EXPLANATORY MEMORANDUM TO

THE OCCUPATIONAL PENSION SCHEMES (SCHEME ADMINISTRATION) (AMENDMENT) REGULATIONS 2016

2016 No. 427

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These regulations will make some technical, but important, changes to the Occupational Pension Schemes (Scheme Administration) Regulations 1996 ("the Scheme Administration Regulations"), as amended by the Occupational Pension Schemes (Charges and Governance) Regulations 2015 (http://www.legislation.gov.uk/uksi/2015/879/pdfs/uksi_20150879_en.pdf). Since the 2015 regulations came into force last April, the Government has received representations from stakeholders that in practice the governance requirements for multi-employer schemes applied to more schemes than were originally intended to be captured and that some technical amendments were required.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

4. Legislative Context

4.1 In April 2015, we introduced new governance requirements for occupational pension schemes providing money purchase benefits by way of the Occupational Pension Schemes (Charges and Governance) Regulations 2015 ("the Charges and Governance Regulations") http://www.legislation.gov.uk/uksi/2015/879/pdfs/uksi_20150879_en.pdf. These Regulations inserted Part V (Governance of Relevant Schemes) into the Scheme Administration Regulations. Part V also included some additional governance requirements regarding annual statements and appointment of independent trustees for a subset of schemes termed "relevant multi-employer schemes".

4.2 We have been made aware through subsequent stakeholder engagement that there were discrepancies between the Regulations as laid and the original policy intention; for example, more schemes were captured by the definition of "relevant multi-employer schemes" than we had wanted. Following further consultation, these amending regulations will make some technical, but important clarifications to the minimum and additional governance requirements.

5. Extent and Territorial Application

5.1 The extent of this instrument is Great Britain.

5.2 The territorial application of this instrument is Great Britain.

5.3 Corresponding provisions will be made in Northern Ireland.

6. European Convention on Human Rights

6.1 The Minister of State for Pensions, the Baroness Altmann, has made the following statement regarding Human Rights:

"In my view the provisions of the Occupational Pension Schemes (Scheme Administration) (Amendment) Regulations 2016 are compatible with the Convention rights"

7. Policy background

What is being done and why

7.1 The Government believes that well-governed pension schemes are essential to good member outcomes. With this in mind, we introduced new governance requirements for occupational pension schemes providing money purchase benefits by way of the Charges and Governance Regulations 2015, which inserted amendments into the Scheme Administration Regulations. These regulations imposed a requirement upon trustees or managers to appoint a chair, who is responsible for signing an annual statement on how the scheme has met the governance standards. This statement must include the level of charges and transactions costs applicable to various funds in the scheme.

7.2 The original regulations also prescribed additional requirements for "relevant multi-employer schemes". These schemes are required to have at least three trustees, with the majority of all trustees independent of any undertaking that provides advisory, administration, investment or other services to the scheme, and to make arrangements to encourage members to make their views about matters relating to the scheme known to the trustees or managers. The requirements in relation to independent trustees are intended to mitigate the potential for conflicts of interest in multi-employer schemes and master trusts.

7.3 But we excluded from these additional governance requirements those multi-employer schemes where the employers are part of the same corporate group ("group schemes") as we considered these schemes to be closer in nature to those sponsored by a single employer and hence not likely to require these additional protections for members.

7.4 The original regulations also introduced a temporary exemption from the additional governance requirements (as mentioned in 7.2) for schemes set up under statute. This exclusion was temporary because we wanted to find out more about any pre-existing governance arrangements in place for these schemes before deciding whether they should continue to be exempt from the additional governance requirements.

7.5 Since the original regulations came into force, we have been made aware of the need for some technical amendments to ensure the governance provisions work as originally intended and apply to the relevant schemes as intended. For example, stakeholders highlighted the need to exempt the correct population of corporate group schemes whilst capturing commercial master trusts and industry-wide schemes. The

document "*Better Workplace Pensions; Reducing regulatory burdens, minor regulation changes, and response to consultation on the investment regulations*" https://www.gov.uk/government/consultations/occupational-pensions-reducing-regulatory-burdens-and-minor-regulation-changes, published on 12th November 2015, included a consultation on a set of amending regulations to this effect.

7.6 Having considered the responses to this Consultation on the governance requirements, these regulations amend some of the minimum and additional governance provisions in the scheme administration regulations in the following ways.

7.7 They make amendments to the definition of "relevant multi-employer scheme" to ensure that normal corporate activity does not bring a scheme into scope of the additional governance requirements unless it generally promotes itself as open to unconnected employers. In particular, they allow corporate group schemes connected to the group in one of five ways to be exempted from the additional governance requirements (provided they also meet the other requirements in the definition of multi-employer scheme).

