
STATUTORY RULES OF NORTHERN IRELAND

2015 No. 309

The Occupational Pension Schemes (Charges and Governance) Regulations (Northern Ireland) 2015

PART 1

INTRODUCTION

Citation and commencement

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Charges and Governance) Regulations (Northern Ireland) 2015.

(2) Subject to paragraph (3), these Regulations shall come into operation on 17th July 2015.

(3) The following provisions shall come into operation on 6th April 2016—

- (a) in regulation 4(2) the words “With the exception of regulation 11,”;
- (b) regulation 11, and
- (c) regulation 23.

Interpretation

2.—(1) In these Regulations—

“the Administration Regulations” means the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997(1);

“annually” means per charges year;

“arrangement” means an allocation of contributions to—

- (a) an investment, or
- (b) more than one investment according to a strategy adopted by the trustees or managers;

“charges” means administration charges other than—

- (c) transaction costs;
- (d) where an order of the court provides for the recovery by the trustees or managers of costs incurred in complying with the order, the amount of those costs;
- (e) charges permitted by regulations made under Article 22(2) (charges by pension arrangements in relation to earmarking orders) or 38 (charges in respect of pension sharing costs) of the Welfare Reform and Pensions (Northern Ireland) Order 1999;
- (f) winding-up costs;
- (g) costs solely associated with the provision of death benefits;

(1) [S.R. 1997 No. 94](#)

(2) Article 22 was amended by paragraph 52 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 and paragraph 109 of Schedule 29 to the Civil Partnership Act [2004 \(c. 33\)](#)

“charges year” means a period of 12 months specified for the purposes of the scheme in any scheme document or, if no such year is specified, a period of 12 months commencing on—

- (h) either 1st or 6th April as the trustees or managers may decide, or
- (i) if no such decision is made, 1st April;

“combination charge structure” has the meaning given in regulation 5(3);

“contributing member” is a member of a relevant scheme in relation to whom a contribution is being made to that scheme for the purposes of accruing money purchase benefits;

“contribution”, in relation to a member, means a payment made by, or on behalf or in respect of, that member;

“contribution percentage charge” has the meaning given in regulation 5(3);

“default arrangement” has the meaning given in regulation 3;

“employer” has the meaning given in section 78 of the Pensions (No. 2) Act;

“executive pension scheme” means a scheme—

- (j) in relation to which a company is the only employer and the sole trustee, and
- (k) the members of which are either current or former directors of the company and include at least one third of the current directors;

“existing rights charge” has the meaning given in regulation 5(3);

“flat fee charge” has the meaning given in regulation 5(3);

“jobholder” has the meaning given in section 78 of the Pensions (No. 2) Act;

“qualifying scheme” has the meaning given in section 78 of the Pensions (No. 2) Act;

“relevant small scheme” means a scheme with fewer than 12 members, where—

- (l) all the members are trustees of the scheme and either—
 - (i) the provisions of the scheme provide that any decision made by the trustees is made by the unanimous agreement of the trustees who are members of the scheme, or
 - (ii) the scheme has a trustee who is independent in relation to the scheme for the purposes of Article 23(3) of the 1995 Order (power to appoint independent trustees), and is registered in the register maintained by the Regulator in accordance with regulations made under Article 23(4) of the 1995 Order, or
- (m) all the members are directors of a company which is the sole trustee of the scheme and either—
 - (i) the provisions of the scheme provide that any decision made by the company in its capacity as a trustee is made by the unanimous agreement of the directors who are members of the scheme, or
 - (ii) one of the directors of the company is independent in relation to the scheme for the purposes of Article 23 of the 1995 Order and is registered in the register maintained by the Regulator in accordance with regulations made under Article 23(4) of the 1995 Order;

“single charge structure” has the meaning given in regulation 5(2);

“transaction costs” means the costs incurred as a result of the buying, selling, lending or borrowing of investments;

“winding-up costs” means the costs of winding up the pension scheme including (but not limited to) the cost of—

(3) Article 23 was substituted by Article 32(3) of the Pensions (Northern Ireland) Order 2005

- (n) legal advice;
- (o) tracing, consulting and communicating with members;
- (p) advice on exiting investments, and
- (q) selection of an alternative scheme or investments;

“worker” has the meaning given in section 78 of the Pensions (No. 2) Act;

“writing” includes by electronic communication and “electronic communication” has the meaning given in section 4(1) of the Electronic Communications Act (Northern Ireland) 2001⁽⁴⁾.

(2) For the purposes of paragraph 1(5) of Schedule 18 to the Pensions Act (Northern Ireland) 2015, “relevant scheme” means—

- (a) an occupational pension scheme under which all the benefits which may be provided are money purchase benefits, or
- (b) where some but not all the benefits which may be provided under an occupational pension scheme are money purchase benefits, that scheme in so far as it relates to those benefits,

other than a scheme with only one member, an executive pension scheme or a relevant small scheme.

(3) Where, in these Regulations, the circumstances require one or more of the calculations listed in paragraph (4) to be made in relation to a period of less than a charges year, that calculation shall be done on a pro rata basis.

(4) The calculations referred to in paragraph (3) are—

- (a) a charge under a single charge structure;
- (b) a flat fee charge;
- (c) an existing rights charge.

(5) The Interpretation Act (Northern Ireland) 1954⁽⁵⁾ shall apply to these Regulations as it applies to an Act of the Assembly.

Default arrangement

3.—(1) Subject to paragraph (6), a “default arrangement”, in relation to an employer, means an arrangement which—

- (a) on or after the relevant date is used by a qualifying scheme (which is a relevant scheme) in relation to one or more relevant jobholders, and
- (b) satisfies one or more of the descriptions in paragraph (2).

(2) The descriptions referred to in paragraph (1) are—

- (a) an arrangement under which the contributions of one or more workers are allocated to a fund or funds where those workers have not expressed a choice as to where those contributions are allocated;
- (b) subject to paragraph (3), an arrangement which, on the relevant date, was an arrangement under which the contributions of 80% or more of the workers who were contributing members of the scheme on that date were allocated where those workers were required to make a choice as to where their contributions were allocated;
- (c) an arrangement which first received contributions from workers after the relevant date, and under which, at any point after the relevant date, the contributions of 80% or more of

(4) 2001 c. 9 (N.I.); the definition of “electronic communication” in section 4(1) was amended by paragraph 170 of Schedule 17 to the Communications Act 2003 (c. 21)

(5) 1954 c. 33 (N.I.)

workers who are contributing members of the scheme are allocated where those workers were required to make a choice as to where their contributions are allocated.

(3) An arrangement does not satisfy the description in paragraph (2)(b) if, at any time before the relevant date—

- (a) each worker whose contributions were allocated under the arrangement (“the original arrangement”) at that time was informed that contributions payable on or after the relevant date would be allocated under a default arrangement satisfying the description in paragraph (2)(a) (“the new arrangement”) unless the worker agreed that allocation of the worker’s contributions under the original arrangement should continue, and
- (b) in the event that a worker did not agree that allocation of that worker’s contributions to the original arrangement should continue, that worker’s contributions payable on or after the relevant date were allocated to the new arrangement.

(4) A worker’s agreement, referred to in paragraph (3)(a), must—

- (a) be in writing, and
- (b) include a statement that the worker acknowledges that charges under the original arrangement may be higher than would otherwise be permitted under these Regulations.

(5) Where an arrangement is a default arrangement in relation to an employer by virtue of paragraph (1), it continues to be such an arrangement regardless of whether it continues to satisfy that paragraph.

