DRAFT STATUTORY INSTRUMENTS

2022 No.

The Occupational Pension Schemes (Governance and Registration) (Amendment) Regulations 2022

PART 1

Introductory provisions

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Governance and Registration) (Amendment) Regulations 2022.

(2) These Regulations come into force on—

(a) 1st October 2022, or

(b) if later, the day after the day on which they are made.

(3) These Regulations extend to England and Wales and Scotland.

(4) In these Regulations "the 1996 Regulations" means the Occupational Pension Schemes (Scheme Administration) Regulations 1996(**1**).

PART 2

Use of fiduciary management services and investment consultancy services

Amendment of the 1996 Regulations

2.—(1) The 1996 Regulations are amended as follows.

(2) After regulation 29(**2**) insert—

"PART 6

Governance of relevant trust schemes

CHAPTER 1

Introductory

Scope of Part 6

30.—(1) This Part applies in relation to relevant trust schemes.

(**1**) S.I. 1996/1715.
(**2**) Regulations 22 to 29 were inserted by S.I. 2015/879.

(2) A "relevant trust scheme" is an occupational pension scheme(**3**) established under a trust other than—

(a) a scheme which is not a registrable scheme (within the meaning given by section 59(2) of the 2004 Act)(**4**),

(b) an executive pension scheme,

(c) a relevant small scheme, or

(d) a scheme to which regulation 2(c) of the Occupational Pension Schemes (Trust and Retirement Benefits Exemption) Regulations 2005(**5**) applies.

(3) For the purposes of this regulation "executive pension scheme" and "relevant small scheme" have the meanings they have for the purposes of the definition of "relevant scheme" (see regulation 1(2ZB)(**6**)).

General interpretation

31.—(1) In this Part—

"the 2019 Order" means the Investment Consultancy and Fiduciary Management Market Investigation Order 2019(**7**);

"actuarial valuation" has the meaning that it has for the purposes of Part 3 of the 2004 Act (see section 224 of that Act);

"the commencement date" means the day on which the Occupational Pension Schemes (Governance and Registration) (Amendment) Regulations 2022 come into force;

"company" has the meaning given in section 1 of the Companies Act 2006(**8**);

"existing IC provider" has the meaning given in regulation 34(5);

"fund manager" has the meaning given in section 124 of the 1995 Act(**9**);

"IC provider" has the meaning given in regulation 34(2);

"relevant trust scheme" has the meaning given in regulation 30(2);

"statement of investment principles" has the meaning given in section 35 of the 1995 Act(**10**);

"the statutory funding objective" has the meaning given for the purposes of Part 3 of the 2004 Act (see section 222 of that Act);

"trustee owned company" has the meaning given in paragraph (2).

(2) "Trustee owned company", in relation to a relevant trust scheme ("scheme 1"), means—

(a) a company limited by shares in which—

(i) a scheme 1 person holds voting shares, and

(ii) no one other than a relevant person also holds shares, or

(b) a company limited by guarantee of which—

(**3**) "Occupational pension scheme" has the meaning given in section 1 of the Pensions Act 1993 (see paragraph 15(1) of Schedule 17 to the Pensions Act 2014).
(**4**) "The 2004 Act" is defined in regulation 1 of the 1996 Regulations.
(**5**) S.I. 2005/2360.
(**6**) The definition of "relevant small scheme" in regulation 1 and paragraph (2ZB) of that regulation were inserted by S.I. 2015/879.
(**7**) Copies of the Order are available on the CMA's website: https://www.gov.uk/cma-cases/investment-consultants-market-investigation#the-investment-consultancy-and-fiduciary-management-market-investigation-order-2019.
(**8**) 2006 c. 46.
(**9**) "The 1995 Act" is defined in regulation 1 of the 1996 Regulations.
(**10**) Section 35 was substituted by section 244 of the Pensions Act 2004 (c. 35).

(i) a scheme 1 person is a member, and

(iii) no one other than a relevant person is also a member.

(3) For the purposes of paragraph (2)—

"relevant person" means—

(a) a trustee of any occupational pension scheme, or

(b) any company which is itself a trustee owned company;

"scheme 1 person" means—

(a) a trustee of scheme 1, or

(b) a company which is itself a trustee owned company in relation to scheme 1;

"voting shares" means shares which carry rights to vote at general meetings of the company in question.

