

EXPLANATORY MEMORANDUM TO
THE OCCUPATIONAL PENSION SCHEMES (ADMINISTRATION AND
DISCLOSURE) (AMENDMENT) REGULATIONS 2018

2018 No. 233

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument makes several amendments to occupational pensions legislation in order to fulfil the statutory duty, introduced by section 44 of the Pensions Act 2014¹ (“the 2014 Act”) on the Secretary of State to make regulations to require trustees or managers of money purchase schemes that are occupational pension schemes to publish scheme transaction costs and administration charges; and to provide information about scheme transaction costs.
- 2.2 This instrument also amends the pensions legislation to require provision of information to members and recognised trade unions, on request, about certain funds in which their money is invested.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Section 113 of the Pension Schemes 1993 Act² (“the 1993 Act”) permits the Secretary of State to make regulations in the case of occupational and personal pension schemes with respect to keeping persons informed of, amongst other things, the scheme’s administration and finances and the rights and obligations that arise under it.
- 4.2 All the amendments in this package of measures apply to “relevant schemes” – occupational schemes offering money purchase benefits, with certain limited exceptions.
- 4.3 Broadly speaking ‘money purchase benefits’ are benefits where the member’s pension is solely based on their contribution and investment return, less costs and charges. Money purchase schemes are schemes in which all the benefits are money purchase benefits – the scheme itself does not provide any promises or guarantees, such as a

¹ <http://www.legislation.gov.uk/ukpga/2014/19>

² <http://www.legislation.gov.uk/ukpga/1993/48>

promised level of income or a guaranteed investment return. The definition of money purchase benefits is set out in section 181 and 181B of the 1993 Act³.

- 4.4 An “occupational pension scheme” is defined in the 1993 Act⁴. In broad terms it is a trust-based scheme established by an employer, the trustees of which have a fiduciary duty to their members.
- 4.5 Section 44 of the 2014 Act amends the 1993 Act to add new provisions, section 113(5) to (10). These impose (amongst other things), a duty on the Secretary of State to make regulations to give members (and relevant persons) of occupational money purchase schemes information about some or all transaction costs, and require the publication of some or all transaction costs and administration charges. They also permit the Secretary of State to make regulations requiring other relevant information to be published, to help assist in making comparisons to other schemes.
- 4.6 Transaction costs are broadly the costs of trading in the underlying investments carried out on pension scheme members’ behalf to deliver an investment return. Charges are all member-borne deductions other than transaction costs (and a few other exceptions). ‘Transaction costs’ and ‘charges’ are defined in the Occupational Pension Schemes (Charges and Governance) Regulations 2015⁵.
- 4.7 Section 44 of the 2014 Act also amends the Financial Services and Markets Act 2000⁶, section 137FA. This imposes (amongst other things), a corresponding duty on the Financial Conduct Authority (FCA) to make comparable rules for workplace personal pension schemes.
- 4.8 A “personal pension scheme” is defined in the 1993 Act⁷. In broad terms, it is a non-occupational scheme which is subject to a contract between the pension provider and the member. Personal pensions schemes are in practice, generally regulated by the FCA.
- 4.9 During the passage of the 2014 Act⁸ the Government committed to consult on relevant regulations to include the publication of transaction costs and charges. It also committed to work closely with the FCA to ensure, as far as possible, a consistent approach between the relevant rules and regulations for different types of pension scheme.
- 4.10 Section 38 of the Pension Schemes Act 2015⁹ amends section 113 of the 1993 Act to provide that, in complying with regulations made under section 113, a person may be required to have regard to any guidance which is prepared from time to time by the Secretary of State.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Great Britain.

