
DRAFT STATUTORY INSTRUMENTS

2015 No.

**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)(1), after the definition of “relevant benefits”, insert—
- ““relevant scheme” means an occupational pension scheme which provides money purchase benefits(2) 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(3);
 - (d) a public service pension scheme(4) which—
 - (i) falls within regulation 4(2) of those Regulations (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 2004 Act(5); or
 - (e) a scheme which provides no money purchase benefits other than benefits which are attributable to additional voluntary contributions;”;
- (b) after regulation 1(2ZA)(6) 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

(1) 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).

(2) *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](#).

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

(4) *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 scheme” in the 1993 Act was amended by [S.I. 1999/1820](#).

(5) *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).

(6) Inserted by regulation 21 of these Regulations.

- (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.
- (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⁽⁷⁾, 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—

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

- (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⁽⁸⁾ (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—
 - (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.

⁽⁸⁾ Section 67 was amended by the Finance (No. 3) Act 2010 (c. 33), section 30(2).

(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⁽⁹⁾, 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⁽¹⁰⁾ 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⁽¹¹⁾ (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;
- (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;

⁽⁹⁾ S.I. 2005/597. Regulation 3(1) was amended by S.I. 2006/1733.

⁽¹⁰⁾ Inserted by regulation 16 of these Regulations.

⁽¹¹⁾ Inserted by regulation 20 of these Regulations.

- (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(12) insert—

“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(13) 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(14)—

(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”;

(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”;

(13) Inserted by regulation 18 of these Regulations.

(14) S.I. 2005/3378.

“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⁽¹⁵⁾ 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.”.

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

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⁽¹⁶⁾ (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⁽¹⁷⁾ insert—

“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;

⁽¹⁶⁾ 2006 c.46.

⁽¹⁷⁾ Inserted by regulation 19 of these Regulations.

- (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”**(18)**—

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

(18) Inserted by regulation 21 of these Regulations.