Regulations made by the Department for Communities and laid before the Assembly under section 51(3) and (4)(e) of the Pensions Act (Northern Ireland) 2015 for approval of the Assembly before the expiration of six months from the date of their coming into operation

STATUTORY RULES OF NORTHERN IRELAND

2023 No. 62

PENSIONS

The Occupational Pension Schemes (Administration, Investment, Charges and Governance) (Amendment) Regulations (Northern Ireland) 2023

Made - - - - 4th April 2023

Coming into operation in accordance with regulation 1(1) and (2)

The Department for Communities makes the following Regulations in exercise of the powers conferred by sections 109(6)(b) and (7) and 177(2) to (4) of the Pension Schemes (Northern Ireland) Act 1993(**a**), Articles 35(4) and (7) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(**b**), and now vested in it(**c**), and sections 42 and 51(6) of, and paragraphs 1 and 2 of Schedule 18 to, the Pensions Act (Northern Ireland) 2015(**d**).

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Administration, Investment, Charges and Governance) (Amendment) Regulations (Northern Ireland) 2023 and, subject to paragraph (2), shall come into operation on 6th April 2023.

(2) Regulation 5(2)(a)(iv) shall come into operation on 5th April 2028.

(3) Regulations 2(3)(a) and (b) and (4) and 4(a) (requirements to report on specified performance-based fees) apply in relation to the first scheme year of an occupational pension scheme which ends after 6th April 2023.

(4) Regulations 2(3)(c) and (5) and 4(b) to (d) (requirements to assess and report on asset allocation) apply in relation to the first scheme year of an occupational pension scheme which ends after 1st October 2023.

(5) Where, before these Regulations come into operation, the trustees or managers of an occupational pension scheme have chosen to calculate the charge imposed annually in accordance with the performance-fee smoothing provision, or the trustees or managers have chosen to make the performance-fee smoothing assumption, the amendments in regulation 5(3) to (6) (omission of

(**a**) 1993 c. 49; section 109(6) and (7) was inserted by section 43 of the Pensions Act (Northern Ireland) 2015 (c. 5 (N.I.)) and amended by paragraph 15(3) of Schedule 11 to the Pension Schemes Act 2021 (c. 1)

(**b**) S.I. 1995/3213 (N.I. 22); Article 35 was substituted by Article 221 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1))

(**c**) *See* Article 8(b) of S.R. 1999 No. 481 and section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.))

(**d**) 2015 c. 5 (N.I.); paragraph 1 was amended by paragraph 25(2) of Schedule 6 and paragraph 15(2) of Schedule 11 to the Pension Schemes Act 2021

provisions enabling smoothing of performance fees) do not apply until the first charges year of that scheme which ends after the earlier of—

(a) the date which is 5 years after the end of the first charges year in which the trustees or managers first chose to calculate the charge imposed annually in accordance with the performance-fee smoothing provision, or first chose to make the performance-fee smoothing assumption, and

(b) 5th April 2028.

(6) Regulation 3(2) applies in relation to an occupational pension scheme with effect from the earlier of—

(a) the first date on which the default statement of investment principles prepared in accordance with regulation 2A of the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005(**a**) (additional requirements in relation to default arrangement) is revised after 1st October 2023, and

(b) 1st October 2024.

(7) Regulation 3(3) and (4) (amendment of the requirements relating to the statement of investment principles in the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005) applies in relation to an occupational pension scheme with effect from the earlier of—

(a) the first date on which the statement of investment principles prepared under Article 35 of the Pensions (Northern Ireland) Order 1995 (investment principles) is revised after 1st October 2023, and

(b) 1st October 2024.

(8) For the purposes of this regulation—

"the Charges and Governance Regulations" means the Occupational Pension Schemes (Charges and Governance) Regulations (Northern Ireland) 2015(**b**);

"charges year" and "qualifying collective money purchase scheme"(**c**) have the meanings given in regulation 2(1) of the Charges and Governance Regulations;

"the performance-fee smoothing assumption" means the assumption set out in regulation 8(3A)(**d**) (alternative assessment of charges – default arrangements(**e**)) or 8A(4)(**f**) (alternative assessment of charges – qualifying collective money purchase schemes), as applicable, of the Charges and Governance Regulations, as those assumptions applied immediately before these Regulations came into operation;

"the performance-fee smoothing provision" means the provision in regulation 7(10)(**g**) (assessment of charges – default arrangements(**h**)) or 7A(10)(**i**) (assessment of charges – qualifying collective money purchase schemes), as applicable, of the Charges and Governance Regulations, as those provisions applied immediately before these Regulations came into operation;

"scheme year" has the meaning given in regulation 1(2) of the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997(**j**).

