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DRAFT STATUTORY INSTRUMENTS

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**2022 No.**

**The Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022**

**PART 3**

**Authorisation**

**Authorisation: contents**

**6.—(1)** This regulation applies for the purposes of section 8(4)(a) of the Act (application for authorisation).

(2) The other information to be included in an application, in relation to each person acting in a capacity mentioned in section 11(2) of the Act (fit and proper persons requirement), is—

- (a) in the case of an individual—
  - (i) the person’s full name;
  - (ii) the person’s date of birth;
  - (iii) the title and description of the person’s role in relation to the scheme;
  - (iv) (aa) the person’s residential address and address for correspondence, if different, and
    - (bb) if there has been a change to the person’s residential address at any time in the period of five years before the date of the application for authorisation, their other residential addresses falling within that period;
  - (v) a criminal conviction certificate obtained by means of an application in accordance with section 112(1) of the Police Act 1997<sup>(1)</sup> (criminal conviction certificates) or, in relation to the law of a country outside the United Kingdom, any equivalent document;
- (b) where that person is acting in a capacity mentioned in section 11(2)(a) to (d) and that person is a body corporate—
  - (i) the full name of each individual who is performing, or who will be performing, the functions of that person in relation to the scheme in the exercise of a management or executive role in relation to that person;
  - (ii) the date of birth of each such individual;
  - (iii) (aa) the residential address of each such individual and their address for correspondence, if different, and

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<sup>(1)</sup> 1997 c. 50; section 112(1) was amended by section 79(1) of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14), sections 97(2) and 112(2) of and Part 8 of Schedule 8 to the Policing and Crime Act 2009 (c. 26), section 80(1) of the Protection of Freedoms Act 2012 (c. 9), S.S.I. 2006/50 and S.I. 2012/3006.

- (bb) if there has been a change to each such individual's residential address at any time in the period of five years before the date of the application for authorisation, their other residential addresses falling within that period;
  - (c) in the case of any person, responses to a list of questions that may be asked by the Regulator, as part of an application for authorisation, to assess whether the person is a fit and proper person.
- (3) The other information to be included in an application, in relation to whether the scheme is financially sustainable, is the information set out in Part 1 of Schedule 3.
- (4) The other information to be included in an application, in relation to whether the systems and processes used for communicating with members and others are adequate, is details of the systems and processes used, or intended to be used, for the purposes of communicating with relevant persons, including details of the matters set out in Schedule 4.
- (5) The other information to be included in an application, in relation to whether the systems and processes used in running the scheme are sufficient, is—
- (a) details of the systems and processes used, or intended to be used, in the running of the scheme, including details of the matters set out in Schedule 5;
  - (b) whether the systems and processes used, or intended to be used, in the running of the scheme have been devised, applied or maintained by the scheme or a service provider.
- (6) The other information to be included in an application is—
- (a) the name of the scheme;
  - (b) the name of each employer in relation to the scheme;
  - (c) the date on which it is proposed that the scheme will begin operating, subject to the Regulator's decision under section 9(1) of the Act (decision on application);
  - (d) the contact details of the trustees making the application;
  - (e) a copy of the rules of the scheme;
  - (f) a copy of the scheme's trust deed.
- (7) For the purposes of paragraph (6), the date on which it is proposed that the scheme will begin operating is the date proposed as the date on which, in relation to the scheme, a person is to first accept money as described in section 7(5)(a) or (b) of the Act.

#### **Application for authorisation: fee**

7.—(1) Subject to paragraphs (2) and (3), an application for authorisation of a collective money purchase scheme must be accompanied by a fee of £77,000.

(2) If an application for authorisation is made in respect of a section of a pension scheme and, at the time when the application is made another section of that pension scheme is an authorised collective money purchase scheme, the application must be accompanied by such fee as the Regulator may specify (but see paragraph (4)).

(3) If applications for authorisation are made in respect of two or more sections of the same pension scheme at the same time and, at the time when the applications are made no other section of that pension scheme is an authorised collective money purchase scheme—

- (a) one of the applications for authorisation must be accompanied by a fee of £77,000; and
- (b) all the other applications for authorisation must each be accompanied by such fee as the Regulator may specify (but see paragraph (4)).

