

This Statutory Instrument corrects an error in S.I. 2022/1220 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2023 No. 399

PENSIONS

**The Occupational Pension Schemes (Administration,
Investment, Charges and Governance) and Pensions Dashboards
(Amendment) Regulations 2023**

Made - - - - *30th March 2023*

Coming into force in accordance with regulation 1(3) to (5)

The Secretary of State, in exercise of the powers conferred by sections 113(6)(b) and (7) and 182(2) and (3) of the Pension Schemes Act 1993(a), sections 35(4) and (7) and 174(2) and (3) of the Pensions Act 1995(b), sections 238D, 238E and 315(2) and (5) of the Pensions Act 2004(c) and sections 43 and 54(5) and (6) of, and paragraphs 1(1) and (2) and 2(1) to (3) and (5) of Schedule 18 to, the Pensions Act 2014(d) makes the following Regulations.

In accordance with section 185(1)(e) of the Pension Schemes Act 1993, section 120(1) of the Pensions Act 1995, section 317(1) of the Pensions Act 2004 and paragraph 8 of Schedule 18 to the Pensions Act 2014, the Secretary of State has consulted with such persons as the Secretary of State considers appropriate.

In accordance with section 113(9)(f) of the Pension Schemes Act 1993, the Secretary of State has consulted the Financial Conduct Authority and the Treasury.

A draft of these Regulations has been laid before and approved by a resolution of each House of Parliament in accordance with section 316(2)(kb)(g) of the Pensions Act 2004 and section 54(2)(e) of the Pensions Act 2014.

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- (a) 1993 c. 48. Section 113 is amended by section 44(1) of the Pensions Act 2014 (c. 19) and by section 127(3) of the Pension Schemes Act 2021 (c. 1). There are other amendments to section 113 but none is relevant to this instrument. See section 181(1) of the Pension Schemes Act 1993 for the meaning given to “regulations”.
- (b) 1995 c. 26. Section 35 is substituted by section 244 of the Pensions Act 2004 (c. 35). See section 124(1) of the Pensions Act 1995 for the meanings given to “prescribed” and “regulations”.
- (c) 2004 c. 35. Sections 238D and 238E were inserted by section 119 of the Pension Schemes Act 2021. See section 318(1) of the Pensions Act 2004 for the meanings given to “prescribed” and “regulations”.
- (d) 2014 c. 19. Paragraph 1(1) of Schedule 18 is amended by section 48 of and paragraph 25(1) and (2) of Schedule 3 to the Pension Schemes Act 2021.
- (e) Section 185(1) is amended by section 122 of and paragraph 46 of Schedule 3 to, section 151 of and paragraph 80 of Schedule 5 to and section 177 of and Schedule 7, Part 1 to the Pensions Act 1995.
- (f) Section 113(9) was inserted by section 44(1) of the Pensions Act 2014.
- (g) Section 316(2)(kb) was inserted by section 119(4) of the Pension Schemes Act 2021.

Citation, extent, commencement and application

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Administration, Investment, Charges and Governance) and Pensions Dashboards (Amendment) Regulations 2023.

(2) They extend to England and Wales and Scotland.

(3) Subject to paragraphs (4) and (5), they come into force on 6th April 2023.

(4) Regulation 6 (amendment of the Pensions Dashboards Regulations 2022) comes into force 21 days after the date on which these Regulations are made.

(5) Regulation 2(2)(a)(iv) (omission of definition of “performance fee”) comes into force on 5th April 2028.

(6) Regulations 4(3)(a) and (b), 4(4) and 5(2)(a) (requirements to report on specified performance-based fees) apply in relation to the first scheme year of an occupational pension scheme which ends after 6th April 2023.

(7) Regulations 4(3)(c), 4(5) and 5(2)(b) and (c) (requirements to assess and report on asset allocation) apply in relation to the first scheme year of an occupational pension scheme which ends after 1st October 2023.

(8) Where, before these regulations come into force, the trustees or managers of an occupational pension scheme have chosen to calculate the charge imposed annually in accordance with the performance-fee smoothing provision, or the trustees or managers have chosen to make the performance-fee smoothing assumption, the amendments in regulation 2(3) to 2(6) (omission of provisions enabling smoothing of performance fees) do not apply until the first charges year of that scheme which ends after the earlier of—

(a) the date which is 5 years after the end of the first charges year in which the trustees or managers first chose to calculate the charge imposed annually in accordance with the performance-fee smoothing provision, or first chose to make the performance-fee smoothing assumption; and

(b) 5th April 2028.

