

2022 No. 827

PENSIONS

The Occupational Pension Schemes (Investment) (Employer-related investments by Master Trusts) (Amendment) Regulations 2022

<i>Made</i> - - - -	<i>18th July 2022</i>
<i>Laid before Parliament</i>	<i>19th July 2022</i>
<i>Coming into force</i> - -	<i>1st October 2022</i>

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 113(1)(d) and (3) and 182(2) and (3) of the Pension Schemes Act 1993(a), sections 40(1) and (2), 41(1), 124(1) and 174(2) and (3) of the Pensions Act 1995(b) and sections 77, 99 and 144(2) and (4) of the Pensions Act 2008(c), makes the following Regulations.

In accordance with section 185(1)(d) of the Pension Schemes Act 1993 and section 120(1) of the Pensions Act 1995, the Secretary of State has consulted with such persons as the Secretary of State considers appropriate.

Citation, extent and commencement

- 1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Investment) (Employer-related investments by Master Trusts) (Amendment) Regulations 2022.
- (2) These Regulations extend to England and Wales and Scotland, subject to paragraph (3).
- (3) This regulation and regulation 5 extend to England and Wales, Scotland and Northern Ireland.
- (4) These Regulations come into force on 1st October 2022.

The Occupational Pension Schemes (Investment) Regulations 2005

2.—(1) The Occupational Pension Schemes (Investment) Regulations 2005(e) are amended as follows.

(a) 1993 c. 48. Section 113(1) is amended by section 52(1) of the Child Support, Pensions and Social Security Act 2000 (c. 19).
(b) 1995 c. 26. Section 124(1) is cited for the meaning it gives to “prescribed” and “regulations”. There are amendments to section 124(1) but they are not relevant to this instrument.
(c) 2008 c. 30. Section 99 is cited for the meaning it gives to “regulations”. There are amendments to section 99 but they are not relevant to this instrument.
(d) Section 185(1) is amended by Schedule 3 (paragraph 46), Schedule 5 (paragraph 80) and Schedule 7, Part 1 to the Pensions Act 1995.
(e) S.I. 2005/3378.

(2) In regulation 1 (citation, commencement and interpretation)(a), in paragraph (5) after “these Regulations” insert “, save in relation to regulation 16A”.

(3) In regulation 12 (restrictions on employer-related investments)(b)—

(a) in paragraph (2), for “13 and 16” substitute “13, 16, 16A and 16B”;

(b) in paragraph (2A), for “15A and 16” substitute “15A, 16, 16A and 16B”;

(c) in paragraph (2B)—

(i) for “regulation 16” substitute “regulations 16 and 16A”; and

(ii) for “15 and 15A” substitute “15, 15A, 16A(9) and 16B”; and

(d) at the beginning of paragraph (3), insert “Subject to regulations 16A and 16B,”.

(4) In regulation 15A(1) (deposits)(c), for “regulation 12(4)” substitute “regulations 12(4) or 16A(5)”.

(5) In regulation 16 (multi-employer schemes)(d), at the beginning of paragraph (5), insert “Subject to regulations 16A and 16B,”.

(6) After regulation 16 insert—

“Authorised Master Trust schemes

16A.—(1) Subject to paragraphs (2) and (3), this regulation applies to a scheme which is—

(a) a Master Trust scheme to which Part 1 of the Pension Schemes Act 2017 (Master Trusts)(e) applies (and where that scheme provides money purchase benefits in conjunction with other benefits, references to that scheme are to the scheme only to the extent that it provides money purchase benefits);

(b) authorised in accordance with section 5(4)(a) of the Pension Schemes Act 2017 (decision on application for authorisation of a Master Trust scheme); and

(c) used by 500 or more employers.

(2) This regulation continues to apply to a scheme during any period of less than two years in which the number of employers using the scheme falls below 500.

(3) If a scheme to which this regulation applies ceases to be authorised in accordance with section 5(4)(a) of the Pension Schemes Act 2017, this regulation continues to apply to the scheme until the date which is two years after the date on which a decision to withdraw authorisation from the scheme becomes final in accordance with section 35 of the Pension Schemes Act 2017 (when a decision to withdraw authorisation becomes final).

(4) For the purposes of determining whether the scheme complies with regulation 12(2) (restrictions on employer-related investments), “employer-related investments” means—

(a) shares or other securities issued by a relevant person;

(b) land which is occupied or used by, or subject to a lease in favour of, a relevant person;

(c) property (other than land) which is used for the purposes of any business carried on by a relevant person;

(d) loans to a relevant person;

(e) any guarantee of, or security given to secure, obligations of a relevant person, and for the purposes of section 40 of the 1995 Act and these Regulations a guarantee or security given by the trustees or managers shall be regarded as an investment of

(a) There are amendments to regulation 1 but they are not relevant to this instrument.