(4) A fee specified under paragraphs (2) or (3)(b)—

- (a) must not exceed £77,000; and

(b) must be calculated on a cost recovery basis.

(5) The Regulator must pay fees received under this regulation to the Secretary of State, unless the Secretary of State with the consent of the Treasury directs otherwise.

### **Fit and proper persons requirement**

**8.**—(1) Schedule 1 sets out the matters that the Regulator must take into account in assessing, for the purposes of section 11 of the Act (fit and proper persons requirement), whether a person is fit and proper to act in a capacity mentioned in section 11(2) of the Act.

(2) For the purposes of section 11(2)(e) of the Act, where a person in a capacity mentioned in paragraphs (a) to (d) of section 11(2) is a body corporate, the Regulator must assess whether each individual performing the functions of that person in relation to the scheme, in the exercise of a management or executive role, is a fit and proper person to act in relation to the scheme in that capacity.

### **Scheme design requirement**

**9.** Part 1 of Schedule 2 sets out the matters that the Regulator must take into account in deciding, for the purposes of section 12 of the Act (scheme design requirement), whether it is satisfied that the design of a collective money purchase scheme is sound.

### **Viability report**

**10.**—(1) A viability report must include the information specified in Part 2 of Schedule 2.

(2) A viability report must be submitted—

- (a) in writing;
- (b) in the format set out in a Code.

(3) The following must be prepared or obtained in connection with a viability report—

- (a) a copy of the rules of the scheme concerning how the rate or amount of benefits provided under the scheme is to be determined;
- (b) a document prepared by the scheme actuary to inform the trustee's consideration as to whether the design of the scheme is sound for the purposes of preparing or reviewing the viability report;
- (c) a document prepared by the trustees, having taken advice from an authorised person, setting out the strategy for investing the assets that arise or derive from the payments made by or in respect of members of the scheme; and
- (d) any other information or documents as requested by the Regulator.

(4) The document described at paragraph (3)(b) must include an explanation of—

- (a) the assumptions used by the scheme actuary in carrying out the tests in regulation 11(2) (c) or (d) (as the case may be) and how the use of those assumptions is justified;
- (b) the conclusions reached by the scheme actuary on the matters contained in regulation 11(2); and
- (c) the testing or modelling being considered by the trustees including the results of such testing or modelling.

(5) A viability report must be prepared—

- (a) in the case of the scheme's first viability report, by reference to information as at a date, chosen by the trustees, which must not be earlier than ten months before the date when the trustees apply to the Regulator for authorisation;

- (b) in the case of any subsequent viability report, by reference to information as at a date, chosen by the trustees, which must not be earlier than ten months before the date when the trustees provide the report to the Regulator.
- (6) If a revised viability report is submitted in accordance with section 13(6)(b) of the Act (viability report), the viability report must indicate which parts of it have been revised and why.
- (7) In this regulation, “authorised person” means a person who is reasonably believed by the trustees of a collective money purchase scheme to be qualified by their ability in and practical experience of financial matters and to have the appropriate knowledge and experience of the management of the investments of such schemes.

### **Viability certificate**

- 11.**—(1) A viability certificate must contain the information specified in Part 3 of Schedule 2.
- (2) The scheme actuary must have regard to the following matters when providing a viability certificate and considering whether the design of the scheme is sound—
- (a) whether the rules of the scheme meet—
    - (i) the requirements of section 18 of the Act (calculation of benefits); and
    - (ii) the requirements of regulation 17;
  - (b) whether, in the opinion of the scheme actuary, the trustees have, in the member booklet, the statement of scheme design and the wording used in the most recent statements of benefits—
    - (i) accurately described the methods by which the scheme determines the rate or amount of benefits provided under the scheme;
    - (ii) accurately described estimates of the rate or amount of any future pension benefits payable under the design of the scheme;
    - (iii) accurately explained that the future pension benefits payable under the scheme are subject to annual adjustment in accordance with the scheme rules;
  - (c) in a case where the certificate is being provided in respect of a collective money purchase scheme the trustees of which are applying for authorisation under section 8 of the Act (application for authorisation), whether the scheme actuary is satisfied that—
    - (i) the first gateway test is met; and
    - (ii) the second gateway test is met;
  - (d) in a case where a collective money purchase scheme has begun operating and has at least one active member, whether the scheme actuary is satisfied that—
    - (i) the first live running test is met; and
    - (ii) the second live running test is met.
- (3) In a case where a final version of the member booklet, the statement of scheme design or the wording to be used in the statements of benefits has not been prepared, the reference to that document or wording, as the case may be, in sub-paragraph (2)(b) is to the latest draft of that document or wording, as the case may be.
- (4) The first gateway test is met if the estimate of the projected average annual increase in the first ten years’ benefits, calculated on a central estimate basis—
- (a) by reference to the contributions to be made into the scheme over the first ten years by or on behalf of or in respect of the expected active members into the scheme;