(9) Regulation 3(2) (amendment of the requirements relating to the default statement of investment principles in the Occupational Pension Schemes (Investment) Regulations 2005) applies in relation to an occupational pension scheme with effect from the earlier of—

(a) the first date on which the default statement of investment principles prepared in accordance with regulation 2A of the Occupational Pension Schemes (Investment) Regulations 2005 (additional requirements in relation to default arrangement)(a) is revised after 1st October 2023; and

(b) 1st October 2024.

(10) Regulation 3(3) and (4) (amendment of the requirements relating to the statement of investment principles in the Occupational Pension Schemes (Investment) Regulations 2005) applies in relation to an occupational pension scheme with effect from the earlier of—

(a) the first date on which the statement of investment principles prepared under section 35 of the Pensions Act 1995 (investment principles) is revised after 1st October 2023; and

(b) 1st October 2024.

(11) For the purposes of this regulation—

“Charges and Governance Regulations” means the Occupational Pension Schemes (Charges and Governance) Regulations 2015(b);

(a) S.I. 2005/3378. Regulation 2A was inserted by S.I. 2015/879 and amended by S.I. 2018/988, S.I. 2021/1070 and S.I. 2022/337.

(b) S.I. 2015/879.

“charges year” and “qualifying collective money purchase scheme” have the meanings given in regulation 2(1) (interpretation)(a) of the Charges and Governance Regulations;

“the performance-fee smoothing assumption” means the assumption set out in regulation 8(3A) (alternative assessment of charges – default arrangements)(b) or 8A(4) (alternative assessment of charges – qualifying collective money purchase schemes)(c), as applicable, of the Charges and Governance Regulations, as those assumptions applied immediately before these Regulations came into force;

“the performance-fee smoothing provision” means the provision in regulation 7(10) (assessment of charges – default arrangements)(d) or 7A(10) (assessment of charges – qualifying collective money purchase schemes)(e), as applicable, of the Charges and Governance Regulations, as those provisions applied immediately before these Regulations came into force;

“scheme year” has the meaning given in section 1(2) (citation, commencement and interpretation) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996(f).

Amendment of the Occupational Pension Schemes (Charges and Governance) Regulations 2015

2.—(1) The Occupational Pension Schemes (Charges and Governance) Regulations 2015 are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)(g)—

(i) in the definition of “charges”, after paragraph (f) insert—

“(g) specified performance-based fees;”;

(ii) after the definition of “collective flat fee charge” insert—

““collective investment scheme” has the meaning given in regulation 1(2) (citation, commencement and interpretation) of the Occupational Pension Schemes (Investment) Regulations 2005;”;

(iii) after the definition of “flat fee charge” insert—

““fund manager” has the meaning given in section 124(1) (interpretation of Part 1) of the 1995 Act;

“fund of funds” means a collective investment scheme which has a policy of investing in other collective investment schemes;”;

(iv) omit the definition of “performance fee”; and

(v) after the definition of “single charge structure” insert—

““specified performance-based fees” means fees, profit-sharing arrangements, or any part of fees or profit-sharing arrangements, which are—

(a) payable by or on behalf of the trustees or managers of a pension scheme to a fund manager in relation to investments (“the managed investments”) managed by the fund manager, either directly or as part of a collective investment scheme, for the purposes of the scheme;

(a) The definition of “qualifying collective money purchase scheme” was inserted by S.I. 2022/255. There are other amendments to regulation 2(1) but none is relevant to the definition of “charges year” or to the definition of “qualifying collective money purchase scheme”.

(b) Regulation 8(3A) was inserted by S.I. 2021/1070.

(c) Regulation 8A was inserted by S.I. 2022/255.

(d) Regulation 7(10) was inserted by S.I. 2021/1070.

(e) Regulation 7A was inserted by S.I. 2022/255.

(f) S.I. 1996/1715.

(g) Regulation 2(1) is amended by S.I. 2016/304 and S.I. 2021/1070. There are other amendments to regulation 2(1) but none is relevant to this instrument.