(6) An arrangement is not a default arrangement if—

- (a) at any time before a benefit under that arrangement comes into payment, it provides for a pensions promise to be obtained from a third party in relation to any such benefit, or
- (b) it provides no benefits other than benefits which are attributable to additional voluntary contributions.

(7) For the purposes of paragraph (6)—

- (a) a “pensions promise” is a promise about the level of the benefit;
- (b) an arrangement provides for a promise to be obtained from a third party if it—
 - (i) requires the promise to be obtained from a third party, or
 - (ii) provides for the worker to be given the option of requiring a promise to be obtained from a third party (whether or not the option is subject to conditions).

(8) For the purposes of paragraph (7)(a), a promise about the level of the benefit includes a promise about factors that will be used to calculate the level of the benefit, but does not include a promise if, or to the extent that, it consists merely of a promise that the level of benefit will be calculated by reference to an amount available for its provision.

(9) In this regulation—

“contributing member” does not include a member whose contributions are solely additional voluntary contributions;

“relevant date” means the date referred to in regulation 1(2) or, if later, the employer’s staging date;

“relevant jobholder” means a jobholder of the employer referred to in paragraph (1);

“staging date” means the date on which sections 2(6) to 9 of the Pensions (No. 2) Act (employers’ duties) first apply to the employer;

(6) Section 2 was amended by section 5(1) of the Pensions Act (Northern Ireland) 2012 (c. 3 (N.I.)). Section 3 was amended by sections 6(1) and (2) and 7(1) of that Act and Article 2(1) of S.R. 2014 No. 81. Section 4 was substituted by section 7(2) of that Act. Section 5 was amended by sections 5(2) to (4), 6(3) and (4) and 7(3) of that Act, sections 36(2) and 37(3)(b) of the

“worker” means a worker of the employer referred to in paragraph (1).

PART 2

RESTRICTIONS ON CHARGES

Restrictions on charges

4.—(1) Subject to regulations 9 and 10, the trustees or managers of a relevant scheme must not impose or permit to be imposed on a member of that scheme to whom this Part applies charges which—

- (a) exceed the limits specified in this Part, or
 - (b) are of a description prohibited by this Part.
- (2) With the exception of regulation 11, this Part applies—
- (a) to a member of a relevant scheme to the extent of the value of that member’s rights under a default arrangement, and
 - (b) beginning with the date on which the first contribution to the default arrangement referred to in sub-paragraph (a) is received by the trustees or managers on or after the date on which this regulation comes into operation.

Prohibited charge structures

5.—(1) The description of the charges which are prohibited under regulation 4(1)(b) are charges under a charge structure other than—

- (a) a single charge structure, or
- (b) a combination charge structure.

(2) In these Regulations, a “single charge structure” is one under which the charges imposed on the member are calculated solely by reference to the value of the member’s rights under the scheme.

(3) In these Regulations, a “combination charge structure” is one under which charges are calculated by reference to the value of the member’s rights under the scheme (an “existing rights charge”) and either—

- (a) calculated as a percentage of the value of contributions (a “contribution percentage charge”), or
- (b) calculated by reference to a period of time and not by reference to contributions or to the value of a member’s rights under the scheme (a “flat fee charge”).

(4) For the purposes of regulation 4(1)(b), neither the charge structure, nor the type of combination charge structure, that applies to a member may be changed during a charges year.

Limits on charges

6.—(1) The limits on charges for the purposes of regulation 4(1)(a) are the limits specified in this regulation and the trustees or managers must choose whether to assess them in accordance with regulation 7 or 8 (but see regulation 8(6)).

(2) The limit in relation to a single charge structure is 0.75% annually of the value of the member’s rights under the default arrangement.

(3) The limit in the case of a combination charge structure whose charges fall within regulation 5(3)(a) is—

- (a) in relation to the contribution percentage charge, 2.5% of the contributions allocated under the default arrangement—
 - (i) annually, or
 - (ii) where in relation to a charges year, regulation 4 does not apply to the member for the whole of the year, in the period for which that regulation applies, and
- (b) in relation to the existing rights charge, the percentage annually of the value of the member's rights under the default arrangement which is the figure in Column 2 of the following Table which corresponds to the contribution percentage charge rate in Column 1 of the Table which is imposed on the member.

Table

<i>Column 1</i> <i>Contribution percentage charge rate (%)</i>	<i>Column 2</i> <i>Existing rights charge rate (%)</i>
1 or lower	0.6
Higher than 1 but no higher than 2	0.5
Higher than 2 but no higher than 2.5	0.4

(4) The limit in the case of a combination charge structure whose charges fall within regulation 5(3)(b) is—

- (a) in relation to the flat fee charge, £25 annually, and
- (b) in relation to the existing rights charge, the percentage annually of the value of the member's rights under the default arrangement which is the figure in Column 2 of the following Table which corresponds to the annual flat fee charge in Column 1 of the Table which is imposed on the member.

Table

<i>Column 1</i> <i>Flat fee charge (£)</i>	<i>Column 2</i> <i>Existing rights charge rate (%)</i>
10 or less	0.6
More than 10 but no more than 20	0.5
More than 20 but no more than 25	0.4

Assessment of charges

7.—(1) If the trustees or managers make the choice under regulation 6(1) to assess charges in accordance with this regulation, the following provisions apply.

(2) Trustees or managers must calculate the value of the member's rights under the default arrangement at reference points set at equal intervals during the charges year of no more than 3 months (but see paragraphs (3), (6) and (7)).

(3) Where trustees or managers change the intervals between reference points chosen for the purposes of paragraph (2) during the charges year, the start of the first new interval must commence on the day following the reference point at the end of the previous interval.

(4) The limit of permitted charges under—

- (a) a single charge structure, or
- (b) an existing rights charge in a combination charge structure,

is exceeded if the charges imposed on the member annually exceed the average of the reference point values multiplied by the applicable percentage.

- (5) The applicable percentage is—
 - (a) in the case of a single charge structure, 0.75%, and
 - (b) in the case of an existing rights charge in a combination charge structure, the percentage in Column 2 of the Table—
 - (i) in regulation 6(3), where a contribution percentage charge is imposed, and
 - (ii) in regulation 6(4), where a flat fee is imposed.

(6) Where a member has rights in the default arrangement at only one reference point referred to in paragraph (2), paragraph (4) is to be read as if “average of the reference point values” read “value at the reference point”.

(7) Where a member has no rights in the default arrangement at a reference point referred to in paragraph (2), paragraph (4) is to be read as if “average of the reference point values” read “value of that member’s rights in the default arrangement on the final day of the charges year or, where the member has no such rights on that day, on the final day on which the member has such rights.”

(8) In this regulation, monthly, 2 monthly and 3 monthly intervals are to be treated as equal intervals.

Alternative assessment of charges

8.—(1) If the trustees or managers make the choice under regulation 6(1) to assess charges in accordance with this regulation, the limit of permitted charges under—

- (a) a single charge structure, or
- (b) an existing rights charge in a combination charge structure,

is not exceeded, if on the first day of the charges year, the charges regime to be applied to the member’s rights meets the requirement in paragraph (2) and that charges regime is applied to the member’s rights throughout that charges year.

(2) The requirement referred to in paragraph (1) is that the charges regime would not result in charges being imposed on the member exceeding the limit of permitted charges when calculated in accordance with regulation 7, if the assumptions in paragraph (3) are made for the purposes of those calculations.

- (3) The assumptions to be made for the purposes of paragraph (2) are—
 - (a) the value of the member’s rights under the default arrangement will not increase or decrease during the charges year when compared to the value on the first day of the charges year, other than as a result of charges imposed on the member, and
 - (b) the member may leave the scheme at any time during that charges year.
- (4) In this regulation, “charges regime” means—
 - (a) the charges to be imposed, and any rebates of charges to be applied, as a percentage of the value of the member’s rights in the default arrangement;
 - (b) when they are to be deducted from, or added to, the member’s rights throughout the charges year;
 - (c) how the value of the member’s rights will be calculated for the purposes of imposing or rebating charges.