- (b) by reference to the returns expected to be achieved on the available assets of the scheme during the remaining lives of the first ten years' beneficiaries, calculated on a central estimate basis; and
- (c) based on the premise that such projected annual increase is to be applied over the remaining lives of the first ten years' beneficiaries,

is no less than the estimate of the projected average annual increase in the prices for goods and services as measured by the consumer prices index, calculated on a central estimate basis.

(5) For the purposes of the first gateway test—

- (a) the “first ten years” means the period of ten years beginning with the date on which the scheme is expected to begin operating;
- (b) the “first ten years' beneficiaries” means—
  - (i) the expected active members of the scheme during the first ten years; and
  - (ii) the expected survivors in relation to the expected active members of the scheme during the first ten years;
- (c) the “first ten years' benefits” means the estimated rate or amount of future pension benefits payable under the scheme which relate to the rights to benefits to be accrued under the scheme over a period of ten years beginning with the date on which the scheme is expected to begin operating.

(6) The second gateway test is met if the expected value of the rights to benefits of each active member which are expected to accrue under the scheme during the relevant period is at least equal in value to the amount of the contributions expected to be made by or on behalf of the member into the scheme in that period (not including contributions made by or on behalf of the employers other than any contributions made as a result of a salary sacrifice arrangement).

(7) The first live running test is met if the expected value of the rights to benefits of each active member which are expected to accrue under the scheme during the relevant period is at least equal in value to the amount of the contributions expected to be made by or on behalf of the member into the scheme in that period (not including contributions made by or on behalf of the employers other than any contributions made as a result of a salary sacrifice arrangement).

(8) For the purposes of paragraphs (6) and (7)—

- (a) the expected value of the rights to benefits which are expected to accrue is to be calculated using the methods and assumptions that would be expected to be used for an actuarial valuation of the scheme;
- (b) the “relevant period” is—
  - (i) in paragraph (6), a period of five years beginning with the date on which the scheme is expected to begin operating;
  - (ii) in paragraph (7), a period of five years beginning with the date which has been agreed in accordance with paragraph (11) in respect of the viability certificate that is being provided.

(9) The second live running test is met if the weighted average of the EVs during the test period is not less than half, but not more than twice, the rate of contributions (expressed as a percentage of pensionable salary) made by or on behalf of or in respect of all active members into the scheme (including contributions made by or on behalf of the employers).

(10) For the purposes of the second live running test—

- (a) an EV in relation to an actuarial valuation is the expected value of the rights to benefits which are expected to accrue in the year following the effective date of that actuarial valuation (the “reference period”);

