



Department
for Work &
Pensions

Better Workplace Pensions: Reducing regulatory burdens, minor regulation changes, and response to consultation on the investment regulations

Public consultation and Government response

November 2015

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Ministerial Foreword

This consultation covers a number of small but important changes to existing regulations. It recognises that pensions law is complex and technical, and that sometimes we need to change it because you tell us it is not doing the job we want it to.

I welcome your feedback on how legislation is working and want it to continue. But I also want to know about any requirements in legislation that make life needlessly difficult for you and do not benefit members. So please use this opportunity to tell me about burdens you would like us to consider reducing in order to make life easier for trustees and schemes.

I also recognise that responding to consultations can itself be an additional ask of an already busy industry. We have therefore sought to combine a number of issues in this document, rather than publish these separately. Of course it will be necessary to continue to consult on other pension issues as there remain a number of important changes necessary to ensure the successful implementation of our private pension reforms. I appreciate the time that goes into responding to these consultations, and am grateful for the on-going input from the pensions industry, consumer organisations, employers and members.

I would like to thank the many people who have already provided ideas and suggestions to me and our officials about how pensions legislation could be improved, and look forward to further engagement on this important topic.

**THE BARONESS ALTMANN CBE
MINISTER OF STATE FOR PENSIONS**

Chapter 1: Introduction

1. This paper seeks views on draft amending regulations, to take effect from April 2016, which make small but important changes to the Occupational Pension Schemes (Scheme Administration) Regulations 1996, as previously amended by the Occupational Pension Schemes (Charges and Governance) Regulations 2015, and the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996.
2. It also includes the Government's response to an earlier consultation which sought views on two changes to the Occupational Pension Schemes (Investment) Regulations 2005, reflecting recommendations from the Law Commission.
3. In addition, it seeks views about how information about investments in pension schemes is, and can be, made available to beneficiaries.
4. It also seeks views on how to reduce regulatory burdens on occupational pension schemes.

About this consultation

Who this consultation is aimed at

5. We welcome comments from those involved in designing and running pension schemes, pensions industry professionals and advisers, auditors, pension scheme members, consumer groups and member representative organisations and anyone with an interest in pensions

Purpose of the consultation

6. This consultation
 - seeks views on changes to the Occupational Pension Schemes (Scheme Administration) Regulations 1996 and the Occupational Pension Schemes (Charges and Governance) Regulations 2015, in response to feedback from stakeholders;
 - seeks views on changes to the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996 which update the existing regulatory requirements, and remove the requirement for an auditor's statement of contributions from large multi-employer schemes;
 - invites views from the pensions industry about where burdens on those running schemes can be reduced whilst maintaining member protection;

- responds to an earlier consultation¹ which sought views on two changes to the Occupational Pension Schemes (Investment) Regulations 2005;
- seeks evidence on how information about investments in pension schemes is, and can be, made available to beneficiaries.

Scope of consultation

7. This consultation applies to England, Wales and Scotland. It is anticipated that Northern Ireland will make corresponding regulations

Duration of the consultation

8. The consultation period begins on 12th November 2015 and runs until 9th December 2015. Please ensure your responses reach us by that date as any replies received after that date may not be taken into account.

How to respond to this consultation

9. Please send your consultation responses and any queries to:

Maggie Simpkin
Department for Work and Pensions
1st Floor, Caxton House
6 – 12 Tothill Street
London
SW1H 9NA
E-mail: reinvigorating.pensions@dwpgsi.gov.uk

10. When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled. We will acknowledge your response.

Government response

11. We will aim to publish the Government response to the consultation on the GOV.UK website. The consultation principles encourage Departments to publish a response within 12 weeks. The report will summarise the responses and the action we will take, or have taken, in respect of them.

