Draft Regulations laid before Parliament under section 54(2)(e) of the Pensions Act 2014, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2021 No.

PENSIONS

The Occupational Pension Schemes (Administration, Investment, Charges and Governance) (Amendment) Regulations 2021

Made - - - -	***
Coming into force - -	*1st October 2021*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 113(1), (5), (6) and (7), and 182(2) and (3) of the Pension Schemes Act 1993(**a**), sections 35(7) and 174(1) and (2) of the Pensions Act 1995(**b**), sections 60(2)(h) and (3) and 315(2), (3), (4) and (5) of the Pensions Act 2004(**c**) and sections 43 and 54(5) and (6) of, and paragraphs 1(1), (2), 2(1), (2), (3) and (5) of Schedule 18 to, the Pensions Act 2014(**d**).

In accordance with section 185(1) of the Pension Schemes Act 1993, section 120(1) of the Pensions Act 1995, section 317(1) of the Pensions Act 2004 and paragraph 8 of Schedule 18 to the Pensions Act 2014, the Secretary of State has consulted with such persons as the Secretary of State considers appropriate.

In accordance with section 113(9) of the Pension Schemes Act 1993, the Secretary of State has consulted the Financial Conduct Authority and the Treasury.

A draft of these Regulations has been laid before and approved by a resolution of each House of Parliament in accordance with section 54(2)(e) of the Pensions Act 2014.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Administration, Investment, Charges and Governance) (Amendment) Regulations 2021.

(2) They come into force on 1st October 2021.

(**a**) 1993 c. 48. Subsection (1) has been amended by Child Support, Pensions and Social Security Act 2000 (c. 19), s. 52(1) and prospectively amended by the Pension Schemes Act 2015 (c. 8), s.38. Section 113(5) to (10) was inserted by the Pensions Act 2014 (c. 19), s. 44(1), and section 113(5) is prospectively amended by the Pensions Scheme Act 2015, s. 38(6). Section 185 was amended by Schedule 3 (paragraph 46), Schedule 5 (paragraph 80) and Schedule 7, Part 1 to the Pensions Act 1995 (c. 26).

(**b**) 1995 c. 26. Section 35 was substituted by s. 244 of the Pensions Act 2004 (c. 35).

(**c**) 2004 c. 35.

(**d**) 2014 c. 19.

(3) The amendments made by regulations 2(2) (except for regulation 2(2)(a)(iii)) and (3)(a), 3(2)(a) and (4), 5(a)(i) and (b) apply to an occupational pension scheme in relation to the first scheme year of that scheme which ends after 1st October 2021.

(4) The amendments made by regulations 2(2)(a)(iii), (3)(b) and (c), 3(2)(b) and (3) and 5(a)(ii) and (iii) apply to an occupational pension scheme in relation to the first scheme year of that scheme which ends after 31st December 2021.

(5) The amendments made by regulation 4(2) and (3) apply in relation to an occupational pension scheme from whichever date is later of the date—

(a) after the end of three months beginning with the last day of the first scheme year of that scheme which ends after 1st October 2021, or

(b) after the end of six months beginning with the day on which these Regulations come into force.

(6) The amendments made by regulation 6(2)(c), (3) and (4) apply to an occupational pension scheme in relation to the first charges year of that scheme which ends after 1st October 2021.

(7) For the purposes of this regulation—

"charges year" has the meaning given in regulation 2(1) of the Occupational Pension Schemes (Charges and Governance) Regulations 2015(**a**);

"scheme year" has the meaning given in regulation 1(2) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996(**b**).

The Occupational Pension Schemes (Scheme Administration) Regulations 1996

2.—(1) The Occupational Pension Schemes (Scheme Administration) Regulations 1996 are amended as follows.