- (b) an EV is to be calculated in relation to each actuarial valuation—
    - (i) by reference to the effective date of that valuation;
    - (ii) using the methods and assumptions that were used for that actuarial valuation;
  - (c) the EV for the period starting on the day the scheme began operating and ending the day before the effective date of the first actuarial valuation is the value that would have been calculated for an EV if an actuarial valuation with an effective date of the date that the scheme began operating had been obtained by the trustees, calculated using the methods and assumptions that would be expected to have been used for such an actuarial valuation;
  - (d) an EV is expressed as a percentage of the pensionable salary on the effective date of the actuarial valuation to which it relates (or in the case of the EV referred to in sub-paragraph (c), on the date that the scheme began operating) of all active members on that date;
  - (e) the EVs are weighted according to the proportion of the test period to which they relate;
  - (f) where an EV (“EV2”) is calculated in relation to a period to which a prior EV (“EV1”) relates, the period to which EV1 relates for the purposes of sub-paragraph (e) is the period—
    - (i) starting the day following the effective date by reference to which EV1 was calculated; and
    - (ii) ending the day before the period to which EV2 relates;
  - (g) subject to sub-paragraph (h), the test period is the period of five years ending with the last day of the reference period for the EV that has most recently been calculated;
  - (h) where any of the period referred to in sub-paragraph (g) falls before the scheme began operating, the test period is the period—
    - (i) starting on the date on which the scheme began operating; and
    - (ii) ending with the last day of the reference period for the most recent EV that has been calculated.
- (11) A viability certificate must be prepared—
- (a) in respect of the scheme’s first viability certificate, by reference to information as at a date to be agreed between the trustees and the scheme actuary, but not earlier than ten months before the date when the trustees apply to the Regulator for authorisation;
  - (b) in respect of any subsequent viability certificate, by reference to information as at a date to be agreed between the trustees and the scheme actuary, but not earlier than ten months before the date when the certificate is provided to the trustees.
- (12) In this regulation—
- “consumer prices index” means the consumer prices index calculated and published by the Office for National Statistics;
- “member booklet” means a document containing, in relation to a collective money purchase scheme, any basic information about the scheme that regulations made under section 113 of the 1993 Act<sup>(2)</sup> (disclosure of information about schemes to members etc) require the trustees of the scheme to provide to members and, if it is practicable to do so, prospective members (each as defined for the purposes of those regulations);

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(2) Section 113 was amended by section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8), sections 52(1) and (2) of the Child Support, Pensions and Social Security Act 2000 (c. 19), paragraphs 9 and 17 of Schedule 12 to the 2004 Act, paragraph 6 of Schedule 5 to the Pensions Act 2007 (c. 22), section 44(1) of the Pensions Act 2014 (c. 19), section 38 of and Schedule 2 to the Pension Schemes Act 2015 (c. 8), section 127(3) of the 2021 Act and S.I. 2005/2053.

“relevant pension provision” has the meaning given in section 228ZA(7) of the Finance Act 2004(3).

“salary sacrifice arrangement” has the meaning given to “relevant salary sacrifice arrangements” in section 228ZA(6) of the Finance Act 2004;

“statement of benefits” means a document containing, in relation to a member of a collective money purchase scheme, any of the following information that regulations made under section 113 of the 1993 Act require the trustees of the scheme to provide to the members (as defined for the purposes of those regulations) of the scheme specified by those regulations—

- (i) an illustration of the amount of pension that may be payable to that member on their retirement date;
- (ii) the amount that represents the member’s share of the available assets of the scheme on a specific date; and
- (iii) other information related to that illustration;

“statement of scheme design” means information explaining the design of a collective money purchase scheme that regulations made under section 46(1) of the Act (publication of information) require the trustees to publish.

(13) For the purposes of this regulation a collective money purchase scheme begins operating where, in relation to the scheme, a person first accepts money as described in section 7(5)(a) or (b) of the Act.

### **Financial sustainability requirement**

**12.**—(1) Part 2 of Schedule 3 sets out the matters that the Regulator must take into account in deciding, for the purposes of section 14 of the Act (financial sustainability requirement), whether it is satisfied that a collective money purchase scheme is financially sustainable.

(2) Part 3 of Schedule 3 sets out for the purposes of section 14(4)(b) of the Act the requirements to be met by a collective money purchase scheme in relation to its financing.

### **Communication requirement**

**13.** Schedule 4 sets out the matters that the Regulator must take into account in deciding, for the purposes of section 15 of the Act (communication requirement), whether it is satisfied that a collective money purchase scheme has adequate systems and processes for communicating with members and others.

### **Systems and processes requirement**

**14.** Schedule 5 sets out the matters that the Regulator must take into account in deciding, for the purposes of section 16 of the Act (systems and processes requirements), whether it is satisfied that the systems and processes used in running a collective money purchase scheme are sufficient to ensure that the scheme is run effectively.

