

**2021 No. 272**

**PENSIONS**

**The Occupational Pension Schemes  
(Administration, Investment and Charges and Governance)  
(Amendment) Regulations (Northern Ireland) 2021**

*Made* - - - - *29th September 2021*

*Coming into operation* - *1st October 2021*

*Approved by resolution of the Assembly on 21st March 2022*

The Department for Communities makes the following Regulations in exercise of the powers conferred by sections 109(1) and (5) to (7) and 177(2) to (4) of the Pension Schemes (Northern Ireland) Act 1993(a), Articles 35(7) and 166(1) and (2) of the Pensions (Northern Ireland) Order 1995(b), and now vested in it(c), Articles 55(2)(h) and (3) and 287(1) to (3) of the Pensions (Northern Ireland) Order 2005(d) and sections 42 and 51(6) of, and paragraphs 1, 2, 3 and 6 of Schedule 18 to, the Pensions Act (Northern Ireland) 2015(e).

**Citation, commencement, application and interpretation**

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Administration, Investment and Charges and Governance) (Amendment) Regulations (Northern Ireland) 2021 and shall come into operation on 1st October 2021.

(2) The amendments made by regulations 2(2) (except for regulation 2(2)(a)(iii)) and (3)(a), 3(2)(a) and (4), 5(a)(i) and (b) apply to an occupational pension scheme in relation to the first scheme year of that scheme which ends after 1st October 2021.

(3) The amendments made by regulations 2(2)(a)(iii), (3)(b) and (c), 3(2)(b) and (3) and 5(a)(ii) and (iii) apply to an occupational pension scheme in relation to the first scheme year of that scheme which ends after 31st December 2021.

(4) The amendments made by regulation 4(2) and (3) apply in relation to an occupational pension scheme from whichever date is later of the date—

- (a) after the end of 3 months beginning with the last day of the first scheme year of that scheme which ends after 1st October 2021, or

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(a) 1993 c. 49; section 109(1) was amended by section 48(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)) and is prospectively amended by section 38(2) of the Pension Schemes Act (Northern Ireland) 2016 (c. 1 (N.I.)); section 109(5) to (9) was inserted by section 43 of the Pensions Act (Northern Ireland) 2015 (c. 5 (N.I.)); section 109(5) is prospectively amended by section 38(6) of the Pension Schemes Act (Northern Ireland) 2016

(b) S.I. 1995/3213 (N.I. 22); Article 35 was substituted by Article 221 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1))

(c) See Article 8(b) of S.R. 1999 No. 481 and section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.))

(d) S.I. 2005/255 (N.I. 1)

(e) 2015 c. 5 (N.I.); paragraph 6 of Schedule 18 was amended by section 41 of the Pension Schemes Act (Northern Ireland) 2021 (c. 6 (N.I.)); see the definitions of “relevant scheme” in paragraphs 1(5) and 2(5) of Schedule 18

(b) after the end of 6 months beginning with the day on which these Regulations come into operation.

(5) The amendments made by regulation 6(2)(c), (6) and (7) apply to an occupational pension scheme in relation to the first charges year of that scheme which ends after 1st October 2021.

(6) For the purposes of this regulation—

“charges year” has the meaning given in regulation 2(1) of the Occupational Pension Schemes (Charges and Governance) Regulations (Northern Ireland) 2015(a);

“scheme year” has the meaning given in regulation 1(2) of the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997(b).

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

### **Amendment of the Occupational Pension Schemes (Scheme Administration) Regulations**

2.—(1) The Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997 are amended in accordance with paragraphs (2) and (3).

(2) In regulation 23(d) (annual statement regarding governance)—

(a) in paragraph (1)—

(i) after sub-paragraph (a) insert—

“(aa) state the return on investments, after deduction of any charges or transaction costs relating to those investments (calculated in accordance with regulation 25(1)(a)), relating to—

(i) each default arrangement; and

(ii) each fund—

(aa) which members are now able to select or were in the past able to select; and

(bb) in which assets relating to members are invested during the scheme year,

having regard to guidance issued by the Department under section 109(2A)(e) of the Pension Schemes Act (disclosure of information about schemes to members, etc);”;

(ii) in sub-paragraph (c)—

(aa) for paragraph (ii) substitute—

“(ii) state the levels of charges and transaction costs applicable to each fund—

(aa) which members are now able to select or were in the past able to select; and