¹ Consultation on changes to the Investment Regulations following the Law Commission's report "Fiduciary Duties of Investment Intermediaries" – 27th February 2015

How we consult

Consultation principles

12. This consultation is being conducted in line with the new [Cabinet Office consultation principles](#). The key principles are:

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before
- departments will need to give more thought to how they engage with and use real discussion with affected parties and experts to make well informed decisions
- departments should explain what responses they have received and how these have been used in formulating policy
- consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy
- the principles of the [Compact: the agreement between government and the voluntary/community sector](#) will continue to be respected

Feedback on the consultation process

13. We value your feedback on how well we consult. If you have any comments about the consultation process (as opposed to comments about the issues which are the subject of the consultation), including if you feel that the consultation does not adhere to the values expressed in the consultation principles or that the process could be improved, please address them to:

DWP Consultation Coordinator
2nd Floor
Caxton House
Tothill Street
London
SW1H 9NA

Email: caxtonhouse.legislation@dwp.gsi.gov.uk

Freedom of information

14. The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

15. All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information

provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.

16. To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact the Central Freedom of Information Team: Email: freedom-of-information-request@dpw.gsi.gov.uk
17. The Central FoI team cannot advise on specific consultation exercises, only on Freedom of Information issues. Read more information about the [Freedom of Information Act](#).

Chapter 2: Reducing regulatory burdens on schemes

Background

1. This consultation sets out where we propose to make a number of small but important changes that will make life easier for pension schemes. The Government as a whole remains committed to cutting burdensome red tape and we are always keen to hear your feedback on how regulations are working in practice. In particular, we are interested to know about things we can change to make life easier for pension scheme trustees and professionals.
2. Reductions in burdens will always have to be weighed against other factors, such as the impact on members' accrued rights and the security of pensions generally, whether the change supports the Government's overall agenda for pensions, and the value of change compared to any burdens of implementation. So whilst it might not always be possible or appropriate to make such changes, we still want to hear about areas where requirements may have fallen out of date or where improvements could be made.

Consultation question 1:

Do you have any views on ways that regulatory burdens on occupational pension schemes (including managers and trustees) can be reduced without compromising member protection?

Chapter 3: Changes to the Occupational Pension Schemes (Scheme Administration) Regulations 1996 and the Occupational Pension Schemes (Charges and Governance) Regulations 2015

Summary

These changes will

- put beyond doubt that multi-employer *group* schemes are excluded from the additional governance requirements;
- remove the requirement for the chair of NEST to be appointed within a set time period as NEST appointments are already covered by other statutory requirements;
- allow a deputy or acting chair to sign the chair's statement where there is no chair in place (for example, between appointments);
- apply a statutory override to provisions in trust deeds and rules where they conflict with the trustee requirements for relevant multi-employer schemes to have at least three trustees and a majority of non-affiliated trustees;
- let the current exclusion for multi-employer schemes established by statute expire from April 2016 but give these schemes six months to comply with the trustee appointment requirements;
- make other minor technical changes to compliance procedures;
- correct a typographical error in the Occupational Pension Schemes (Investment) Regulations 2005.

Introduction

1. It is estimated that 10 million people will be eligible for automatic enrolment into a workplace pension scheme by 2018. Whilst many of these schemes are already well-governed and offer value for money, we want to ensure this applies to all schemes. It is particularly important that people running pension schemes are informed, competent and have members' interests as their priority.
2. With this in mind, we introduced, from 6th April 2015, new governance arrangements for occupational pension schemes providing money purchase benefits by way of the Occupational Pension Schemes (Charges and Governance) Regulations 2015 ("the governance regulations").
3. These regulations inserted provisions into the Occupational Pension Schemes (Scheme Administration) Regulations 1996 ("the scheme administration regulations") and the Occupational Pension Schemes (Investment) Regulations 2005 ("the investment regulations"). These regulations require trustees to design default arrangements in members' interests and keep them under regular review, ensure that core financial transactions are processed promptly and accurately, assess the value for members of charges and transaction costs; and appoint a chair of trustees responsible for signing an annual statement on how the governance requirements have been met.
4. These governance regulations also introduced additional governance requirements for relevant multi-employer schemes, including a requirement for there to be at least three trustees and for the majority of all trustees of such a scheme to be independent of any undertaking that provides advisory, administration, investment or other services to the scheme (these are referred to as non-affiliated trustees).
5. Since the regulations have come into force we have received representations from industry representatives and legal firms on how the governance provisions for multi-employer schemes work in practice and the implications for schemes. This consultation seeks views on a set of draft regulations which will address these concerns, and also include some tidying-up provisions to ensure that these governance requirements work as intended. These are set out below.