(5) Where the first contribution in relation to a member to the default arrangement is made after the first day of the charges year, paragraphs (1) and (3)(a) are to be read as if “on the first day of the charges year” read “on the date on which the first contribution is made in a charges year”.

(6) Where the trustees or managers make the choice under regulation 6(1) to assess charges in accordance with this regulation but, during the charges year the charges regime fails to meet the requirement in paragraph (2), the trustees or managers must assess charges for the whole charges year in accordance with regulation 7.

Member agreement for services

9.—(1) Subject to paragraph (3), the restrictions in regulation 4 do not apply in relation to a service for which the member has entered into an agreement with a person for the provision of that service, provided the conditions in paragraph (2) are satisfied.

- (2) The conditions referred to in paragraph (1) are that the agreement must—
- (a) be in writing;
 - (b) include a statement that entering into the agreement—
 - (i) is not a condition of becoming or remaining a member of a relevant scheme;
 - (ii) is not a condition of the member’s contributions being allocated under a default arrangement, and
 - (iii) shall incur charges at a rate or of an amount specified in the agreement and that such charges may be higher than would otherwise be permitted under these Regulations;
 - (c) be entered into before the charges are imposed.
- (3) This regulation does not apply to a service which—
- (a) the provider is under a statutory obligation to provide, or
 - (b) is a core service.
- (4) In this regulation, “core service” includes (but is not limited to)—
- (a) designing and implementing an investment strategy;
 - (b) investment of contributions to the scheme;
 - (c) holding investments relating to scheme members;
 - (d) a transfer out of a default arrangement into a different arrangement, fund or scheme;
 - (e) a transfer into a default arrangement.

Charge limits adjustment

10.—(1) The charge limits do not apply, on or after the adjustment date, to a member of a relevant scheme whose contributions are allocated to a default arrangement, in the circumstances set out in paragraph (2), if the conditions in paragraph (3) are met.

- (2) The circumstances for the purposes of paragraph (1) are that—
- (a) the trustees or managers have used their best endeavours to comply with the charge limits in relation to one or more members of the default arrangement referred to in paragraph (1) but have determined that they are unlikely to be able to comply with those limits for one or both of the current and following charges years, or
 - (b) an event happens which is outside the control of the trustees or managers, and the trustees or managers have used their best endeavours to mitigate the effect of the event on the scheme but they have determined that, because of that event, they are unlikely to be able

to comply with the charge limits for the current or the following charges year in relation to one or more members of the default arrangement referred to in paragraph (1).

- (3) The conditions referred to in paragraph (1) are that—
 - (a) the trustees or managers have elected to implement an adjustment measure in relation to the default arrangement beginning on the adjustment date;
 - (b) the trustees or managers have informed the persons listed in paragraph (4) at least one month before the adjustment date—
 - (i) that the trustees or managers have determined that they are unlikely to be able to comply with the charge limits, in relation to one or more members of the default arrangement, for one or both of the current and following charges years, as applicable;
 - (ii) of the adjustment measure that will be implemented on the adjustment date, and
 - (iii) that the charge limits will no longer apply to members of the default arrangement on or after the adjustment date, and
 - (c) the trustees or managers must, when informing the Regulator, do so in the manner and form determined by the Regulator.
- (4) The persons referred to in paragraph (3) are—
 - (a) the employer whose workers are members of the default arrangement;
 - (b) members of the default arrangement whose contributions have been allocated to the default arrangement in the 12 month period ending with the date of the determination in paragraph (2)(a) or (b), as applicable, and
 - (c) the Regulator.
- (5) In this regulation, the “adjustment date” means the date chosen by the trustees or managers on which the adjustment measure is to begin, and—
 - (a) if the circumstances in paragraph (2)(a) apply, must be a date falling within a period of 6 months beginning with the date on which this regulation comes into operation, or
 - (b) if the circumstances in paragraph (2)(b) apply, must be a date falling within a period of 6 months beginning with the date that the trustees or managers make the determination described in paragraph (2)(b).
- (6) In this regulation, the “adjustment measure” means a measure where—
 - (a) the trustees or managers shall no longer allocate future contributions of members of the scheme to the default arrangement, and will allocate future contributions of members of the default arrangement to another default arrangement within the scheme, or
 - (b) the trustees or managers shall no longer accept future contributions of members of the default arrangement into the scheme, and will not allocate the contributions of any other members of the scheme into that default arrangement.
- (7) In implementing the adjustment measure, the trustees or managers may decide to give the members described in paragraph (4)(b) the option to agree to continue to have their future contributions received by the scheme and allocated to the default arrangement after the adjustment date.
- (8) Where the trustees or managers have given to the members the option referred to in paragraph (7), the trustees or managers must inform the members described in paragraph (4) (b) of that option, and any such agreement by the member must be in writing and include an acknowledgement by the member that charges under the default arrangement may be higher than would otherwise be permitted under these Regulations.

(9) Where a member is given the option referred to in paragraph (7) but does not agree to the option offered, that decision is not to be treated as being an action or omission by a jobholder for the purposes of section 6(4)(b) of the Pensions (No. 2) Act (timing of automatic re-enrolment).

(10) In this regulation, “charge limits” means the provisions of regulations 4(1)(a) and 6.

Non-contributing members

11.—(1) It is prohibited for the purposes of regulation 4(1)(b) to impose or permit to be imposed on a non-contributing member to whom this regulation applies a higher—

- (a) rate of charges where a scheme imposes a charge based on a percentage charge, or
- (b) amount of charges where a scheme imposes a charge which is not based on a percentage charge,

than that to which the member would have been subject if that member were a contributing member.

(2) In paragraph (1), the comparison is to be made on the basis of—

- (a) the period for which the member had contributed to the scheme on the date of that member’s last contribution;
- (b) the value of the member’s rights under the scheme on the date when the charges are imposed, and
- (c) the value of the last contribution made in relation to the member.

(3) This regulation applies to a non-contributing member of a relevant scheme provided that—

- (a) a contribution in relation to that member has been made to that scheme on or after the date on which this regulation comes into operation, and
- (b) at least one contribution referred to in sub-paragraph (a) was made when the member was a worker of the employer in relation to whose jobholders the scheme is a qualifying scheme.

(4) This regulation applies to a non-contributing member beginning with the date on which the first contribution satisfying paragraph (3)(a) and (b) is received by the trustees or managers.

(5) In this regulation—

“non-contributing member” means a member who is not a contributing member;

“relevant scheme” is a scheme satisfying the definition in regulation 2(2) which is a qualifying scheme for at least one jobholder of the member’s employer.

Amendment of the Stakeholder Pension Schemes Regulations

12.—(1) The Stakeholder Pension Schemes Regulations (Northern Ireland) 2000(7) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 13(8) (expenses, commission etc. – principles) after paragraph (4) add—

“(5) This regulation and regulations 14 to 14C(9) do not apply in the circumstances set out in regulation 14D.”.

