
DRAFT STATUTORY INSTRUMENTS

2015 No.

**The Occupational Pension Schemes
(Charges and Governance) Regulations 2015**

PART 1

INTRODUCTION

Citation and commencement

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Charges and Governance) Regulations 2015.

(2) Subject to paragraph (3), these Regulations come into force on 6th April 2015.

(3) The following provisions come into force on 6th April 2016—

- (a) regulation 11 and the words “with the exception of regulation 11” in regulation 4(2); and
- (b) regulation 23.

Interpretation

2.—(1) In these Regulations—

“the 1995 Act” means the Pensions Act 1995;

“the 2008 Act” means the Pensions Act 2008(1);

“the Administration Regulations” means the Occupational Pension Schemes (Scheme Administration) Regulations 1996(2);

“annually” means per charges year;

“arrangement” means an allocation of contributions to—

- (a) an investment; or
- (b) more than one investment according to a strategy adopted by the trustees or managers;

“charges” means administration charges(3) other than—

- (a) transaction costs;
- (b) where an order of the court provides for the recovery by the trustees or managers of costs incurred in complying with the order, the amount of those costs;
- (c) charges permitted by regulations made under section 24 or 41 (charges in respect of pension sharing costs) of the Welfare Reform and Pensions Act 1999(4);

(1) 2008 c. 30.

(2) S.I. 1996/1715.

(3) “Administration charge” is defined in paragraph 1(5) of Schedule 18 to the Pensions Act 2014 (c. 19).

(4) Section 24 was amended by the Family Law Act 1996 (c. 27), section 66 and Schedule 8, paragraph 43A (subject to savings as to which *see* section 66(2) and Schedule 9, paragraph 5 of that Act) and the Civil Partnership Act 2004 (c. 33), section 261(1) and (4), Schedule 27, paragraph 158(1) to (2) and Schedule 30.

(d) winding up costs;

(e) costs solely associated with the provision of death benefits;

“charges year” means a period of 12 months specified for the purposes of the scheme in any scheme document or, if no such year is specified, a period of 12 months commencing on—

(a) either 1st or 6th April as the trustees or managers may decide; or

(b) if no such decision is made, 1st April;

“contributing member” is a member of a relevant scheme in relation to whom a contribution is being made to that scheme for the purposes of accruing money purchase benefits;

“contribution”, in relation to a member, means a payment made by, on behalf of or in respect of that member;

“contribution percentage charge” has the meaning given in regulation 5(3);

“default arrangement” has the meaning given in regulation 3;

“employer” has the meaning given in section 99 of the 2008 Act⁽⁵⁾;

“executive pension scheme” means a scheme—

(a) in relation to which a company is the only employer and the sole trustee; and

(b) the members of which are either current or former directors of the company and include at least one third of the current directors;

“existing rights charge” has the meaning given in regulation 5(3);

“flat fee charge” has the meaning given in regulation 5(3);

“jobholder” has the meaning given in section 99 of the 2008 Act;

“qualifying scheme” has the meaning given in section 99 of the 2008 Act;

“relevant small scheme” means a scheme with fewer than 12 members, where—

(a) all the members are trustees of the scheme and either—

(i) the provisions of the scheme provide that any decision made by the trustees is made by the unanimous agreement of the trustees who are members of the scheme; or

(ii) the scheme has a trustee who is independent in relation to the scheme for the purposes of section 23 of the 1995 Act⁽⁶⁾ (power to appoint independent trustees), and is registered in the register maintained by the Authority (as defined in that Act)⁽⁷⁾ in accordance with regulations made under subsection (4) of that section; or

(b) all the members are directors of a company which is the sole trustee of the scheme and either—

(i) the provisions of the scheme provide that any decision made by the company in its capacity as a trustee is made by the unanimous agreement of the directors who are members of the scheme; or

(ii) one of the directors of the company is independent in relation to the scheme for the purposes of section 23 of the 1995 Act and is registered in the register maintained by the Authority (as defined in that Act) in accordance with regulations made under subsection (4) of that section;

“single charge structure” has the meaning given in regulation 5(2);

⁽⁵⁾ There are amendments to section 99 which are not relevant to these Regulations.

⁽⁶⁾ Section 23 was substituted by the 2004 Act, section 36(3).

⁽⁷⁾ See section 124(1) of the 1995 Act, substituted by the 2004 Act, section 7(2)(b).

“transaction costs” means the costs incurred as a result of the buying, selling, lending or borrowing of investments;

“winding up costs” means the costs of winding up the pension scheme including (but not limited to) the cost of —

- (a) legal advice;
- (b) tracing, consulting and communicating with members;
- (c) advice on exiting investments;
- (d) selection of an alternative scheme or investments;

“worker” has the meaning given in section 99 of the 2008 Act;

“writing” includes electronic communication and ‘electronic communication’ has the meaning given in section 15(1) of the Electronic Communications Act 2000⁽⁸⁾.

