

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

DRAFT STATUTORY INSTRUMENTS

2015 No. 0000

PENSIONS

**The Occupational Pension Schemes
(Charges and Governance) Regulations 2015**

Made - - - - *******

Coming into force in accordance with regulation 1

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 113(1), 181(1) and 182(2) and (3) of the Pension Schemes Act 1993⁽¹⁾, sections 35(1), (3) and (4), 36(1), (1A)(a) and (9), 68(2)(e), 124(1) and 174(2) and (3) of the Pensions Act 1995⁽²⁾, sections 1(5), 8(1) and 83(4)(a) of the Welfare Reform and Pensions Act 1999⁽³⁾, sections 60(2)(h), 259(1), 315 and 318(1) of the Pensions Act 2004⁽⁴⁾ and sections 43 and 54(5) and (6) of, and paragraphs 1(1), (2) (a), (3) and (5), 2(1) to (3) and (5), 6 and 7 of Schedule 18 to, the Pensions Act 2014⁽⁵⁾, makes the following Regulations.

In accordance with section 185(1) of the Pension Schemes Act 1993⁽⁶⁾, section 120(1) of the Pensions Act 1995, section 317(1) of the Pensions Act 2004 and paragraph 8 of Schedule 18 to the Pensions Act 2014, the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

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

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- (1) 1993 c. 48. Section 113(1) was amended by the Child Support, Pensions and Social Security Act 2000 (c. 19), section 52(1). Section 181(1) is cited for the meaning it gives to “regulations”.
- (2) 1995 c. 26 (“the 1995 Act”). Subsections (1) and (1A) of section 36 were substituted by the Pensions Act 2004 (c. 35) (“the 2004 Act”), section 245(2). Section 124(1) is cited for the meaning it gives to “prescribed” and “regulations”.
- (3) 1999 c. 30. Section 1(5) was amended by the 2004 Act, section 285(3). Section 8(1) is cited for the meaning it gives to “prescribed”.
- (4) 2004 c. 35. Section 318(1) is cited for the meaning it gives to “prescribed” and “regulations”.
- (5) 2014 c. 19.
- (6) Section 185(1) was amended by the 1995 Act, sections 122, 151 and 177 and Schedule 3, paragraph 46, Schedule 5, paragraph 80(a), (d) and (f) and Schedule 7, Part 1.

PART 1

INTRODUCTION

Citation and commencement

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

(2) Subject to paragraph (3), these Regulations come into force on 6th April 2015.

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

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

Interpretation

2.—(1) In these Regulations—

“the 1995 Act” means the Pensions Act 1995;

“the 2008 Act” means the Pensions Act 2008(7);

“the Administration Regulations” means the Occupational Pension Schemes (Scheme Administration) Regulations 1996(8);

“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(9) other than—

- (a) transaction costs;
- (b) 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;
- (c) charges permitted by regulations made under section 24 or 41 (charges in respect of pension sharing costs) of the Welfare Reform and Pensions Act 1999(10);
- (d) winding up costs;
- (e) costs solely associated with the provision of death benefits;

“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—

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

“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, on behalf of or in respect of that member;

(7) 2008 c. 30.

(8) S.I. 1996/1715.

(9) “Administration charge” is defined in paragraph 1(5) of Schedule 18 to the Pensions Act 2014 (c. 19).

(10) Section 24 was amended by the Family Law Act 1996 (c. 27), section 66 and Schedule 8, paragraph 43A (subject to savings as to which *see* section 66(2) and Schedule 9, paragraph 5 of that Act) and the Civil Partnership Act 2004 (c. 33), section 261(1) and (4), Schedule 27, paragraph 158(1) to (2) and Schedule 30.

- “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 99 of the 2008 Act**(11)**;
- “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;
- “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 99 of the 2008 Act;
- “qualifying scheme” has the meaning given in section 99 of the 2008 Act;
- “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 section 23 of the 1995 Act**(12)** (power to appoint independent trustees), and is registered in the register maintained by the Authority (as defined in that Act)**(13)** in accordance with regulations made under subsection (4) of that section; 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 section 23 of the 1995 Act and is registered in the register maintained by the Authority (as defined in that Act) in accordance with regulations made under subsection (4) of that section;
- “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 —
- (a) legal advice;
 - (b) tracing, consulting and communicating with members;
 - (c) advice on exiting investments;
 - (d) selection of an alternative scheme or investments;
- “worker” has the meaning given in section 99 of the 2008 Act;

(11) There are amendments to section 99 which are not relevant to these Regulations.