(**a**) S.R. 2005 No. 569; regulation 2A was inserted by regulation 20(3) of S.R. 2015 No. 309 and amended by regulation 4(3) of S.R. 2018 No. 165, regulation 4(3) of S.R. 2021 No. 272 and regulation 10 of S.R. 2022 No. 192
(**b**) S.R. 2015 No. 309
(**c**) The definition of "qualifying collective money purchase scheme" was inserted by paragraph 4(e) of Schedule 7 to S.R. 2023 No. 7
(**d**) Paragraph (3A) was inserted by regulation 6(7)(b) of S.R. 2021 No. 272
(**e**) The heading to regulation 8 was amended by paragraph 15 of Schedule 7 to S.R. 2023 No. 7
(**f**) Regulation 8A was inserted by paragraph 16 of Schedule 7 to S.R. 2023 No. 7
(**g**) Paragraph (10) was added by regulation 6(6) of S.R. 2021 No. 272
(**h**) The heading to regulation 7 was amended by paragraph 13 of Schedule 7 to S.R. 2023 No. 7
(**i**) Regulation 7A was inserted by paragraph 14 of Schedule 7 to S.R. 2023 No. 7
(**j**) S.R. 1997 No. 94

(9) The Interpretation Act (Northern Ireland) 1954(**a**) shall apply to these Regulations as it applies to an Act of the Assembly.

Amendment of the Occupational Pension Schemes (Scheme Administration) Regulations

2.—(1) The Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997 are amended in accordance with paragraphs (2) to (5).

(2) In regulation 1(2) (interpretation) after the definition of "the Solvency 2 Directive"(**b**) insert—

> ""specified performance-based fees" has the same meaning as in regulation 2(1)(**c**) of the Occupational Pension Schemes (Charges and Governance) Regulations (Northern Ireland) 2015;".

(3) In regulation 23(1)(**d**) (annual statement regarding governance)—

(a) after sub-paragraph (a) insert—

> "(aza) state the amount of any specified performance-based fees incurred in relation to each default arrangement (if any) during the scheme year, calculated in accordance with regulation 25(1)(a), as a percentage of the average value of the assets held for the purposes of that default arrangement during the scheme year;";

(b) in sub-paragraph (cza)(**e**)—

(i) at the end of head (i) omit "and";

(ii) at the end of head (ii) insert "and";

(iii) after head (ii) add—

> "(iii) where the scheme is a qualifying collective money purchase scheme for the purposes of regulation 3A(**f**) of the Occupational Pension Schemes (Charges and Governance) Regulations (Northern Ireland) 2015, the amount of any specified performance-based fees incurred in relation to the scheme during the scheme year, calculated in accordance with regulation 25(1)(a), as a percentage of the average value of the assets held for the purposes of the scheme during the scheme year;";

(c) after sub-paragraph (cb)(**g**) insert—

> "(cc) state the results of any calculations required by virtue of regulation 25A;".

(4) In regulation 25(1)(**h**) (assessment of charges and transaction costs)—

(a) in sub-paragraph (a) after head (iii) add—

> "(iv) the specified performance-based fees incurred in respect of assets in the scheme; and";

(b) in sub-paragraph (b) after "charges" insert ", specified performance-based fees".

(5) After regulation 25 insert—

"Assessment of asset allocation

25A.—(1) The trustees or managers of a relevant scheme to which this provision applies must, at intervals of no more than one year, calculate the percentage of relevant scheme assets allocated to each of the asset classes in paragraph (3).

(**a**) 1954 c. 33 (N.I.)
(**b**) The definition of "the Solvency 2 Directive" was inserted by paragraph 7(2)(b) of Schedule 2 to S.I. 2015/575
(**c**) The definition of "specified performance-based fees" is inserted by regulation 5(2)(a)(v) of these Regulations
(**d**) Regulation 23 was added by regulation 17(1) of S.R. 2015 No. 309
(**e**) Sub-paragraph (cza) was inserted by paragraph 1(4)(d) of Schedule 7 to S.R. 2023 No. 7
(**f**) Regulation 3A was inserted by paragraph 6 of Schedule 7 to S.R. 2023 No. 7
(**g**) Sub-paragraph (cb) was inserted by regulation 2(2)(a)(iii) of S.R. 2021 No. 272
(**h**) Regulation 25 was added by regulation 19 of S.R. 2015 No. 309 and paragraph (1) was amended by regulation 2(3)(a) of S.R. 2021 No. 272

(2) This provision applies to a relevant scheme unless it is a collective money purchase scheme which is not a qualifying collective money purchase scheme.