(2) For the purposes of paragraph 1(5) of Schedule 18 to the Pensions Act 2014, “relevant scheme” means—

- (a) an occupational pension scheme under which all the benefits which may be provided are money purchase benefits; or
- (b) where some but not all the benefits which may be provided under an occupational pension scheme are money purchase benefits, that scheme in so far as it relates to those benefits, other than a scheme with only one member, an executive pension scheme or a relevant small scheme.

(3) Where, in these Regulations, the circumstances require one or more of the calculations listed in paragraph (4) to be made in relation to a period of less than a charges year, that calculation shall be done on a pro rata basis.

(4) The calculations referred to in paragraph (3) are—

- (a) a charge under a single charge structure;
- (b) a flat fee charge;
- (c) an existing rights charge.

Default arrangement

3.—(1) Subject to paragraph (6), a “default arrangement”, in relation to an employer, means an arrangement which—

- (a) on or after the relevant date is used by a qualifying scheme (which is a relevant scheme) in relation to one or more relevant jobholders; and
- (b) satisfies one or more of the descriptions in paragraph (2).

(2) The descriptions referred to in paragraph (1) are—

- (a) an arrangement under which the contributions of one or more workers are allocated to a fund or funds where those workers have not expressed a choice as to where those contributions are allocated;
- (b) subject to paragraph (3), an arrangement which, on the relevant date, was an arrangement under which the contributions of 80% or more of the workers who were contributing members of the scheme on that date were allocated where those workers were required to make a choice as to where their contributions were allocated;

⁽⁸⁾ 2000 (c. 7). Section 15(1) was amended by the Communications Act 2003 (c. 21), section 406(1) and Schedule 17, paragraph 158.

- (c) an arrangement which first received contributions from workers after the relevant date, and under which, at any point after the relevant date, the contributions of 80% or more of workers who are contributing members of the scheme are allocated where those workers were required to make a choice as to where their contributions are allocated.
- (3) An arrangement does not satisfy the description in paragraph (2)(b) if, at any time before the relevant date—
- (a) each worker whose contributions were allocated under the arrangement (‘the original arrangement’) at that time was informed that contributions payable on or after the relevant date would be allocated under a default arrangement satisfying the description in paragraph (2)(a) (‘the new arrangement’) unless the worker agreed that allocation of the worker’s contributions under the original arrangement should continue; and
 - (b) in the event that a worker did not agree that allocation of that worker’s contributions to the original arrangement should continue, that worker’s contributions payable on or after the relevant date were allocated to the new arrangement.
- (4) A worker’s agreement, referred to in paragraph (3)(a), must—
- (a) be in writing; and
 - (b) include a statement that the worker acknowledges that charges under the original arrangement may be higher than would otherwise be permitted under these Regulations.
- (5) Where an arrangement is a default arrangement in relation to an employer by virtue of paragraph (1), it continues to be such an arrangement regardless of whether it continues to satisfy that paragraph.
- (6) An arrangement is not a default arrangement if, at any time before a benefit under that arrangement comes into payment, it provides for a pensions promise to be obtained from a third party in relation to any such benefit.
- (7) For the purposes of paragraph (6) -
- (a) a “pensions promise” is a promise about the level of the benefit;
 - (b) an arrangement provides for a promise to be obtained from a third party if it—
 - (i) requires the promise to be obtained from a third party; or
 - (ii) provides for the worker to be given the option of requiring a promise to be obtained from a third party (whether or not the option is subject to conditions).
- (8) For the purposes of paragraph (7)(a) a promise about the level of the benefit includes a promise about factors that will be used to calculate the level of the benefit, but does not include a promise if, or to the extent that, it consists merely of a promise that the level of benefit will be calculated by reference to an amount available for its provision.
- (9) In this regulation—
- “contributing member” does not include a member whose contributions are solely additional voluntary contributions.
- “relevant date” means the date referred to in regulation 1(2) or, if later, the employer’s staging date;
- “relevant jobholder” means a jobholder of the employer referred to in paragraph (1);
- “staging date” means the date on which sections 2 to 9 of the 2008 Act⁽⁹⁾ first apply to the employer; and

(9) Section 2 was amended by the Pensions Act 2011 (c. 19) (“the 2011 Act”), section 4. Section 3 was amended by the 2011 Act, sections 5 and 6, and [S.I. 2012/1506](#), [S.I. 2013/667](#) and [S.I. 2014/623](#). Section 4 was substituted by the 2011 Act, section 6(2). Section 5 was amended by the 2011 Act, sections 4, 5 and 6, the Pensions Act 2014, sections 37 and 38 and [S.I. 2012/1506](#), [S.I. 2013/667](#) and [S.I. 2014/623](#). Section 6 was amended by the 2011 Act, sections 4, 6 and 7. Section 7 was amended by the 2011 Act, section 6.

“worker” means a worker of the employer referred to in paragraph (1).