(12) Section 23 was substituted by the 2004 Act, section 36(3).

(13) See section 124(1) of the 1995 Act, substituted by the 2004 Act, section 7(2)(b).

“writing” includes electronic communication and ‘electronic communication’ has the meaning given in section 15(1) of the Electronic Communications Act 2000(14).

(2) For the purposes of paragraph 1(5) of Schedule 18 to the Pensions Act 2014, “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.

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 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

(14) 2000 (c. 7). Section 15(1) was amended by the Communications Act 2003 (c. 21), section 406(1) and Schedule 17, paragraph 158.

- (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, 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.
- (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 to 9 of the 2008 Act⁽¹⁵⁾ first apply to the employer; and
 - "worker" means a worker of the employer referred to in paragraph (1).

⁽¹⁵⁾ Section 2 was amended by the Pensions Act 2011 (c. 19) ("the 2011 Act"), section 4. Section 3 was amended by the 2011 Act, sections 5 and 6, and S.I. 2012/1506, S.I. 2013/667 and S.I. 2014/623. Section 4 was substituted by the 2011 Act, section 6(2). Section 5 was amended by the 2011 Act, sections 4, 5 and 6, the Pensions Act 2014, sections 37 and 38 and S.I. 2012/1506, S.I. 2013/667 and S.I. 2014/623. Section 6 was amended by the 2011 Act, sections 4, 6 and 7. Section 7 was amended by the 2011 Act, section 6.

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 force.

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 that table which is imposed on the member.

<i>Column 1</i>	<i>Column 2</i>
<i>Contribution percentage charge rate (%)</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 that table which is imposed on the member.

<i>Column 1</i>	<i>Column 2</i>
<i>Flat fee charge (£)</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 the words “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 the words “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” were “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; and
 - (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) will 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.

Chargelimits 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; and
 - (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.
- (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 force; 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 will 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 will 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 should 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 2008 Act.
- (10) In this regulation, “charge limits” means the provisions of regulation 4(1)(a) and regulation 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 force; 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; and
 - “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 2000

- 12.**—(1) The Stakeholder Pension Schemes Regulations 2000(**16**) are amended as follows.
- (2) In regulation 13(**17**) (expenses, commission etc - principles), after paragraph (4) insert—
 - “(5) This regulation and regulations 14 to 14C(**18**) do not apply in the circumstances set out in regulation 14D.”.
- (3) After regulation 14C (rounding of fractional amounts) insert—

“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 scheme the circumstances are that—
 - (a) the scheme is a qualifying scheme in relation to an employer; and
 - (b) the member’s workplace 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 2015 applies to the scheme.

(16) S.I. 2000/1403.

(17) Regulation 13 was amended by S.I. 2001/577 and S.I. 2011/246.

(18) Regulations 14, 14A, 14B and 14C were substituted by S.I. 2005/577. Regulation 14, as substituted, was amended by S.I. 2007/814 and S.I. 2013/459.

(4) In this regulation, “default arrangement” and “workplace pension contributions” have the meanings given in the FCA Handbook(19).”.

Amendments of other regulations

13.—(1) In regulation 10(1) of the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006(20) (listed changes: exclusions), after sub-paragraph (a) insert—

“(aa) is made for the purposes of implementing an adjustment measure within regulation 10 of the Occupational Pension Scheme (Charges and Governance) Regulations 2015.”.

(2) After regulation 7A of the Occupational Pension Schemes (Modification of Schemes) Regulations 2006(21) (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 2015.”.