(bb) in which assets relating to members are invested during the scheme year;”;

(bb) for paragraph (iv) substitute—

“(iv) where the trustees or managers are required to assess the extent to which the charges and transaction costs borne by members represent good value for members, explain that assessment and its results;”;

(iii) after sub-paragraph (ca) insert—

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(a) S.R. 2015 No. 309; there are amendments to regulation 2(1) which are not relevant to this definition

(b) S.R. 1997 No. 94; there are amendments to regulation 1(2) which are not relevant to this definition

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

(d) Regulation 23 was added by regulation 17(1) of S.R. 2015 No. 309 and amended by regulation 5 of S.R. 2016 No. 192 and regulation 2 of S.R. 2018 No. 53

(e) Subsection (2A) was inserted by section 38(4) of the Pension Schemes Act (Northern Ireland) 2016

- “(cb) explain the results of any assessment required by virtue of regulation 25(1A);”.
- (b) after paragraph (1A)(a) insert—
- “(1B) Paragraph (1)(cb) does not apply if—
- (a) the Pensions Regulator has been notified under Article 57(4) or (5) of the 2005 Order(b) (the register: duties of trustees or managers) that the winding up of the scheme in question has commenced; and
- (b) the trustees or managers of the scheme explain why they are not complying with paragraph (1)(cb) in the statement required under paragraph (1)(c)(iv).”.
- (3) In regulation 25(c) (assessment of charges and transaction costs)—
- (a) in paragraph (1)(a)—
- (i) in head (i) for “; and” substitute “borne by members of the scheme;”;
- (ii) in head (ii) for “costs,” substitute “costs borne by members of the scheme; and”;
- (iii) after head (ii) add—
- “(iii) the returns on investments earned by assets in the scheme; and”;
- (iv) at the end omit “borne by members of the scheme; and”;
- (b) after paragraph (1) insert—
- “(1A) As part of the assessment referred to in paragraph (1)(b), the trustees or managers of a specified scheme (see paragraph (5)) must assess—
- (a) the charges and transaction costs borne by members of the scheme by comparison with the charges and transaction costs borne by members of at least three schemes (“comparison schemes”)—
- (i) each of which satisfies one of the conditions in paragraph (1D)(a); and
- (ii) at least one of which satisfies the condition in paragraph (1D)(b);
- (b) the return on investments by comparison with the return on investments for each of the three comparison schemes relating to—
- (i) the default arrangement; and
- (ii) any funds—
- (aa) which members are now able to select or were in the past able to select; and
- (bb) in which assets relating to members are invested,
- and in each case the return on investments is to be calculated after deduction of any charges or transaction costs; and
- (c) how the administrative and governance criteria set out in paragraph (1C) are met by the scheme.
- (1B) In making the assessment required under paragraph (1)(b), the trustees or managers of the specified scheme must have regard to any guidance issued by the Department by virtue of paragraph 2 of Schedule 18 to the Pensions Act (Northern Ireland) 2015 (power to impose requirements relating to administration or governance) in relation to that assessment.
- (1C) The administration and governance criteria are—
- (a) the promptness and accuracy of core financial transactions;
- (b) the quality of the records kept by the trustees or managers;
- (c) the appropriateness of the default investment strategy followed by the trustees or managers;

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(a) Paragraph (1A) was inserted by regulation 2(b) of S.R. 2018 No. 53

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

(c) Regulation 25 was inserted by regulation 19 of S.R. 2015 No. 309

- (d) the quality of the scheme’s investment governance;
- (e) the extent to which—
  - (i) the requirements of Articles 224 and 225(a) of the 2005 Order (requirement for knowledge and understanding: individual trustees and corporate trustees) are satisfied; and
  - (ii) the trustees or managers have the knowledge, understanding and skills to enable them—
    - (aa) properly to exercise their functions; and
    - (bb) to operate the scheme effectively;
- (f) the quality of communication with the members of the scheme;
- (g) the effectiveness of the management of any conflicts of interest that might arise between or among trustees and managers, or between trustees, managers and third parties.

(1D) The conditions are that—

- (a) each comparison scheme is—
  - (i) an occupational pension scheme which on the relevant date held total assets equal to or greater than £100 million; or
  - (ii) a personal pension scheme, which is not an investment-regulated pension scheme within the meaning of paragraph 1 of Schedule 29A to the Finance Act 2004(b) (schemes other than occupational pension schemes);
- (b) the trustees or managers have had discussions with the comparison scheme on a transfer of the rights of members of the specified scheme to that scheme if the specified scheme is wound up.

