Changes to legislation: *The Occupational Pension Schemes (Charges and Governance) Regulations (Northern Ireland) 2015 is up to date with all changes known to be in force on or before 05 April 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY RULES OF NORTHERN IRELAND

2015 No. 309

PENSIONS

The Occupational Pension Schemes (Charges and Governance) Regulations (Northern Ireland) 2015

Made - - - - 16th July 2015

Coming into operation in accordance with regulation 1

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 109(1) and 177(2) to (4) of the Pension Schemes (Northern Ireland) Act 1993 [F1], Articles 35(1), (3) and (4), 36(1), (1A)(a) and (9), 47(6)(a), 68(2)(e) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995 [F2], Article 3(5) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 [F3], and now vested in it [F4], Articles 55(2)(h), 236(1) and 287 of the Pensions (Northern Ireland) Order 2005 [F5] and sections 42 and 51(6) of, and paragraphs 1(1), (2)(a), (3) and (5), 2(1) to (3) and (5), 3, 6 and 7 of Schedule 18 to, the Pensions Act (Northern Ireland) 2015 [F6].

F1 1993 c. 49; section 109(1) was amended by section 48(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.))

F2 S.I. 1995/3213 (N.I. 22); Article 35 was substituted by Article 221 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)); Article 36(1) and (1A) was substituted for Article 36(1) by Article 222(2) of that Order; Article 36(9) was added by Article 222(6) of that Order

F3 S.I. 1999/3147 (N.I. 11); Article 3(5) was amended by Article 262(3) of the Pensions (Northern Ireland) Order 2005

F4 *See* Article 8(b) of S.R. 1999 No. 481

F5 S.I. 2005/255 (N.I. 1)

F6 2015 c. 5 (N.I.); *see* the definition of "relevant scheme" in paragraph 1(5) of Schedule 18

PART 1

INTRODUCTION

Citation and commencement

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

(2) Subject to paragraph (3), these Regulations shall come into operation on 17th July 2015.

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

(a) in regulation 4(2) the words "With the exception of regulation 11,";

(b) regulation 11, and

(c) regulation 23.

Interpretation

2.—(1) In these Regulations—

"the Administration Regulations" means the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997 [F7];

[[F8]"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 other than—

(c) transaction costs;

(d) 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;

(e) charges permitted by regulations made under Article 22 [F9] (charges by pension arrangements in relation to earmarking orders) or 38 (charges in respect of pension sharing costs) of the Welfare Reform and Pensions (Northern Ireland) Order 1999;

(f) winding-up costs;

(g) costs solely associated with the provision of death benefits;

"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—

(h) either 1st or 6th April as the trustees or managers may decide, or

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

"combination charge structure" has the meaning given in regulation 5(3);

"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, or on behalf 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 78 of the Pensions (No. 2) Act;

"executive pension scheme" means a scheme—

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

(k) 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 78 of the Pensions (No. 2) Act;

"qualifying scheme" has the meaning given in section 78 of the Pensions (No. 2) Act;

[F10"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—

(l) 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 Article 23 F11 of the 1995 Order (power to appoint independent trustees), and is registered in the register maintained by the Regulator in accordance with regulations made under Article 23(4) of the 1995 Order, or

(m) 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 Article 23 of the 1995 Order and is registered in the register maintained by the Regulator in accordance with regulations made under Article 23(4) of the 1995 Order;

[F12"service provider" means a person who provides an administration service directly to the trustees or managers of a specified scheme;**]**

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

[F13"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—

(n) legal advice;

(o) tracing, consulting and communicating with members;

(p) advice on exiting investments, and

(q) selection of an alternative scheme or investments;

"worker" has the meaning given in section 78 of the Pensions (No. 2) Act;

"writing"" includes by electronic communication and "electronic communication" has the meaning given in section 4(1) of the Electronic Communications Act (Northern Ireland) 2001 F14.

(2) For the purposes of paragraph 1(5) of Schedule 18 to the Pensions Act (Northern Ireland) 2015, "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.