- (b) calculated only by reference to investment performance, whether in terms of the capital appreciation of the managed investments, the income produced by the managed investments or otherwise;
- (c) only payable when—
 - (i) investment performance exceeds a pre-agreed rate, which may be fixed or variable; or
 - (ii) the value of the managed investments exceeds a pre-agreed amount;
- (d) calculated over a pre-agreed period of time; and
- (e) subject to pre-agreed terms designed to mitigate the effects of short-term fluctuations in the investment performance or value of the managed investments;”;
- (b) after paragraph (1A)(a) insert—
 - “(1B) When determining whether or not fees or profit-sharing arrangements, or any part of fees or profit-sharing arrangements, are specified performance-based fees for the purposes of these regulations—
 - (a) a rate, amount, period of time or term is pre-agreed if—
 - (i) it has been agreed between the trustees or managers and the fund manager to whom the fees are payable, before the trustees or managers make the investments to which the fees relate; or
 - (ii) where the trustees or managers have invested in a fund of funds, it is set out in the investment policy of the fund of funds to which the trustees or managers agreed when they invested in the fund of funds; and
 - (b) regard must be had to any guidance issued by the Secretary of State by virtue of paragraph 1(2)(b) of Schedule 18 to the Pensions Act 2014 (power to restrict charges).”; and
 - (c) omit paragraphs (5), (5A) and (6)(b).
- (3) In regulation 7 (assessment of charges – default arrangements)(c), omit paragraphs (9), (10), (11) and (12).
- (4) In regulation 7A (assessment of charges – qualifying collective money purchase schemes)(d), omit paragraphs (9), (10), (11) and (12).
- (5) In regulation 8 (alternative assessment of charges – default arrangements)(e)—
 - (a) in paragraph (2), omit “and, if the trustees or managers so choose, the assumption in paragraph (3A)”; and
 - (b) omit paragraph (3A).
- (6) In regulation 8A (alternative assessment of charges – qualifying collective money purchase schemes)(f)—
 - (a) in paragraph (2), omit “and, if the trustees so choose, the assumption in paragraph (4)”; and
 - (b) omit paragraph (4).

Amendment of the Occupational Pension Schemes (Investment) Regulations 2005

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

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

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- (a) Regulation 2(1A) was inserted by S.I. 2021/1070.
 - (b) Regulation 2(5) and (6) were inserted by S.I. 2021/1070. Regulation 2(5A) was inserted by S.I. 2022/255.
 - (c) Regulation 7 is amended by S.I. 2021/1070 and S.I. 2022/255.
 - (d) Regulation 7A was inserted by S.I. 2022/255.
 - (e) Regulation 8 is amended by S.I. 2021/1070 and S.I. 2022/255.
 - (f) Regulation 8A was inserted by S.I. 2022/255.

- (a) after paragraph (1)(a) insert—
 - “(aa) their policy in relation to investment in illiquid assets;”;
 - (b) in paragraph (1)(c) after “the aims and objectives mentioned in sub-paragraph (a)” insert “, the policy mentioned in sub-paragraph (aa)”;
 - (c) after paragraph (1) insert—
 - “(1A) For the purposes of paragraph (1)(aa), their policy in relation to investment in illiquid assets must include—
 - (a) a statement as to whether or not investments held for the purposes of the default arrangement will include illiquid assets;
 - (b) where those investments will include illiquid assets—
 - (i) a description of the age profile of those members in respect of whom investments will be held in illiquid assets;
 - (ii) an explanation of whether investments will be held directly in illiquid assets, or via a collective investment scheme;
 - (iii) an explanation of the types of illiquid assets in which investments will be held; and
 - (iv) an explanation of why the trustees or managers have a policy of investing in illiquid assets including their assessment of the advantages to members of investing in illiquid assets, when compared to investments in other classes of assets;
 - (c) where those investments will not include illiquid assets, an explanation of why the trustees or managers have a policy of not investing in illiquid assets; and
 - (d) an explanation of whether the trustees have any plans to invest in illiquid assets or increase their investment in illiquid assets, in the future.”; and
 - (d) after paragraph (6) insert—
 - “(6A) For the purposes of this regulation “illiquid assets” means assets of a type which cannot easily or quickly be sold or exchanged for cash and where assets are invested in a collective investment scheme, includes any such assets held by the collective investment scheme;”.
- (3) After regulation 2A insert—

“Additional requirements in relation to qualifying collective money purchase schemes

2B.—(1) The trustees of a qualifying collective money purchase scheme must ensure that the statement of investment principles prepared under section 35 of the 1995 Act covers their policy in relation to investment in illiquid assets with respect to assets held for the purposes of the qualifying collective money purchase scheme.