(2) In regulation 23 (annual statement regarding governance)(**c**)—

(a) in paragraph (1)—

(i) after sub-paragraph (a), insert—

"(aa) state the return on investments, after deduction of any charges or transaction costs relating to those investments (calculated in accordance with regulation 25(1)(a)), relating to—

(i) each default arrangement, and

(ii) each fund—

(aa) which members are now able to select or were in the past able to select, and

(bb) in which assets relating to members are invested during the scheme year,

having regard to guidance issued by the Secretary of State under section 113(2A) of the Pension Schemes Act 1993(**d**);";

(ii) in sub-paragraph (c)—

(aa) for paragraph (ii), substitute—

"(ii) state the levels of charges and transaction costs applicable to each fund—

(aa) which members are now able to select or were in the past able to select, and

(bb) in which assets relating to members are invested during the scheme year;";

(**a**) S. I. 2015/879. There are amendments to regulation 2(1) which are not relevant to this definition.
(**b**) S.I. 1996/1715. There are amendments to regulation 1(2) which are not relevant to this definition.
(**c**) Regulation 23 was inserted by S.I. 2015/879 and amended by S.I. 2016/427 and 2018/233.
(**d**) Subsection (2A) was inserted by section.38 of the Pension Schemes Act 2015.

(bb) for paragraph (iv), substitute—

"(iv) where the trustees or managers are required to assess the extent to which the charges and transaction costs borne by members represent good value for members, explain that assessment and its results;";

(iii) after sub-paragraph (ca), insert—

"(cb) explain the results of any assessment required by virtue of regulation 25(1A);";

(b) after paragraph (1A), insert—

"(1B) Paragraph (1)(cb) does not apply if—

(a) the Regulator has been notified under section 62(4) or (5) of the Pensions Act 2004 that the winding up of the scheme in question has commenced, and

(b) the trustees or managers of the scheme explain why they are not complying with paragraph (1)(cb) in the statement required under paragraph (1)(c)(iv).".

(3) In regulation 25 (assessment of charges and transaction costs)(**a**)—

(a) in paragraph (1)(a)—

(i) at the end of paragraph (i), for "; and", substitute "borne by members of the scheme,";

(ii) in paragraph (ii), for "costs," substitute "costs borne by members of the scheme, and";

(iii) after paragraph (ii), insert—

"(iii) the returns on investments earned by assets in the scheme, and";

(iv) omit the words after paragraph (iii), as so inserted;

(b) after paragraph 1, insert—

"(1A) As part of the assessment referred to in paragraph (1)(b), the trustees or managers of a specified scheme (see paragraph (5)) must assess—

(a) the charges and transaction costs borne by members of the scheme by comparison with the charges and transaction costs borne by members of at least three schemes ("comparison schemes")—

(i) each of which satisfies one of the conditions in paragraph (1D)(a), and

(ii) at least one of which satisfies the condition in paragraph (1D)(b),

(b) the return on investments by comparison with the return on investments for each of the three comparison schemes, relating to—

(i) the default arrangement, and

(ii) any funds—

(aa) which members are now able to select or were in the past able to select, and

(bb) in which assets relating to members are invested,

and in each case the return on investments is to be calculated after deduction of any charges or transaction costs, and

(c) how the administrative and governance criteria set out in paragraph (1C) are met by the scheme.

(1B) In making the assessment required under paragraph (1)(b), the trustees or managers of the specified scheme must have regard to any guidance issued by the Secretary of State by virtue of paragraph 2 of Schedule 18 to the Pensions Act 2014 in relation to that assessment.

(1C) The administration and governance criteria are—

(**a**) Regulation 25 was inserted by S.I. 2015/879.

(a) the promptness and accuracy of core financial transactions;

(b) the quality of the records kept by the trustees or managers;

(c) the appropriateness of the default investment strategy followed by the trustees or managers;

(d) the quality of the scheme's investment governance;

(e) the extent to which—

(i) the requirements of sections 247 and 248 of the Pensions Act 2004(**a**) (requirements for knowledge and understanding: individual and corporate trustees) are satisfied, and

(ii) the trustees or managers have the knowledge, understanding and skills to enable them—

(aa) properly to exercise their functions, and

(bb) to operate the scheme effectively;

(f) the quality of communication with the members of the scheme;

(g) the effectiveness of the management of any conflicts of interest that might arise between or among trustees and managers, or between trustees, managers and third parties.

(1D) The conditions are that—

(a) each comparison scheme is—

(i) an occupational pension scheme which on the relevant date held total assets equal to or greater than £100 million, or

(ii) a personal pension scheme, which is not an investment-regulated pension scheme within the meaning of paragraph 1 of Schedule 29A to the Finance Act 2004(**b**);

(b) the trustees or managers have had discussions with the comparison scheme on a transfer of the rights of members of the specified scheme to that scheme if the specified scheme is wound up.