³ <http://www.legislation.gov.uk/ukpga/1993/48>

⁴ Ibid

⁵ <http://www.legislation.gov.uk/uksi/2015/879>

⁶ <https://www.legislation.gov.uk/ukpga/2000/8/contents>

⁷ <http://www.legislation.gov.uk/ukpga/1993/48>

⁸ Citation: HL Deb, 26 February 2014, c955 <https://hansard.parliament.uk/lords/2014-02-26/debates/140226105000067/PensionsBill> and Citation: HL Deb, 12 March 2014, c1769 - <https://hansard.parliament.uk/Lords/2014-03-12/debates/14031265000435/PensionsBill#contribution-14031265000453>

⁹ <https://www.legislation.gov.uk/ukpga/2015/8>

5.2 The territorial application of this instrument is Great Britain.

5.3 Northern Ireland will be making separate parallel provisions

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

Cost and charge disclosure

7.1 Engaged pension savers need to be able to find information about costs and charges, to satisfy themselves that they receive good value for money from their pension. The lack of consistent, comparable charge and transaction cost data also has a range of negative implications for competition in the market and the delivery of best value for members.

7.2 The then Office of Fair Trading (OFT) published a report on the defined contribution workplace market in September 2013¹⁰. This found that competition alone cannot be relied upon to drive value for money for all savers; and made a number of recommendations, including the case for improving transparency of costs and charges in workplace pension schemes. The Department for Work and Pensions (DWP) subsequently consulted in October 2013 on a range of measures¹¹, including the introduction of a cap on the charges paid by members of schemes used for automatic enrolment, increased disclosure to members and employers, and measures to enable greater public comparison of charges.

7.3 In March 2014, DWP concluded in its consultation response¹² that existing access to information about pension scheme costs and charges was inadequate. In particular, money purchase benefits in occupational pension schemes were largely unique as savings products without guaranteed returns in that they did not provide any access to information about costs and charges. This was unreasonable, given that receiving employers' contributions would be conditional on continuing to save in the employer's nominated scheme, into which members are automatically enrolled without making an active choice. Therefore, it was announced in the consultation response¹³ that DWP and the Financial Conduct Authority would bring forward regulations and rules, respectively, requiring disclosure of transaction costs and administration charges incurred in workplace pension schemes.

7.4 Since April 2015 schemes have therefore been required to disclose a statement, on request, including cost and charge information (known as a Chair's statement¹⁴). However trustees or managers were not required to tell members that it was available, and there has been little evidence of schemes doing so voluntarily.

¹⁰ http://webarchive.nationalarchives.gov.uk/20140402194810/http://www.offt.gov.uk/shared_offt/market-studies/oft1505

¹¹ <https://www.gov.uk/government/consultations/better-workplace-pensions-a-consultation-on-charging>

¹² Ibid

¹³ Ibid

¹⁴ Regulation 12 of the Disclosure Regulations 2013 (<http://www.legislation.gov.uk/uksi/2013/2734>) and Regulation 23 of the Administration Regulations 1996 (<http://www.legislation.gov.uk/uksi/1996/1715>)

- 7.5 In March 2015 the Department for Work and Pensions and the Financial Conduct Authority (FCA) published a Joint Call for Evidence¹⁵, feedback from which was published in the FCA’s October 2016 consultation paper “Transaction cost disclosure in workplace pensions”¹⁶. This proposed new rules and guidance to improve the disclosure of transaction costs and investment charges by investment managers and insurers, when requested to do so by a relevant scheme. This enables Independent Governance Committees of workplace personal pensions and trustees and managers of occupational schemes, for the first time, to have access to the transaction costs that scheme members incur, calculated according to a standardised methodology.
- 7.6 The FCA published a Policy Statement and final rules¹⁷ in September 2017, which came into force on 3 January 2018.
- 7.7 Since April 2015 the Occupational Pension Schemes (Scheme Administration) Regulations 1996¹⁸ (“the Scheme Administration Regulations 1996”) have required trustees and managers of relevant occupational pension schemes to calculate charges and, as far as they are able, transaction costs and include them in the Chair’s Statement. This information must be produced within 7 months of the end of each scheme year (the scheme’s annual reporting cycle) and is available on request to scheme members (and certain others). It must be presented alongside the scheme trustees’ or managers’ assessment of the extent to which these costs and charges present value for money, the details of any information about transaction costs which trustees have been unable to obtain, and an explanation of the steps being taken to obtain that information in the future. These requirements will not change¹⁹.
- 7.8 These Regulations, however, enhance the existing reporting requirements in the Scheme Administration Regulations 1996 to produce a Chair’s statement and ensures more detailed transaction costs and charges information will be provided to members. As a result of these Regulations, this information now needs to include the levels of transaction costs and charges for all funds the member can select and an illustrative example of what this means to future fund values. It also requires that the member is told, via the annual communication they receive about their pension benefits (known as an annual benefit statement), where and how they can access this information on a webpage and the circumstances in which they can request a paper format copy. This will provide members with information so they can raise concerns with their employers and/or scheme trustees to consider and so drive better value within their scheme.
- 7.9 This instrument also requires that trustees and managers must publish this information so that it is available publicly for anyone who wishes to view this information. This will bring transparency to pension scheme costs and allow trustees of pension schemes to benchmark, by identifying whether their costs are reasonable compared with comparable schemes, and whether they are therefore obtaining best value for members from their service providers. It will also assist trustees of smaller schemes in identifying whether their members would be better off in larger schemes.

