
DRAFT STATUTORY INSTRUMENTS

2022 No.

The Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022

PART 6

Triggering events and continuity options

Triggering events: notification requirements

25.—(1) For the purposes of section 33(4)(b) of the Act (notification of triggering events), a trustee who is required to give a required notification under section 33(3) of the Act must notify each employer and any relevant former employer of the following matters—

- (a) that the trustees—
 - (i) have submitted an implementation strategy to the Regulator and the date on which they did so, or
 - (ii) will submit an implementation strategy to the Regulator before the end of the period specified in regulation 26; and
 - (iii) in either case, will make the implementation strategy available to each employer and any relevant former employer after it has been approved by the Regulator;
- (b) the timetable for future communications with each employer and any relevant former employer.

(2) Notifications under section 33 of the Act must be given before the end of—

- (a) seven days (in the case of notifications to the Regulator);
- (b) fourteen days (in the case of notifications to an employer or any relevant former employer);
or
- (c) two days (in the case of notifications to trustees),

beginning with the date specified in paragraph (3).

(3) The specified date is—

- (a) the date on which the triggering event occurred, in the case of—
 - (i) notifications given under section 33(1) of the Act—
 - (aa) by the employer or relevant former employer, in respect of an item 4 triggering event;
 - (bb) by the person who made the decision, in respect of an item 6 or 8 triggering event;
 - (ii) notifications given under section 33(7) or (8) of the Act;
- (b) the date on which the employer or relevant former employer becomes aware that they are unlikely to continue as a going concern, in the case of notifications given under

section 33(1) of the Act by the employer or relevant former employer in respect of an item 5 triggering event;

- (c) the date on which the person under the duty to notify became aware that the event had occurred, in the case of—
- (i) notifications given under section 33(1) of the Act which are not mentioned in subparagraph (a)(i);
 - (ii) notifications given under section 33(3) or (9) of the Act.

Implementation strategy: approval

26. Where the trustees of a collective money purchase scheme are required to submit an implementation strategy to the Regulator for approval, it must be submitted before the end of 28 days beginning with the date on which—

- (a) the decision to withdraw authorisation becomes final, in relation to an item 1 or 2 triggering event; or
- (b) the triggering event occurred, in relation to an item 3 to 9 triggering event.

Implementation strategy: charges

27.—(1) The information to be included in the implementation strategy about the levels of administration charges in relation to members of the scheme—

- (a) must relate to the levels of administration charges for the scheme years specified in paragraph (2); and
 - (b) with the exception of those administration charges mentioned in regulation 34(1) (administration charges during a triggering event period), must be set out in accordance with paragraphs (3) and (4).
- (2) The specified scheme years are—
- (a) the scheme year in which the triggering event occurred; and
 - (b) the scheme year preceding the one in which the triggering event occurred.
- (3) The trustees must set out for each charge structure all levels of administration charges including—
- (a) for any additional charges, and the reason for imposing them;
 - (b) for any third-party charges, and the reason for imposing them;
 - (c) for any other type of administration charge in the scheme, including the reason for imposing it.
- (4) The levels in paragraph (3) must be set out on an annualised basis.
- (5) For the purposes of section 45(3)(b) of the Act (prohibition on increasing charges etc during triggering event period), during a triggering event period for a collective money purchase scheme, the trustees must not impose administration charges on or in respect of members at levels above the fixed charge level.
- (6) For the purposes of paragraph (5) the fixed charge level is calculated as follows—
- (a) the trustees must compare each level from the levels set out in the implementation strategy for the scheme year in paragraph (2)(a) with the corresponding level from the levels set out for the scheme year in paragraph (2)(b), and take the lower of the two levels as the fixed charge level; and
 - (b) where the triggering event period is more or less than a full year, the levels in subparagraph (a) must be applied on a pro rata basis.