Narrowing the definition of multi-employer scheme

6. Under the current provisions in the governance regulations, relevant multi-employer schemes are required to have a majority of non-affiliated trustees. This is intended to address the potential for conflicts of interest in such schemes. These risks may be particularly present in schemes with vertically integrated structures which are run for profit and marketed to a wide range of employers.

7. However, we recognised the difficulties in trying to target legislation at specific types of multi-employer scheme. Accordingly, the current regulations include a rather broad definition of multi-employer scheme which encompasses occupational pension schemes with unconnected employers regardless of whether those employers operate within the same industry or whether the scheme is operated on a commercial basis. The regulations capture what the industry understood as commercial master trusts and also industry-wide schemes which may have the same potential for risk.
8. We accepted however, that it would be appropriate to exclude from the requirements multi-employer schemes where the employers are part of the same corporate group. We considered such schemes to be closer in nature to those with a single employer, and did not believe the main risks associated with what the industry perceive as master trusts to be a concern in relation to those “group” schemes.
9. Since the regulations have come into force we have received representations from stakeholders who are concerned that what are referred to as “ordinary group schemes” will fall within scope of the additional requirements because of commonplace business events. This could include disposals of companies or joint venture activities between, for example, subsidiaries within the group and entities outside of the group. This would bring such schemes within the definition of relevant multi-employer scheme as some of the participating employers would no longer be connected to those remaining within the scheme.
10. We accept that the existing policy did not exclude from the additional requirements all types of group schemes, including those where this type of corporate activity has occurred
- 11. We therefore propose to amend the governance (scheme administration) regulations to put beyond doubt that all types of multi-employer group schemes are excluded from the additional governance requirements. Normal corporate activity should not bring the scheme into scope unless the scheme promotes itself as open to unconnected employers.**

NEST and the requirement for a chair

12. The governance provisions require there to be a chair of trustees or trustee directors who is responsible for signing the annual chair’s statement on how the scheme has met all the governance standards. The regulations provide for a three month time limit to allow for re-appointment if a chair leaves for whatever reason, for example, if they die, resign or are removed. This covers all schemes including NEST.
13. However, NEST differs from other occupational schemes in that there are statutory arrangements concerning how it is governed. As a result of this, NEST is exempted from the additional governance requirements for relevant multi-

employer schemes. The statutory arrangements for NEST are set out in the Pensions Act 2008 and in the NEST Order 2010, and they include requirements about the appointment and tenure of the chair and trustee members.

14. Because of this, the current public appointments process for NEST can take considerably longer than three months. The terms and conditions of the Deputy Chair include acting as the chair as and when required which would mitigate any risk in the event that there was an unexpected vacancy.
15. **In order to cater for this, we propose to amend the governance (scheme administration) regulations so that there is no longer a requirement for the chair of NEST to be appointed within the set time period of three months.**

Deputy or acting chair signing the chair's statement

16. Under the current provisions, trustees must have a chair. The chair has particular responsibility for signing the annual chair's statement on how the governance requirements have been met. This statement must be prepared within seven months of the scheme year and included in the annual report. Where there is no chair in place the trustees have three months in which to appoint a new chair, which could result in a period where the annual statement needs to be signed and there is no chair in place.
17. **We therefore propose to amend the governance (scheme administration) regulations to allow a person or deputy chair appointed by the trustees to sign the statement if there is no chair in place.**

Statutory override for the appointment of trustees to multi-employer schemes

18. For some schemes, certain provisions governing the appointment of their trustees are set out in their trust deeds and rules and these may conflict with what is required in the governance regulations. The governance regulations do not address how inconsistencies between the regulations and the trust deeds can be resolved. Moreover, the trustees do not always have unilateral power of amendment to these deeds.
19. **In order to make it easier for these types of scheme to comply with the governance arrangements we propose to amend the governance (scheme administration) regulations so that where there are provisions in trust deeds or rules which conflict with the key requirements for the majority of trustees to be non-affiliated and for there to be at least three trustees, these**

provisions will be overridden by the governance regulations. Please note that this does not include NEST as it is not covered by the additional governance requirements.

