

**EXPLANATORY MEMORANDUM TO**  
**THE OCCUPATIONAL PENSION SCHEMES (REQUIREMENT TO OBTAIN**  
**AUDITED ACCOUNTS AND A STATEMENT FROM THE AUDITOR)**  
**(AMENDMENT) REGULATIONS 2016**

**2016 No. 229**

**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 Financial Reporting Standard 102 (FRS 102), introduced in 2014, revised the financial reporting framework in the UK, replacing all previous accounting standards for accounting periods commencing on or after 1 January 2015. As a consequence, amendments are required in order to better align the legislative requirements governing the audit of certain occupational pension schemes with the relevant financial reporting framework applicable to these schemes and with the investments they have made.
- 2.2 The regulations also exempt multi-employer pension schemes with at least 20 participating employers from the requirement to obtain a statement from the auditor concerning the payment of contributions to the scheme, as this is a disproportionately burdensome requirement for auditors of larger multi-employer schemes.

**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 the 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 Following the introduction of FRS 102 in 2014, which replaces all previous UK accounting standards, these Regulations modernise the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996 (S.I. 1996/1975) (“the 1996 Regulations”) [http://www.legislation.gov.uk/uksi/1996/1975/pdfs/uksi\\_19961975\\_310815\\_en.pdf](http://www.legislation.gov.uk/uksi/1996/1975/pdfs/uksi_19961975_310815_en.pdf) by deleting most of the detailed investment disclosure information set out in the Schedule to these regulations.
- 4.2 In its place, these Regulations require the scheme auditor to confirm that the pension scheme’s accounts have been prepared in accordance with the relevant financial reporting framework in place at the end of the pension scheme’s accounting year, and to note any material departures from this framework.

- 4.3 These Regulations also make changes following concerns raised by stakeholders that the amount and nature of the work required in producing the auditor's statement about the payment of contributions is highly dependent on, for example, how a multi-employer scheme defines pensionable pay and the form of payment schedule produced. This makes the requirement disproportionately burdensome for large multi-employer schemes whose auditors may not be able to obtain a sufficient level of evidence. The changes mean that the requirement to obtain an auditor's statement about contributions under the scheme does not apply to multi employer pension schemes with at least 20 participating employers.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is Great Britain.  
5.2 The territorial application of this instrument is Great Britain.  
5.3 Corresponding provisions are being made in Northern Ireland.

## **6. European Convention on Human Rights**

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

## **7. Policy Background**

### *What is being done and why*

- 7.1 These Regulations amend regulations 2 and 3, and omit the Schedule to, the 1996 Regulations. Regulation 2 of the 1996 Regulations places a duty on the trustees or managers of certain occupational pension schemes to obtain audited accounts annually, and to obtain a statement from the auditor concerning the payment of contributions to the scheme. Both the accounts and the statement must be prepared in accordance with specific provisions in the Regulations.

### *Investment Disclosure*

- 7.2 The 1996 Regulations require pension scheme accounts to show a true and fair view of the scheme's financial position, and the Schedule to the Regulations prescribes detailed investment information that must be disclosed in the accounts.
- 7.3 The Financial Reporting Council, which is responsible for setting UK standards for accounting and auditing, introduced FRS 102 in 2014 which revised the financial reporting framework in the UK for accounting periods commencing on or after 1 January 2015. Following this change, the Government was advised, and subsequently agreed, that the 1996 Regulations should be amended in order to align the prescribed requirements with FRS 102 and with any subsequent relevant financial reporting framework. The intention is that the amended Regulations will:-
- better reflect modern accounting practices;
  - remove out of date investment information that no longer reflects UK pension scheme investments which have changed significantly since the 1996 Regulations (which contain investment disclosures that originated in a 1986 set of Regulations) came into force;

- ensure that pension scheme financial statements report investments in a manner that is consistent with trustees' investment strategy, making them more useful; and
- reduce the costs incurred by schemes in preparing their financial statements, by removing the need to prepare out of date investment analysis that is of little use, but is required in order to comply with the prescribed requirements in the 1996 Regulations.