(3) After regulation 14C (rounding of fractional amounts) insert—

(7) [S.R. 2000 No. 262](#); relevant amending provisions are [S.R. 2001 No. 119](#), [S.R. 2005 No. 110](#), [S.R. 2007 No. 185](#), [S.R. 2012 No. 124](#) and [S.R. 2013 No. 72](#)

(8) Regulation 13 was amended by regulation 9 of [S.R. 2001 No. 119](#), regulation 2(8) of [S.R. 2005 No. 110](#) and Article 21(3) of [S.R. 2012 No. 124](#)

(9) Regulations 14 to 14C were substituted for regulation 14 by regulation 2(9) of [S.R. 2005 No. 110](#). Regulation 14 was amended by regulation 9 of [S.R. 2007 No. 185](#) and regulations 8(3) and 10(a) of [S.R. 2013 No. 72](#)

“Disapplication of regulations 13 to 14C in certain circumstances

14D.—(1) The circumstances referred to in regulation 13(5) are as follows.

(2) In relation to a member of a stakeholder pension scheme that is a personal pension scheme, the circumstances are that—

- (a) the scheme is a qualifying scheme in relation to an employer, and
- (b) the member’s workplace pension contributions are allocated under a default arrangement.

(3) In relation to a member of a stakeholder pension scheme that is an occupational pension scheme, the circumstances are that Part 2 of the Occupational Pension Schemes (Charges and Governance) Regulations (Northern Ireland) 2015 (restrictions on charges) applies to the scheme.

(4) In this regulation “default arrangement” and “workplace pension contributions” have the meanings given by the FCA Handbook(10).”.

Amendment of the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations and the Occupational Pension Schemes (Modification of Schemes) Regulations

13.—(1) In regulation 10(1) of the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006(11) (listed changes: exclusions) after subparagraph (a) insert—

“(aa) is made for the purposes of implementing an adjustment measure within regulation 10 of the Occupational Pension Schemes (Charges and Governance) Regulations (Northern Ireland) 2015 (charge limits adjustment);”.

(2) After regulation 7A of the Occupational Pension Schemes (Modification of Schemes) Regulations (Northern Ireland) 2006(12) (modification of schemes: abolition of protected rights) insert—

“Amendment of schemes for adjustment measure

7B. The trustees of a trust scheme may by resolution amend the scheme for the purposes of implementing an adjustment measure within regulation 10 of the Occupational Pension Schemes (Charges and Governance) Regulations (Northern Ireland) 2015 (charge limits adjustment).”.

PART 3

CHAPTER 1

GOVERNANCE OF RELEVANT SCHEMES

Definition of “relevant scheme”

14. In regulation 1 of the Administration Regulations (interpretation)—

- (a) in paragraph (2) before the definition of “scheme year” insert—

(10) The definition of “the FCA Handbook” was substituted for the definition of “the FSA Handbook” by paragraph 30(a)(ii) of Schedule 2 to [S.I. 2013/472](#)

(11) [S.R. 2006 No. 48](#)

(12) [S.R. 2006 No. 149](#); regulation 7A was inserted by regulation 3 of [S.R. 2012 No. 125](#)

““relevant scheme” means an occupational pension scheme which provides money purchase benefits other than—

- (a) an executive pension scheme;
- (b) a relevant small scheme;
- (c) a scheme that does not fall within paragraph 1 of Schedule 1 to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014⁽¹³⁾ (description of schemes);
- (d) a public service pension scheme⁽¹⁴⁾ which—
 - (i) falls within regulation 4(2) of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014 (limitations on application to certain public service pension schemes); or
 - (ii) does not fall within regulation 4(2) of those Regulations but is a public service pension scheme within the meaning of the 2005 Order⁽¹⁵⁾; or
- (e) a scheme which provides no money purchase benefits other than benefits which are attributable to additional voluntary contributions;”;

(b) after paragraph (2ZA)⁽¹⁶⁾ insert—

“(2ZB) For the purposes of the definition of “relevant scheme”—

“executive pension scheme” means a scheme—

- (a) in relation to which a company is the only employer and the sole trustee; and
- (b) the members of which are either current or former directors of the company and include at least one-third of the current directors;

“relevant small scheme” means a scheme with fewer than 12 members, where—

- (a) all the members are trustees of the scheme and either—
 - (i) the provisions of the scheme provide that any decision made by the trustees is made by the unanimous agreement of the trustees who are members of the scheme; or
 - (ii) the scheme has a trustee who is independent in relation to the scheme for the purposes of Article 23⁽¹⁷⁾ (power to appoint independent trustees), and is registered in the register maintained by the Authority⁽¹⁸⁾ in accordance with regulations made under Article 23(4); or
- (b) all the members are directors of a company which is the sole trustee of the scheme and either—
 - (i) the provisions of the scheme provide that any decision made by the company in its capacity as a trustee is made by the unanimous agreement of the directors who are members of the scheme; or
 - (ii) one of the directors of the company is independent in relation to the scheme for the purposes of Article 23 and is registered in the register

⁽¹³⁾ [S.R. 2014 No. 79](#)

⁽¹⁴⁾ See section 1 of the Pension Schemes (Northern Ireland) Act 1993

⁽¹⁵⁾ See the definition of “public service pension scheme” in Article 2 of the Pensions (Northern Ireland) Order 2005 as inserted by paragraph 2(3) of Schedule 4 to the Public Service Pensions Act (Northern Ireland) 2014 (c. 2 (N.I.)). The definition of “the 2005 Order” was inserted by paragraph 5(2) of Schedule 3 to [S.R. 2005 No. 568](#)

⁽¹⁶⁾ Paragraph (2ZA) is inserted by regulation 21(b) of these Regulations

⁽¹⁷⁾ Article 23 was substituted by Article 32(3) of the Pensions (Northern Ireland) Order 2005

⁽¹⁸⁾ The definition of “the Authority” in Article 121(1) of the Pensions (Northern Ireland) Order 1995 was substituted by Article 6(2)(b) of the Pensions (Northern Ireland) Order 2005

maintained by the Authority in accordance with regulations made under Article 23(4).”.

Appointment of service providers

- 15.**—(1) The Administration Regulations are amended in accordance with paragraphs (2) and (3).
(2) For the heading to Part II substitute “ADVISERS AND SERVICE PROVIDERS”.
(3) After regulation 6 (duty to disclose information) insert—

“Appointment of service providers in respect of relevant schemes

- 6A.**—(1) The trust deed or scheme rules must not contain a provision that—
(a) requires that the administrative, fund management, advisory or other services in respect of the scheme are provided by a person identified in any document; or
(b) restricts the choice of person who may be appointed to provide such services.
(2) Paragraph (1) overrides any provision of a relevant scheme to the extent that it conflicts with that paragraph.
(3) In relation to a relevant scheme which is not a money purchase scheme, this regulation applies only in relation to services which are provided in connection with the provision of money purchase benefits.”.

Appointment of chair of trustees or managers

- 16.**—(1) The Administration Regulations are amended in accordance with paragraphs (2) and (3).
(2) In regulation 1(2) (interpretation)—
(a) after the definition of “business days” insert—
 ““chair” means—
(a) the person appointed as chair of the trustees or managers of a relevant scheme, in accordance with regulation 22;
(b) the person appointed as chair of the trustees of a relevant scheme by someone other than the trustees, in accordance with the trust deed or scheme rules; or
(c) in the case of a scheme established under section 67 of the Pensions Act 2008⁽¹⁹⁾ (duty to establish a pension scheme), the person appointed as chair of the trustee corporation established under section 75 of that Act;”;
(b) after the definition of “money purchase scheme”⁽²⁰⁾ insert—
 ““professional trustee body” means a body which—
(a) was not established by an employer in relation to the scheme;
(b) is remunerated for its services as a trustee by one or more schemes;
(c) has arranged a policy of indemnity insurance in relation to the exercise of its functions as a trustee of the scheme; and
(d) is carrying out its functions as a trustee of the scheme in the ordinary course of a profession or business which consists of, or includes, providing and holding itself out as providing services in connection with the management or administration of trusts or any particular aspect of such management or

⁽¹⁹⁾ 2008 c. 30; section 67 was amended by section 30(2) of the Finance (No. 3) Act 2010 (c. 33)

⁽²⁰⁾ The definition of “money purchase scheme” was inserted by paragraph 16(2)(a) of the Schedule to S.R. 1997 No. 160

administration, whether or not such services relate to a particular kind of trust;”.