¹⁵ <https://www.gov.uk/government/consultations/improving-transparency-in-workplace-pensions-transaction-costs-disclosure>

¹⁶ <https://www.fca.org.uk/publication/consultation/cp16-30.pdf>

¹⁷ FCA Policy statement (<https://www.fca.org.uk/publication/policy/ps17-20.pdf>) and FCA rules (https://www.handbook.fca.org.uk/instrument/2017/FCA_2017_53.pdf)

¹⁸ <http://www.legislation.gov.uk/ukxi/1996/1715>

¹⁹ Regulation 23(c)(iii) and (iv), <http://www.legislation.gov.uk/ukxi/1996/1715>

- 7.10 Similar opportunities will be available not only to pension scheme trustees and managers but to employers, commercial providers and commentators alike, thereby helping drive better market outcomes. Trustees and managers and their advisers will also benefit from being able to develop their reporting, by learning from other pension schemes' practices.
- 7.11 The measures will also have member benefits. With pro-active disclosure of costs and charges across all schemes, members will be able to switch funds in a more informed way, consolidate pension pots to limit charges and costs, and to engage with their employer and trustees about the choices of scheme and fund, respectively, that they have made.
- 7.12 The Department for Work and Pensions (DWP) has sought to implement this legislation in a way which minimises trustee burdens, by permitting them to include a link to the information, rather than the information itself, in the annual benefit statement. It is also not requiring schemes to set up a website for the information, but instead to use any web publishing tool which can provide for the information to be indexed by internet search engines, printed and downloaded.
- 7.13 The Financial Conduct Authority intend to consult on their proposals to achieve similar outcomes for workplace personal pension schemes in the second quarter of this year, with the aim of having rules coming into force in early 2019.

Investment disclosure

- 7.14 The Government published a Call for Evidence in November 2015²⁰, which requested views and evidence about the extent to which occupational pension schemes are currently able to make particular types of investment information available to members and certain others. This recognised that a number of factors influence trustees' and managers' ability to access and disclose this information, including the level of delegation to other parties, and how the assets were invested.
- 7.15 The DWP responded to this Call for Evidence as part of its October 2017 consultation on these amendments²¹. This reported respondents' views that there were a number of advantages to providing information to engaged members who want to know more about which funds their savings are invested in, specifically in relation to pooled funds (for an explanation, see paras 7.19 and 7.20 below).
- 7.16 Provision of pooled fund information would allow members to identify those funds' objectives and top holdings, and the firms managing the investments on their behalf. That would in turn permit members to access other publicly available information about the policies and practices of the investment managers in relation to voting, engagement, and sustainable and responsible investment. The outcome would be to provide reassurance to members where appropriate, whilst also enabling them to draw the attention of pension scheme trustees or managers to instances where objectives, engagement and decisions could be improved.
- 7.17 Responses also suggested that this could be achieved without imposing significant additional burdens on trustees or managers of schemes.