PART 3

CHAPTER 1

GOVERNANCE OF RELEVANT SCHEMES

Definition of “relevant scheme”

14. The Administration Regulations are amended as follows—

- (a) in regulation 1(2) (interpretation)(22), after the definition of “relevant benefits”, insert—
- ““relevant scheme” means an occupational pension scheme which provides money purchase benefits(23) 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 (description of schemes) to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013(24);
 - (d) a public service pension scheme(25) which—
 - (i) falls within regulation 4(2) of those Regulations (limitations on application to certain public service pension schemes); or

(19) The definition of “the FCA Handbook” was substituted for the definition of “the FSA Handbook” by [S.I. 2013/472](#). The definition of “the FSA Handbook” was inserted by [S.I. 2005/577](#).

(20) [S.I. 2006/349](#).

(21) [S.I. 2006/759](#).

(22) Regulation 1(2) was amended by [S.I. 1997/786](#), regulation 3, Schedule 1, paragraph 11(2), [2005/2426](#), regulations 4(1) and (2), [2005/3377](#), regulation 20(1) and Schedule 3, paragraph 4(1) and (2) and [2006/778](#), regulation 4(1) and (2)(a) to (d).

(23) See [S.I. 1996/1715](#), regulation 1(2), substituted by [S.I. 1997/786](#), and section 181(1) of the Pension Schemes Act 1993 (“the 1993 Act”) for definition of “money purchase benefits”. The definition of “money purchase benefits” in section 181(1) of the 1993 Act was amended by the 2011 Act, section 29 and [S.I. 2005/2053](#).

(24) [S.I. 2013/2734](#).

(25) See [S.I. 1996/1715](#), regulation 1(2), and section 1 of the 1993 Act, for definition of “public service pension scheme”. The definition of “public service pension scheme” in the 1993 Act was amended by [S.I. 1999/1820](#).

- (ii) does not fall within regulation 4(2) of those Regulations but is a public service pension scheme within the meaning of the 2004 Act⁽²⁶⁾; or
 - (e) a scheme which provides no money purchase benefits other than benefits which are attributable to additional voluntary contributions⁽²⁷⁾;
- (b) after regulation 1(2ZA)⁽²⁷⁾ 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 section 23 of the 1995 Act (power to appoint independent trustees), and is registered in the register maintained by the Authority (as defined in that Act) in accordance with regulations made under subsection (4) of that section; 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 section 23 of the 1995 Act and is registered in the register maintained by the Authority (as defined in that Act) in accordance with regulations maintained under subsection (4) of that that section.”.

Appointment of service providers

- 15.** The Administration Regulations are amended as follows—
- (a) for the heading to Part 2 substitute “Advisers and Service Providers”;
 - (b) 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.

⁽²⁶⁾ See section 318 of the 2004 Act. The definition of “public service pension scheme” was inserted by the Public Service Pensions Act 2013 (c.25), Schedule 4, paragraph 22(2).

⁽²⁷⁾ Inserted by regulation 21 of these Regulations.

(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⁽²⁸⁾, 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 as follows—

(a) in regulation 1(2) (interpretation) insert in the appropriate places alphabetically—

““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⁽²⁹⁾ (duty to establish a pension scheme), the person appointed as chair of the trustee corporation established under section 75 of that Act (trustee corporation);”;

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

(b) after regulation 21 insert—

“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—

⁽²⁸⁾ See S.I. 1996/1715, regulation 1(2), substituted by S.I. 1997/786, for definition of “money purchase scheme”.

⁽²⁹⁾ Section 67 was amended by the Finance (No. 3) Act 2010 (c. 33), section 30(2).

- (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, 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) The first chair of a relevant scheme must be appointed before the end of the period of three months starting with the date on which the scheme is established (but see also paragraph (6)).

(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 three months starting 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 three months starting with that date.”.

(2) In the Register of Occupational and Personal Pension Schemes Regulations 2005⁽³⁰⁾, in regulation 3(1) (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 1996, the name of the person for the time being appointed as the chair, within the meaning of regulation 1(2) of those Regulations;”.

Annual statement regarding governance

17.—(1) In the Administration Regulations after regulation 22⁽³¹⁾ insert—

“Annual statement regarding governance

23.—(1) Subject to paragraph (3), the trustees or managers of a relevant scheme must prepare a statement within seven 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⁽³²⁾ (default investment strategy) of the Occupational Pension Schemes (Investment) Regulations 2005 (“the Investment Regulations”);
 - (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;

⁽³⁰⁾ S.I. 2005/597. Regulation 3(1) was amended by S.I. 2006/1733.

