Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Occupational Pension Schemes (Charges and Governance) Regulations 2015. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2015 No. 879

PENSIONS

The Occupational Pension Schemes (Charges and Governance) Regulations 2015

Made - - - - 23rd March 2015

Coming into force in accordance with regulation 1

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 113(1), 181(1) and 182(2) and (3) of the Pension Schemes Act 1993 [F1], sections 35(1), (3) and (4), 36(1), (1A)(a) and (9), 68(2)(e), 124(1) and 174(2) and (3) of the Pensions Act 1995 [F2], sections 1(5), 8(1) and 83(4)(a) of the Welfare Reform and Pensions Act 1999 [F3], sections 60(2)(h), 259(1), 315 and 318(1) of the Pensions Act 2004 [F4] and sections 43 and 54(5) and (6) of, and paragraphs 1(1), (2)(a), (3) and (5), 2(1) to (3) and (5), 6 and 7 of Schedule 18 to, the Pensions Act 2014 [F5], makes the following Regulations.

In accordance with section 185(1) of the Pension Schemes Act 1993 [F6], section 120(1) of the Pensions Act 1995, section 317(1) of the Pensions Act 2004 and paragraph 8 of Schedule 18 to the Pensions Act 2014, the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

A draft of these Regulations has been laid before and approved by a resolution of each House of Parliament in accordance with section 54(2)(e) and (f) of the Pensions Act 2014.

F1 1993 c. 48. Section 113(1) was amended by the Child Support, Pensions and Social Security Act 2000 (c. 19), **section 52(1)**. Section 181(1) is cited for the meaning it gives to "regulations".

F2 1995 c. 26 ("the 1995 Act"). Subsections (1) and (1A) of section 36 were substituted by the Pensions Act 2004 (c. 35) ("the 2004 Act"), section 245(2). Section 124(1) is cited for the meaning it gives to "prescribed" and "regulations".

F3 1999 c. 30. Section 1(5) was amended by the 2004 Act, section 285(3). Section 8(1) is cited for the meaning it gives to "prescribed".

F4 2004 c. 35. Section 318(1) is cited for the meaning it gives to "prescribed" and "regulations".

F5 2014 c. 19.

F6 Section 185(1) was amended by the 1995 Act, sections 122, 151 and 177 and Schedule 3, paragraph 46, Schedule 5, paragraph 80(a), (d) and (f) and Schedule 7, Part 1.

PART 1

INTRODUCTION

Citation and commencement

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Charges and Governance) Regulations 2015.

(2) Subject to paragraph (3), these Regulations come into force on 6th April 2015.

(3) The following provisions come into force on 6th April 2016—

(a) regulation 11 and the words "with the exception of regulation 11" in regulation 4(2); and

(b) regulation 23.

Interpretation

2.—(1) In these Regulations—

"the 1995 Act" means the Pensions Act 1995;

"the 2008 Act" means the Pensions Act 2008 [F7];

"the Administration Regulations" means the Occupational Pension Schemes (Scheme Administration) Regulations 1996 [F8];

[[F9]"adviser" is a person described in regulation 11A(3); **]**

"annually" means per charges year;

"arrangement" means an allocation of contributions to—

(a) an investment; or

(b) more than one investment according to a strategy adopted by the trustees or managers;

"charges" means administration charges [F10] other than—

(a) transaction costs;

(b) where an order of the court provides for the recovery by the trustees or managers of costs incurred in complying with the order, the amount of those costs;

(c) charges permitted by regulations made under section 24 or 41 (charges in respect of pension sharing costs) of the Welfare Reform and Pensions Act 1999 [F11];

(d) winding up costs;

(e) costs solely associated with the provision of death benefits**[**[F12];

(f) costs solely attributable to holding physical assets;**]**

"charges year" means a period of 12 months specified for the purposes of the scheme in any scheme document or, if no such year is specified, a period of 12 months commencing on—

(a) either 1st or 6th April as the trustees or managers may decide; or

(b) if no such decision is made, 1stApril;

[[F13]"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);**]**

"contributing member" is a member of a relevant scheme in relation to whom a contribution is being made to that scheme for the purposes of accruing money purchase benefits;

"contribution", in relation to a member, means a payment made by, on behalf of or in respect of that member;

"contribution percentage charge" has the meaning given in regulation 5(3);

"default arrangement" has the meaning given in regulation 3;

"employer" has the meaning given in section 99 of the 2008 Act [F14];

"executive pension scheme" means a scheme—

(a) in relation to which a company is the only employer and the sole trustee; and

(b) the members of which are either current or former directors of the company and include at least one third of the current directors;

"existing rights charge" has the meaning given in regulation 5(3);

"flat fee charge" has the meaning given in regulation 5(3);

"jobholder" has the meaning given in section 99 of the 2008 Act;

[[F15]"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;**]**

"qualifying scheme" has the meaning given in section 99 of the 2008 Act;

[[F9]"qualifying scheme employer" means an employer in relation to whom a scheme is a qualifying scheme in relation to at least one of its jobholders;**]**

"relevant small scheme" means a scheme with fewer than 12 members, where—

(a) all the members are trustees of the scheme and either—

(i) the provisions of the scheme provide that any decision made by the trustees is made by the unanimous agreement of the trustees who are members of the scheme; or

(ii) the scheme has a trustee who is independent in relation to the scheme for the purposes of section 23 of the 1995 Act [F16] (power to appoint independent trustees), and is registered in the register maintained by the Authority (as defined in that Act) [F17] in accordance with regulations made under subsection (4) of that section; or

(b) all the members are directors of a company which is the sole trustee of the scheme and either—