7.8 The regulations also remove the requirement for the chair of the National Employment Savings Trust (NEST) to be appointed within a three month timeframe, as this appointment is already covered by other statutory requirements as set out in the Pensions Act 2008 http://www.legislation.gov.uk/ukpga/2008/30/pdfs/ukpga_20080030_310515_en.pdf and the National Employment Trust Savings Order 2010 http://www.legislation.gov.uk/uksi/2010/917/pdfs/uksi_20100917_en.pdf, and the public appointments procedure. In relation to the relevant schemes, the amendments will also allow a person or deputy chair appointed by the trustees to sign the chair's annual statement if there is no chair in place.

7.9 The regulations apply a statutory override to provisions in trust deeds and rules where they conflict with the trustee requirements for "relevant multi-employer schemes". They also give "relevant multi-employer schemes" established by statute up to six months to comply with these trustee requirements.

Consolidation

7.10 Informal consolidated text of instruments is available to the public free of charge via "The Law Relating to Social Security" (Blue Volumes) on the Department for Work and Pensions website at http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/ or the National Archive website: National Archive website legislation.gov.uk An explanation as to which instruments are maintained on each site is available from http://www.dwp.gov.uk/docs/lawvolnews.pdf.

8. Consultation outcome

8.1 The Secretary of State has consulted on a draft of these Regulations. The consultation period started on the 12th November 2015 and closed on the 11th December 2015. Although this consultation was just over 4 weeks, stakeholder engagement, by way of meetings with interested parties, in particular legal and industry representatives, had already taken place prior to consultation and the outcome of those discussions has fed into the changes taking place now. Building on previous consultations and recent engagement with stakeholders, a four week consultation was considered proportionate.

8.2 The consultation can be found at https://www.gov.uk/government/consultations/occupational-pensions-reducing-regulatory-burdens-and-minor-regulation-changes. The relevant part which deals with these changes is in Chapter 3.

8.3 39 written responses were received to the consultation as a whole, from a variety of organisations including pensions industry representatives and legal firms. These organisations responded on some or all of the issues covered by the consultation document. Just over half of these responded on the governance issues, and there was support for the proposed amendments in principle, with respondents differing over the way in which the drafting could be improved to meet their particular requirements. Overall, we had a wide variety of views and that input has enhanced the policy and regulation-making process.

8.4 One scheme with a statutory background wanted the exemption for statutory relevant multi-employer schemes from the additional governance requirements to continue on the basis that their existing arrangements were sound. Although they were the only scheme of this type that we were aware of, we considered that, on balance, it would not be appropriate for this exemption to continue simply for one scheme. However, these regulations give a period of up to six months for such schemes to make the necessary arrangements to comply.

8.5 Following feedback from respondents, a small number of changes were made to the definition of "relevant multi-employer scheme" to ensure that we are capturing the intended population of multi-employer group schemes. A more detailed analysis of the consultation responses is available in the Government Response on these regulations which can be found at https://www.gov.uk/government/consultations/occupational-pensions-reducing-regulatory-burdens-and-minor-regulation-changes.

9. Guidance

9.1 Guidance on the original governance changes has been made available by the Pensions Regulator at http://www.thepensionsregulator.gov.uk/trustees/managing-your-dc-scheme.aspx. The Department will consider with the Regulator whether any additional guidance is necessary as part of the monitoring and review of Part V of the Scheme Administration Regulations (Governance of Relevant Schemes).

10. Impact

10.1 These changes are technical and mechanical and no impact on business, charities or voluntary bodies is foreseen.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument. A previous Impact Assessment was published with the original Regulations and estimated the various monetised and non-monetised costs to schemes of meeting the different governance requirements [https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/364324/better-workplace-pensions-impact-assessment.pdf]. The total net cost to business per year was estimated at £5.05 million. These regulations aim to clarify the original policy intent and do not introduce any new burdens on business.

11. Regulating small business

11.1 The legislation applies to all pension schemes covered by Part V (Governance of Relevant Schemes) of the Scheme Administration Regulations, including those sponsored by small businesses.

11.2 Changes are technical and mechanical and designed to achieve the original policy intent, so there are no new burdens on small businesses.

12. Monitoring & review

12.1 A review provision has been included in these regulations. Regulation 8 requires the Secretary of State to review the operation and effect of the whole of Part V of the Scheme Administration Regulations (Governance of Relevant Schemes), including any relevant definitions and publish a report within five years after these regulations come into force, and within every five years following that. The review provision covers not just the effect of these amendments but the substantive Governance provisions which these regulations amend and were inserted into the Scheme Administration Regulations by the Charges and Governance Regulations. The Department will work with interested parties on how to monitor the impact of the Governance provisions. There is no provision to review Regulation 9 (Amendment of the Occupational Pension Schemes (Investment) Regulations 2005) which is just a correcting amendment and does not alter any burdens on business.

13. Contact

13.1 Maggie Simpkin at the Department for Work and Pensions, telephone: 0207 449 5994 or email: Maggie.simpkin@dwp.gsi.gov.uk can answer any queries regarding the instrument.