(2) For the purposes of this regulation, their policy in relation to investment in illiquid assets must include—

- (a) a statement as to whether or not investments held for the purposes of the qualifying collective money purchase scheme will include illiquid assets;
- (b) where those investments will include illiquid assets—
 - (i) a description of the age profile of those members in respect of whom investments will be held in illiquid assets;
 - (ii) an explanation of whether investments will be held in respect of the qualifying collective money purchase scheme directly in illiquid assets, or via a collective investment scheme;
 - (iii) an explanation of the types of illiquid assets in which investments will be held; and

- (iv) an explanation of why the trustees have a policy of investing in illiquid assets including their assessment of the advantages to members of the qualifying collective money purchase scheme of investing in illiquid assets, when compared to investments in other classes of assets;
 - (c) where those investments will not include illiquid assets, an explanation of why the trustees have a policy of not investing in illiquid assets; and
 - (d) an explanation of whether the trustees have any plans to invest in illiquid assets or increase their investment in illiquid assets for the purposes of the qualifying collective money purchase scheme, in the future.
- (3) For the purposes of this regulation—
- “illiquid assets” has the same meaning as in regulation 2A(6A); and
 - “qualifying collective money purchase scheme” has the meaning given in regulation 2(1) of the Occupational Pension Schemes (Charges and Governance) Regulations 2015.”.

(4) In the heading to regulation 6 (disapplication of section 35 of the 1995 Act and of regulations 2 and 3 in respect of certain schemes) and in regulation 6, after “regulations 2” insert “, 2B”.

Amendment of the Occupational Pension Schemes (Scheme Administration) Regulations 1996

4.—(1) The Occupational Pension Schemes (Scheme Administration) Regulations 1996 are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation)(a), in paragraph (2), after the definition of “the Solvency 2 Directive” insert—

““specified performance-based fees” has the same meaning as in the Occupational Pension Schemes (Charges and Governance) Regulations 2015;”.

(3) In regulation 23 (annual statement regarding governance)(b)—

(a) after paragraph (1)(a) insert—

“(aza)state the amount of any specified performance-based fees incurred in relation to each default arrangement (if any) during the scheme year, calculated in accordance with regulation 25(1)(a), as a percentage of the average value of the assets held for the purposes of that default arrangement during the scheme year;”;

(b) in paragraph (1)(cza)—

(i) at the end of sub-paragraph (i), omit “and”;

(ii) after sub-paragraph (ii), insert—

“and

(iii) where the scheme is a qualifying collective money purchase scheme for the purposes of regulation 3A of the Occupational Pension Schemes (Charges and Governance) Regulations 2015 (qualifying collective money purchase schemes)(c), the amount of any specified performance-based fees incurred in relation to the scheme during the scheme year, calculated in accordance with regulation 25(1)(a), as a percentage of the average value of the assets held for the purposes of the scheme during the scheme year;”;

(c) after paragraph (1)(cb) insert—

(a) The definition of “the Solvency 2 Directive” was inserted by S.I. 2015/575. There are other amendments to regulation 1 but none is relevant to this instrument.

(b) Regulation 23 was inserted by S.I. 2015/879 and amended by S.I. 2016/427, S.I. 2018/233, S.I. 2021/1070 and S.I. 2022/255.

(c) Regulation 3A was inserted by S.I. 2022/255.

“(cc) state the results of any calculations required by virtue of regulation 25A (assessment of asset allocation);”.

(4) In regulation 25 (assessment of charges and transaction costs)(a)—

(a) after paragraph (1)(a)(iii) insert—

“(iv) the specified performance-based fees incurred in respect of assets in the scheme, and”; and

(b) in paragraph (1)(b) after “charges” insert “, specified performance-based fees”.

(5) After regulation 25, insert—

“Assessment of asset allocation

25A.—(1) The trustees or managers of a relevant scheme to which this provision applies must, at intervals of no more than one year, calculate the percentage of relevant scheme assets allocated to each of the asset classes in paragraph (3).

(2) This provision applies to a relevant scheme unless it is a collective money purchase scheme which is not a qualifying collective money purchase scheme.

(3) The asset classes are—

- (a) cash;
- (b) bonds creating or acknowledging indebtedness, issued by—
 - (i) a company;
 - (ii) His Majesty’s Government in the United Kingdom; or
 - (iii) the government of any country or territory other than the United Kingdom;
- (c) shares listed on a recognised stock exchange;
- (d) shares not listed on a recognised stock exchange;
- (e) infrastructure comprising of physical structures, facilities, systems or networks that provide or support essential public services and including water, gas and electricity networks, roads, telecommunications facilities, schools, hospitals and prisons;
- (f) property which does not fall within paragraph (e);
- (g) instruments creating or acknowledging indebtedness which do not fall within paragraph (b); and
- (h) any other assets which do not fall within paragraphs (a) to (g).

(4) In making the calculation required under paragraph (1), the trustees or managers of the relevant scheme must have regard to any guidance issued by the Secretary of State by virtue of paragraph 2(2)(b) of Schedule 18 to the Pensions Act 2014.

(5) Where relevant scheme assets are invested in a collective investment scheme, the trustees or managers of the relevant scheme must refer to the assets held by the collective investment scheme when making the calculation required by paragraph (1).

