes-regulations-and-guidance-on-climate-risk-governance-for-pension-scheme-trustees (assessed 23 August 2021)
[106] n 56
[107] 'Climate Risk and the Pension Schemes Act' (*Slaughter and May*, 17 Feb 2021) https://my.slaughterandmay.com/insights/briefings/climate-risk-and-the-pension-schemes-act (accessed 12 May 2021)

Subsequent research by this author has shown that other financial institutions have begun to consider climate-related risks in their day-to-day business practices (for instance, during the processing loan finance applications).[108] The UK pensions sector alone has 'almost £2 trillion of assets under management';[109] *ergo* it is clear that the pension funds and their trustees can play a very significant role in escalating environmental problems by exercising their fiduciary duty of investment. Given the significantly large market capitalisation of the sector, it is essential that the assessing and reporting of ESG risks becomes a paradigm for the future. It is, however, rather regrettable that the Regulations only deal with pension schemes that are in possession of large asset holdings and that the sanctions for non-compliance are rather minimal (particularly when it comes to where the person is a body corporate). However, this is at least a start.

Moreover, for large asset holders at least, assist with the "greening" of their overall perception towards climate-related risks, and this may indeed increase the pension schemes' consideration of ESG more generally.[110] Richardson has noted that financial institutions are 'unseen polluters, who wittingly or unwittingly contribute to environmental problems they sponsor and profit from.'[111] He argues further that, 'environmental law must target the financial sector, which sponsors and profits from environmental pillage.'[112] However, when writing in 2008, Richardson felt that many of the legal reforms that had been made to assist in encouraging Socially Responsible Investing (SRI) amongst financial institutions had 'yet to make a tangible difference'.[113] It is hoped that these changes will assist in making the

[108] n 17
[109] ibid
[110] n 29
[111] Benjamin J Richardson, 'Putting Ethics into Environmental Law: Fiduciary Duties for Ethical Investment' (2008) 46(2) Osgoode Hall Law Journal 243, 245
[112] ibid
[113] ibid

pension sector more responsible when it comes to their investments, while not restricting the fiduciary duty of investment that trustees owe to their beneficiaries.

Finally, the PSA 2021's requirement to consider climate risk as a "financially material" risk and to publicly (and annually) report on the climate duties under section 124 should be seen as significantly important legislative developments for the pension sector. Hopefully, the imposition of the legislation will act to shift any existing perception of climate change risk as an abstract non-financial risk, to something that should be taken seriously as a risk that could greatly impact the trust assets. As to the latter point on reporting requirements, this should be seen as an effective means to increase trustees' accountability within the public sphere. For instance, if a pension scheme has not complied with the regime, it would not only receive a notice and possible penalty but, more impactfully perhaps, may also receive a great deal of reputational damage from the content of its annual TCFD report. While statutory compliance seems to be the most significant driver for changing the trustees' perceptions of climate change risk at the present time, it may be the case that ignominy and reputational damage could overtake legislation as the most important catalyst for compliance in the future (and this is especially so as reporting requirements become an established norm for pensions' ESG considerations).

Conclusion

This article has outlined the tiered regulatory regime under the Pension Schemes Act 2021. It has shown the pension schemes that fall within the regime's remit and has undertaken an examination of the new "climate duties" that now fall onto trustees and managers of such schemes. An examination of the new regulatory regime has shown that the climate duties include the need for trustee to develop knowledge and understanding of such things as the governance, strategy, scenario analysis, risk management, and metrics and targets of climate change risk. Thus trustees will now have a statutory duty to deploy a proportionate approach to managing climate change risk, while continually assessing and publicly reporting on this environmental risk on behalf of their beneficiaries. Following an examination of the regulatory regime, the article then progressed to determine what the new climate duties mean for pensions' trustees and managers, and the sector more generally. While it was argued that more could have been done to develop climate duties for the sector, the article nevertheless suggested that the changes are a welcome development for ESG considerations. Ultimately, climate change had the potential to have a major impact on the pensions industry if things are not done now. Not only are the changes brought about by the PSA 2021 important for the financial reporting requirements imposed by the TCFD, but it is also highly important for protecting beneficiaries of pension schemes from suffering any future losses that may arise because of climate-related risks. Most significantly of all, however, this new legislative driver for greater compliance is much needed to reduce the environmental effects from climate change.

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