(3) After regulation 21 (circumstances where notice of non-payment of any amount payable to a scheme need not be given) add—

“PART V

GOVERNANCE OF RELEVANT SCHEMES

CHAPTER 1

GENERAL

Duty to appoint a chair of the trustees or managers

22.—(1) Where a relevant scheme which is a trust scheme does not have a chair appointed, the trustees must appoint a chair of the trustees in accordance with this regulation.

(2) The chair of the trustees must be—

- (a) an individual who is a trustee of the scheme;
- (b) a professional trustee body which is a trustee of the scheme;
- (c) where a company which is not a professional trustee body is a trustee of the scheme, an individual who is a director of that company and through whom the company exercises its functions as a trustee of the scheme, or a professional trustee body which is a director of that company; or
- (d) in the case of a scheme established under section 67 of the Pensions Act 2008 (duty to establish a pension scheme), a member of the trustee corporation established under section 75 of that Act.

(3) Where a relevant scheme is not a trust scheme, the managers must appoint one of their number to be the chair of the managers.

(4) Subject to paragraph (6), the first chair of a relevant scheme must be appointed before the end of the period of 3 months beginning with the date on which the scheme is established.

(5) Where the chair ceases to hold office as chair for any reason, the trustees or managers must appoint a replacement in accordance with the provisions of this regulation, before the end of the period of 3 months beginning with the date on which the chair ceases to hold that office.

(6) Paragraph (4) does not apply to a relevant scheme which was established before 6th April 2015 and, if the scheme has no chair on that date, the first chair must be appointed before the end of the period of 3 months beginning with that date.”.

(4) In regulation 3(1) of the Register of Occupational and Personal Pension Schemes Regulations (Northern Ireland) 2005(**21**) (registrable information) after sub-paragraph (d) insert—

“(da) in the case of an occupational pension scheme which is a relevant scheme within the meaning of the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997(**22**), the name of the person for the time being appointed as the chair within the meaning of regulation 1(2) of those Regulations;”.

(21) S.R. 2005 No. 93; regulation 3 was amended by regulation 4 of S.R. 2006 No. 297

(22) S.R. 1997 No. 94; the definitions of “relevant scheme” and “chair” are inserted by regulations 14(a) and 16(2)(a) of these Regulations

Annual statement regarding governance

17.—(1) After regulation 22 of the Administration Regulations (duty to appoint a chair of the trustees or managers) add—

“Annual statement regarding governance

23.—(1) Subject to paragraph (3), the trustees or managers of a relevant scheme must prepare a statement within 7 months of the end of each scheme year and that statement must—

- (a) in relation to the default arrangement—
 - (i) include the latest statement prepared in accordance with regulation 2A of the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005⁽²³⁾ (additional requirements in relation to default arrangement);
 - (ii) describe any review undertaken during the scheme year in accordance with paragraph (2) of that regulation;
 - (iii) explain any changes resulting from such a review; and
 - (iv) where no review was undertaken during the scheme year, give the date of the last review;
- (b) describe how the requirements of regulation 24⁽²⁴⁾ have been met during the scheme year;
- (c) in relation to the charges and transaction costs which the trustees or managers are required to calculate in accordance with regulation 25(1)(a)—
 - (i) state the level of charges and transaction costs applicable to the default arrangement during the scheme year or, where the scheme has more than one default arrangement, state the range of the levels of charges and transaction costs applicable to those arrangements;
 - (ii) state the range of the levels of charges and transaction costs applicable to all funds which are not part of the default arrangement and in which assets relating to members are invested during the scheme year;
 - (iii) indicate any information about transaction costs which the trustees or managers have been unable to obtain and explain what steps are being taken to obtain that information in the future; and
 - (iv) explain the trustees’ or managers’ assessment, in accordance with regulation 25(1)(b), of the extent to which the charges and transaction costs represent good value for members;
- (d) describe how the requirements of Articles 224 and 225⁽²⁵⁾ of the 2005 Order (requirements for knowledge and understanding: individual trustees and corporate trustees) have been met during the scheme year and explain how the combined knowledge and understanding of the trustees or managers, together with the advice which is available to them, enables them properly to exercise their functions as trustees or managers of the scheme; and
- (e) be signed on behalf of the trustees or managers by the chair.

(2) Where the first statement required to be prepared by the trustees or managers of a relevant scheme in accordance with this regulation relates to a scheme year which ends before 5th April 2016, this regulation applies to that statement as if references to “the scheme year”

⁽²³⁾ S.R. 2005 No. 569; regulation 2A is inserted by regulation 20(3) of these Regulations

⁽²⁴⁾ Regulations 24 and 25 are inserted by regulations 18 and 19 of these Regulations

⁽²⁵⁾ Article 225 was amended by paragraph 252(9) of Schedule 1 to S.I. 2009/1941

in sub-paragraphs (a) to (d) of paragraph (1) were references to “the part of the scheme year beginning on 6th April 2015”.

(3) Where the circumstances in paragraph (2) apply and the period to be covered by the first statement is 3 months or less, paragraph (1) does not apply to that scheme year, but the statement required to be prepared in relation to the following scheme year must include information relating to the period of 3 months or less of the previous scheme year.

(4) In this regulation “default arrangement”(26) has the same meaning as in the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005.”.

(2) In Schedule 3 to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014 (information to be given on request) after paragraph 33 add—

“34. Where the scheme is a relevant scheme within the meaning of the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997, the statement which the trustees or managers are required to prepare by regulation 23 of those Regulations (annual statement regarding governance).”.

Requirements for processing financial transactions

18. After regulation 23 of the Administration Regulations (annual statement regarding governance) add—

“Requirements for processing financial transactions

24.—(1) The trustees or managers of a relevant scheme must secure that core financial transactions are processed promptly and accurately.

(2) A “core financial transaction” includes (but is not limited to)—

- (a) investment of contributions to the scheme;
- (b) transfers of assets relating to members into and out of the scheme;
- (c) transfers of assets relating to members between different investments within the scheme;
- (d) payments from the scheme to, or in respect of, members.

(3) In relation to a scheme which is not a money purchase scheme, this regulation applies only in relation to the provision of money purchase benefits.”.

Assessment of charges and costs

19. After regulation 24 of the Administration Regulations (requirements for processing financial transactions) add—

“Assessment of charges and transaction costs

25.—(1) The trustees or managers of a relevant scheme must, at intervals of no more than one year—

- (a) calculate—
 - (i) the charges; and
 - (ii) in so far as they are able to do so, the transaction costs, borne by members of the scheme; and

(26) The definition of “default arrangement” is inserted by regulation 20(2)(a) of these Regulations

(b) assess the extent to which those charges and transaction costs represent good value for members.

(2) In this regulation (and in regulation 23) “charges” and “transaction costs” have the meanings given in regulation 2(1) of the Occupational Pension Schemes (Charges and Governance) Regulations (Northern Ireland) 2015.

(3) In relation to a scheme which is not a money purchase scheme, this regulation applies only in relation to charges and transaction costs which relate to the provision of money purchase benefits.”.

