



Department  
for Work &  
Pensions

**Laura Trott MBE MP**  
**Minister for Pensions**

Rt. Hon Sir Stephen Timms MP  
Chair  
Work and Pensions Select Committee  
London  
SW1A 0AA

9<sup>th</sup> December 2022

Dear Stephen,

Thank you for your letter dated 30 November.

Dr Keating is correct to state that the UK's transposition, via *The Occupational Pension Schemes (Investment) Regulations 2005*, transposing Article 18(2) of the IORP Directive, now Article 19(3) of the IORP II Directive, makes no specific reference to 'investment risk' but refers to risks in general. This effectively made it possible for trustees to consider a wider set of risks and circumstances in their use of derivatives than those shown on the face of the IORP Directive.

This change will have been made in response to the feedback on the Government's consultation on *The Occupational Pension Schemes (Investment) Regulations 2005* in which the Department explicitly set out that we wanted to allow derivatives and repos. Our subsequent approach was based on feedback from industry in which they expressed concern that gilt repurchase schemes and various other types of legitimate investment may be inadvertently restricted.

As is standard practice when producing legislation, the Department took suitable legal advice at the time and throughout the implementation process.

I hope this information is useful to you and your Committee.

Yours sincerely,

**Laura Trott MBE MP**  
**Minister for Pensions**



# Work and Pensions Committee

House of Commons | London | SW1A 0AA

Tel 020 7219 8976 Email [workpencom@parliament.uk](mailto:workpencom@parliament.uk) Website [www.parliament.uk/workpencom](http://www.parliament.uk/workpencom)

Laura Trott

Pensions Minister

From the Chair

30 November 2022

Dear Laura

## **Defined benefit pension schemes with Liability Driven Investments (LDI)**

The Committee has received evidence questioning the way in which article 18(2) of the IORP I Directive (now consolidated and replaced by Article 19(3) of the IORP II Directive) was transposed into UK law. In evidence to the Committee on 23 November, Dr Con Keating said:

The European directive limits the use of derivatives for investment purposes, for investment risk management. The UK transposition omitted the word “investment” and added a second line, which appears to permit this. No English court, to our reckoning, would support that transposition. We believe that a court would just put a line through the added sentences and reinsert the word “investment”. The use of derivatives to hedge liabilities is also almost certainly illegal.<sup>1</sup>

The argument is expanded upon in written evidence which makes the point that, given the purpose of the Directive is to protect against excessive risk taking by pension schemes, it would “seem strange that its restriction on borrowing could be easily circumvented by economic borrowing using repos.”<sup>2</sup>

We would be grateful for information on whether the Government took external legal advice on this, its reasoning for making the amendments; and a description of the processes involved in transposition. It would be very helpful to have a response by Friday 9 December.

Yours sincerely,

**Rt Hon Sir Stephen Timms MP**  
**Chair**

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<sup>1</sup> [Oral evidence 23 November 2022 \(Q10\)](#)

<sup>2</sup> [LDI0018](#)