⁽³¹⁾ Inserted by regulation 16 of these Regulations.

⁽³²⁾ Inserted by regulation 20 of these Regulations.

- (b) describe how the requirements of regulation 24 of these Regulations (requirements for processing financial transactions) 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) of these Regulations—
 - (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 sections 247 and 248 of the 2004 Act (requirements for knowledge and understanding) 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” in sub-paragraphs (a) to (d) of paragraph (1) were to the part of the scheme year starting on 6th April 2015.

(3) Where the circumstances in paragraph (2) apply and the period to be covered by the first statement is three 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 three months or less of the previous scheme year.

(4) In this regulation “default arrangement” has the same meaning as in the Investment Regulations.”.

(2) In the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013, in Part 5 of Schedule 3 (information to be included in the annual report) after paragraph 33 insert—

“**34.** Where the scheme is a relevant scheme within the meaning of the Occupational Pension Schemes (Scheme Administration) Regulations 1996, 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. In the Administration Regulations, after regulation 23(**33**) insert—

(33) Inserted by regulation 17 of these Regulations.

“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. In the Administration Regulations, after regulation 24(34) insert—

“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
- (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 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. In the Occupational Pension Schemes (Investment) Regulations 2005(35)—

(a) in regulation 1(2) (interpretation) insert the following in the appropriate places alphabetically—

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

- (a) in paragraph (1)(a) omit “qualifying”, and for “relevant jobholders” substitute “workers”;

(34) Inserted by regulation 18 of these Regulations.

(35) S.I. 2005/3378.

- (b) in paragraph (2)(b) omit “subject to paragraph (3),”;
 - (c) omit paragraphs (3) and (4); and
 - (d) in paragraph (8)-
 - (i) in the definition of “relevant date” omit the words after “regulation 1(2)”;
 - and
 - (ii) omit the definitions of “relevant jobholder” and “staging date”;
 “relevant scheme” has the same meaning as in the Occupational Pension Schemes (Administration) Regulations 1996;”;
- (b) 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), are invested in the default arrangement.”;

- (c) after regulation 4 (investment by trustees) insert—

“Investments relating to a default arrangement

4A. Where regulation 4(2) does not apply⁽³⁶⁾ 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. The Administration Regulations are amended as follows—

(a) in regulation 1(2) insert in the appropriate place alphabetically—

““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 will 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; or
- (c) the scheme is established by or under an enactment, other than a scheme referred to in paragraph (b).”;

(b) after regulation 1(2) insert—

“(2ZA) For the purposes of the definition of “relevant multi-employer scheme”—

“connected employers” means two 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⁽³⁷⁾ (meaning of “subsidiary” etc); 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. In the Administration Regulations after regulation 25⁽³⁸⁾ insert—

⁽³⁶⁾ See regulation 7 of S.I. 2005/3378.

⁽³⁷⁾ 2006 c.46.

⁽³⁸⁾ Inserted by regulation 19 of these Regulations.

“CHAPTER 3

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) (majority of trustees and chair to be non-affiliated) 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) (open and transparent appointment process) was met;
- (c) details of the arrangements in place during the year to meet the requirement of regulation 29 (representation of the views of members to the trustees or managers).

Appointment of trustees

27.—(1) A relevant multi-employer scheme which is a trust scheme must have at least three 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 who 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 three months starting 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 three months starting 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 paragraphs (1) or (2) are not met on that date, the requirement in question must be met before the end of the period of three months starting 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 section 241(2) or, as the case may be, 242(2) of the 2004 Act (nomination and selection of 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 five 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—
 - (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 five years; or
- (b) subject to paragraph (5), more than ten 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 five 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 or she 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 five 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 ten years in total.
- (8) For the purposes of paragraph (3)(a), two 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) (interpretation) of the Administration Regulations, in the definition of “relevant multi-employer scheme”(39)—

- (a) after paragraph (a) insert “or”; and
- (b) omit paragraph (c) and the word “or” immediately preceding it.

