

EXPLANATORY MEMORANDUM TO
THE OCCUPATIONAL PENSION SCHEMES (COLLECTIVE MONEY PURCHASE
SCHEMES) REGULATIONS 2022

2022 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument implements the new authorisation and supervisory regime for collective money purchase schemes. These will be the first schemes of their type in the United Kingdom pensions market. Together with the Occupational Pension Schemes (Collective Money Purchase Schemes) (Modifications and Consequential and Miscellaneous Amendments) Regulations 2022, which are due to be laid in Parliament in February 2022, they will enable single or connected¹ employer collective money purchase schemes to apply to the Pensions Regulator for authorisation to operate in Great Britain.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Great Britain.
4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for Pensions and Financial Inclusion, Guy Opperman, has made the following statement regarding Human Rights:

“In my view the provisions of the Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Part 1 of the Pension Schemes Act 2021² provided the legislative framework to introduce collective money purchase pension schemes to Great Britain. Collective money purchase benefits are a sub-set of money purchase benefits. This instrument will constitute the first use of the powers in Part 1 of the Act. Some of those powers require use of the affirmative procedure (including some which require that procedure on first use only, and require use of the negative procedure on subsequent use) and others require use of the negative procedure. This affirmative procedure instrument

¹ Connected employer is defined in section 49(2) of the Pension Schemes Act 2021 (c. 1) (see also regulation 3 of this instrument)

² www.legislation.gov.uk/ukpga/2021/1/contents/enacted

contains provisions subject to both procedures pursuant to section 51(6) of the Pension Schemes Act 2021, which permits this approach. This instrument provides the detailed legislative framework within which single or connected employer collective money purchase schemes can seek authorisation to operate. This instrument also sets out the detail of how the Pensions Regulator's supervisory framework will apply and what the trustees of these schemes will need to do if something goes wrong with the scheme including when a scheme might need to be wound up.

- 6.2 This instrument also makes certain changes to existing pensions legislation to ensure that collective money purchase schemes can operate as intended, that they are run well and that the interests of members are protected. (We have prepared and published in draft a further instrument³, making further consequential amendments to the same end. We expect to bring that instrument, which will be subject to the negative procedure, forward in February 2022.)
- 6.3 It is envisaged that Northern Ireland will make corresponding regulations in relation to Part 2 of the Pension Schemes Act 2021.

7. Policy background

What is being done and why?

- 7.1 Traditionally, the pensions market in the United Kingdom has been binary in nature. The only options broadly available to employers and employees have been either defined benefit schemes where the employer underwrites the pension benefits paid to employees or defined contribution schemes where individual members bear all the investment and longevity risks and there are no employer guarantees regarding what the member might receive at retirement.
- 7.2 Collective money purchase schemes provide an alternative in which the contributions of members and employers are pooled and invested with a view to delivering benefits at the level to which the scheme aspires. They offer potential benefits in economies of scale and the opportunity for greater investment in higher returning assets than are usually associated with defined contribution occupational pension schemes. Another benefit is the collective nature of these schemes, which means that investment and longevity risks are shared across the membership. As these schemes provide an income to pensioner members there is no need for members to make complex financial decisions at the point of retirement. Income in retirement from collective money purchase schemes is subject to periodic adjustment, which is designed to achieve a balance between a scheme's assets and the amount required for the provision of benefits.
- 7.3 The government committed to introduce this new type of pension provision because it believes it is more sustainable for employers and employees alike and has the potential to offer better outcomes for pension scheme members. There is also cross party support for this new type of pension provision and considerable industry interest (including in seeing it extended beyond the single or connected employer collective money purchase schemes that this instrument will facilitate).

³ The draft Occupational Pension Schemes (Collective Money Purchase Schemes) (Modifications and Consequential and Miscellaneous Amendments) Regulations 2022, annexed to the government response to the consultation published on 15 December 2021.

- 7.4 If confidence in this new provision is to be built, then it is essential that only well run schemes are allowed to operate. This instrument sets out detailed requirements for the process for applying for authorisation as well as details regarding the authorisation criteria that need to be met in order for collective money purchase schemes to operate. These include criteria to ensure only fit and proper persons are involved in key capacities relating to these schemes, that the design of the scheme is sound and complies with the legislative requirements, and that the scheme has sufficient financial resources to meet the costs of setting up and running the scheme and to take the necessary steps if things go wrong.
- 7.5 The instrument also states that the fee the Pensions Regulator will charge for processing an application for authorisation is £77,000 (subject to certain exceptions specified in the regulations, where the Pensions Regulator may be able to charge a lower fee). This has been calculated on a cost recovery basis and reflects the complexity involved in reviewing an application for collective money purchase scheme authorisation including the actuarial input that will be needed.
- 7.6 The instrument provides details of the valuation and benefit adjustment process which is a key part of the operation of a collective money purchase scheme and which must be carried out each year.
- 7.7 The instrument provides details of requirements relating to the Pensions Regulator’s supervisory role. The instrument sets out matters to which the Pensions Regulator must have regard in deciding whether the authorisation criterion are met.
- 7.8 The instrument also clearly sets out the actions trustees must take if the scheme experiences a triggering event. These are events, listed in section 31 of the Pension Schemes Act 2021, which can pose a threat to the future of the scheme and the interests of members and can lead to a scheme being wound up. Schedule 6 to this instrument sets out the process which trustees must comply with when winding up a collective money purchase scheme. This is designed to protect the interests of the members of the scheme.
- 7.9 Schedule 7 to this instrument amends the Occupational and Personal Pension Scheme (Automatic Enrolment) Regulations 2010 to make provision for an alternative automatic enrolment quality test for collective money purchase schemes so that such schemes can demonstrate that they meet the minimum scheme quality requirements to be used as a workplace pension for the purposes of the Pensions Act 2008. It also makes amendments to the Occupational Pension Schemes (Charges and Governance) Regulations 2015 to make provision about charges in relation to members of collective money purchase schemes; and technical amendments to the Occupational Pension Schemes (Scheme Administration) Regulations 1996.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018 (c.16).