### **Continuity strategy: contents**

**15.**—(1) The following information is specified for the purposes of section 17(5)(a) of the Act (continuity strategy requirement)—

- (a) the steps the trustees would take to decide which continuity option to pursue (if applicable) and the timescales for taking those steps;

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(3) 2004 c. 12; section 228ZA was inserted by the Finance (No. 2) Act 2015 (c. 33), Schedule 4, paragraph 10(1).

- (b) details of—
  - (i) the main decisions and actions that would need to be taken to protect members’ interests during a triggering event period;
  - (ii) the person responsible for taking them; and
  - (iii) the timescales for taking them;
- (c) details of strategies for communicating with employers and beneficiaries, including—
  - (i) the information to be provided; and
  - (ii) the stages at which communication would take place;
- (d) details of strategies for communicating with the Regulator;
- (e) details of how the trustees would choose a receiving scheme, if applicable;
- (f) details of how the trustees would choose the policy or policies mentioned in paragraph 2(2) of Schedule 6, if applicable;
- (g) details of how any periodic income to be paid in accordance with paragraph 7 of Schedule 6 would be calculated and paid, if continuity option 1 were to be pursued;
- (h) details of how the value of beneficiaries’ accrued rights to benefits would be transferred to a receiving scheme, if applicable;
- (i) details of how beneficiaries’ personal data would be transferred to a receiving scheme, if applicable;
- (j) details of how the payment of benefits would be secured in accordance with paragraph 2(2) of Schedule 6, if applicable;
- (k) details of how beneficiaries’ personal data would be transferred to an insurer, or insurers, mentioned in paragraph 2(2) of Schedule 6, if applicable;
- (l) details of how members’ records are to be maintained during a triggering event period;
- (m) details of how the quantification of the value of each beneficiary’s accrued rights to benefits under the scheme would be carried out;
- (n) details of how the trustees would comply with any legal requirements and meet any legal costs arising from a triggering event;
- (o) details of how the trustees would comply with any actuarial requirements and meet any actuarial costs arising from a triggering event;
- (p) a plan for making decisions concerning the scheme’s investment strategy, when a triggering event occurs, and for dealing with scheme investments during a triggering event period;
- (q) a plan for dealing with any contributions due from employers and members;
- (r) details of how the scheme’s administration services would continue after a triggering event;
- (s) details of how service providers would be retained and paid during a triggering event period;
- (t) details of how implementation of the continuity strategy would be funded;
- (u) an estimate of the costs of carrying out the actions set out in the continuity strategy.

(2) In deciding, for the purposes of section 17 of the Act (continuity strategy requirement), whether it is satisfied that a collective money purchase scheme has an adequate continuity strategy, the Regulator must take into account the robustness of any assumptions referred to in the following information which have been used for the purposes of estimating figures included in that information—



- (a) the plan mentioned at paragraph (1)(p); and
  - (b) the details mentioned at paragraph (1)(n), (o), (s) and (t).
- (3) A continuity strategy must be prepared—
- (a) in writing;
  - (b) in the format set out in a Code; and
  - (c) in accordance with any further requirements set out in a Code.
- (4) In this regulation—
- “beneficiary” has the meaning given in section 36(8) of the Act (continuity option 1: discharge of liabilities and winding up);
- “receiving scheme” means a pension scheme to which the value of a beneficiary’s accrued rights to benefits under the scheme may be transferred in accordance with Schedule 6.

**Continuity strategy: administration charges**

**16.—**(1) For the purposes of section 17(4) of the Act (continuity strategy requirement), with the exception of those administration charges mentioned in regulation 34(1), the section of the continuity strategy setting out the levels of administration charges must set them out as follows.

- (2) The section must set out for each charge structure all levels of administration charges in the current scheme year including—
- (a) for any additional charges, and the reason for imposing them;
  - (b) for any third-party charges, and the reason for imposing them;
  - (c) for any other type of administration charge in the scheme, and the reason for imposing it.
- (3) The levels must be set out on an annualised basis.