(1E) Where an occupational pension scheme provides both money purchase benefits within the meaning of section 176(1)(c) of the Pension Schemes Act (general interpretation) and benefits other than money purchase benefits—

- (a) the trustees or managers of the scheme are only required to comply with the obligations in paragraphs (1A) and (1B) in relation to the assets held for its money purchase benefits; and
- (b) the scheme may only be used as a comparison scheme in relation to the assets held for its money purchase benefits.”;

(c) after paragraph (3) add—

“(4) Paragraphs (1A) to (1E) do not apply if—

- (a) the Pensions Regulator has been notified under Article 57(4) or (5) of the 2005 Order (the register: duties of trustees or managers) before the date on which the trustees or managers of the scheme are required to prepare a statement under regulation 23(1) (“the annual statement”) that the winding up of the scheme in question has commenced; and
- (b) the trustees or managers of the scheme explain why they are not complying with paragraph (cb) in the annual statement.

(5) In this regulation—

“audited accounts” means the audited accounts which the trustees are required to obtain in accordance with regulation 2 of the Occupational Pension Schemes (Requirement to

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

(b) 2004 c. 12; Schedule 29A was inserted by paragraph 13 of Schedule 21 to the Finance Act 2006 (c. 25)

(c) The definition of “money purchase benefits” was amended by paragraph 19 of the Schedule to S.R. 2005 No. 434 and section 27(1) of the Pensions Act (Northern Ireland) 2012 (c. 3 (N.I.))

obtain Audited Accounts and a Statement from the Auditor) Regulations (Northern Ireland) 1997(a) (requirement of trustees or managers to obtain documents);

“core financial transactions” has the same meaning as in regulation 24(b) (requirements for processing financial transactions);

“default arrangement” has the meaning given in regulation 1(2) of the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005(c);

“default investment strategy” means the default strategy referred to in regulation 2A(1)(c)(d) of the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005 (additional requirements in relation to default arrangement);

“ear-marked scheme” has the meaning given by regulation 1(2)(e) of the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations (Northern Ireland) 1997;

“relevant date” means the date on which the trustees obtain the audited accounts for the scheme year that ended most recently;

“specified scheme” means a relevant scheme which, on the relevant date—

- (i) held total assets worth less than £100 million, and
- (ii) has been operating for 3 or more years.

(6) In this regulation, a reference to the “total assets” of a scheme means—

- (a) in the case of a scheme in respect of which the trustees are required to obtain audited accounts, the total of the amount of the net assets of the scheme recorded in the audited accounts for the scheme year; or
- (b) in the case of a scheme which is an ear-marked scheme, the value of the assets of the scheme represented by any policies of insurance or annuity contracts that are specifically allocated to the provision of benefits for individual members or any other person who has a right to benefits under the scheme.”.

### **Amendment of the Register of Occupational and Personal Pension Schemes Regulations**

**3.—**(1) Regulation 3 of the Register of Occupational and Personal Pension Schemes Regulations (Northern Ireland) 2005(f) (registrable information) is amended in accordance with paragraphs (2) to (5).

(2) In paragraph (1)—

(a) after sub-paragraph (da)(g) insert—

“(db) the value of the assets held by the scheme for the purpose of providing benefits to members, calculated on the last day of the scheme year which ended most recently;”;

(b) after sub-paragraph (h)(h) insert—

“(ha) subject to paragraph (3A), in the case of a specified scheme—

- (i) whether, on the basis of the most recent assessment required by virtue of regulation 25(1A) of the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997 (assessment of charges

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(a) S.R. 1997 No. 40; regulation 2 was amended by regulation 2 of S.R. 2000 No. 107, regulation 8 of S.R. 2000 No. 382, regulation 2 of S.R. 2005 No. 421, the Schedule to S.R. 2006 No. 65; paragraph 5 of Schedule 9 to S.R. 2014 No. 79 and regulation 2 of S.R. 2016 No. 141

(b) Regulation 24 was added by regulation 18 of S.R. 2015 No. 309

(c) S.R. 2005 No. 569; the definition of “default arrangement” was inserted by regulation 20(2) of S.R. 2015 No. 309

(d) Regulation 2A was inserted by regulation 20(3) of S.R. 2015 No. 309 and amended by regulation 4 of S.R. 2018 No. 165

