
DRAFT STATUTORY INSTRUMENTS

2021 No.

**The Occupational Pension Schemes
(Administration, Investment, Charges and
Governance) (Amendment) Regulations 2021**

The Occupational Pension Schemes (Scheme Administration) Regulations 1996

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

(2) In regulation 23 (annual statement regarding governance)(1)—

(a) in paragraph (1)—

(i) after sub-paragraph (a), insert—

“(aa) state the return on investments, after deduction of any charges or transaction costs relating to those investments (calculated in accordance with regulation 25(1)(a)), relating to—

(i) each default arrangement, and

(ii) each fund—

(aa) which members are now able to select or were in the past able to select, and

(bb) in which assets relating to members are invested during the scheme year,

having regard to guidance issued by the Secretary of State under section 113(2A) of the Pension Schemes Act 1993(2);”;

(ii) in sub-paragraph (c)—

(aa) for paragraph (ii), substitute—

“(ii) state the levels of charges and transaction costs applicable to each fund—

(aa) which members are now able to select or were in the past able to select, and

(bb) in which assets relating to members are invested during the scheme year;”;

(bb) for paragraph (iv), substitute—

“(iv) where the trustees or managers are required to assess the extent to which the charges and transaction costs borne by members represent good value for members, explain that assessment and its results;”;

(iii) after sub-paragraph (ca), insert—

(1) Regulation 23 was inserted by [S.I. 2015/879](#) and amended by [S.I. 2016/427](#) and [2018/233](#).

(2) Subsection (2A) was inserted by section.38 of the Pension Schemes Act 2015.

- “(cb) explain the results of any assessment required by virtue of regulation 25(1A);”;
- (b) after paragraph (1A), insert—
- “(1B) Paragraph (1)(cb) does not apply if—
- (a) the Regulator has been notified under section 62(4) or (5) of the Pensions Act 2004 that the winding up of the scheme in question has commenced, and
- (b) the trustees or managers of the scheme explain why they are not complying with paragraph (1)(cb) in the statement required under paragraph (1)(c)(iv).”.
- (3) In regulation 25 (assessment of charges and transaction costs)(3)—
- (a) in paragraph (1)(a)—
- (i) at the end of paragraph (i), for “; and”, substitute “borne by members of the scheme,”;
- (ii) in paragraph (ii), for “costs,” substitute “costs borne by members of the scheme, and”;
- (iii) after paragraph (ii), insert—
- “(iii) the returns on investments earned by assets in the scheme, and”;
- (iv) omit the words after paragraph (iii), as so inserted;
- (b) after paragraph 1, insert—
- “(1A) As part of the assessment referred to in paragraph (1)(b), the trustees or managers of a specified scheme (see paragraph (5)) must assess—
- (a) the charges and transaction costs borne by members of the scheme by comparison with the charges and transaction costs borne by members of at least three schemes (“comparison schemes”)—
- (i) each of which satisfies one of the conditions in paragraph (1D)(a), and
- (ii) at least one of which satisfies the condition in paragraph (1D)(b),
- (b) the return on investments by comparison with the return on investments for each of the three comparison schemes, relating to—
- (i) the default arrangement, and
- (ii) any funds—
- (aa) which members are now able to select or were in the past able to select, and
- (bb) in which assets relating to members are invested,
- and in each case the return on investments is to be calculated after deduction of any charges or transaction costs, and
- (c) how the administrative and governance criteria set out in paragraph (1C) are met by the scheme.
- (1B) In making the assessment required under paragraph (1)(b), the trustees or managers of the specified scheme must have regard to any guidance issued by the Secretary of State by virtue of paragraph 2 of Schedule 18 to the Pensions Act 2014 in relation to that assessment.
- (1C) The administration and governance criteria are—
- (a) the promptness and accuracy of core financial transactions;
- (b) the quality of the records kept by the trustees or managers;

(3) Regulation 25 was inserted by [S.I. 2015/879](#).