(4) For the purposes of this Part, a person ("A") is connected to another person ("B") if A is a group undertaking in relation to B (within the meaning of section 1161(5) of the Companies Act 2006).

(5) For the purposes of this Part, a reference to the appointment of a person in any capacity includes a reference to—

(a) the reappointment of that person, and

(b) the extension of that person's term of appointment.

(6) For the purposes of this Part, it does not matter whether any advice is given—

(a) for the purposes of section 36 of the 1995 Act (choosing investments)(**11**) or otherwise, or

(b) in a recommendation or in guidance or otherwise.

Time at which services are provided

32. For the purposes of this Part, a person is to be taken to provide services at any time if, at that time, arrangements are in place for the provision of those services.

CHAPTER 2

Use of fiduciary management services

Duties of trustees to carry out tender process in connection with the provision of fiduciary management services by FM providers

33. The Schedule—

(a) defines "fiduciary management services", "FM provider" and related terms (see Part 1 of the Schedule), and

(b) sets out the duties of trustees of relevant trust schemes in connection with the provision of fiduciary management services by FM providers (see Parts 2 and 3 of the Schedule).

(**11**) Section 36 was amended by section 245 of the Pensions Act 2004 and S.I. 2001/3649

CHAPTER 3

Use of investment consultancy services

Meaning of "IC provider", "existing IC provider" and related expressions

34.—(1) This regulation defines "IC provider", "existing IC provider" and related expressions for the purposes of this Part.

(2) "IC provider", in relation to a relevant trust scheme, means a person who provides investment consultancy services to the trustees of the scheme and is not—

(a) a trustee of the scheme, or

(b) a trustee owned company.

(3) A person ("P") provides investment consultancy services to the trustees of a relevant trust scheme if—

(a) P gives advice to the trustees of the scheme on or in connection with any of the following—

(i) the merits of—

(aa) the exercise of any of the trustees' powers of investment in any particular case (including the making or retaining of any investment);

(bb) the appointment of a particular fund manager;

(cc) strategic asset allocation;

(dd) adopting a particular investment strategy, or

(ii) the preparation or revision of the statement of investment principles, and

(b) P gives that advice otherwise than in P's capacity as a legal adviser appointed by the trustees.

(4) Where P is an actuary, any high-level commentary given by P in, or in relation to, an actuarial valuation on the link between the statutory funding objective and the investment strategy, is not to be treated as advice for the purposes of this regulation.

(5) "Existing IC provider", in relation to a relevant trust scheme, means an IC provider who—

(a) was appointed by the trustees of the scheme before the commencement date, and

(b) continues to provide investment consultancy services to those trustees on and after that date in accordance with the terms of that appointment.

(6) References in this Part to investment consultancy services are to be read in accordance with this regulation.

Duty to set objectives for IC providers

35.—(1) The trustees of a relevant trust scheme must set objectives for each IC provider.

(2) The trustees must—

(a) when setting objectives for an IC provider, have regard to the statement of investment principles, in so far as it is relevant to services provided, or to be provided, by that provider;

(b) where the IC provider is appointed on or after the commencement date, ensure that the IC provider's objectives are set by the end of the day on which the IC provider's appointment takes effect.

(3) The trustees must review and, if appropriate, revise an IC provider's objectives—

(a) at least every three years, and

(b) without delay after any significant change in investment policy.

(4) Where an existing IC provider has strategic objectives which were set, before the commencement date, under Article 12 of the 2019 Order ("the existing objectives")—

(a) the existing objectives are to be treated as if they had been set by the trustees under paragraph (1), and

(b) the trustees must complete the first review of the existing objectives for the purposes of paragraph (3)(a) before the end of the period of three years beginning with the date on which those objectives were set under Article 12 of the 2019 Order.

Duty to review performance of IC providers

36. The trustees of a relevant trust scheme must, at least every 12 months, review the performance of each IC provider against the objectives set under regulation 35.

CHAPTER 4

Compliance

Compliance notices

Compliance notice

37.—(1) The Regulator(**12**) may issue a compliance notice(**13**) to a person with a view to ensuring that person's compliance with a listed provision.