Requirements relating to default arrangement

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

(2) In regulation 1(2) (interpretation)—

(a) after the definition of “collective investment scheme” insert—

““default arrangement”, means an arrangement, within the meaning of regulation 3 of the Occupational Pension Schemes (Charges and Governance) Regulations (Northern Ireland) 2015, which would be a default arrangement within the meaning of that regulation if that regulation were modified as follows—

(a) in paragraph (1)(a)—

(i) omit “qualifying”;

(ii) for “relevant jobholders” substitute “workers”;

(b) in paragraph (2)(b) omit “subject to paragraph (3),”;

(c) omit paragraphs (3) and (4);

(d) in paragraph (9)—

(i) in the definition of “relevant date” omit the words after “regulation 1(2)”;

(ii) omit the definitions of “relevant jobholder” and “staging date”;

(b) after the definition of “recognised stock exchange” insert—

““relevant scheme” has the same meaning as in the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997;”.

(3) After regulation 2 (statement of investment principles) insert—

“Additional requirements in relation to default arrangement

2A.—(1) The trustees or managers of a relevant scheme must prepare a statement of the investment principles governing decisions about investments for the purposes of the default arrangement, and that statement must be in writing and must cover at least the following matters—

(a) the aims and objectives of the trustees or managers in respect of such investments;

(b) their policies in relation to the matters mentioned in regulation 2(3)(b) in respect of the default arrangement, and

(c) an explanation of how the aims and objectives mentioned in sub-paragraph (a) and the policies mentioned in sub-paragraph (b) (together “the default strategy”) are intended to ensure that assets are invested in the best interests of the group of persons consisting of relevant members and relevant beneficiaries.

(2) The trustees or managers must review both the default strategy and the performance of the default arrangement—

- (a) at least every three years, and
- (b) without delay after any significant change in—
 - (i) investment policy, or
 - (ii) the demographic profile of relevant members.

(3) The trustees or managers must, in particular, review the extent to which the return on investments relating to the default arrangement (after deduction of any charges relating to those investments) is consistent with the aims and objectives of the trustees or managers in respect of the default arrangement.

(4) The trustees or managers must revise the statement prepared in accordance with paragraph (1) after every review unless they decide that no action is needed as a result of the review in paragraph (3).

(5) For the purposes of this regulation and regulation 4A, a person is a relevant member or a relevant beneficiary if assets relating to that member or, as the case may be, that beneficiary (as defined in regulation 4(11)), are invested in the default arrangement.”.

(4) After regulation 4 (investment by trustees) insert—

“Investments relating to a default arrangement

4A. Where regulation 4(2) does not apply⁽²⁷⁾ to a relevant scheme, the assets allocated to the scheme’s default arrangement must be invested—

- (a) in the best interests of relevant members and relevant beneficiaries, and
- (b) in the case of a potential conflict of interest, in the sole interest of those members and beneficiaries.”.

CHAPTER 2

ADDITIONAL GOVERNANCE REQUIREMENTS FOR RELEVANT MULTI-EMPLOYER SCHEMES

Definition of “relevant multi-employer scheme”

21. In regulation 1 of the Administration Regulations (interpretation)—

(a) in paragraph (2) after the definition of “relevant benefits” insert—

““relevant multi-employer scheme” means a relevant scheme in relation to which some or all of the participating employers are not connected employers, or which is promoted as a scheme where participating employers need not be connected employers, except where—

- (a) the scheme has distinct sections relating to employers which are not connected employers and each of those sections is governed by different trustees or managers (or, where the scheme does not currently have participating employers which are not connected employers, it shall have such sections when there are participating employers which are not connected employers);
- (b) the scheme is established under section 67 of the Pensions Act 2008⁽²⁸⁾; or

⁽²⁷⁾ See regulation 7 of S.R. 2005 No. 569

⁽²⁸⁾ 2008 c. 30; section 67 was amended by section 30(2) of the Finance (No. 3) Act 2010 (c. 33)

- (c) the scheme is established by or under a statutory provision, other than a scheme referred to in paragraph (b).”;
- (b) after paragraph (2) insert—
 - “(2ZA) For the purposes of the definition of “relevant multi-employer scheme”—
 - “connected employers” means 2 employers which are—
 - (a) part of a group of companies consisting of a holding company and one or more subsidiaries within the meaning of section 1159(1) of the Companies Act 2006(29); or
 - (b) partnerships, each having the same persons as at least half of its partners;
 - “participating employer” means any employer currently or previously participating in the scheme in accordance with the scheme rules.”.

Additional requirements for relevant multi-employer schemes

22. After regulation 25 of the Administration Regulations (assessment of charges and transaction costs) add—

“CHAPTER 2

RELEVANT MULTI-EMPLOYER SCHEMES

Annual statement regarding governance: relevant multi-employer schemes

26. Where a relevant scheme is a relevant multi-employer scheme, the statement prepared in accordance with regulation 23 must include such of the following additional information as is relevant to the scheme—

- (a) how the requirements of regulation 27(2) have been met during the year;
- (b) where a trustee who is non-affiliated (within the meaning of regulations 27 and 28) was appointed during the year, details of how the requirement of regulation 28(1) was met;
- (c) details of the arrangements in place during the year to meet the requirement of regulation 29.

Appointment of trustees

27.—(1) A relevant multi-employer scheme which is a trust scheme must have at least 3 trustees (but see also paragraphs (4) to (7)).

(2) A majority of the trustees of a relevant multi-employer scheme which is a trust scheme, including the chair of the trustees, must be non-affiliated (but see also paragraphs (4) to (7)).

(3) Where there is a chair of the trustees at the time any other trustee is appointed, the chair must be consulted on the appointment.

(4) In relation to a company which is not a professional trustee body and which is a trustee of a relevant multi-employer scheme, this regulation applies as if—

- (a) the company were not a trustee of the scheme; and

(b) each individual who is a director of the company and through whom the company exercises its functions as trustee, and any professional trustee body which is a director of the company, were a trustee of the scheme.

(5) A new relevant multi-employer scheme must meet the requirements of paragraphs (1) and (2) before the end of the period of 3 months beginning with the date on which the scheme is established (or, if later, the date on which the scheme becomes a relevant multi-employer scheme which is a trust scheme).

(6) Where a trustee of a relevant multi-employer scheme—

(a) ceases to be a trustee for any reason; or

(b) in the case of a trustee who was non-affiliated, ceases to be non-affiliated,

the requirements of paragraphs (1) and (2) must be met before the end of the period of 3 months beginning with the date on which the former trustee ceases to be a trustee or, as the case may be, the trustee ceases to be non-affiliated.

(7) Where a relevant multi-employer scheme was established, or became a relevant multi-employer scheme, before 6th April 2015 and the requirements of paragraph (1) or (2) are not met on that date, the requirement in question must be met before the end of the period of 3 months beginning with that date.

(8) In this regulation and in regulation 28 “non-affiliated” means independent of any undertaking which provides advisory, administration, investment or other services in respect of the relevant multi-employer scheme (but see also regulation 28).

Appointment of trustees: trustees who are non-affiliated

28.—(1) The appointment process for a trustee who is to count as non-affiliated for the purposes of regulation 27(2) must be open and transparent.

(2) For the purposes of paragraph (1), an appointment process which is open and transparent includes (but is not limited to) a process which—

(a) includes advertisement of the vacancy for a trustee in at least one appropriate national publication;

(b) includes engagement of the services of a recruitment agency to assist in the selection of candidates; or

(c) meets the requirements of Article 218(2) or, as the case may be, 219(2) of the 2005 Order⁽³⁰⁾ (requirements for member-nominated trustees and member-nominated directors of corporate trustees).