(e) The definition of “ear-marked scheme” was amended by paragraph 14 of the Schedule to S.R. 1997 No. 160

(f) S.R. 2005 No. 93; relevant amending Regulations are S.R. 2006 No. 297 and S.R. 2015 No. 309

(g) Sub-paragraph (da) was inserted by regulation 16(4) of S.R. 2015 No. 309

(h) Sub-paragraph (h) was added by regulation 24 of S.R. 2015 No. 309

and transaction costs), the trustees or managers of the scheme consider that the scheme provides good value for members;

(ii) where a value assessment was carried out for the previous scheme year, whether, on the basis of that value assessment, the trustees or managers of the scheme considered that the scheme provided good value for members;

(hb) subject to paragraph (3A), in the case of a specified scheme where the trustees or managers of the scheme have stated under sub-paragraph (ha)(i) that they do not consider that the scheme provides good value for members—

(i) whether the trustees or managers propose to transfer the money purchase benefits of its members into another scheme, and whether or not they also propose to wind up the scheme, and

(ii) if the trustees or managers do not propose to wind up the scheme—

(aa) their reasons for not doing so, and

(bb) what improvements they propose to make to the scheme to ensure that it does provide good value for members.”.

(3) After paragraph (3) insert—

“(3A) Paragraph (1)(ha) and (hb) does not apply if the Regulator has been notified under Article 57(4) or (5) of the 2005 Order (the register: duties of trustees or managers) that the winding up of the scheme in question has commenced.”.

(4) In paragraph (4)(a) after the definition of “recovery period” add—

““specified scheme” has the meaning given in regulation 25(5)(b) of the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997.”.

#### **Amendment of the Occupational Pension Schemes (Investment) Regulations**

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

(2) In regulation 1(2) (interpretation) in the definition of “default arrangement”(c) in paragraph (c) for “(3) and (4)” substitute “(3), (4), (6)(a), (7) and (8)”.

(3) In regulation 2A(d) (additional requirements in relation to default arrangement)—

(a) in paragraph (3) after “charges” insert “and transaction costs”;

(b) after paragraph (5) add—

“(6) For the purposes of this regulation, “transaction costs” has the meaning given in regulation 2(1) of the Occupational Pension Schemes (Charges and Governance) Regulations (Northern Ireland) 2015.”.

(4) In regulation 8(1)(a) (modification of regulation 2 in respect of wholly-insured schemes) for “(b) and (c)” substitute “(b), (c) and (d)”.

#### **Amendment of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations**

**5.** In the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014(e)—

(a) in regulation 29A(2) (publishing charges and transaction costs and other relevant information)—

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(a) Paragraph (4) was substituted by regulation 4 of S.R. 2006 No. 297

(b) Regulation 25(5) is added by regulation 2(3)(c) of these Regulations

(c) The definition of “default arrangement” was inserted by regulation 20(2)(a) of S.R. 2015 No. 309

(d) Regulation 2A was inserted by regulation 20(3) of S.R. 2015 No. 309

(e) S.R. 2014 No. 79; regulation 29A was inserted by regulation 3(6) of S.R. 2018 No. 53 and amended by regulation 5 of S.R. 2018 No. 165 and regulations 3 and 4 of S.R. 2019 No. 115

- (i) after sub-paragraph (a) insert—
  - “(aa) paragraph (1)(aa);”;
- (ii) at the end of sub-paragraph (b) omit “and”;
- (iii) at the end of sub-paragraph (c) insert—
  - “, and
  - (d) paragraph (1)(cb).”;
- (b) in Schedule 3 (information to be given on request) in Part 5 (information that applies to the scheme) in paragraph 30—
  - (i) the provisions of the paragraph shall become sub-paragraph (1) of the paragraph;
  - (ii) after sub-paragraph (1) add—
    - “(2) Where, on the preparation or revision of an investment report under sub-paragraph (1), a scheme is a wholly-insured scheme and the trustees do not consider that it should cease to be such a scheme, sub-paragraphs (ca) and (d) of sub-paragraph (1) do not apply.”.

### **Amendment of the Occupational Pension Schemes (Charges and Governance) Regulations**

**6.—**(1) The Occupational Pension Schemes (Charges and Governance) Regulations (Northern Ireland) 2015<sup>(a)</sup> are amended in accordance with paragraphs (2) to (12).