(b) Regulation 12 is amended by S.I. 2007/814 and S.I. 2009/615.

(c) Regulation 15A is inserted by S.I. 2009/615 and amended by S.I. 2013/472 and S.I. 2019/192.

(d) Regulation 16 is amended by S.I. 2009/615.

(e) 2017 c. 17.

resources of the scheme equal to the amount of the obligations guaranteed or secured;

- (f) any loan arrangement entered into with any person whereby the trustees' or managers' right to or expectation of repayment depends on the actions or situation of a relevant person, unless it was not the trustees' or managers' purpose in entering into the arrangement to provide financial assistance to the relevant person;
- (g) the proportion attributable to the scheme's resources (whether directly or through any intervening collective investment scheme) of any investments which—
 - (i) have been made by the operator of any collective investment scheme, and
 - (ii) would, if they had been made by the scheme, have met any of the descriptions set out in sub-paragraphs (a) to (f);
- (h) where any of a scheme's resources are invested in an insurance policy that meets the description set out in regulation 11(d), the proportion of the scheme's resources invested in that policy which is the same proportion as B is of A where—

A represents all the assets of the insurer held in the fund, and

B represents that part of A which would, if invested by the scheme, have met any of the descriptions set out in sub-paragraphs (a) to (f); and
- (i) where any of a scheme's resources are invested in an insurance policy that meets the description set out in regulation 11(e), any investments made by the insurer from the premiums or other consideration or monies described in regulation 11(e), which would have met any of the descriptions set out in sub-paragraphs (a) to (f) if they had been made by the scheme.

(5) For the purposes of determining whether the scheme complies with regulation 12(2A) and for the purposes of regulation 12(2B), "employer-related loan" means—

- (a) a loan to a relevant person (including one which falls within this description by virtue of section 40(3) of the 1995 Act);
- (b) a security described in paragraph (4)(a) which is an instrument creating or acknowledging indebtedness, except any such security which is listed on a recognised stock exchange;
- (c) an employer-related investment prescribed as such by regulation 11(b), which meets the description set out in paragraph (4)(e); and
- (d) an employer-related investment prescribed as such by regulation 11(c), which meets the description set out in paragraph (4)(f).

(6) For the purposes of regulation 12(3), "employer-related investment" has the meaning set out in paragraph (4).

(7) In regulation 13(10) (investments to which restrictions do not apply), "employer-related investments" has the meaning set out in paragraph (4).

(8) Regulation 16(5)(a) (multi-employer schemes) applies with the omission of "and in any event must not exceed 20 per cent of the current market value of the scheme".

(9) If an investment falls within the definition of "employer-related investments" set out in paragraph (4) or the definition of "employer-related loan" set out in paragraph (5) on or after 1st October 2022, other than as a result of new investment by the scheme, the investment may be retained, or left undischarged, until whichever is the latest of—

- (a) the date falling two years after the date on which it first fell within the definition set out in paragraph (4) or paragraph (5); and
- (b) where repayment cannot by virtue of contractual or other legal obligations be required, or where disinvestment cannot be effected before the date mentioned in sub-paragraph (a), the earliest date on which repayment can be enforced or disinvestment effected.

(10) Paragraph (9) does not apply in respect of any sum regarded as a loan under section 40(3) of the 1995 Act.

(11) For the purposes of this regulation—

“active member” has the meaning set out in section 124(1) of the 1995 Act (interpretation of Part I)(a);

“employer” means a person who employs or engages persons who are, or are entitled to become, members of the scheme, including at least one active member of the scheme;

“money purchase benefits” has the meaning set out in section 181(1) of the Pension Schemes Act 1993 (general interpretation)(b);

“relevant person” means a scheme funder, a scheme strategist or any person who is connected with, or an associate of, a scheme funder or a scheme strategist;

“scheme funder” and “scheme strategist” have the meanings set out in section 39 of the Pension Schemes Act 2017 (interpretation of Part 1); and

“securities” has the meaning set out in section 40(2A) of the 1995 Act (restrictions on employer-related investments) and must be read in accordance with section 40(2B) of that Act(c).

Schemes to which regulation 16A ceases to apply

16B. To the extent that—

- (a) an investment becomes an employer-related loan or an employer-related investment as a result of regulation 16A ceasing to apply to a scheme; and
- (b) repayment or disinvestment cannot be effected immediately by virtue of contractual or other legal obligations,

the investment may be retained until the earliest date on which, having regard to contractual and other legal obligations, repayment or disinvestment can be effected.”.

The Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996

3.—(1) The Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996(d) are amended as follows.

(2) In regulation 3A (information to be included in the accounts audited by the auditor)(e)—

- (a) at the start of paragraph (7) insert “Subject to paragraph (8),”; and
- (b) after paragraph (7) insert—

“(8) Where regulation 16A of the Occupational Pension Schemes (Investment) Regulations 2005 (authorised master trust schemes) applies to a scheme that is a trust scheme, then for the purposes of the statement required by paragraph (4), any employer-related investments which do not meet the definition in paragraph (4) of regulation 16A of those Regulations may be disregarded.”.

(a) Section 124(1) is prospectively amended by section 320 of and Part 1 of Schedule 13 to the Pensions Act 2004 (c. 35). There are other amendments to section 124(1) but they are not relevant to this instrument.

(b) Section 181(1) is amended by S.I. 2005/2053 and by section 29(1) of the Pensions Act 2011 (c. 19). It is prospectively amended by section 6 of and paragraph 3(3)(a) and (b) of Schedule 1 to the Pension Schemes Act 2021 and these amendments will come into force in accordance with S.I. 2022/721 (C. 43). There are other amendments to section 181(1) but they are not relevant to this instrument.

(c) Sections 40(2A) and 40(2B) were inserted by S.I. 2001/3649 and substituted by S.I. 2004/355.

(d) S.I. 1996/1975.

(e) Regulation 3A was inserted by S.I. 2016/229.

The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013

4.—(1) The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013(a) are amended as follows.

(2) In paragraph 33 of Part 5 of Schedule 3 (information that applies to the scheme to be given on request)—

(a) at the start of sub-paragraph (2) insert “Subject to sub-paragraph (3),”; and

(b) after sub-paragraph (2) insert—

“(3) Where regulation 16A of the Occupational Pension Schemes (Investment) Regulations 2005 (authorised master trust schemes) applies to a scheme that is a trust scheme, then for the purposes of the statement required by sub-paragraph (1), any employer-related investments which do not meet the definition in paragraph (4) of regulation 16A of those Regulations may be disregarded.”.

The Application of Pension Legislation to the National Employment Savings Trust Corporation Regulations 2010

5. In regulation 4 of the Application of Pension Legislation to the National Employment Savings Trust Corporation Regulations 2010 (application of the Occupational Pension Schemes (Investment) Regulations 2005)(b), for paragraph (b) substitute—

“(b) in regulation 16 (multi-employer schemes), after paragraph (5), there were added—

“(6) In relation to a pension scheme established under section 67 of the Pensions Act 2008 (duty to establish a pension scheme)(c), government bonds are not to be regarded as employer-related investments for the purposes of regulation 12(2) (restrictions on employer-related investments) as modified by paragraph (5)(a).

(7) In paragraph (6), “government bonds” means bonds creating or acknowledging indebtedness issued by Her Majesty’s Government in the United Kingdom.”.

Signed by authority of the Secretary of State for Work and Pensions

Chloe Smith

Minister of State

Department for Work and Pensions

18th July 2022

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations narrow the scope of investments that come within the definition of “employer-related investments” for large Master Trust schemes with 500 or more participating employers.

Regulation 2 amends the Occupational Pension Schemes (Investment) Regulations 2005 (S.I. 2005/3378) so that the restrictions on employer-related investments by large Master Trusts only apply to investments relating to a scheme funder, a scheme strategist and persons connected or associated with a scheme funder or a scheme strategist.

Regulation 3 amends the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996 (S.I. 1996/1975), so that the

(a) S.I. 2013/2734.

(b) S.I. 2010/8.

(c) Section 67 is amended by section 30(2) of the Finance (No. 3) Act 2010 (c. 33).

accounting requirements for large Master Trust schemes reflect the updated provisions on employer-related investments that apply in respect of those schemes.

Regulation 4 amends the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (S.I. 2013/2734), so that the information that must be disclosed on request to members of large Master Trust schemes reflects the updated provisions on employer-related investments that apply in respect of those schemes.

Regulation 5 makes consequential amendments to the Application of Pension Legislation to the National Employment Savings Trust Corporation Regulations 2010 (S.I. 2010/8) to remove a provision which is no longer needed as a result of the changes made by regulation 2 of these Regulations.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from legislation.gov.uk. A hard copy of the impact assessment may be obtained from the Department for Work and Pensions, Caxton House, Tothill Street, London SW1H 9NA.

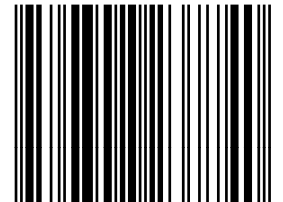
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