(3) The asset classes are—

(a) cash;

(b) bonds creating or acknowledging indebtedness, issued by—

(i) a company;

(ii) His Majesty's Government in the United Kingdom; or

(iii) the government of any country or territory other than the United Kingdom;

(c) shares listed on a recognised stock exchange;

(d) shares not listed on a recognised stock exchange;

(e) infrastructure comprising of physical structures, facilities, systems or networks that provide or support essential public services and including water, gas and electricity networks, roads, telecommunications facilities, schools, hospitals and prisons;

(f) property which does not fall within sub-paragraph (e);

(g) instruments creating or acknowledging indebtedness which do not fall within sub-paragraph (b); and

(h) any other assets which do not fall within sub-paragraphs (a) to (g).

(4) In making the calculation required under paragraph (1), the trustees or managers of the relevant scheme must have regard to any guidance issued by the Department by virtue of paragraph 2(2)(b) of Schedule 18 to the Pensions Act (Northern Ireland) 2015 (power to impose requirements relating to administration or governance).

(5) Where relevant scheme assets are invested in a collective investment scheme, the trustees or managers of the relevant scheme must refer to the assets held by the collective investment scheme when making the calculation required by paragraph (1).

(6) In this regulation—

"collective investment scheme" has the same meaning as in regulation 1(2) of the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005;

"default arrangement" has the same meaning as in regulation 25;

"qualifying collective money purchase scheme" has the meaning given in regulation 2(1) of the Occupational Pension Schemes (Charges and Governance) Regulations (Northern Ireland) 2015;

"recognised stock exchange" has the meaning given by section 1005 of the Income Tax Act 2007(**a**);

"relevant scheme assets" means—

(a) in relation to a relevant scheme which is not a qualifying collective money purchase scheme, the assets allocated to that scheme's default arrangements; and

(b) in relation to a qualifying collective money purchase scheme, the assets held for the purposes of the scheme.".

Amendment of the Occupational Pension Schemes (Investment) Regulations

3.—(1) The Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005 are amended in accordance with paragraphs (2) to (4).

(**a**) 2007 c. 3; section 1005 was substituted by paragraph 1 of Schedule 26 to the Finance Act 2007 (c. 11) and amended by paragraph 55 of Schedule 2 to the Taxation (International and Other Provisions) Act 2010 (c. 8)

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

(a) in paragraph (1)—

(i) after sub-paragraph (a) insert—

"(aa) their policy in relation to investment in illiquid assets;";

(ii) in sub-paragraph (c) after "the aims and objectives mentioned in sub-paragraph (a)" insert ", the policy mentioned in sub-paragraph (aa)";

(b) after paragraph (1) insert—

"(1A) For the purposes of paragraph (1)(aa), their policy in relation to investment in illiquid assets must include—

(a) a statement as to whether or not investments held for the purposes of the default arrangement will include illiquid assets;

(b) where those investments will include illiquid assets—

(i) a description of the age profile of those members in respect of whom investments will be held in illiquid assets;

(ii) an explanation of whether investments will be held directly in illiquid assets, or via a collective investment scheme;

(iii) an explanation of the types of illiquid assets in which investments will be held, and

(iv) an explanation of why the trustees or managers have a policy of investing in illiquid assets including their assessment of the advantages to members of investing in illiquid assets, when compared to investments in other classes of assets;

(c) where those investments will not include illiquid assets, an explanation of why the trustees or managers have a policy of not investing in illiquid assets, and

(d) an explanation of whether the trustees have any plans to invest in illiquid assets or increase their investment in illiquid assets, in the future.";

(c) after paragraph (6) insert—

"(6A) For the purposes of this regulation, "illiquid assets" means assets of a type which cannot easily or quickly be sold or exchanged for cash and, where assets are invested in a collective investment scheme, includes any such assets held by the collective investment scheme.".

(3) After regulation 2A insert—

"Additional requirements in relation to qualifying collective money purchase schemes

2B.—(1) The trustees of a qualifying collective money purchase scheme must ensure that the statement of investment principles prepared under Article 35 covers their policy in relation to investment in illiquid assets with respect to assets held for the purposes of the qualifying collective money purchase scheme.