(3) For the purposes of determining whether a person is non-affiliated, the following matters must be taken into account—

(a) whether the person—

(i) is a director, manager, partner or employee of an undertaking which provides advisory, administration, investment or other services in respect of the scheme (a “service provider”) or an undertaking which is connected to a service provider; or

(ii) has been such a director, manager, partner or employee during the period of 5 years ending with the date of the person’s appointment as a trustee;

(b) whether the person receives any payment or other benefit from a service provider, other than—

⁽³⁰⁾ The definition of “the 2005 Order” was inserted by paragraph 5(2) of Schedule 3 to [S.R. 2005 No. 568](#)

- (i) a payment or other benefit in respect of a role in the governance of a personal pension scheme in which the person is required to act in the interests of some or all of the scheme members; or
 - (ii) a payment in respect of the person's role as trustee of the relevant multi-employer scheme;
 - (c) whether or not, in the person's relationship with a service provider, the person's obligations to the service provider conflict with their obligations as a trustee of the relevant multi-employer scheme and whether their obligations as a trustee will take priority in the case of a conflict.
- (4) A trustee who is an individual is not to count as non-affiliated for the purposes of regulation 27(2) for—
- (a) any one period of more than 5 years; or
 - (b) subject to paragraph (5), more than 10 years in total.
- (5) No period of appointment of a trustee who is an individual is to be taken into account for the purposes of paragraph (4)(b) if more than 5 years have elapsed since the trustee last held office as a trustee of the same relevant multi-employer scheme.
- (6) Paragraphs (1) to (5) apply to an individual who is a director of a corporate trustee and to whom regulation 27 applies as if he were a trustee as they apply to a trustee who is an individual.
- (7) Where a trustee who is to count as non-affiliated for the purposes of regulation 27(2) is a professional trustee body—
- (a) the trustee is not to count as non-affiliated for any one period of more than 5 years;
 - (b) a nominated individual must act as representative of the trustee; and
 - (c) the nominated individual may not act as representative of the trustee for more than 10 years in total.
- (8) For the purposes of paragraph (3)(a), 2 undertakings are “connected” if they are—
- (a) part of a group of companies consisting of a holding company and one or more subsidiaries within the meaning of section 1159(1) of the Companies Act 2006; or
 - (b) partnerships, each having the same persons as at least half of its partners.

Representation of members

29. The trustees or managers of a relevant multi-employer scheme must make arrangements to encourage members of the scheme, or their representatives, to make their views on matters relating to the scheme known to the trustees or managers.”.

Administration Regulations: further amendment

23. In regulation 1(2) of the Administration Regulations (interpretation) in the definition of “relevant multi-employer scheme”**(31)**—

- (a) at the end of paragraph (a) insert “or”;
- (b) at the end of paragraph (b) omit “or”;
- (c) omit paragraph (c).

(31) The definition of “relevant multi-employer scheme” is inserted by regulation 21(a) of these Regulations

PART 4

COMPLIANCE

Amendment of the Register of Occupational and Personal Pension Schemes Regulations

24. In regulation 3(1) of the Register of Occupational and Personal Pension Schemes Regulations (Northern Ireland) 2005⁽³²⁾ (registrable information)—

- (a) in sub-paragraph (e) for “employer, and” substitute “employer;”;
- (b) in sub-paragraph (g)⁽³³⁾ for “commenced.” substitute “commenced;”;
- (c) after sub-paragraph (g) add—
 - “(h) in the case of an occupational pension scheme which is a relevant scheme within the meaning of the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997, whether the trustees or managers of that scheme have prepared the statement that they are required to prepare in accordance with regulation 23 of those Regulations (annual statement regarding governance), and
 - (i) in the case of an occupational pension scheme in respect of which the requirements of Part 2 of the Occupational Pension Schemes (Charges and Governance) Regulations (Northern Ireland) 2015 (restrictions on charges) apply to one or more of its members, whether the trustees or managers of that scheme have complied with those requirements in respect of each member to whom they apply.”.

Amendment of Article 9(7) of the 2005 Order

25. In Article 9(7)⁽³⁴⁾ of the 2005 Order (improvement notices)—

- (a) at the end of sub-paragraph (d) omit “or”;
- (b) in sub-paragraph (e) for “2014.” substitute “2014, or”;
- (c) after sub-paragraph (e) add—
 - “(f) paragraph 2 of Schedule 18 to the Pensions Act (Northern Ireland) 2015⁽³⁵⁾ (power to impose requirements relating to administration or governance).”.

Compliance notices

26.—(1) The Regulator may issue a compliance notice to the trustees or managers in any of the circumstances of non-compliance in paragraph (2).

- (2) The circumstances mentioned in paragraph (1) are—
 - (a) receipt of an indication pursuant to regulation 3(1)(i) of the Register of Occupational and Personal Pension Schemes Regulations (Northern Ireland) 2005 (registrable information) that the trustees or managers have not complied with Part 2;
 - (b) if the Regulator is of the opinion that the trustees or managers are not complying with, or have not complied with, Part 2.

⁽³²⁾ S.R. 2005 No. 93; relevant amending Regulations are S.R. 2006 No. 297

⁽³³⁾ Sub-paragraph (g) was added by regulation 4(a) of S.R. 2006 No. 297

⁽³⁴⁾ Article 9(7) was amended by paragraph 3(3) of Schedule 4 to the [Public Service Pensions Act \(Northern Ireland\) 2014](#) (c. 2 (N.I.))

⁽³⁵⁾ 2015 c. 5 (N.I.)

(3) A compliance notice is a notice directing the trustees or managers to whom it is issued to take, or refrain from taking, the steps specified in the notice.

(4) The steps mentioned in paragraph (3) may be any steps that the Regulator reasonably requires with a view to ensuring that any non-compliance with Part 2 is remedied and, where appropriate, not repeated.

(5) A direction in a compliance notice may be expressed to be conditional on compliance by a third party with a specified direction contained in a third party compliance notice under regulation 27.

(6) A compliance notice may, in particular—

- (a) state the period within which any step must be taken or must cease to be taken;
- (b) require the trustees or managers to provide within a specified period specified information relating to the non-compliance;
- (c) require the trustees or managers to inform the Regulator, within a specified period, how the person has complied with or is complying with the notice;
- (d) state that if the Regulator is of the opinion that the trustees or managers have failed to comply with the requirements of the notice, the Regulator may issue a penalty notice under regulation 28(1)(b)(i);
- (e) give the trustees or managers a choice between different ways of remedying, or preventing the recurrence of, the non-compliance.

(7) A compliance notice must—

- (a) state which of the circumstances of non-compliance in paragraph (2) applies, and
- (b) if the circumstance in paragraph (2)(b) applies, state—
 - (i) which provision of Part 2 the Regulator believes was not, or is not being, complied with, and
 - (ii) the evidence on which that belief is based.

Third party compliance notices

27.—(1) Where in any of the circumstances of non-compliance in paragraph (2)—

- (a) the Regulator is of the opinion that the non-compliance is or was, wholly or partly, a result of a failure of someone other than the trustees or managers (“the third party”), and
- (b) that failure is not in itself a contravention of Part 2,

the Regulator may issue to the third party a third party compliance notice.

(2) The circumstances mentioned in paragraph (1) are—

- (a) receipt of an indication pursuant to regulation 3(1)(i) of the Register of Occupational and Personal Pension Schemes Regulations (Northern Ireland) 2005 (registrable information) that the trustees or managers have not complied with Part 2;
- (b) receipt of an indication that the trustees or managers are unable to confirm whether they are complying or will be able to comply with Part 2, or
- (c) if the Regulator is of the opinion that the trustees or managers are not complying with, or have not complied with, Part 2.

(3) A third party compliance notice is a notice directing the third party to take, or refrain from taking, the steps specified in the notice.

