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

D R A F T  S T A T U T O R Y  I N S T R U M E N T S

# 2016 No.

# PENSIONS

# The Occupational Pension Schemes (Scheme Administration) (Amendment) Regulations 2016

*Laid before Parliament* ***

*Coming into force in accordance with regulation 1*

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 35(1), (3) and (4), 36(1) and (1A)(a), 124(1) and 174(2) and (3) of the Pensions Act 1995(**a**) and section 54(5) and (6) of, and paragraphs 2(1), (3) and (5), 6 and 7 of Schedule 18 to, the Pensions Act 2014(**b**) ("the Act"), makes the following Regulations.

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

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 Act.

**Citation and commencement**

**1.** These Regulations may be cited as the Occupational Pension Schemes (Scheme Administration) (Amendment) Regulations 2016 and come into force on 6th April 2016.

**Amendment of the Occupational Pension Schemes (Scheme Administration) Regulations 1996**

**2.** The Occupational Pension Schemes (Scheme Administration) Regulations 1996(**c**) are amended in accordance with regulations 3 to 7.

(**a**) 1995 c.26. Sections 35 and 36(1) and (1A)(a) were substituted by the Pensions Act 2004 (c. 35), sections 244 and 245(2). Section 124(1) is cited for the meaning it gives to "prescribed" and "regulations".
(**b**) 2014 c.19.
(**c**) S.I. 1996/1715. Relevant amendments were made by the Occupational Pension Schemes (Charges and Governance) Regulations 2015 (S.I. 2015/879) ("the 2015 Regulations").

**Amendment of regulation 1**

**3.** In regulation 1(2) (interpretation), in the definition of "relevant multi-employer scheme"(**a**), for the words from "in relation to" to "or which is" in the introductory words, substitute "which is or has been".

**4.** For regulation 1(2ZA) (meanings for the purposes of the definition of "relevant multi-employer scheme")(**b**) substitute—

"(2ZA) For the purposes of the definition of "relevant multi-employer scheme", a participating employer is "connected" to another employer where either of the following conditions is satisfied—

(a) the first condition is that both employers—

(i) are or have been part of the same group of companies consisting of one or more holding companies and subsidiaries of any such companies within the meaning of section 1159(1) of the Companies Act 2006(**c**) (meaning of "subsidiary" etc.); or

(ii) are or have been partnerships, each having the same persons as at least half of its partners;

(b) the second condition is that the participating employer which is not a company within the group referred to in paragraph (a)(i)—

(i) forms or formed a joint venture with that other employer within the group;

(ii) jointly employs or employed members of the scheme with that other employer within the group;

(iii) employs active members of the scheme following a transfer from that other employer within the group;

(iv) holds, held, controls or controlled at least 20% of the voting power in that other employer within the group; or

(v) is or was an employer 20% of whose voting power is or was held or controlled by that other employer within the group.".

**Amendment of regulation 22**

**5.**—(1) At the end of regulation 22(5) (duty to appoint a chair of the trustees or managers)(**d**) insert "(but see also paragraph (7))".

(2) After regulation 22(6) insert—

"(7) Paragraph (5) does not apply to a scheme established under section 67 of the Pensions Act 2008.".

**Amendment of regulation 23**

**6.** For regulation 23(1)(e) (annual statement regarding governance)(**e**) substitute—

"(e) be signed on behalf of the trustees or managers by—

(i) the chair; or

(ii) where the chair has ceased to hold office as chair for any reason and a replacement has not yet been appointed, a person appointed by the trustees or managers to act as the chair in the interim period.".

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(**a**) The definition of "relevant multi-employer scheme" was inserted by the 2015 Regulations, regulation 21(a). Paragraph (c) of the definition will be revoked on 6th April 2015 by the effect of regulations 1(3)(b) and 23 of those Regulations.
(**b**) Regulation 1(2ZA) was inserted by the 2015 Regulations, regulation 21(b).
(**c**) 2006 c.46.
(**d**) Regulation 22 was inserted by the 2015 Regulations, regulation 16(1)(b).
(**e**) Regulation 23 was inserted by the 2015 Regulations, regulation 17(1).

**Amendment of regulation 27**

**7.**—(1) After regulation 27(2) (appointment of trustees)(**a**) insert—

"(2A) Paragraphs (1) and (2) override any provision of a relevant multi-employer scheme to the extent that it conflicts with those paragraphs.".

(2) After regulation 27(7) insert—

"(7A) Where a relevant multi-employer scheme was established by or under an enactment, other than a scheme established under section 67 of the Pensions Act 2008, before 6th April 2016 and the requirements of paragraphs (1) or (2) are not met on that date, the requirement in question must be met before the end of the period of six months starting with that date.".

**Review of Part V (governance of relevant schemes) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996**

**8.**—(1) The Secretary of State must from time to time—

(a) carry out a review of regulations 22 to 29(**b**) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (including relevant definitions);

(b) set out the conclusions of the review in a report; and

(c) publish the report.

(2) The report must in particular—

(a) set out the objectives intended to be achieved by the regulatory system established by the regulations referred to in paragraph (1)(a);

(b) assess the extent to which those objectives are achieved; and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(3) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(4) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

**Amendment of the Occupational Pension Schemes (Investment) Regulations 2005**

**9.** In regulation 1(2) of the Occupational Pension Schemes (Investment) Regulations 2005(**c**) (interpretation), in paragraph (d) of the definition of "default arrangement"(**d**), for "(8)" substitute "(9)".

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

Minister of State
Department for Work and Pensions

Date

(**a**) Regulation 27 was inserted by the 2015 Regulations, regulation 22.
(**b**) Regulations 22 to 29 were inserted by the 2015 Regulations, regulation 16 to 23, which also include relevant definitions.
(**c**) S.I. 2005/3378.
(**d**) The definition of "default arrangement" was inserted by the 2015 Regulations, regulation 20(a).

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (S.I. 1996/1715) ("Scheme Administration Regulations"), and the Occupational Pension Schemes (Investment) Regulations 2005 (S.I. 2005/3378) ("Investment Regulations").

Regulations 3 to 7 make amendments to the Scheme Administration Regulations, which had been amended by the Occupational Pension Schemes (Charges and Governance) Regulations 2015 (S.I. 2015/879).

Regulation 3 provides an amended definition of "relevant multi-employer scheme". Regulation 4 substitutes the definition of "connected employers" and thereby removes the definition of "participating employer" for the purposes of the definition of "relevant multi-employer scheme".

Regulation 5 amends regulation 22 and disapplies the requirement to appoint a chair of the trustees or managers for a scheme established under section 67 of the Pensions Act 2008 (c.30).

Regulation 6 amends regulation 23 and makes provision for the signing of the annual statement regarding governance in the absence of a chair.

Regulation 7 amends regulation 27 concerning the appointment of trustees and provides a further exemption solely from the appointment requirements for six months for schemes established by statute. This exemption in respect of appointment of trustees replaces the complete exemption for schemes established by statute from the definition of "relevant multi-employer scheme" for one year from the 6th April 2015.

Regulation 8 requires the Secretary of State to review the operation and effect of Part V (regulations 22 to 29) of the Scheme Administration Regulations, including any relevant definitions and publish a report within five years after these Regulations come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether that Part of the Scheme Administration Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

Regulation 9 corrects an error in the definition of "default arrangement" in regulation 1(2) of the Investment Regulations. There is no provision to review this regulation as it is simply a correction and will have no impact.

A full impact assessment has not been produced for this instrument as no significant impact on the private, voluntary or public sectors is foreseen.

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