(6) In this regulation—

“collective investment scheme” has the same meaning as in regulation 1(2) (citation, commencement and interpretation) of the Occupational Pension Schemes (Investment) Regulations 2005;

“default arrangement” has the same meaning as in regulation 25;

“qualifying collective money purchase scheme” has the meaning given in regulation 2(1) of the Occupational Pension Schemes (Charges and Governance) Regulations 2015;

(a) Regulation 25 was inserted by S.I. 2015/879 and amended by S.I. 2021/1070 and S.I. 2022/255.

“recognised stock exchange” has the meaning given by section 1005 (meaning of “recognised stock exchange” etc) of the Income Tax Act 2007(a); and

“relevant scheme assets” means——

- (i) in relation to a relevant scheme which is not a qualifying collective money purchase scheme, the assets allocated to that scheme’s default arrangements; and
- (ii) in relation to a qualifying collective money purchase scheme, the assets held for the purposes of the scheme.”.

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

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

(2) In regulation 29A(2) (publishing charges and transaction costs and other relevant information)(c)—

- (a) after sub-paragraph (a) insert—
“(aza) paragraph (1)(aza);”;
- (b) at the end of sub-paragraph (c), omit “and”; and
- (c) after sub-paragraph (d), insert—
“; and
- (e) paragraph (1)(cc).”.

Amendment of the Pensions Dashboards Regulations 2022

6.—(1) The Pensions Dashboards Regulations 2022(d) are amended as follows.

(2) In the third column of the table in Part 1 of Schedule 2 (staging profile), for “10,999” substitute “10,000”.

Review

7.—(1) The Secretary of State must from time to time—

- (a) carry out a review of the regulatory provisions contained in regulations 2 to 5; and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 6th April 2028.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) A report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provisions referred to in paragraph (1)(a);
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate; and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(a) 2007 c. 3. Section 1005 was substituted by section 109 of and paragraph 1 of Schedule 26 to the Finance Act 2007 (c. 11) and amended by section 381(1) of and paragraphs 50 and 55 of Schedule 2 to the Taxation (International and Other Provisions) Act 2010 (c. 8).

(b) S.I. 2013/2734.

(c) Regulation 29A was inserted by S.I. 2018/233 and amended by S.I. 2018/988, S.I. 2019/982, S.I. 2021/1070 and S.I. 2022/337.

(d) S.I. 2022/1220.

(5) In this regulation, “regulatory provision” has the same meaning as in section 32(4) of the Small Business, Enterprise and Employment Act 2015 (duty to review secondary legislation)(a).

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

30th March 2023

Laura Trott
Parliamentary Under Secretary of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the requirements relating to the administration and governance of occupational pension schemes and correct an error in the Pensions Dashboards Regulations 2022 (S.I. 2022/1220).

These Regulations are being issued free of charge to all known recipients of the Pensions Dashboards Regulations 2022.

Regulation 1 sets out when the new requirements will apply to schemes.

Regulation 2 amends the Occupational Pension Schemes (Charges and Governance) Regulations 2015 (S.I. 2015/879) to exclude specified performance-based fees from the charge cap that applies to limit the charges that can be passed on to members of most occupational money purchase pension schemes. It also removes provisions allowing schemes to smooth or pro-rate the effects of performance-based fees for the purposes of the charge cap, as these are no longer required when most performance-based fees will be excluded from the charge cap.

Regulation 3 amends the Occupational Pension Schemes (Investment) Regulations 2005 (S.I. 2005/3378) to require schemes to include an explanation of their policy about investing in illiquid assets in their default Statement of Investment Principles or, in the case of qualifying collective money purchase schemes, in their Statement of Investment Principles.

Regulation 4 amends the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (S.I. 1996/1715) to require trustees or managers of occupational money purchase schemes to report on specified performance-based fees incurred by the scheme and on the different classes of assets in which they invest in their annual chair’s statement.

Regulation 5 amends the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (S.I. 2013/2734) so that the new disclosures about specified performance-based fees and asset allocation, which will be required in the annual chair’s statement, are included within the list of disclosures that must be made publicly available free of charge on a website.

Regulation 6 corrects an error in the table in Part 1 of Schedule 2 to the Pensions Dashboards Regulations 2022, relating to the staging profile for master trust schemes that provide money purchase benefits only.

Regulation 7 provides for a review of the impact of regulations 2 to 5 every 5 years, in accordance with the Small Business, Enterprise and Employment Act 2015 (c. 26).

A full 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.

(a) 2015 c. 26.

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