(2) The Regulator may issue a notice under paragraph (1) if it is of the opinion that the person is not complying, or has not complied, with that provision.

(3) For the purposes of this Chapter, the listed provisions are the following provisions of this Part—

(a) regulation 35(1) or (3);

(b) regulation 36;

(c) paragraph 7(1) of the Schedule;

(d) paragraph 8(1) of the Schedule;

(e) paragraph 9(3) of the Schedule;

(f) paragraph 10(1) or (2) of the Schedule.

(4) A compliance notice must—

(a) state the listed provision which the Regulator is of the opinion was not, or is not being, complied with,

(b) state the evidence on which that opinion is based, and

(c) specify the steps that the Regulator requires the person to whom it is issued to take to remedy the non-compliance with that provision and, where appropriate, ensure that it is not repeated.

(5) A step specified for the purposes of paragraph (4)(c) may be expressed to be conditional on compliance by a third party with a specified direction contained in a third party compliance notice under regulation 38.

(**12**) "Regulator" is defined in paragraph 15(1) of Schedule 17 to the Pensions Act 2014.
(**13**) "Compliance notice" is defined in paragraph 3(2)(a) of Schedule 18 to the Pensions Act 2014.

(6) A compliance notice may also—

(a) specify the period within which any step must be taken;

(b) require the person to whom it is issued to provide the Regulator within a specified period specified information relating to the non-compliance;

(c) require the person to whom it is issued to inform the Regulator, within a specified period, of how they have complied with or are complying with the notice;

(d) state that, if the Regulator is of the opinion that the person to whom it is issued has failed to comply with the notice, the Regulator may issue a penalty notice to them under regulation 39;

(e) give the person to whom it is issued a choice between different ways of remedying, or preventing the recurrence of, the non-compliance.

(7) In this regulation "specified" means specified in a compliance notice.

Third party compliance notice

38.—(1) The Regulator may issue a third party compliance notice(**14**) to a person ("A") with a view to ensuring another person ("B")'s compliance with a listed provision if—

(a) the Regulator is of the opinion that—

(i) B is not complying, or has not complied, with that provision, and

(ii) that non-compliance is, or was, wholly or partly, a result of the failure of A, and

(b) A's failure is not itself a contravention of any listed provision.

(2) A third party compliance notice must—

(a) state the listed provision which the Regulator is of the opinion was not, or is not being, complied with,

(b) state the evidence on which that opinion is based, and

(c) specify the steps that the Regulator requires A to take, or refrain from taking, with a view to remedying and, where appropriate, preventing a recurrence of the failure mentioned in paragraph (1)(a)(ii).

(3) A compliance notice may also—

(a) specify the period within which any step must be taken;

(b) require A to provide the Regulator within a specified period specified information relating to the non-compliance;

(c) require A to inform the Regulator, within a specified period, of how they have complied with or are complying with the notice;

(d) state that, if the Regulator is of the opinion that A has failed to comply with the notice, the Regulator may issue a penalty notice to A under regulation 39;

(e) give A a choice between different ways of remedying, or preventing the recurrence of, the non-compliance.

(4) In this regulation "specified" means specified in a third party compliance notice.

(**14**) "Third party compliance notice" is defined in paragraph 3(2)(b) of Schedule 18 to the Pensions Act 2014.

Penalty notices

Penalty notices

39.—(1) The Regulator may issue a penalty notice(**15**) imposing a penalty on a person where the Regulator is of the opinion that the person—

(a) has failed to comply with a compliance notice,

(b) has failed to comply with a third party compliance notice, or

(c) has contravened a listed provision.

(2) The Regulator may determine the amount of the penalty to be imposed on a person.

(3) But the amount of the penalty imposed on a person must not—

(a) if the person is an individual, exceed £5,000;

(b) in any other case, exceed £50,000.

(4) A penalty notice must—

(a) if it is issued to the trustees of a trust scheme, be issued to all the trustees of the scheme and specify their joint and several liability for the penalty;

(b) state the Regulator's decision to impose a penalty;

(c) state the reasons for that decision including—

(i) if the notice is issued under paragraph (1)(a) or (b), the failure to which the notice relates;

(ii) if the notice is issued under paragraph (1)(c), the provision which has been contravened;

(d) state the amount of the penalty;

(e) state the date by which the penalty must be paid;

(f) state the period (if any) to which the penalty relates;

(g) notify the person to whom the notice is issued of the right to a review under regulation 43 and the right of referral under regulation 44.