PART 4

COMPLIANCE

Amendment of the Register of Occupational and Personal Pension Schemes Regulations 2005

24.—(1) Regulation 3(1) of the Register of Occupational and Personal Pension Schemes Regulations 2005(40) is amended as follows.

- (2) At the end of sub-paragraph (e) omit “and”.
- (3) After sub-paragraph (g)(41) insert—
 - “(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 1996, 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; 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 2015 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.”.

(39) Inserted by regulation 21 of these Regulations.

(40) *S.I. 2005/597*.

(41) Sub-paragraph (g) was inserted by *S.I. 2006/1733*, regulation 4(1) and (2)(a).

Amendment of section 13 of the Pensions Act 2004

25. In section 13(7) of the Pensions Act 2004(42) (improvement notices)—

- (a) omit the “or” at the end of paragraph (d);
- (b) at the end of paragraph (e) insert—
 - “, or
 - (f) paragraph 2 of Schedule 18 to the Pensions Act 2014 (c.19).”.

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)(43) of the Register of Occupational and Personal Pension Schemes Regulations 2005 that the trustees or managers have not complied with Part 2 of these Regulations; or
- (b) if the Regulator is of the opinion that the trustees or managers are not complying with, or have not complied with, Part 2 of these Regulations.

(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 of these Regulations 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 sub-paragraph (b)(i) of paragraph (1) of regulation 28;
- (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 of these Regulations the Regulator believes was not, or is not being, complied with; and
 - (ii) the evidence on which that belief is based.

(42) 2004 c.35. Subsection (7) was amended by the Public Service Pensions Act 2013 (c.25), section 17(1) and Schedule 4, paragraphs 1, 3(1) and (3)(a) and (b). The Pension Schemes Act 2015 (currently the Pension Schemes Bill before Parliament) will, when enacted, insert an additional paragraph into subsection 7 which, depending upon when that Bill receives Royal Assent, may either precede or follow the paragraph (f) inserted by this regulation 25(b).

(43) Inserted by regulation 24(3) of these Regulations.

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 a Part 2 of these Regulations, 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 2005 that the trustees or managers have not complied with Part 2 of these Regulations;
- (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 that Part; or
- (c) if the Regulator is of the opinion that the trustees or managers are not complying with, or have not complied with, that Part.

(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 sub-paragraph (a) of paragraph (1) of regulation 28;
- (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; and
- (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 of these Regulations 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 of these Regulations; or
 - (iii) a provision in Part V of the Administration Regulations.
- (2) Where—
- (a) the Regulator is in receipt of an indication pursuant to regulation 3(1)(h)(44) of the Register of Occupational and Personal Pension Schemes Regulations 2005 that the trustees or managers have failed to prepare the statement that they are required to prepare by regulation 23(45) of the Administration Regulations; 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 a Scottish partnership 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) where it is issued to a Scottish partnership, be issued to all the partners of that Scottish partnership and specify their joint and several liability for the penalty;
 - (d) state the amount of the penalty;
 - (e) 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;
 - (f) state the period (if any) to which the penalty relates;
 - (g) if the notice is issued under paragraph (1)(a) or (b)(i), specify the failure to which the notice relates;
 - (h) if the notice is issued under paragraph (1)(b)(ii) or (iii), specify the provision or provisions that have not been complied with;
 - (i) 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,

(44) Inserted by regulation 24(3) of these Regulations.

(45) Inserted by regulation 17 of these Regulations.

- (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) In England and Wales, any such penalty is, if the county court so orders, recoverable under section 85 of the County Courts Act 1984(46) or otherwise as if it were payable under an order of that court.

(3) In Scotland, any such penalty is enforceable as if it were an extract registered decree arbitral bearing a warrant for execution signed by the sheriff court of any sheriffdom in Scotland.

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

Penalty notices: recovery from bodies corporate and Scottish partnerships

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

- (a) the compliance failure which is the subject of that notice occurred by reason of an act or omission of the body or partnership, 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 or the partnership,
the Regulator may require the officer to pay the penalty required by the notice.