(i) the provisions of the scheme provide that any decision made by the company in its capacity as a trustee is made by the unanimous agreement of the directors who are members of the scheme; or

(ii) one of the directors of the company is independent in relation to the scheme for the purposes of section 23 of the 1995 Act and is registered in the register maintained by the Authority (as defined in that Act) in accordance with regulations made under subsection (4) of that section;

[F9"service provider" means a person who provides an administration service directly to the trustees or managers of a **[**F18relevant**]** scheme;**]**

"single charge structure" has the meaning given in regulation 5(2);

[F9"specified scheme" means a relevant scheme in which at least one qualifying scheme employer participates;**]**

"transaction costs" means the costs incurred as a result of the buying, selling, lending or borrowing of investments;

"winding up costs" means the costs of winding up the pension scheme including (but not limited to) the cost of —

(a) legal advice;

(b) tracing, consulting and communicating with members;

(c) advice on exiting investments;

(d) selection of an alternative scheme or investments;

"worker" has the meaning given in section 99 of the 2008 Act;

"writing" includes electronic communication and 'electronic communication' has the meaning given in section 15(1) of the Electronic Communications Act 2000 **F19**.

[F20(1A) For the purposes of the definition of "charges", the costs solely attributable to holding a physical asset include—

(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.**]**

(2) For the purposes of paragraph 1(5) of Schedule 18 to the Pensions Act 2014, "relevant scheme" means—

(a) an occupational pension scheme under which all the benefits which may be provided are money purchase benefits; or

(b) where some but not all the benefits which may be provided under an occupational pension scheme are money purchase benefits, that scheme in so far as it relates to those benefits, other than a scheme with only one member, an executive pension scheme or a relevant small scheme.

(3) Where, in these Regulations, the circumstances require one or more of the calculations listed in paragraph (4) to be made in relation to a period of less than a charges year, that calculation shall be done on a pro rata basis.

(4) The calculations referred to in paragraph (3) are—

(a) a charge under a single charge structure;

(b) a flat fee charge;

(c) an existing rights charge.

[F21(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.**]**

F7 2008 c. 30.
F8 S.I. 1996/1715.
F9 Words in reg. 2(1) inserted (6.4.2016) by The Occupational Pension Schemes (Charges and Governance) (Amendment) Regulations 2016 (S.I. 2016/304), regs. 1, **3**
F10 "Administration charge" is defined in paragraph 1(5) of Schedule 18 to the Pensions Act 2014 (c. 19).
F11 Section 24 was amended by the Family Law Act 1996 (c. 27), **section 66** and Schedule 8, paragraph 43A (subject to savings as to which *see* section 66(2) and Schedule 9, paragraph 5 of that Act) and the Civil Partnership Act 2004 (c. 33), **section 261(1)** and (4), Schedule 27, paragraph 158(1) to (2) and Schedule 30.
F12 Words in reg. 2(1) inserted (1.10.2021) by The Occupational Pension Schemes (Administration, Investment, Charges and Governance) (Amendment) Regulations 2021 (S.I. 2021/1070), regs. 1(2), **6(2)(a)(i)**
F13 Words in reg. 2(1) inserted (1.10.2021) by The Occupational Pension Schemes (Administration, Investment, Charges and Governance) (Amendment) Regulations 2021 (S.I. 2021/1070), regs. 1(2), **6(2)(a)(ii)**
F14 There are amendments to section 99 which are not relevant to these Regulations.
F15 Words in reg. 2(1) inserted (1.10.2021) by The Occupational Pension Schemes (Administration, Investment, Charges and Governance) (Amendment) Regulations 2021 (S.I. 2021/1070), regs. 1(2), **6(2)(a)(iii)**
F16 Section 23 was substituted by the 2004 Act, section 36(3).
F17 *See* section 124(1) of the 1995 Act, substituted by the 2004 Act, section 7(2)(b).
F18 Word in reg. 2(1) substituted (1.10.2017) by The Occupational Pension Schemes (Charges and Governance) (Amendment) Regulations 2017 (S.I. 2017/774), regs. 1, **3**
F19 2000 c. 7. Section 15(1) was amended by the Communications Act 2003 (c. 21), **section 406(1)** and Schedule 17, paragraph 158.
F20 Reg. 2(1A) inserted (1.10.2021) by The Occupational Pension Schemes (Administration, Investment, Charges and Governance) (Amendment) Regulations 2021 (S.I. 2021/1070), regs. 1(2), **6(2)(b)**
F21 Reg. 2(5)(6) inserted (with application in accordance with reg. 1(6) of the amending S.I.) by The Occupational Pension Schemes (Administration, Investment, Charges and Governance) (Amendment) Regulations 2021 (S.I. 2021/1070), regs. 1(2), **6(2)(c)**

Default arrangement

3.—(1) Subject to paragraph (6), a "default arrangement", in relation to an employer, means an arrangement which—

(a) on or after the relevant date is used by a qualifying scheme (which is a relevant scheme) in relation to one or more relevant jobholders; and

(b) satisfies one or more of the descriptions in paragraph (2).

(2) The descriptions referred to in paragraph (1) are—

(a) an arrangement under which the contributions of one or more workers are allocated to a fund or funds where those workers have not expressed a choice as to where those contributions are allocated;

(b) subject to paragraph (3), an arrangement which, on the relevant date, was an arrangement under which the contributions of 80% or more of the workers who were contributing members of the scheme on that date were allocated where those workers were required to make a choice as to where their contributions were allocated;

(c) an arrangement which first received contributions from workers after the relevant date, and under which, at any point after the relevant date, the contributions of 80% or more of workers who are contributing members of the scheme are allocated where those workers were required to make a choice as to where their contributions are allocated.