²⁰ <https://www.gov.uk/government/consultations/occupational-pensions-reducing-regulatory-burdens-and-minor-regulation-changes>

²¹ <https://www.gov.uk/government/consultations/occupational-pensions-improving-disclosure-of-costs-charges-and-investments>

- 7.18 This instruments takes forward these proposals, adding a new requirement for relevant schemes to provide members and recognised trade unions with a statement, on request, about the pooled funds in which their pension pot is directly invested, or indirectly invested if via a unit-linked contract.
- 7.19 In broad terms, money purchase benefits offered by pension schemes are usually accrued by members selecting from, or being defaulted into, one or more investment options. Those options are normally invested in one or more pooled funds. Pooled funds are an overarching term to cover products provided by insurers or investment managers in which a pension scheme's funds are invested alongside those of other schemes and investors.
- 7.20 These Regulations have specified the disclosure of information about 'collective investment schemes' – a type of regulated pooled fund on which a range of information must be made publicly available. They also require that trustees 'look through' unit-linked contracts - a form of pooled fund-like structure for which no information is required to be made publicly available - to underlying collective investment schemes in which pooled funds invest.
- 7.21 These Regulations also ensure that members are reminded regularly, via their annual benefit statement, of how they can obtain this information.

8. Consultation outcome

- 8.1 The policy proposals were put to public consultation, held between October 2017 and December 2017 for six weeks²² asking a range of questions. The consultation was supported by meetings with stakeholders and smaller groups of industry and legal experts to examine the detailed proposals, the drafting, and financial impact of the proposed changes.
- 8.2 46 responses were received to the consultation, from a variety of stakeholders in the pensions industry, including individual pension schemes, professional industry bodies, third party administrators and member representative groups.
- 8.3 The Department for Work and Pensions (DWP) also carried out a survey aimed at individual members of occupational pension schemes to help understand what information pension schemes send their members on transaction costs, charges and investments and how useful members find this information. DWP received responses from 55 individuals. A similar survey was also carried out by the consumer group Which on DWP's behalf, which received 2,300 responses from individuals. Full details can be found in the Government's consultation response²³.

²² <https://www.gov.uk/government/consultations/occupational-pensions-improving-disclosure-of-costs-charges-and-investments>

²³ Ibid

Cost and charge disclosure

- 8.4 44 respondents commented on this element of the proposed measures. No respondent disagreed with the need for transparency in this area and all who commented welcomed and agreed with the need to be transparent on scheme transaction costs and charges. A wide range of broad policy issues were raised, relating to the benefit of this information to members, publishing the information more generally for benchmarking purposes, the importance of sufficient contextualisation and the practical work associated with providing information on a website. Full details can be found in the Government's consultation response²⁴. The following paragraphs summarise the main changes the Department for Work and Pensions (DWP) has decided to make in response to the consultation.
- 8.5 **Amendments to the statutory guidance.** DWP has amended the statutory guidance to take account of minor proposed changes to the illustrative example showing the cumulative effect of transaction costs and charges. The Department has also added new provisions to clarify that cost and charge information should be published on a webpage in a format so that it can be stored offline or printed and the requirements of disabled people should be taken into account.
- 8.6 **Amendments to the Regulations.** We have amended the Regulations so that the coming into force date for the changes to the annual benefit statement is now consistent with the timings for publication of the transaction cost and charge information as required in the Chair's statement. A few other minor changes have been made to address more technical issues with regard to the application of the Regulations.

Investment disclosure

- 8.7 37 respondents commented on this element of the proposed measures. All respondents who commented broadly welcomed the proposals although some issues were raised. Some welcomed this measure as a first step but believed Government should in the long term go further. Others, in contrast, emphasised that the measure should be proportionate as they expected few members to request this information. A number of respondents highlighted that they already provided very similar content online. The following paragraphs summarise those policy changes we plan to implement in the Regulations.
- 8.8 **When the information will be available for the member on pooled funds.** Many respondents thought the original proposals would provide members with fund information too slowly. We have therefore amended the requirements so that the information must be available for all members to request from 6 April 2019 (instead of our original proposal which some members would have had to wait until November 2019). This information must be provided within two months of a request. To limit burdens on business, requests have been limited so that members will only be able to make one request within any six month period.
- 8.9 **Timing of the information to be given about pooled funds.** Some respondents suggested the investment information was readily available to most trustees or managers on a more frequent basis than annually. The requirements have therefore

²⁴ Ibid

been modified, so that information must be no more than six months out of date at the point of request. The information is based on the investment options in which the member is invested at the time of their request, rather than those in which they were historically invested over the previous scheme year.