(5) The date specified under paragraph (4)(e) must be at least four weeks after the date on which the notice is issued.

(6) See also regulation 41 (recovery of penalty from bodies corporate and Scottish partnerships).

Penalty notices: recovery of penalty

40.—(1) Any penalty required by a penalty notice is recoverable by the Regulator.

(2) In England and Wales, any such penalty is, if the county court so orders, recoverable under section 85 of the County Courts Act 1984(**16**) or otherwise, as if it were payable under an order of that court.

(3) In Scotland, any such penalty is enforceable as if it were an extract registered decree arbitral bearing a warrant for execution signed by the sheriff court of any sheriffdom in Scotland.

(**15**) "Penalty notice" is defined in paragraph 3(2)(c) of Schedule 18 to the Pensions Act 2014.

(**16**) 1984 c. 28. Section 85 was amended by section 67 of and paragraph 69 of Schedule 13, and Part 3 of Schedule 23, to the Tribunals, Courts and Enforcement Act 2007 (c. 15), paragraph 10 of Schedule 9 to the Crime and Courts Act 2013 (c. 22) and S.I. 1991/724.

(4) The Regulator must pay into the Consolidated Fund any penalty recovered under this regulation.

Penalty notices: recovery of penalty from bodies corporate and Scottish partnerships

41.—(1) This regulation applies where—

(a) a penalty under regulation 39 is recoverable from a body corporate or a Scottish partnership by reason of any act or omission of the body or partnership, and

(b) the act or omission was done with the consent or connivance of, or is attributable to any neglect on the part of, any specified person.

(2) Where this regulation applies, the Regulator may impose a penalty on each specified person who has consented to or connived in the act or omission, or to whose neglect the act or omission was attributable.

(3) In this regulation "specified person"—

(a) in relation to a body corporate, means—

(i) a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, or

(ii) where the affairs of the body are managed by its members, a member who has management functions;

(b) in relation to a Scottish partnership, means a partner of the partnership.

(4) If the Regulator imposes a penalty on one or more specified persons, the Regulator—

(a) may not also impose a penalty on the body corporate or Scottish partnership (as the case may be) in respect of the same act or omission, and

(b) must issue the penalty notice to each specified person on whom a penalty is imposed.

(5) The Regulator may notify the relevant body corporate or Scottish partnership of the Regulator's decision under this regulation to impose a penalty on one or more specified persons.

Service of notices

Service of notices

42. Sections 303 to 305 of the 2004 Act (service of documents and electronic working) apply to notices issued under this Chapter as they apply to a notification given under any provision of that Act.

Review of notices

Review of notices

43.—(1) The Regulator may review a specified notice issued under these Regulations—

(a) on an application, in writing, from the person to whom the notice was issued ("the applicant"), or

(b) otherwise, if the Regulator considers it appropriate to do so.

(2) In this regulation "specified notice" means—

(a) a compliance notice,

(b) a third party compliance notice, or

(c) a penalty notice.

(3) An application for a review of a specified notice must be made by the applicant before the end of the period of 28 days beginning with the day on which the notice was issued to the applicant.

(4) The Regulator may review a notice under paragraph (1)(b) at any time before the end of the period of 18 months beginning with the day on which the notice was issued to the applicant.

(5) On a review of a notice, the effect of the penalty notice is suspended for the period—

(a) beginning with the day on which the Regulator determines to carry out the review, and

(b) ending with the day on which the review is completed.

(6) In carrying out the review, the Regulator must consider any representations made by the applicant.

(7) On a review under this regulation, the Regulator may—

(a) confirm the notice,

(b) vary the notice,

(c) revoke the notice, or

(d) substitute a different notice.

References to the Upper Tribunal

Reference to the Upper Tribunal

44.—(1) A person to whom a penalty notice is issued ("the applicant") may, if one of the conditions in paragraph (2) is satisfied, make a reference to the Upper Tribunal ("the Tribunal") in respect of—

(a) the issue of the notice;

(b) the amount of the penalty imposed under the notice.