(2) In regulation 2 (interpretation)—

- (a) in paragraph (1)—
  - (i) in the definition of “charges” after paragraph (e) add—
    - “(f) costs solely attributable to holding physical assets;”;
  - (ii) after the definition of “combination charge structure” insert—
    - ““commodity” means any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products and energy such as electricity, but not including cash or financial instruments (within the meaning of Article 3 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(b)</sup>);”;
  - (iii) after the definition of “jobholder” insert—
    - ““performance fee” means a fee which—
      - (a) is calculated by reference to the returns from investments held by the scheme, whether in terms of the capital appreciation of those investments, the income produced by those investments or otherwise, and
      - (b) is not calculated by reference to the value of the member’s rights under the scheme;
    - “physical asset” means an asset whose value depends on its physical form, including—
      - (a) land;
      - (b) buildings and other structures on land or sea;
      - (c) vehicles, ships, aircraft or rolling stock, and
      - (d) commodities;”;
  - (iv) in the definition of “service provider”<sup>(c)</sup> for “specified” substitute “relevant”;

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(a) S.R. 2015 No. 309

(b) S.I. 2001/544; the definition of “financial instrument” was inserted by Article 3 of S.I. 2006/3384 and amended by Article 2 of S.I. 2017/488 and regulation 121 of S.I. 2019/632. There are other amendments to this Article which are not relevant to these Regulations

(c) The definition of “service provider” was inserted by regulation 3(c) of S.R. 2016 No. 171

(b) after paragraph (1) insert—

“(1A) For the purposes of the definition of “charges”, the costs solely attributable to holding a physical asset include—

- (a) the costs of managing and maintaining the asset;
  - (b) fees for valuing the asset;
  - (c) the cost of insuring the asset;
  - (d) ground rent charges, rates, taxes and utilities bills incurred in relation to the asset.”
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(c) after paragraph (4) insert—

“(4A) When a charge under a single charge structure is calculated on a pro rata basis under paragraph (3) and paragraph (4B) applies, no account is to be taken of any performance fee charged within the period for which the calculation is made.

(4B) This paragraph applies if the performance fee in question is calculated and deducted from the value of the investments to which it relates each time the value of those investments is calculated for the purposes of buying or selling units.”.

(3) Before the heading to regulation 4 insert—

#### “CHAPTER 1

Default arrangements, non-contributing members and payments to advisers”.

(4) In regulation 4 (restrictions on charges)—

- (a) in paragraph (1)(a) for “this Part”, in each place where it appears, substitute “this Chapter”;
- (b) in paragraph (2)(b) for “this Part” substitute “this Chapter”;
- (c) in paragraph (4)(c) for “This Part” substitute “this Chapter”.

(5) In regulation 6(1) (limits on charges) for “The limits” substitute “Subject to regulation 13C(6), the limits”.

(6) In regulation 7 (assessment of charges) after paragraph (8) add—

“(9) Paragraph (10) applies where the charges imposed on a member include a performance fee payable at the end of the investment period.

(10) For the purposes of paragraph (4), the charge imposed annually on the member in relation to the performance fee may be treated as X divided by Y, where—

- (a) X is the sum of the performance fees accrued in relation to the return earned by the assets in the default arrangement (“the relevant assets”) during the relevant charges year and each of the preceding charges years, up to a maximum of 4 preceding charges years, and
- (b) Y is—
  - (i) 5, or
  - (ii) where the investment period is less than 5 charges years, the number of charges years in the relevant period.

(11) Where the trustees or managers choose to calculate the charge imposed annually on a member in accordance with paragraph (10), the trustees or managers must, at the end of each charges year during the investment period, calculate—

- (a) the return earned by the relevant assets during that charges year;
- (b) the performance fee which has accrued in relation to that return.

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(a) Paragraph (1) was amended by regulation 4(a) of S.R. 2016 No. 171  
(b) Paragraph (2) was amended by regulation 4(c) of S.R. 2016 No. 171  
(c) Paragraph (4) was added by regulation 3(2) of S.R. 2018 No. 54



(12) In this regulation, “investment period” means the total period for which the assets in the default arrangement are invested in an investment for which a performance fee is payable at the end of the investment period.”.