9. Consolidation

- 9.1 Informal consolidated text of instruments is available to the public free of charge via ‘the National Archive’ website⁴.

⁴ www.legislation.gov.uk

10. Consultation outcome

- 10.1 In November 2018, the government launched a consultation on “Delivering Collective Defined Contribution Pension Schemes⁵”, which set out its proposals for the establishment of these schemes (now referred to in the legislation as collective money purchase schemes). In its response to the consultation, which was published in March 2019⁶, the government confirmed that the vast majority of respondents supported its proposals. It also confirmed its intention to proceed with legislating for this new type of pension provision.
- 10.2 The Pension Schemes Act 2021 received Royal Assent on 11 February 2021. This contained the primary legislative framework that was necessary for single or connected employer collective money purchase schemes to be able to operate in the United Kingdom pensions market. In a further consultation, which ran from 19 July to 31 August 2021, “The Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2021⁷”, the government published a draft of and sought views on the detailed secondary legislation needed to implement these schemes in Great Britain.
- 10.3 The government published its response to the consultation on 15 December 2021⁸. 33 written responses were received, from a range of interested parties including pension industry representatives, trade unions, legal firms, advisers and actuaries. Respondents were broadly supportive of the approach we have taken with the majority of respondents raising drafting and minor technical points and requests for clarification. In addition, direct engagement was undertaken with a number of industry stakeholders including actuarial and legal firms. The Pensions Regulator also provided input throughout the development of the draft secondary legislation. Having considered the points raised, drafting changes have been made to the instrument to provide greater clarity and more accurately reflect the policy intent. There have been no changes in policy intent as a result of the responses received.

11. Guidance

- 11.1 The Pensions Regulator is developing a Code of Practice, as required by section 90(2)(jc) and (jd) of the Pensions Act 2004, to support the regulations for those interested in applying for authorisation to operate a collective money purchase scheme. The Pensions Regulator plans to consult on the draft Code of Practice next year and it will be brought into force in accordance with section 91 of the Pensions Act 2004, which includes a requirement for a draft to be laid in Parliament. In addition, the Pensions Regulator will also be providing some guidance to supplement the Code of Practice.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is minimal.

⁵ www.gov.uk/government/consultations/delivering-collective-defined-contribution-pension-schemes/delivering-collective-defined-contribution-pension-schemes

⁶ www.gov.uk/government/consultations/delivering-collective-defined-contribution-pension-schemes

⁷ www.gov.uk/government/consultations/the-occupational-pension-schemes-collective-money-purchase-schemes-regulations-2021

⁸ www.gov.uk/government/consultations/the-occupational-pension-schemes-collective-money-purchase-schemes-regulations-2021

- 12.2 The main impact will be on persons seeking to establish and operate a collective money purchase scheme, persons who choose to apply to the Pensions Regulator for authorisation of such a scheme and persons who operate a collective money purchase scheme.
- 12.3 The Equivalent Annual Net Direct Cost to Businesses of the package of measures contained in this instrument is £0.4m.
- 12.4 Costs principally stem from familiarisation with the relevant regulations and guidance, the development of the proposed design of the scheme, one-off costs associated with meeting the criteria to be authorised, ongoing scheme running costs and ongoing costs associated with complying with the Pensions Regulator's supervisory return and other periodic reporting requirements.
- 12.5 There is no, or no significant, impact on the public sector.
- 12.6 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The Department for Work and Pensions will be informally monitoring these regulations to make sure that they operate as intended. This will involve engagement with the Pensions Regulator and any collective money purchase scheme that is established.
- 14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Guy Opperman MP, Parliamentary Under-Secretary of State for the Department for Work and Pensions, has made the following statement:

“Having had regard to the Statutory Review Guidance for Departments published under section 31(3) of the Small Business, Enterprise and Employment Act 2015, in my view, it is not appropriate to make provision for review in the Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022”.

15. Contact

- 15.1 Julian Barker at the Department of Work and Pensions, Telephone: 07941893143 or email: julian.barker@dwp.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Joanne Gibson, Deputy Director for Automatic Enrolment and Defined Contribution Pensions Policy, at the Department for Work and Pensions can confirm this Explanatory Memorandum meets the required standard.
- 15.3 Minister for Pensions and Financial Inclusion (Parliamentary Under-Secretary of State), Guy Opperman MP at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.