
DRAFT STATUTORY INSTRUMENTS

2021 No.

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

The Occupational Pension Schemes (Charges and Governance) Regulations 2015

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

(2) In regulation 2—

(a) in paragraph (1)—

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

“;

(f) costs solely attributable to holding physical assets;”;

(ii) after the definition of “charges year”, insert—

““commodity” means any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products and energy such as electricity, but not including cash or financial instruments (within the meaning of article 3 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(1));”;

(iii) after the definition of “jobholder”, insert—

““performance fee” means a fee which—

(a) is calculated by reference to the returns from investments held by the scheme, whether in terms of the capital appreciation of those investments, the income produced by those investments or otherwise; and

(b) is not calculated by reference to the value of the member’s rights under the scheme;

“physical asset” means an asset whose value depends on its physical form, including—

(a) land,

(b) buildings and other structures on land or sea,

(c) vehicles, ships, aircraft or rolling stock, and

(d) commodities;”;

(b) after paragraph (1), insert—

“(1A) For the purposes of the definition of “charges”, the costs solely attributable to holding a physical asset include—

(1) [S.I. 2001/544](#). The definition of financial instrument was inserted by [S.I. 2006/3384](#), and amended by [S.I. 2017/488](#) and [2019/632](#). There are other amendments to this article which are not relevant to this instrument.

- (a) the costs of managing and maintaining the asset;
 - (b) fees for valuing the asset;
 - (c) the cost of insuring the asset;
 - (d) ground rent, charges, rates, taxes and utilities bills incurred in relation to the asset.”;
- (c) after paragraph (4), insert—
- “(5) When a charge under a single charge structure is calculated on a pro rata basis under paragraph (3) and paragraph (6) applies, no account is to be taken of any performance fee charged within the period for which the calculation is made.
- (6) This paragraph applies if the performance fee in question is calculated and deducted from the value of the investments to which it relates each time the value of those investments is calculated for the purposes of buying or selling units.”.
- (3) In regulation 7 (assessment of charges), after paragraph (8), insert—
- “(9) Paragraph (10) applies where the charges imposed on a member include a performance fee payable at the end of the investment period.
- (10) For the purposes of paragraph (4), the charge imposed annually on the member in relation to the performance fee may be treated as X divided by Y, where—
- (a) X is the sum of the performance fees accrued in relation to the return earned by the assets in the default arrangement (“the relevant assets”) during the relevant charges year and each of the preceding charges years, up to a maximum of four preceding charges years, and
 - (b) Y is—
 - (i) 5, or
 - (ii) where the investment period is less than 5 charges years, the number of charges years in the relevant period.
- (11) Where the trustees or managers choose to calculate the charge imposed annually on a member in accordance with paragraph (10), the trustees or managers must, at the end of each charges year during the investment period, calculate—
- (a) the return earned by the relevant assets during that charges year;
 - (b) the performance fee which has accrued in relation to that return.
- (12) In this regulation, “investment period” means the total period for which the assets in the default arrangement are invested in an investment for which a performance fee is payable at the end of the investment period.”.
- (4) In regulation 8 (alternative assessment of charges)—
- (a) in paragraph (2), after “paragraph (3)”, insert “and, if the trustees or managers so choose, the assumption in paragraph (3A)”;
 - (b) after paragraph (3), insert—

“(3A) The assumption which may be made for the purposes of paragraph (2) is that, where the charges include a performance fee to which regulation 7(10) applies, the charge to be imposed on the member in relation to the forthcoming charges year will be X divided by Y, where—

 - (a) X is the sum of the performance fees accrued in relation to the return earned by the assets in the default arrangement during each of the years preceding the charges year in question, up to a maximum of five preceding charges years, and
 - (b) Y is—

- (i) 5, or
- (ii) where the investment period is less than 5 charges years, the number of charges years in the relevant period.”.