(2) For the purposes of this regulation, their policy in relation to investment in illiquid assets must include—

(a) a statement as to whether or not investments held for the purposes of the qualifying collective money purchase scheme will include illiquid assets;

(b) where those investments will include illiquid assets—

(i) a description of the age profile of those members in respect of whom investments will be held in illiquid assets;

(ii) an explanation of whether investments will be held in respect of the qualifying collective money purchase scheme directly in illiquid assets, or via a collective investment scheme;

(iii) an explanation of the types of illiquid assets in which investments will be held, and

(iv) an explanation of why the trustees have a policy of investing in illiquid assets, including their assessment of the advantages to members of the qualifying collective money purchase scheme of investing in illiquid assets, when compared to investments in other classes of assets;

(c) where those investments will not include illiquid assets, an explanation of why the trustees have a policy of not investing in illiquid assets, and

(d) an explanation of whether the trustees have any plans to invest in illiquid assets or increase their investment in illiquid assets for the purposes of the qualifying collective money purchase scheme, in the future.

(3) For the purposes of this regulation—

"illiquid assets" has the same meaning as in regulation 2A(6A);

"qualifying collective money purchase scheme" has the meaning given in regulation 2(1) of the Occupational Pension Schemes (Charges and Governance) Regulations (Northern Ireland) 2015.".

(4) In regulation 6 (disapplication of Article 35 and of regulations 2 and 3 in respect of certain schemes)—

(a) in the heading after "regulations 2" insert ", 2B";

(b) in paragraph (1) after "regulations 2" insert ", 2B".

Amendment of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations

4. In regulation 29A(2) of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014(**a**) (publishing charges and transaction costs and other relevant information(**b**))—

(a) after sub-paragraph (a) insert—

"(aza) paragraph (1)(aza);";

(b) in sub-paragraph (c) for "(1)(ca), and" substitute "(1)(ca);";

(c) in sub-paragraph (d) for "(1)(cb)." substitute "(1)(cb), and";

(d) after sub-paragraph (d) add—

"(e) paragraph (1)(cc).".

Amendment of the Occupational Pension Schemes (Charges and Governance) Regulations

5.—(1) The Occupational Pension Schemes (Charges and Governance) Regulations (Northern Ireland) 2015 are amended in accordance with paragraphs (2) to (6).

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) in the definition of "charges" after paragraph (f)(**c**) add—

"(g) specified performance-based fees;";

(**a**) S.R. 2014 No. 79; regulation 29A was inserted by regulation 3(6) of S.R. 2018 No. 53 and paragraph (2) was amended by regulation 5(a) of S.R. 2021 No. 272 and regulation 13(12) of S.R. 2022 No. 192

(**b**) The heading to regulation 29A was amended by regulation 5(3) of S.R. 2018 No. 165

(**c**) Paragraph (f) was added by regulation 6(2)(a)(i) of S.R. 2021 No. 272

(ii) after the definition of "collective flat fee charge"(**a**) insert—

""collective investment scheme" has the meaning given in regulation 1(2) of the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005(**b**);";

(iii) after the definition of "flat fee charge" insert—

""fund manager" has the meaning given in Article 121(1) of the 1995 Order;

"fund of funds" means a collective investment scheme which has a policy of investing in other collective investment schemes;";

(iv) omit the definition of "performance fee"(**c**);

(v) after the definition of "single charge structure" insert—

""specified performance-based fees" means fees or profit-sharing arrangements, or any part of fees or profit-sharing arrangements, which are—

(a) payable by or on behalf of the trustees or managers of a pension scheme to a fund manager in relation to investments ("the managed investments") managed by the fund manager, either directly or as part of a collective investment scheme, for the purposes of the scheme;

(b) calculated only by reference to investment performance, whether in terms of the capital appreciation of the managed investments, the income produced by the managed investments or otherwise;

(c) only payable when—

(i) investment performance exceeds a pre-agreed rate, which may be fixed or variable, or

(ii) the value of the managed investments exceeds a pre-agreed amount;

(d) calculated over a pre-agreed period of time, and

(e) subject to pre-agreed terms designed to mitigate the effects of short-term fluctuations in the investment performance or value of the investments;";

(b) after paragraph (1A)(**d**) insert—

"(1B) When determining whether or not fees or profit-sharing arrangements, or any part of fees or profit-sharing arrangements, are specified performance-based fees for the purposes of these Regulations—

(a) a rate, amount, period of time or term is pre-agreed if—

(i) it has been agreed between the trustees or managers and the fund manager to whom the fees are payable, before the trustees or managers make the investments to which the fees relate, or

(ii) where the trustees or managers have invested in a fund of funds, it is set out in the investment policy of the fund of funds to which the trustees or managers agreed when they invested in the fund of funds, and

(b) regard must be had to any guidance issued by the Department by virtue of paragraph 1(2)(b) of Schedule 18 to the Pensions Act (Northern Ireland) 2015 (power to restrict charges).";

(c) omit paragraphs (4A)(**e**), (4AA)(**f**) and (4B).