(7) In regulation 8 (alternative assessment of charges)—

(a) in paragraph (2) after “paragraph (3)” insert “and, if the trustees or managers so choose, the assumption in paragraph (3A)”;

(b) after paragraph (3) insert—

“(3A) The assumption which may be made for the purposes of paragraph (2) is that, where the charges include a performance fee to which regulation 7(10) applies, the charge to be imposed on the member in relation to the forthcoming charges year will be X divided by Y, where—

(a) X is the sum of the performance fees accrued in relation to the return earned by the assets in the default arrangement during each of the years preceding the charges year in question, up to a maximum of 5 preceding charges years, and

(b) Y is—

(i) 5, or

(ii) where the investment period is less than 5 charges years, the number of charges years in the relevant period.”.

(8) In regulation 9 (member agreement for services)—

(a) in paragraph (1)—

(i) after “in relation to” insert “advice or”;

(ii) after “provision of that” insert “advice or”;

(b) in paragraph (3) after “does not apply to” insert “advice or”.

(9) In regulation 11A(a) (payments to advisers)—

(a) in paragraph (1) omit “on or after 6th April 2016”;

(b) in paragraph (2) after “11B(2)” insert “, 11B(2B)”;

(c) in paragraph (4) for “This regulation” substitute “The prohibition in paragraph (2)”;

(d) for paragraph (6) substitute—

“(6) The prohibition in paragraph (2) does not apply to a charge imposed to reimburse a service provider for any payment made to an adviser for advice or a service referred to in paragraph (3)(a) or (b) where—

(a) the charge is imposed under a relevant contract which—

(i) was entered into before 6th April 2016, and

(ii) has not been varied or renewed on or after that date, and

(b) the payment was made before 1st October 2021.”;

(e) after paragraph (6) add—

“(7) Where the prohibition in paragraph (2) applies it overrides any term of a relevant contract to the extent that the term conflicts with it.”.

(10) In regulation 11B (relevant information)—

(a) in paragraph (2) for “paragraph (4)” substitute “paragraphs (2B) and (5)”;

(b) after paragraph (2) insert—

“(2A) This paragraph applies where the relevant contract—

(a) was entered into before 6th April 2016, and

(b) has not been varied or renewed on or after that date.

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(a) Regulations 11A to 11C were inserted by regulation 5 of S.R. 2016 No. 171

(2B) Subject to paragraph (5), where paragraph (2A) applies regulation 11A does not apply until the expiry of the period of 6 months beginning with 1st October 2021.”;

(c) in paragraph (3) for “The service” substitute “Except in a case to which paragraph (2A) applies, the service”;

(d) after paragraph (3) insert—

“(3A) In a case to which paragraph (2A) applies, subject to paragraph (5), the service provider must confirm in writing to the trustees or managers of the specified scheme within one month beginning with 1st April 2022 that it is complying with the prohibition in regulation 11A(2) in relation to all members to whom paragraph (2A) applies.”;

(e) in paragraph (5)—

(i) in sub-paragraph (a) for “paragraph (2)” substitute “paragraph (2) or (2B)”;

(ii) in sub-paragraph (b) for “paragraph (3)” substitute “paragraph (3) or (3A)”;

(f) in paragraph (6) after “paragraph (3)” insert “or (3A)”.

(11) In regulation 11C(3) (member agreement for payments to advisers) after “member agreement for” insert “advice or”.

(12) After regulation 13 (amendment of the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations and the Occupational Pension Schemes (Modification of Schemes) Regulations) insert—

## “CHAPTER 2

### RESTRICTIONS ON EARLY EXIT CHARGES

#### **Early exit charges**

**13A.**—(1) For the purposes of this Chapter an early exit charge in relation to a member of a relevant scheme is a charge which—

(a) is imposed under the scheme or a relevant contract when a member who has reached normal minimum pension age takes the action mentioned in paragraph (2), and

(b) is only imposed, or only imposed to that extent, if the member takes that action before the member’s normal pension age.

(2) The action is the member taking benefits under the scheme, converting benefits under the scheme into different benefits or transferring benefits to another pension scheme.

(3) For the purposes of this regulation—

(a) “normal minimum pension age” has the meaning given in section 279(1) of the Finance Act 2004<sup>(a)</sup>;

(b) “normal pension age” means the earliest age at which, or the earliest occasion on which, the member is entitled to receive the benefit without adjustment for taking it early or late (disregarding any special provision as to early payment on the grounds of ill-health or otherwise and any administration charges), and

(c) a reference to “benefits” includes any part or all of those benefits.