(1E) Where an occupational pension scheme provides both money purchase benefits within the meaning of section 181 of the Pension Schemes Act 1993(**c**) and benefits other than money purchase benefits—

(b) the trustees or managers of the scheme are only required to comply with the obligations in paragraphs (1A) and (1B) in relation to the assets held for its money purchase benefits, and

(c) the scheme may only be used as a comparison scheme in relation to the assets held for its money purchase benefits.";

(c) after paragraph (3), insert—

"(4) Paragraphs (1A) to (1E) do not apply if—

(a) the Regulator has been notified under section 62(4) or (5) of the Pensions Act 2004 before the date on which the trustees or managers of the scheme are required to prepare a statement under regulation 23(1) ("the annual statement") that the winding up of the scheme in question has commenced, and

(b) the trustees or managers of the scheme explain why they are not complying with paragraph (cb) in the annual statement.

(5) In this regulation—

(**a**) 2004 (c. 35). Section 248 of the Pensions Act 2004 was amended by S.I. 2009/1941.

(**b**) 2004 (c. 12). Schedule 29A was inserted by paragraph 13 of Schedule 21 to the Finance Act 2006 (c. 25).

(**c**) 1993 c. 48. Section 181 was amended by section 29(1) of the Pensions Act 2011 (c. 19), and S.I. 2005/2053. There are other amendments to section 181 which are not relevant to these Regulations.

"audited accounts" means the audited accounts which the trustees are required to obtain in accordance with regulation 2 of the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996(**a**);

"core financial transactions" has the same meaning as in regulation 24;

"default arrangement" has the meaning given in regulation 1(2) of the Occupational Pension Schemes (Investment) Regulations 2005(**b**);

"default investment strategy" means the default strategy referred to in regulation 2A(1)(c) of the Occupational Pension Schemes (Investment) Regulations 2005(**c**);

"ear-marked scheme" has the meaning given by regulation 1(2) of the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996(**d**);

"relevant date" means the date on which the trustees obtain the audited accounts for the scheme year that ended most recently;

"specified scheme" means a relevant scheme which, on the relevant date—

(i) held total assets worth less than £100 million, and

(ii) has been operating for three or more years.

(6) In this regulation, a reference to the "total assets" of a scheme means—

(a) in the case of a scheme in respect of which the trustees are required to obtain audited accounts, the total of the amount of the net assets of the scheme recorded in the audited accounts for the scheme year, or

(b) in the case of a scheme which is an ear-marked scheme, the value of the assets of the scheme represented by any policies of insurance or annuity contracts that are specifically allocated to the provision of benefits for individual members or any other person who has a right to benefits under the scheme.".

The Register of Occupational and Personal Pension Schemes Regulations 2005

3.—(1) Regulation 3 of the Register of Occupational and Personal Pension Schemes Regulations 2005 (registrable information)(**e**) is amended as follows.

(2) In paragraph (1)—

(a) after sub-paragraph (da), insert—

"(db) the value of the assets held by the scheme for the purpose of providing benefits to members, calculated on the last day of the scheme year which ended most recently; ";

(b) after sub-paragraph (h), insert—

"(ha) subject to paragraph (3A), in the case of a specified scheme—

(i) whether, on the basis of the most recent assessment required by virtue of regulation 25(1A) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 ("value assessment"), the trustees or managers of the scheme consider that the scheme provides good value for members;

(ii) where a value assessment was carried out for the previous scheme year, whether, on the basis of that value assessment, the trustees or managers of the scheme considered that the scheme provided good value for members;

(**a**) S.I. 1996/1975, amended by S.I. 1997/786, 2000/833, 2000/3198, 2005/2426, 2013/2734 and 2016/229.
(**b**) S.I. 2005/3378. The definition of "default arrangement" was inserted by S.I. 2015/879 and amended by S.I. 2016/427.
(**c**) Regulation 2A was inserted by S.I. 2015/897.
(**d**) The definition of "ear-marked scheme" was amended by S I. 1997/786.
(**e**) S.I. 2005/597. Sub-paragraph (da) was inserted into regulation 3 by S.I. 2015/879. There are other amendments to regulation 3 which are not relevant to these Regulations.