Implementation strategy: content

- 28.—**(1) An implementation strategy must contain—
- (a) details of—
 - (i) the main decisions and actions that will be taken, in relation to the continuity option being pursued, to address the triggering event that has occurred;
 - (ii) the person responsible for taking them; and
 - (iii) the timescales for taking them;
 - (b) a communications plan setting out what information will be communicated to employers and beneficiaries and when, including information about—
 - (i) the continuity option being pursued, and
 - (ii) key milestones and when they are to be (or were) achieved;
 - (c) if continuity option 1 is being pursued, a plan setting out how the scheme’s liability to each beneficiary in respect of the value of their accrued rights to benefits under the scheme is to be discharged under the proposal formulated by the trustees in accordance with section 36(1)(b) of the Act (continuity option 1: discharge of liabilities and winding up);
 - (d) if continuity option 1 is being pursued, details of how any periodic income to be paid in accordance with paragraph 7 of Schedule 6 would be calculated and paid;
 - (e) a plan setting out how the integrity of members’ records will be maintained during the triggering event period;
 - (f) details of how assets held by the scheme would be converted into a cash equivalent of the value of each beneficiary’s accrued rights to benefits under the scheme, if applicable;
 - (g) details of how the trustees will comply with any legal requirements and meet any legal costs arising from the triggering event that has occurred and the continuity option being pursued;
 - (h) details of how the trustees will comply with any actuarial requirements and meet any actuarial costs arising from the triggering event that has occurred and the continuity option being pursued;
 - (i) details of how scheme investments will be managed during the triggering event period;
 - (j) a plan for dealing with any outstanding contributions due from employers and members;
 - (k) details of how the scheme’s administration services will continue during the triggering event period;
 - (l) details of how service providers are to be retained and paid during the triggering event period;
 - (m) details of how carrying out the steps identified in the implementation strategy, including steps relating to the continuity option being pursued, is to be funded;
 - (n) details of when and how the process of determining the rate or amount of benefits provided under the scheme is to be carried out in accordance with section 18 of the Act (calculation of benefits), if applicable.
- (2) An implementation strategy must be prepared—
- (a) in writing;
 - (b) in the format set out in a Code; and
 - (c) in accordance with any further requirements set out in a Code.
- (3) After approval by the Regulator, the implementation strategy must be made available to the employers and any relevant former employer in relation to the scheme before the end of seven days

beginning with the date on which the Regulator notifies the trustees that the implementation strategy is approved.

Continuity option 1: discharge of liabilities and winding up

29. Schedule 6 applies when the trustees of a collective money purchase scheme are required, or decide, to pursue continuity option 1.

Continuity option 2: resolving the triggering event

30. For the purposes of section 37(3)(b) of the Act (continuity option 2: resolving triggering event), the notification to the Regulator setting out how the trustees consider that a triggering event (“the relevant event”) has been resolved must be given before the end of 14 days beginning with the later of—

- (a) the date on which the relevant event was, in the trustees’ opinion, resolved; and
- (b) if any other event within the second column of the triggering events table has occurred in relation to the scheme since the occurrence of the relevant event, the date on which such other events have, in the trustees’ opinion, been resolved.

Continuity option 3: conversion to closed scheme

31.—(1) For the purposes of section 38(3) of the Act (continuity option 3: conversion to closed scheme), the notification to the Regulator under section 38(2) of the Act must be given before the end of 28 days beginning with the date on which the trustees consider that preparations for the conversion of the scheme into a closed scheme are complete.

(2) Preparations for the conversion of the scheme into a closed scheme are not complete unless the steps identified in the implementation strategy, in order to carry out continuity option 3, are complete.

Periodic reporting requirement

32.—(1) For the purposes of section 43(2) of the Act (periodic reporting requirements) the first report must be submitted to the Regulator before the end of 14 days beginning with the date on which the Regulator notifies the trustees that the implementation strategy is approved.

(2) For the purposes of section 43(4)(b) of the Act, the reports must record—

- (a) decisions made by the trustees and employers concerning the continuity option being pursued;
- (b) where continuity option 1 is being pursued, decisions made by the trustees and employers in relation to the proposal formulated in accordance with section 36(1)(b) of the Act (continuity option 1: discharge of liabilities and winding up) for discharging the scheme’s liability to each beneficiary.