#### **Prohibition of early exit charges**

**13B.**—(1) This regulation applies to a member of a relevant scheme who joined that scheme on or after 1st October 2021.

(2) Service providers and trustees and managers of a relevant scheme must not impose an early exit charge, or permit such a charge to be imposed, on a member of the scheme to whom this regulation applies.

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(a) 2004 c. 12

### **Limits on early exit charges**

**13C.**—(1) This regulation applies to a member of a relevant scheme who joined that scheme before 1st October 2021.

(2) Service providers and trustees and managers of a relevant scheme must not impose, or permit to be imposed, on a member of the scheme to whom this regulation applies an early exit charge that exceeds the lower of—

- (a) 1% of the value of the member's benefits being taken, converted or transferred, or
- (b) such amount as was provided for under the scheme rules or a relevant contract as at 1st October 2021.

(3) Where no provision for an early exit charge was made under the scheme rules or a relevant contract as at 1st October 2021, service providers and trustees and managers of a relevant scheme must not impose an early exit charge, or permit such a charge to be imposed, on a member of the scheme to whom this regulation applies.

(4) Trustees and managers of a relevant scheme must not—

- (a) include provision in a relevant scheme for an early exit charge, where such provision did not exist on 1st October 2021, or
- (b) vary provision for an early exit charge in such a scheme to increase or potentially increase the charge.

(5) Nothing in this regulation permits an early exit charge to be imposed—

- (a) that is higher than the limits prescribed by regulation 6 where that regulation applies, or
- (b) where section 33 of the Pension Schemes Act (Northern Ireland) 2021(a) (prohibition on increasing charges etc during triggering event period) applies.

(6) Nothing in regulation 6 permits—

- (a) an early exit charge which is lower than 0.75% of the value of the member's benefits being taken, converted or transferred, to be increased, or
- (b) an early exit charge to be imposed where one did not exist.

(7) The value of a member's benefits in paragraphs (2)(a) and (6)(a)—

- (a) means the value calculated at the point when the trustee or manager of the scheme receives confirmation from the member of the instruction to take the action giving rise to the early exit charge, and
- (b) is to be calculated in accordance with guidance issued from time to time by the Department.

### **Conflicting contract terms**

**13D.** Regulations 13B and 13C override any term of a relevant contract to the extent that the term conflicts with those regulations.

### **Relevant information**

**13E.**—(1) A service provider must confirm in writing to the trustees or managers of a relevant scheme that it is complying with the restrictions in regulations 13B and 13C within one month beginning with whichever is the later of—

- (a) 1st October 2021, or
- (b) the date on which the service provider becomes a service provider in relation to the relevant scheme.

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(a) 2021 c. 6 (N.I.)

(2) The service provider must inform the trustees or managers of the relevant scheme in writing if the confirmation that it has given in compliance with paragraph (1) is no longer accurate as soon as practicable, and in any event within one month, beginning with the date on which that confirmation is no longer accurate.”.

Sealed with the Official Seal of the Department for Communities on 29th September 2021

(L.S.)

*Anne McCleary*  
A senior officer of the Department for Communities

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the law relating to the administration of occupational pension schemes. Regulation 2 amends the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997 to require trustees and managers to report on the return on investments their funds have achieved as part of the annual statement required on governance. It also requires the trustees and managers of schemes holding assets worth less than £100 million to compare the charges and transaction costs and the return on investments of their schemes with three other schemes and to assess the extent to which their schemes satisfy administration and governance criteria as part of their value for members assessment under regulation 25(1A) of those Regulations. Regulation 5 makes a consequential amendment to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014.

Regulation 3 amends the Register of Occupational and Personal Pension Schemes Regulations (Northern Ireland) 2005 to require additional registrable information to be sent to the Pensions Regulator for inclusion in the register of occupational pension schemes and personal pension schemes.

Regulation 4 amends the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005 to ensure that transaction costs are taken into account with charges in a review by the trustees or managers of the return on investments in relation to the default arrangement, and to remove the obligation for the statement of investment principles of a wholly-insured scheme which is also a defined benefit scheme to include any information on the trustees' policy on asset managers.

Regulation 6 amends the Occupational Pension Schemes (Charges and Governance) Regulations (Northern Ireland) 2015 ("the 2015 Regulations").