(2) In this regulation, “officer”—

- (a) in relation to a body corporate, has the same meaning as in regulation 28(6); and
- (b) in relation to a Scottish partnership, means the partners of that partnership.

(3) Where the Regulator requires any person to pay a penalty by virtue of paragraph (1), it may not also require the body corporate, or Scottish partnership, 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, starting 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, starting 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 paragraph (1)(a) of regulation 31 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; or
- (b) if the reference is made out of time, on the day on which 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; the Tribunal has remitted the matter to the Regulator.

(5) In this regulation—

- (a) “the Tribunal” means—
 - (i) 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;
 - (ii) the First Tier Tribunal in any other case, and
- (b) “Tribunal Procedure Rules” means—
 - (i) the Tribunal Procedure (First-Tier Tribunal) (General Regulatory Chamber) Rules 2009⁽⁴⁷⁾ in relation to the First-Tier Tribunal; and
 - (ii) the Tribunal Procedure (Upper Tribunal) Rules 2008⁽⁴⁸⁾ in relation to the Upper Tribunal.

⁽⁴⁷⁾ S.I. 2009/1976.

⁽⁴⁸⁾ S.I. 2008/2698.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Occupational Pension Schemes (Charges and Governance) Regulations 2015 No. 879*

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

Date

Name
Minister of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations impose obligations on trustees and managers of certain occupational pension schemes in relation to charges imposed by and governance of those schemes. These Regulations are made mainly using powers in the Pensions Act 2014 (c. 19).

Part 1 contains interpretation provisions including definitions of ‘relevant scheme’ (regulation 2(1)) and ‘default arrangement’ (regulation 3).

Part 2 contains restrictions on charges imposed on members of relevant schemes. With the exception of regulation 11 (non-contributing members), these restrictions apply to members with rights in the default arrangement of a relevant scheme.

Regulations 4 to 6 impose limits on the charges which can be imposed and prohibits certain charges. Regulations 7 and 8 provide alternative ways of assessing the charges imposed on a member.

Regulation 9 provides for a member to agree that services provided will not be covered by the provisions of these Regulations as long as certain conditions are met.

Regulation 10 allows trustees and managers to take action in relation to a default arrangement where, despite their best endeavours, they are unlikely to be able to comply with the charge limits. Regulation 13 makes amendments to other regulations as a consequence of regulation 10.

Regulation 11 prohibits trustees and managers from imposing higher charges on members who are not contributing than they would on comparable members who are contributing to the pension scheme.

Regulation 12 makes amendments to the Stakeholder Pension Scheme Regulations 2000 (S.I. 2000/1403) to provide that the provisions in these Regulations apply to stakeholder pension schemes, where appropriate.

Part 3, Chapter 1 contains provisions relating to governance of relevant schemes by making amendments to the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (S.I. 1996/1715) and the Occupational Pension Schemes (Investment) Regulations 2005 (S.I. 2005/3378). These provisions include the overriding of any provision in the trust deed or scheme rules which limits the choice of service providers (regulation 15). They also impose duties on trustees and managers to:

- appoint a chair of trustees or managers (regulation 16);
- prepare an annual statement of governance (regulation 17);
- process core financial transactions promptly and fairly (regulation 18);
- calculate and assess the value for money of charges and transaction costs (regulation 19); and
- prepare a statement of investment principles in relation to the default arrangement (regulation 20).

Chapter 2 of Part 3 contains additional governance requirements for multi-employer schemes (known as ‘master trusts’). This includes additional provisions for the annual statement (referred to in (b) above), the appointment of trustees and the representation of members (regulation 22).

Regulation 23 provides that the third limb of the definition of “multi-employer scheme” which is inserted by regulation 21 and relates to schemes established by or under an enactment is omitted from 6th April 2016.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Occupational Pension Schemes (Charges and Governance) Regulations 2015 No. 879*

Part 4 contains compliance provisions in relation to the duties imposed by these Regulations.

Two separate assessments of the impact of regulations in this instrument have been made. A copy of each of the impact assessments for Parts 2 and 3 respectively is available in the libraries of both Houses of Parliament and alongside this instrument on www.legislation.gov.uk. Copies may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D, Caxton House, Tothill Street, London SW1H 9NA.