(3) The following information is specified for the purposes of section 43(4)(c) of the Act—

- (a) if the person preparing the report is not an independent trustee appointed pursuant to section 23(1) of the 1995 Act⁽¹⁾ (power to appoint independent trustees), the name and address of that person;
- (b) the name and address of the scheme actuary;
- (c) a statement as to whether any of the scheme’s administration services are being carried out by a person other than a trustee, and if so the name and address of that person;

(1) Section 23 was substituted for section 23, as originally enacted, by section 36(1) and (3) of the 2004 Act.

- (d) the timescales for completing the steps identified in the implementation strategy;
- (e) details of whether any particular issues are affecting the trustees' ability to pursue or complete the steps identified in the implementation strategy.

Pause orders

33. Where a pause order containing a direction under section 44(5)(e) of the Act (pause orders) has effect in respect of a scheme, section 99 of the 1993 Act⁽²⁾ (trustees' duties after exercise of option) has effect in relation to that scheme as if for subsection (2)(c) of section 99 there were substituted—

- “(c) in the case of an application which relates to money purchase benefits that are collective money purchase benefits, by the later of—
 - (i) the last day of the period of six months beginning with the date of the application or such longer period beginning with that date as may be prescribed; or
 - (ii) where a pause order made under section 44(2) of the Pension Schemes Act 2021 and containing a direction under section 44(5)(e) of that Act has effect in relation to that scheme before the last day of the period referred to in sub-paragraph (i), the last day of the period of three months beginning with the date on which the pause order ceases to have effect.”.

Administration charges during a triggering event period

34.—(1) Section 45(1) and (2) of the Act (prohibition on increasing charges etc during triggering event period) do not apply in relation to the following administration charges—

- (a) costs incurred as a result of the buying, selling, lending or borrowing of investments;
- (b) where a court order provides for the recovery by the trustees of costs incurred in complying with the order, the amount of those costs;
- (c) charges permitted by regulations made under section 24 (charges by pension arrangements in relation to earmarking orders) or 41 (charges in respect of pension sharing costs) of the Welfare Reform and Pensions Act 1999⁽³⁾;
- (d) costs solely associated with the provision of death benefits;
- (e) costs solely attributable to holding physical assets.

(2) Section 45(2) of the Act does not apply, in respect of a receiving scheme that is a Master Trust scheme, in relation to any administration charges imposed on or in respect of a member of the scheme in relation to a member's flexi-access drawdown fund.

(3) For the purposes of section 45(6) of the Act, section 45 of the Act, with the exception of subsection (1), applies to a relevant alternative receiving scheme in the same way as it applies to a receiving scheme that is a Master Trust scheme.

(4) For the purposes of paragraph (3), a relevant alternative receiving scheme is a receiving scheme that—

- (a) has the characteristics mentioned in paragraph 2(1)(a) of Schedule 6; and
- (b) is not a collective money purchase scheme or a Master Trust scheme.

(5) For the purposes of paragraph (1)(e), the costs solely attributable to holding a physical asset include—

(2) Section 99(2) was substituted by section 67 of and paragraphs 3 and 13 of Schedule 4 to the Pension Schemes Act 2015 (c. 8) and was amended by section 25(1) and (4) of the 2021 Act.

(3) 1999 c. 30; section 24 was amended by paragraph 43A of Schedule 8 to the Family Law Act 1996 (c. 27) and paragraph 158 of Schedule 27 to and Schedule 30 to the Civil Partnership Act 2004 (c. 33).

- (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.
- (6) In this regulation—
- “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⁽⁴⁾);
- “member’s flexi-access drawdown fund” has the meaning given in paragraph 1(1) of Schedule 6;
- “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;
- “receiving scheme” has the meaning given in section 45(8) of the Act.

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