(hb) subject to paragraph (3A), in the case of a specified scheme where the trustees or managers of the scheme have stated under sub-paragraph (ha)(i) that they do not consider that the scheme provides good value for members—

(i) whether the trustees or managers propose to transfer the money purchase benefits of its members into another scheme, and whether or not they also propose to wind up the scheme, and

(ii) if the trustees or managers do not propose to wind up the scheme—

(aa) their reasons for not doing so, and

(bb) what improvements they propose to make to the scheme to ensure that it does provide good value for members,".

(3) After paragraph (3), insert—

"(3A) Paragraph (1)(ha) and (hb) does not apply if the Regulator has been notified under section 62(4) or (5) of the Pensions Act 2004 that the winding up of the scheme in question has commenced.".

(4) In paragraph (4), after the definition of "recovery period", insert—

";

"specified scheme" has the meaning given in regulation 25 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996(**a**)".

The Occupational Pension Schemes (Investment) Regulations 2005

4.—(1) The Occupational Pension Schemes (Investment) Regulations 2005(**b**) are amended as follows.

(2) In regulation 1(2), in paragraph (c) of the definition of "default arrangement"(**c**), for "(3) and (4)" substitute "(3), (4), (6)(a), (7) and (8)".

(3) In regulation 2A (additional requirements in relation to default arrangement)(**d**)—

(a) in paragraph (3), after "charges" insert "and transaction costs";

(b) after paragraph (5), insert—

"(6) For the purposes of this regulation, "transaction costs" has the meaning given in regulation 2(1) of the Occupational Pension Schemes (Charges and Governance) Regulations 2015(**e**).".

(4) In regulation 8(1)(a) (modification of regulation 2 in respect of wholly-insured schemes), for "(b) and (c)" substitute "(b), (c) and (d)".

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

5. In the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013(**f**)—

(a) in regulation 29A(2)—

(i) after sub-paragraph (a), insert—

"(aa) paragraph (1)(aa);";

(ii) at the end of sub-paragraph (b), omit "and";

(iii) at the end of sub-paragraph (c), insert—

(**a**) S.I. 1996/1715.
(**b**) S.I. 2005/3378.
(**c**) The definition of default arrangement was inserted by S.I. 2015/879, and amended by S.I. 2016/427.
(**d**) Regulation 2A was inserted by S.I. 2015/879, and amended by S.I. 2018/988.
(**e**) S.I. 2015/879. There are amendments to regulation 2 which are not relevant to these Regulations.
(**f**) S.I. 2013/2734. Regulation 29A was inserted by S.I. 2018/233 and amended by S.I. 2018/982 and 2018/988.

"; and

(d) paragraph (1)(cb)";

(b) in paragraph 30 of Schedule 3—

(i) renumber the existing text as sub-paragraph (1);

(ii) after sub-paragraph (1), as so renumbered, insert—

"(2) Where, on the preparation or revision of an investment report under sub-paragraph (1), a scheme is a wholly-insured scheme and the trustees do not consider that it should cease to be such a scheme, sub-paragraphs (ca) and (d) of sub-paragraph (1) do not apply.".

The Occupational Pension Schemes (Charges and Governance) Regulations 2015

6.—(1) The Occupational Pension Schemes (Charges and Governance) Regulations 2015 are amended as follows.

(2) In regulation 2—

(a) in paragraph (1)—

(i) in the definition of "charges", after paragraph (e), insert—

";

(f) costs solely attributable to holding physical assets;";

(ii) after the definition of "charges year", insert—

""commodity" means any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products and energy such as electricity, but not including cash or financial instruments (within the meaning of article 3 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**a**));";

(iii) after the definition of "jobholder", insert—

""performance fee" means a fee which—

(a) is calculated by reference to the returns from investments held by the scheme, whether in terms of the capital appreciation of those investments, the income produced by those investments or otherwise; and

(b) is not calculated by reference to the value of the member's rights under the scheme;

"physical asset" means an asset whose value depends on its physical form, including—

(a) land,

(b) buildings and other structures on land or sea,

(c) vehicles, ships, aircraft or rolling stock, and

(d) commodities;";

(b) after paragraph (1), insert—

"(1A) For the purposes of the definition of "charges", the costs solely attributable to holding a physical asset include—

(a) the costs of managing and maintaining the asset;

(b) fees for valuing the asset;

(c) the cost of insuring the asset;

(d) ground rent, charges, rates, taxes and utilities bills incurred in relation to the asset."
;

(**a**) S.I. 2001/544. The definition of financial instrument was inserted by S.I. 2006/3384, and amended by S.I. 2017/488 and 2019/632. There are other amendments to this article which are not relevant to this instrument.