7.4 To achieve these aims, the 1996 Regulations are amended so that almost all of the detailed investment disclosure information set out in the Schedule is no longer prescribed. There are three exceptions, where the investments concerned are not covered by FRS 102 and these disclosure requirements are retained, being inserted as new regulation 3A (Information to be included in the accounts audited by the auditor).

7.5 The Regulations as amended will still require that scheme accounts show a true and fair view of the scheme's financial position, and the auditor is now required to provide a statement as to whether the pension scheme's accounts have been prepared in accordance with the applicable financial reporting framework in place at the end of the scheme's financial year and noting any material departures from this framework.

#### *Auditor's Statement about Contributions*

7.6 The 1996 Regulations require that trustees obtain from the scheme auditor a statement as to whether, in their opinion, contributions have been paid in accordance with the scheme's schedule of contributions, and if the statement is negative or qualified, to give reasons for this. This is to ensure that the funds due from the participating employer(s) have been correctly paid to the scheme.

7.7 Whilst this is a relatively straightforward requirement for auditors of schemes with a single or small number of employers, the Government is aware that this is not the case where schemes have a large number of participating employers. The amount and nature of the work required in these cases means that there is a high risk of auditors not being able to get enough evidence, at a reasonable cost to the scheme, to enable them to provide the statement of contributions.

7.8 To meet these concerns, these Regulations amend the 1996 Regulations so that the requirement to obtain an auditor's statement on contributions does not apply to multi-employer schemes with at least 20 participating employers. As amended, the 1996 Regulations will better reflect the current pensions landscape which has evolved, for example with statutory requirements for schemes to have adequate internal controls covering administrative processes, and specific regulatory requirements around monitoring the flow of contributions.

#### ***Consolidation***

7.9 Informal consolidated text of instruments is available to the public free of charge via "The Law Relating to Social Security" (Blue Volumes) on the Department for Work and Pensions website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/> or the National Archive website National Archive website [legislation.gov.uk](http://legislation.gov.uk). An explanation as to which instruments are maintained on each site is available from <http://www.dwp.gov.uk/docs/lawvolnews.pdf>.

## **8. Consultation Outcome**

8.1 The Secretary of State has consulted on a draft of these Regulations. The consultation period started on the 12 November 2015 and closed on 11 December 2015 <https://www.gov.uk/government/consultations/occupational-pensions-reducing-regulatory-burdens-and-minor-regulation-changes>. The consultation period was 4 weeks and two days because it covered minor, deregulatory beneficial amendments, and the Government had undertaken stakeholder engagement before the consultation commenced.

### *Investment Disclosure*

8.2 Twenty two consultation responses were received on the proposed amendments to the disclosure requirements in the 1996 Regulations, with all agreeing that these requirements need amending.

8.3 Of these, twenty one commented on the three options for amending these regulations as discussed in the consultation:-

- Option 1 – update the detailed prescribed investment disclosure requirements to meet the new accounting standard and the supporting guidance;
- Option 2 – amend the 1996 Regulations to remove all the prescribed investments that must be disclosed as listed in the Schedule, replacing these with a requirement that the auditor provides a statement confirming that the accounts have been prepared in line with FRS 102 and the supporting guidance for pension schemes (the Statement of Recommended Practice (SORP));
- Option 3 – the same as Option 2, but retaining three investment disclosure requirement not covered by FRS 102.

8.4 The majority of respondents (twelve) supported or advised that they were content with the proposed approach (Option 3). Three were content with either Option 3 or Option 2, with a minority (six) preferring Option 2. None preferred Option 1. Having considered the responses to the consultation, the Government decided to proceed with the proposed approach as set out in the consultation (Option 3).