(**a**) The definition of "collective flat fee charge was inserted by paragraph 4(2)(b) of Schedule 7 to S.R. 2023 No. 7

(**b**) S.R. 2005 No. 569

(**c**) The definition of "performance fee" was inserted by regulation 6(2)(a)(iii) of S.R. 2021 No. 272 and amended by paragraph 4(2)(d) of Schedule 7 to S.R. 2023 No. 7

(**d**) Paragraph (1A) was inserted by regulation 6(2)(b) of S.R. 2021 No. 272

(**e**) Paragraphs (4A) and (4B) were inserted by regulation 6(2)(c) of S.R. 2021 No. 272 and paragraph (4A) was amended by paragraph 4(7) of Schedule 7 to S.R. 2023 No. 7

(**f**) Paragraph (4AA) was inserted by paragraph 4(8) of Schedule 7 to S.R. 2023 No. 7

(3) In regulation 7 (assessment of charges – default arrangements(**a**)) omit paragraphs (9)(**b**), (10), (11) and (12).

(4) In regulation 7A(**c**) (assessment of charges – qualifying collective money purchase schemes) omit paragraphs (9), (10), (11) and (12).

(5) In regulation 8 (alternative assessment of charges – default arrangements(**d**))—

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

(b) omit paragraph (3A)(**f**).

(6) In regulation 8A(**g**) (alternative assessment of charges – qualifying collective money purchase schemes)—

(a) in paragraph (2) omit "and, if the trustees so choose, the assumption in paragraph (4)";

(b) omit paragraph (4).

Sealed with the Official Seal of the Department for Communities on 4th April 2023

(L.S.)

David Tarr
A senior officer of the Department for Communities

(**a**) The heading to regulation 7 was amended by paragraph 13 of Schedule 7 to S.R. 2023 No. 7
(**b**) Paragraphs (9) to (12) were added by regulation 6(6) of S.R. 2021 No. 272
(**c**) Regulation 7A was inserted by paragraph 14 of Schedule 7 to S.R. 2023 No. 7
(**d**) The heading to regulation 8 was amended by paragraph 15 of Schedule 7 to S.R. 2023 No. 7
(**e**) Paragraph (2) was amended by regulation 6(7)(a) of S.R. 2021 No. 272
(**f**) Paragraph (3A) was inserted by regulation 6(7)(b) of S.R. 2021 No. 272
(**g**) Regulation 8A was inserted by paragraph 16 of Schedule 7 to S.R. 2023 No. 7

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the requirements relating to the administration and governance of occupational pension schemes.

Regulation 1 sets out when the new requirements will apply to schemes.

Regulation 2 amends the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997 to require trustees or managers of occupational money purchase schemes to report on specified performance-based fees incurred by the scheme and on the different classes of assets in which they invest in their annual chair's statement.

Regulation 3 amends the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005 to require schemes to include an explanation of their policy about investing in illiquid assets in their default Statement of Investment Principles or, in the case of qualifying collective money purchase schemes, in their Statement of Investment Principles.

Regulation 4 amends the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014 so that the new disclosures about specified performance-based fees and asset allocation, which will be required in the annual chair's statement, are included within the list of disclosures that must be made publicly available free of charge on a website.

Regulation 5 amends the Occupational Pension Schemes (Charges and Governance) Regulations (Northern Ireland) 2015 to exclude specified performance-based fees from the charge cap that applies to limit the charges that can be passed on to members of most occupational money purchase pension schemes. It also removes provisions allowing schemes to smooth or pro-rate the effects of performance-based fees for the purposes of the charge cap, as these are no longer required when most performance-based fees will be excluded from the charge cap.

As these Regulations, in so far as they are made under the Pensions (Northern Ireland) Order 1995 ("the 1995 Order") and the Pensions Act (Northern Ireland) 2015 ("the 2015 Act"), make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Work and Pensions in relation to Great Britain, the requirement for consultation does not apply by virtue of Article 117(2)(e) of the 1995 Order and paragraph 8 of Schedule 18 to the 2015 Act.

An assessment of the cost to business of these Regulations is detailed in a Regulatory Impact Assessment, a copy of which has been laid in the Business Office and the Library of the Northern Ireland Assembly. Copies of the Assessment are available from the Department for Communities, Social Security Policy, Legislation and Decision Making Services, Level 6, Causeway Exchange, 1-7 Bedford Street, Belfast BT2 7EG or from the website: https://www.communities-ni.gov.uk/articles/pension-information. A copy of the Assessment is also annexed to the Explanatory Memorandum which is available alongside this Statutory Rule on the website: http://www.legislation.gov.uk/nisr.

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