(c) after paragraph (4), insert—

"(5) When a charge under a single charge structure is calculated on a pro rata basis under paragraph (3) and paragraph (6) applies, no account is to be taken of any performance fee charged within the period for which the calculation is made.

(6) This paragraph applies if the performance fee in question is calculated and deducted from the value of the investments to which it relates each time the value of those investments is calculated for the purposes of buying or selling units.".

(3) In regulation 7 (assessment of charges), after paragraph (8), insert—

"(9) Paragraph (10) applies where the charges imposed on a member include a performance fee payable at the end of the investment period.

(10) For the purposes of paragraph (4), the charge imposed annually on the member in relation to the performance fee may be treated as X divided by Y, where—

(a) X is the sum of the performance fees accrued in relation to the return earned by the assets in the default arrangement ("the relevant assets") during the relevant charges year and each of the preceding charges years, up to a maximum of four preceding charges years, and

(b) Y is—

(i) 5, or

(ii) where the investment period is less than 5 charges years, the number of charges years in the relevant period.

(11) Where the trustees or managers choose to calculate the charge imposed annually on a member in accordance with paragraph (10), the trustees or managers must, at the end of each charges year during the investment period, calculate—

(a) the return earned by the relevant assets during that charges year;

(b) the performance fee which has accrued in relation to that return.

(12) In this regulation, "investment period" means the total period for which the assets in the default arrangement are invested in an investment for which a performance fee is payable at the end of the investment period.".

(4) In regulation 8 (alternative assessment of charges)—

(a) in paragraph (2), after "paragraph (3)", insert "and, if the trustees or managers so choose, the assumption in paragraph (3A)";

(b) after paragraph (3), insert—

"(3A) The assumption which may be made for the purposes of paragraph (2) is that, where the charges include a performance fee to which regulation 7(10) applies, the charge to be imposed on the member in relation to the forthcoming charges year will be X divided by Y, where—

(a) X is the sum of the performance fees accrued in relation to the return earned by the assets in the default arrangement during each of the years preceding the charges year in question, up to a maximum of five preceding charges years, and

(b) Y is—

(i) 5, or

(ii) where the investment period is less than 5 charges years, the number of charges years in the relevant period.".

Signed by authority of the Secretary of State for Work and Pensions

Name
Parliamentary Under Secretary of State
Date Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the law relating to the administration of occupational pension schemes. Regulation 2 amends the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (S.I. 1996/1715) to require trustees and managers to report on the return on investments their funds have achieved as part of the annual statement required on governance. It also requires the trustees and managers of schemes holding assets worth less than £100 million to compare the charges and transaction costs and the return on investments of their schemes with three other schemes and to assess the extent to which their schemes satisfy administration and governance criteria as part of their value for members assessment under regulation 25(1A) of those Regulations. Regulation 5 makes a consequential amendment to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (S.I. 2013/2734).

Regulation 3 amends the Register of Occupational and Personal Pension Schemes Regulations 2005 (S.I. 2005/597) to require additional registrable information to be sent to the Regulator for inclusion in the register of occupational pension schemes and personal pension schemes.

Regulation 4 amends the Occupational Pension Schemes (Investment) Regulations 2005 (S.I. 2005/3378) to ensure that transaction costs are taken into account with charges in a review by the trustees or managers of the return on investments in relation to the default arrangement, and to remove the obligation for the statement of investment principles of a wholly-insured scheme which is also a defined benefit scheme to include any information on the trustees' policy on asset managers.

Regulation 6 amends the Occupational Pension Schemes (Charges and Governance) Regulations 2015 (S.I. 2015/879) to exclude costs attributable to holding physical assets from the charges which are subject to the charge cap imposed under those Regulations and also ensures that no account is taken of certain performance fees in calculating a charge under a single charge structure.

A full regulatory impact statement of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from legislation.gov.uk. A hard copy of the impact assessment may be obtained from the Department for Work and Pensions, Caxton House, Tothill Street, London SW1H 9NA.

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