(5) The Interpretation Act (Northern Ireland) 1954 [F15] shall apply to these Regulations as it applies to an Act of the Assembly.

F7 S.R. 1997 No. 94
F8 Words in reg. 2(1) inserted (6.4.2016) by The Occupational Pension Schemes (Charges and Governance) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/171), **regs. 1**, 3(a)
F9 Article 22 was amended by paragraph 52 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 and paragraph 109 of Schedule 29 to the Civil Partnership Act 2004 (c. 33)
F10 Words in reg. 2(1) inserted (6.4.2016) by The Occupational Pension Schemes (Charges and Governance) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/171), **regs. 1**, 3(b)
F11 Article 23 was substituted by Article 32(3) of the Pensions (Northern Ireland) Order 2005
F12 Words in reg. 2(1) inserted (6.4.2016) by The Occupational Pension Schemes (Charges and Governance) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/171), **regs. 1**, 3(c)
F13 Words in reg. 2(1) inserted (6.4.2016) by The Occupational Pension Schemes (Charges and Governance) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/171), **regs. 1**, 3(d)
F14 2001 c. 9 (N.I.); the definition of "electronic communication" in section 4(1) was amended by paragraph 170 of Schedule 17 to the Communications Act 2003 (c. 21)
F15 1954 c. 33 (N.I.)

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.

(3) An arrangement does not satisfy the description in paragraph (2)(b) if, at any time before the relevant date—

(a) each worker whose contributions were allocated under the arrangement ("the original arrangement") at that time was informed that contributions payable on or after the relevant date would be allocated under a default arrangement satisfying the description in paragraph (2)(a) ("the new arrangement") unless the worker agreed that allocation of the worker's contributions under the original arrangement should continue, and

(b) in the event that a worker did not agree that allocation of that worker's contributions to the original arrangement should continue, that worker's contributions payable on or after the relevant date were allocated to the new arrangement.

(4) A worker's agreement, referred to in paragraph (3)(a), must—

(a) be in writing, and

(b) include a statement that the worker acknowledges that charges under the original arrangement may be higher than would otherwise be permitted under these Regulations.

(5) Where an arrangement is a default arrangement in relation to an employer by virtue of paragraph (1), it continues to be such an arrangement regardless of whether it continues to satisfy that paragraph.

(6) An arrangement is not a default arrangement if—

(a) at any time before a benefit under that arrangement comes into payment, it provides for a pensions promise to be obtained from a third party in relation to any such benefit, or

(b) it provides no benefits other than benefits which are attributable to additional voluntary contributions.

(7) For the purposes of paragraph (6)—

(a) a "pensions promise" is a promise about the level of the benefit;

(b) an arrangement provides for a promise to be obtained from a third party if it—

(i) requires the promise to be obtained from a third party, or

(ii) provides for the worker to be given the option of requiring a promise to be obtained from a third party (whether or not the option is subject to conditions).

(8) For the purposes of paragraph (7)(a), a promise about the level of the benefit includes a promise about factors that will be used to calculate the level of the benefit, but does not include a promise if, or to the extent that, it consists merely of a promise that the level of benefit will be calculated by reference to an amount available for its provision.

(9) In this regulation—

"contributing member" does not include a member whose contributions are solely additional voluntary contributions;

"relevant date" means the date referred to in regulation 1(2) or, if later, the employer's staging date;

"relevant jobholder" means a jobholder of the employer referred to in paragraph (1);

"staging date" means the date on which sections 2 [F16] to 9 of the Pensions (No. 2) Act (employers' duties) first apply to the employer;

"worker" means a worker of the employer referred to in paragraph (1).

F16 Section 2 was amended by section 5(1) of the Pensions Act (Northern Ireland) 2012 (c. 3 (N.I.)). Section 3 was amended by sections 6(1) and (2) and 7(1) of that Act and Article 2(1) of S.R. 2014 No. 81. Section 4 was substituted by section 7(2) of that Act. Section 5 was amended by sections 5(2) to (4), 6(3) and (4) and 7(3) of that Act, sections 36(2) and 37(3)(b) of the Pensions Act (Northern