9. Guidance

- 9.1 The amendments made to the Scheme Administration Regulations 1996 and the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013²⁵ (“the Disclosure Regulations 2013”) require that trustees or managers of relevant schemes must have regard to guidance issued from time to time by the Secretary of State in order to comply with transaction costs and charges reporting.
- 9.2 The statutory guidance “Cost and Charge reporting: guidance for trustees and managers of defined contribution occupational schemes”²⁶ is published on Gov.uk and will be reviewed as a minimum every three years, from the first date of publication, and updated when necessary. It explains to trustees or managers of relevant schemes how to satisfy the Regulations with regard to the production of an illustration (as required under regulation 23(1)(ca) of the Scheme Administration Regulations 1996) and publication of the transaction cost and charge information (as required under regulation 29A of the Disclosure Regulations 2013).

10. Impact

- 10.1 The impact on business, charities or voluntary bodies will apply to trustees or managers of occupational pension schemes which provide money purchase benefits. The annualised net impact of the package of measures contained in this instrument is estimated to be £0.4m per year over a ten year period, £0.72m in the first year, and £0.39m in subsequent years.
- 10.2 Trustees already have to provide charges and transaction costs information on request and the consultation has demonstrated that trustees are already informed of the funds in which members are invested on a regular basis. One key aspect of the costs arises from trustees and managers familiarising themselves with the revised requirements within these package of measures. For disclosure of cost and charge information, the costs to business arise from presenting the information in accordance with the new statutory guidance for transaction costs and charges information, uploading this information to the internet and inserting standard lines into the annual benefit statement. For disclosure of investments, there are additional costs to business from trustees and managers ensuring that they have updated fund information, and providing investment information to those engaged members who make a request.
- 10.3 There is no impact on the public sector.
- 10.4 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website²⁷.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.

²⁵ <http://www.legislation.gov.uk/ukxi/2013/2734>

²⁶ <https://www.gov.uk/government/consultations/occupational-pensions-improving-disclosure-of-costs-charges-and-investments>

²⁷ <http://www.legislation.gov.uk>

- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 11.3 We do not anticipate any negative effects on small and micro-businesses. These requirements apply to pension schemes and not employers. Most small businesses do not administer their own pension scheme and instead use an external provider to meet their duty to provide a pension scheme to eligible employees.

12. Monitoring & review

- 12.1 The operation of these Regulations will be monitored on an on-going basis by means of representation and feedback from the pensions community and the Pensions Regulator. It will be made easier for Regulators, Government and others to monitor quality due to the requirement within the Regulation to publish the cost and charge information.
- 12.2 Guy Opperman MP, Parliamentary Under Secretary of State for the Department for Work and Pensions (DWP), has made the following statement under section 28(2)(b) of the Small Business, Enterprise and Employment Act 2015²⁸.
- 12.3 “Having had regard to the Statutory Review Guidance for Departments published under section 31(3) of the Small Business, Enterprise and Employment Act 2015, in my view, it is not appropriate to make provision for review in the Occupational Pension Schemes (Administration and Disclosure) (Amendment) Regulations 2018.
- 12.4 As the activities to provide for cost and charge disclosure and investment disclosure is expected to have an annualised net impact on business of less than +/- £5 million, a statutory review clause is not considered appropriate as it would be disproportionate for this instrument.

13. Contact

- 13.1 Gillian Watson at the DWP. Telephone: 0113 2519810 or email: Gillian.watson1@dwp.gsi.gov.uk can answer any queries regarding the instrument.

²⁸ <http://www.legislation.gov.uk/ukpga/2015/26/contents>