(2) The conditions are—

(a) the Regulator has completed a review of the notice under regulation 43;

(b) the applicant made an application for a review under regulation 43(1)(a) but the Regulator determined not to carry out such a review.

(3) On a reference under this regulation, the effect of the notice is suspended for the period—

(a) beginning with the day on which the Tribunal receives the notice of the reference, and

(b) ending with the relevant day.

(4) For the purposes of paragraph (3) "the relevant day" is—

(a) if the applicant withdraws the reference, the day on which it is withdrawn;

(b) if the reference is made out of time and the Tribunal determines not to allow the reference to proceed, the day on which that determination is made;

(c) otherwise, the day on which the reference is completed.

(5) A reference is completed when—

(a) the reference has been determined, and

(b) the Tribunal has remitted the matter to the Regulator.".

(3) After Part 6, as inserted by paragraph (2), insert the Schedule set out in the Schedule to these Regulations.

PART 3

Registrable information

Amendment of the Register of Occupational and Personal Pension Schemes Regulations 2005

3.—(1) Regulation 3 of the Register of Occupational and Personal Pension Schemes Regulations 2005(**17**) is amended as follows.

(2) In paragraph (1)—

(a) omit sub-paragraphs (a)(ii) and (iii) and (e);

(b) after sub-paragraph (l), insert—

"(m) in the case of an occupational pension scheme which is a relevant trust scheme—

(i) the information mentioned in paragraph (3C) in respect of each in-scope FM provider for the time being appointed in relation to the scheme;

(ii) the information mentioned in paragraph (3D) in respect of each IC provider for the time being appointed in relation to the scheme.".

(3) After paragraph (3A) insert—

"(3B) For the purposes of this regulation "in-scope FM provider", "IC provider" and "relevant trust scheme" have the meanings given in Part 6 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 ("the 1996 Regulations").

(3C) The information referred to in paragraph (1)(m)(i) is—

(a) the name and address of the in-scope FM provider,

(b) the date on which the in-scope FM provider was appointed or last appointed (as the case may be),

(c) whether the trustees carried out a qualifying tender process under paragraph 7(1), 8(1) or 9(3) (as the case may be) of the Schedule to the 1996 Regulations in connection with the in-scope FM provider's appointment or arrangements with the in-scope FM provider, and

(d) if no such tender was carried out, why it was not carried out.

(3D) The information referred to in paragraph (1)(m)(ii) is—

(a) the name and address of the IC provider,

(b) the date on which the IC provider was appointed or last appointed (as the case may be),

(c) whether the trustees have set objectives for the IC provider in accordance with regulation 35(1) of the 1996 Regulations and if no such objectives have been set, the reasons why they have not been set,

(d) whether the trustees have reviewed the objectives set for the IC provider in accordance with regulation 35(3) of those Regulations, and if no such review has been carried out, why that is the case, and

(**17**) S.I. 2005/597; regulation 3 has been amended by S.I. 2006/1733, 2015/879, 2018/1102, 2019/192, 2021/857 and 2021/1070.

(e) whether the trustees have reviewed the performance of the IC provider in accordance with regulation 36 of those Regulations, and if no such review has been carried out, why that is the case.

(3E) For the purposes of paragraphs (3C) and (3D) "appoint", in relation to an in-scope FM provider or an IC provider, includes—

(a) the reappointment of the provider;

(b) the extension of the provider's term of appointment.".

PART 4

Review of Part 6 of the 1996 Regulations

Review of Part 6 of the 1996 Regulations

4.—(1) The Secretary of State must from time to time—

(a) carry out a review of Part 6 of the 1996 Regulations (including relevant definitions),

(b) set out the conclusions of the review in a report, and

(c) publish the report.

(2) The report must in particular—

(a) set out the objectives intended to be achieved by the regulatory system established by Part 6 of the 1996 Regulations,

(b) assess the extent to which the objectives are achieved, and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved by a system which imposes less regulation.

(3) The first report under this regulation must be published by 31st December 2028.

(4) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Signed by authority of the Secretary of State for Work and Pensions

Name
Parliamentary Under Secretary of State
Department for Work and Pensions

Date