Paragraphs (2) to (5) of regulation 6 amend the 2015 Regulations to exclude costs attributable to holding physical assets from the charges which are subject to the charge cap imposed under those Regulations and also ensures that no account is taken of certain performance fees in calculating a charge under a single charge structure. They also make amendments consequential on the insertion of regulations 13A to 13E.

Paragraphs (8) and (11) of regulation 6 insert reference to the provision of advice into regulations 9 and 11C of the 2015 Regulations to clarify that charges may relate to the provision of advice as well as the provision of services.

Paragraph (9) of regulation 6 amends regulation 11A of the 2015 Regulations to apply the prohibition on the imposition of commission charges on members of occupational pension schemes to workers, and former workers, of an employer who used that scheme for automatic enrolment purposes for at least one jobholder before 6th April 2016. Paragraph (9)(d) substitutes regulation 11A(6) to provide that the prohibition does not apply to a charge imposed under a contract entered into before 6th April 2016 (and not subsequently varied or renewed) to reimburse a service provider for any payment made to an adviser before 1st October 2021. Paragraph (9)(e) inserts regulation 11A(7) to provide that the prohibition overrides any conflicting term of a relevant contract.

Paragraph (10) of regulation 6 amends regulation 11B of the 2015 Regulations to provide that the requirements of regulation 11A do not apply to a contract entered into before 6th April 2016 (and not subsequently renewed or varied) until the expiry of 6 months beginning with 1st October 2021. A longer period is allowed where the service provider requests more information from the trustees or managers about former members to enable it to comply (see paragraph (10)(e)). The amendments made by paragraph (10) also set out the timescales within which service providers must send confirmation of compliance with the prohibition in regulation 11A in the case of such a contract.

Paragraph (12) of regulation 6 inserts regulations 13A to 13E into Part 2 of the 2015 Regulations. Regulation 13A sets out a definition of early exit charges for the purposes of inserted

Chapter 2 of Part 2 of the 2015 Regulations. Regulation 13B sets out that early exit charges may not be imposed on members of occupational pension schemes where the member joined the scheme on or after 1st October 2021. Regulation 13C sets out that, where a member of an occupational pension scheme joined that scheme before 1st October 2021, early exit charges exceeding 1% of the member's benefits may not be imposed. Existing early exit charges which are below 1% may not be increased and new early exit charges may not be imposed. Regulation 13C(5) provides that the prohibition in section 33 of the Pension Schemes Act (Northern Ireland) 2021, and (where lower than the cap in regulation 13C) the existing cap on charges in regulation 6 of the 2015 Regulations, take precedence over the early exit charge cap. Regulation 13C(6) ensures that a charge meeting the conditions set out in paragraph (6) is not permitted by regulation 6 of the 2015 Regulations. Regulation 13C(7) contains provision as to how the value of a member's benefits is to be calculated. Regulation 13D provides that the restrictions in regulations 13B and 13C override any conflicting contractual term. Regulation 13E provides a service provider must confirm compliance with the restrictions in regulations 13B and 13C to the trustees or managers of a relevant scheme and inform them if it ceases to be compliant.

As these Regulations, in so far as they are made under the Pensions (Northern Ireland) Order 1995 ("the 1995 Order"), the Pensions (Northern Ireland) Order 2005 ("the 2005 Order") and the Pensions Act (Northern Ireland) 2015 ("the 2015 Act"), make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Work and Pensions in relation to Great Britain, the requirement for consultation does not apply by virtue of Article 117(2)(e) of the 1995 Order, Article 289(2)(e) of the 2005 Order and paragraph 8 of Schedule 18 to the 2015 Act.

Assessments of the costs to business of these Regulations are detailed in Regulatory Impact Assessments, copies of which have been laid in the Business Office and the Library of the Northern Ireland Assembly. Copies of the Assessments are available from the Department for Communities, Social Security Policy, Legislation and Decision Making Services, Level 6, Causeway Exchange, 1-7 Bedford Street, Belfast BT2 7EG or from the website: <https://www.communities-ni.gov.uk/articles/pension-information>. Copies of the Assessments are also annexed to the Explanatory Memorandum which is available alongside this Statutory Rule on the website: <http://www.legislation.gov.uk/nisr>.

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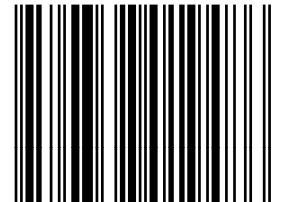
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