8.5 Having considered the comments received a small number of drafting changes were made to the draft regulations consulted upon. In particular, amendments were made to new Regulation 3A(6) (Information to be included in the accounts audited by the auditor) of the 1996 Regulations, to refer to the relevant financial reporting framework in place at the end of the pension scheme's financial year, rather than specifying FRS102 and the supporting guidance (the pensions SORP), as this was considered to be a more appropriate formulation, and one which is in line with the approach taken for company accounts.

### *Auditor's Statement about Contributions*

8.6 Nineteen respondents commented on the proposed amendment to the requirement for an auditor's statement about contributions. The clear majority supported this proposal or supported it in principle. Some respondents pointed out that the existing requirements were not consistent with those for contract-based schemes.

8.7 On the question of whether 20 participating employers was the appropriate number at which the proposed exemption would apply, some respondents thought this was the right number whilst others thought it was pitched too low. However we did not

receive any alternative suggestions on what a suitable number might be. Some respondents thought that this change should apply to all multi-employer schemes, or even all schemes (including single-employer schemes). This was on the basis that there were costs involved in producing an auditor's statement no matter what the size of the scheme.

- 8.8 On balance, having considered these comments carefully we decided to proceed with the proposed approach. In schemes with a large number of participating employers we believe the effort involved in producing this statement is disproportionate to the risk to members. Provisions have been introduced since 1996 which provide assurance to members; for example there is now a statutory requirement for schemes to have adequate internal controls, which covers controls on administrative processes including financial transactions. There are also specific regulatory requirements around monitoring the flow of contributions.
- 8.9 The number of participating employers (particularly for employers that are not connected to each other) is the key factor as to whether the auditor can provide the statement, and so we would not want to pitch this figure too low. We accept that there are pros and cons with setting any figure for the number of participating employers, but we think that on balance, a figure of a least 20 (whether connected or not) is a reasonable threshold for lifting that burden.

## **9. Guidance**

- 9.1 No guidance has been produced as the amendments being made are straightforward and reduce the regulatory requirements on the audit of occupational pension schemes. DWP will write to the key organisations responsible for overseeing the auditing of the accounts of those pension schemes affected by these changes who will inform their members.

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is set out in the Impact Assessment submitted with this Memorandum. It shows an estimated reduction in the costs of complying with the requirements in the 1996 Regulations of around £5 million p.a., of which £4.5 million arises from the changes to the investment disclosure requirements and £0.5 million for the exemption from the requirement for an auditor's statement about contributions for pension schemes with a least 20 participating employers.
- 10.2 The impact on the public sector is negligible as the requirements in the 1996 Regulations do not generally apply to public sector pension schemes.
- 10.3 An Impact Assessment is submitted with this memorandum and published along side the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

- 11.1 The 1996 Regulations apply to those occupational pension schemes which are required to have an auditor. They do not apply to smaller pension schemes that meet certain specified conditions.

## **12. Monitoring & Review**

- 12.1 The 1996 Regulations as amended will be reviewed within five years of the amendments taking effect, as provided for in the Small Business, Enterprise and Employment Act 2015 <http://www.legislation.gov.uk/ukpga/2015/26/contents>.
- 12.2 Regulation 3 of the amending regulations (Review of the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996) provides that the 1996 Regulations as amended will be reviewed to establish if these amendments are meeting the policy objectives as set out in Section 7 above and/or to consider if further amendments might be needed. In the interim the Government will monitor the impact through its normal discussions with those responsible for the administration of occupational pension schemes and their professional advisers, especially their auditors and accountants.

## **13. Contact**

- 13.1 Paul Bovey or Maggie Simpkin at the Department for Work and Pensions (Tel: 020 7449 7284 or 020 7449 5994), e-mail [reinvigorating.pensions@dwp.gsi.gov.uk](mailto:reinvigorating.pensions@dwp.gsi.gov.uk), can answer any queries regarding this instrument.

Ex Memo at 18 Feb 16