(4) The steps mentioned in paragraph (3) may be any steps that the Regulator reasonably requires with a view to remedying and, where appropriate, preventing a recurrence of the failure mentioned in paragraph (1).

- (5) A third party compliance notice may, in particular—
- (a) state the period within which any step must be taken or must cease to be taken;
 - (b) require the third party to provide within a specified period specified information relating to the failure;
 - (c) require the third party to inform the Regulator, within a specified period, how the third party has complied with or is complying with the notice;
 - (d) state that, if the Regulator is of the opinion that the third party has failed to comply with the requirements of the notice, the Regulator may issue a penalty notice under regulation 28(1)(a);
 - (e) give the third party a choice between different ways of remedying or preventing the recurrence of the failure.
- (6) A third party compliance notice must state—
- (a) which of the circumstances of non-compliance in paragraph (2) applies;
 - (b) the matters which the Regulator believes constitute the failure by the third party, and
 - (c) if the circumstance in paragraph (2)(c) applies, in addition to the matters mentioned in sub-paragraphs (a) and (b)—
 - (i) which provision of Part 2 the Regulator believes was not, or is not being, complied with, and
 - (ii) the evidence on which the Regulator’s belief is based.

Penalty notices

- 28.**—(1) Subject to paragraph (2), the Regulator may issue a penalty notice to—
- (a) a third party where it is of the opinion that the third party has failed to comply with a third party compliance notice under regulation 27, or
 - (b) the trustees or managers where it is of the opinion that they have failed to comply with—
 - (i) a compliance notice under regulation 26;
 - (ii) a provision in Part 2, or
 - (iii) a provision in Part V(36) of the Administration Regulations (governance of relevant schemes).
- (2) Where—
- (a) the Regulator is in receipt of an indication pursuant to regulation 3(1)(h) of the Register of Occupational and Personal Pension Schemes Regulations (Northern Ireland) 2005 (registrable information) that the trustees or managers have failed to prepare the statement that they are required to prepare by regulation 23 of the Administration Regulations (annual statement regarding governance), or
 - (b) the Regulator is of the opinion that the trustees or managers have failed to prepare the statement that they are required to prepare by regulation 23 of the Administration Regulations,

the Regulator must issue a penalty notice to the trustees or managers in relation to a first failure in connection with a scheme year.

(3) A penalty notice is a notice requiring the person to whom it is issued to pay a penalty within the period specified in the notice.

(4) The amount of a penalty is to be determined by the Regulator but—

- (a) in relation to a penalty notice issued under paragraph (1) must not exceed—
 - (i) £5,000 if the person is an individual, or
 - (ii) £50,000 if the person is a body corporate or any other person;
 - (b) in relation to a penalty notice issued under paragraph (2), must be at least £500 and must not exceed £2,000.
- (5) A penalty notice must—
- (a) where it is issued to trustees or managers, be issued to all the trustees or managers of the relevant scheme and specify their joint and several liability for the penalty;
 - (b) where it is issued to a body corporate, be issued to all officers of that body corporate who are required to pay the penalty in accordance with regulation 30(1) and specify their joint and several liability for the penalty;
 - (c) state the amount of the penalty;
 - (d) state the date, which must be at least 4 weeks after the date on which the notice is issued, by which the penalty must be paid;
 - (e) state the period (if any) to which the penalty relates;
 - (f) if the notice is issued under paragraph (1)(a) or (b)(i), specify the failure to which the notice relates;
 - (g) if the notice is issued under paragraph (1)(b)(ii) or (iii), specify the provision or provisions that have not been complied with;
 - (h) notify the person to whom the notice is issued of the review process under regulation 31 and the right of referral to a tribunal under regulation 32.
- (6) In paragraph (5)(b), “officer” means—
- (a) any director, manager, secretary or other similar person in the body;
 - (b) a person purporting to act in any such capacity;
 - (c) where the affairs of the body are managed by its members, any member who has management functions.

Penalty notices: recovery

29.—(1) Any penalty required by a penalty notice is recoverable by the Regulator.

(2) Article 10(8A) of the 1995 Order applies to a penalty recoverable under these Regulations as it applies to a penalty recoverable under that Article.

(3) The Regulator must pay into the Consolidated Fund any penalty recovered under this regulation.

Penalty notices: recovery from bodies corporate

30.—(1) Where any penalty required by a penalty notice is recoverable from a body corporate and—

- (a) the compliance failure which is the subject of that notice occurred by reason of an act or omission of the body, and
- (b) that act or omission was done with the consent of, connivance of, or is attributable to any neglect on the part of an officer of the body corporate,

the Regulator may require the officer to pay the penalty required by the notice.

(2) In this regulation, “officer” has the same meaning as in regulation 28(6).

(3) Where the Regulator requires any person to pay a penalty by virtue of paragraph (1), it may not also require the body corporate in question to pay a penalty in respect of the same act or omission.

Review of penalty notices

31.—(1) The Regulator may review a notice to which this paragraph applies—

- (a) on the written application of the person to whom the notice was issued, or
- (b) if the Regulator otherwise considers it appropriate.

(2) Paragraph (1) applies to—

- (a) a compliance notice issued under regulation 26;
- (b) a third party compliance notice issued under regulation 27, and
- (c) a penalty notice issued under regulation 28.

(3) The period within which—

- (a) an application to review a notice may be made under paragraph (1)(a) is 28 days, beginning on the day on which the notice is issued to a person, and
- (b) a notice may be reviewed under paragraph (1)(b) is 18 months, beginning on the day on which the notice is issued to a person.

(4) On a review of a notice, the effect of the notice is suspended for the period beginning on the day the Regulator determines to carry out the review and ending on the day on which the review is completed.

(5) In carrying out a review, the Regulator must consider any representations made by the person to whom the notice was issued.

(6) The Regulator's powers on a review are to—

- (a) confirm, vary or revoke the notice;
- (b) substitute a different notice.

References to First-tier Tribunal or Upper Tribunal

32.—(1) A person to whom a penalty notice is issued under regulation 28 may, if one of the conditions in paragraph (2) is satisfied, make a reference to the Tribunal in respect of—

- (a) the issue of the notice;
- (b) the amount of the penalty under the notice.

(2) The conditions are—

- (a) that the Regulator has completed a review of the notice under regulation 31, or
- (b) that the person to whom the notice was issued has made an application for the review of the notice under regulation 31(1)(a) and the Regulator has determined not to carry out such a review.

(3) On a reference to the Tribunal in respect of a notice, the effect of the notice is suspended for the period beginning on the day on which the Tribunal receives notice of the reference and ending—

- (a) on the day on which the reference is withdrawn;
- (b) if the reference is made out of time, on the day that the Tribunal determines not to allow the reference to proceed, or
- (c) when the reference is completed.

(4) For the purposes of paragraph (3)(c), a reference is completed when—

- (a) the reference has been determined, and

- (b) the Tribunal has remitted the matter to the Regulator.
- (5) In this regulation—
 - “the Tribunal” means—
 - (a) the Upper Tribunal, in any case where it is determined by or under Tribunal Procedure Rules that the Upper Tribunal is to hear the reference;
 - (b) the First-tier Tribunal, in any other case;
 - “Tribunal Procedure Rules” means—
 - (c) the Tribunal Procedure (Upper Tribunal) Rules 2008⁽³⁷⁾ in relation to the Upper Tribunal, and
 - (d) the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009⁽³⁸⁾ in relation to the First-tier Tribunal.

Sealed with the Official Seal of the Department for Social Development on 16th July 2015

(L.S.)

Anne McCleary
A senior officer of the Department for Social
Development

⁽³⁷⁾ S.I. 2008/2698 (L. 15)
⁽³⁸⁾ S.I. 2009/1976 (L. 20)