- (c) the appropriateness of the default investment strategy followed by the trustees or managers;
 - (d) the quality of the scheme’s investment governance;
 - (e) the extent to which—
 - (i) the requirements of sections 247 and 248 of the Pensions Act 2004⁽⁴⁾ (requirements for knowledge and understanding: individual and corporate trustees) are satisfied, and
 - (ii) the trustees or managers have the knowledge, understanding and skills to enable them—
 - (aa) properly to exercise their functions, and
 - (bb) to operate the scheme effectively;
 - (f) the quality of communication with the members of the scheme;
 - (g) the effectiveness of the management of any conflicts of interest that might arise between or among trustees and managers, or between trustees, managers and third parties.
- (1D) The conditions are that—
- (a) each comparison scheme is—
 - (i) an occupational pension scheme which on the relevant date held total assets equal to or greater than £100 million, or
 - (ii) a personal pension scheme, which is not an investment-regulated pension scheme within the meaning of paragraph 1 of Schedule 29A to the Finance Act 2004⁽⁵⁾;
 - (b) the trustees or managers have had discussions with the comparison scheme on a transfer of the rights of members of the specified scheme to that scheme if the specified scheme is wound up.
- (1E) Where an occupational pension scheme provides both money purchase benefits within the meaning of section 181 of the Pension Schemes Act 1993⁽⁶⁾ and benefits other than money purchase benefits—
- (b) the trustees or managers of the scheme are only required to comply with the obligations in paragraphs (1A) and (1B) in relation to the assets held for its money purchase benefits, and
 - (c) the scheme may only be used as a comparison scheme in relation to the assets held for its money purchase benefits.”;
- (c) after paragraph (3), insert—
- “(4) Paragraphs (1A) to (1E) do not apply if—
- (a) the Regulator has been notified under section 62(4) or (5) of the Pensions Act 2004 before the date on which the trustees or managers of the scheme are required to prepare a statement under regulation 23(1) (“the annual statement”) that the winding up of the scheme in question has commenced, and
 - (b) the trustees or managers of the scheme explain why they are not complying with paragraph (cb) in the annual statement.

⁽⁴⁾ 2004 (c. 35). Section 248 of the Pensions Act 2004 was amended by S.I. 2009/1941.

⁽⁵⁾ 2004 (c. 12). Schedule 29A was inserted by paragraph 13 of Schedule 21 to the Finance Act 2006 (c. 25).

⁽⁶⁾ 1993 c. 48. Section 181 was amended by section 29(1) of the Pensions Act 2011 (c. 19), and S.I. 2005/2053. There are other amendments to section 181 which are not relevant to these Regulations.

(5) In this regulation—

“audited accounts” means the audited accounts which the trustees are required to obtain in accordance with regulation 2 of the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996(7);

“core financial transactions” has the same meaning as in regulation 24;

“default arrangement” has the meaning given in regulation 1(2) of the Occupational Pension Schemes (Investment) Regulations 2005(8);

“default investment strategy” means the default strategy referred to in regulation 2A(1)(c) of the Occupational Pension Schemes (Investment) Regulations 2005(9);

“ear-marked scheme” has the meaning given by regulation 1(2) of the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996(10);

“relevant date” means the date on which the trustees obtain the audited accounts for the scheme year that ended most recently;

“specified scheme” means a relevant scheme which, on the relevant date—

- (i) held total assets worth less than £100 million, and
- (ii) has been operating for three or more years.

(6) In this regulation, a reference to the “total assets” of a scheme means—

(a) in the case of a scheme in respect of which the trustees are required to obtain audited accounts, the total of the amount of the net assets of the scheme recorded in the audited accounts for the scheme year, or

(b) in the case of a scheme which is an ear-marked scheme, the value of the assets of the scheme represented by any policies of insurance or annuity contracts that are specifically allocated to the provision of benefits for individual members or any other person who has a right to benefits under the scheme.”.

(7) S.I. 1996/1975, amended by S.I. 1997/786, 2000/833, 2000/3198, 2005/2426, 2013/2734 and 2016/229.

(8) S.I. 2005/3378. The definition of “default arrangement” was inserted by S.I. 2015/879 and amended by S.I. 2016/427.

(9) Regulation 2A was inserted by S.I. 2015/897.

(10) The definition of “ear-marked scheme” was amended by S.I. 1997/786.