Multi-employer schemes set up by statute

20. The governance regulations currently provide an exemption for schemes set up under statute (these are mainly ex-public sector schemes) from the additional governance requirements for relevant multi-employer schemes. This is a temporary exemption, which will expire in April 2016. As mentioned above, NEST is already excluded under the current provisions and this exclusion will remain.
21. In the Government response² to the October 2014 consultation on the governance regulations we acknowledged that these types of schemes would have statutory governance arrangements in place and these pre-existing arrangements may be good reason to exclude them from the additional governance requirements. Since we wanted to carry out further work before deciding whether they should be exempt from the additional governance requirements, we included this temporary exemption in the regulations.
22. Having undertaken this further work, we are only aware of one scheme that is affected by this provision, and we understand that it would be able to meet the additional governance requirements once this temporary exemption has expired. However constraints in the Articles of Association could make it difficult, if not impossible to meet the requirements on duration of trustee appointment by April 2016.
23. **In view of this, we propose to let the current exclusion for schemes established under statute expire from April 2016 (this in itself would not require a regulation amendment). However, we also propose to amend the governance (scheme administration) regulations to give schemes established by statute up to six months from April 2016 to comply with the requirements that there should be a majority of non-affiliated trustees and that there should be at least three trustees.**

Other minor, technical changes

24. We also propose to make some minor, technical changes to Part 4 of the Occupational Pension Schemes (Charges and Governance) Regulations 2015 which will:

² Government response to the consultation on better workplace pensions : putting savers' interests first – Cm 9000 – February 2015

Clarify the enforcement procedures for The Pensions Regulator in the issuing of penalty notices and the recovery of the penalty in the event of non-compliance

25. These changes will clarify the enforcement procedures for The Pensions Regulator and the question of liability in the recovery of penalty notices. They are intended to remove any potential confusion that might be caused in the service of such notices to individual trustees or managers, corporate bodies and Scottish partnerships. These amendments will also align the treatment of the officers of a corporate body and the partners in a Scottish partnership where there are inconsistencies.

Clarify the procedures on service provisions

26. Service provisions in legislation set out how The Pensions Regulator should serve notifications and other documents on individuals and other bodies; for example, by posting it to the last known address of an individual or the address of the registered or principal office of the corporate body. If the provisions are followed, then the notice is deemed to be served even if the person did not receive it, so there should be no dispute if it came to a court hearing. However, the current governance regulations do not contain any reference to such service rules so there is scope for argument between an enforcement body and anyone who was supposed to have received a notice.

27. A new reference to be included in the proposed amendments to the governance regulations will import service provisions from other legislation, just as was done by amendment to the Pensions Act 2008. This will lead to greater clarity for the regulator, individuals and other bodies and reduce the potential for disputes over the service of notices.

Correct a typographical error

28. We intend to correct a typographical error in the definition of “default arrangement” in regulation 20 of the governance regulations, substituting (9) for (8) in Regulation 20(a)(d). This will be inserted into Regulation 1(2) of the investment regulations.

What the draft regulations say

29. This section provides a narrative on the draft Occupational Pension Schemes (Charges and Governance) (Amendment) Regulations 2016. A draft of these

regulations is at Annex A. Whilst specific consultation questions are set out here, views are welcomed on these draft regulations as a whole.

Consultation question 2: Other than the specific consultation questions that follow, do you have any views on these regulations as a whole?

Regulation 1 – Citation and commencement

30. This is a general regulation which gives the title of the regulations and specifies the date on which the regulations are proposed to come into force.

Regulation 2 – Amendment of the Occupational Pension Schemes (Scheme Administration) Regulations 1996

31. This sets out which set of regulations is being amended, in this case the Occupational Pension Schemes (Scheme Administration) Regulations 1996. The following regulations 3-7 set out those amendments.

Regulations 3 and 4 – Amendment of regulation 1 (interpretation)

32. This substitutes a new proposed definition for “relevant multi-employer scheme”. It effectively creates a single condition for determining whether a scheme should be within scope of the requirements – that is, whether it is or has been promoted to unconnected employers.

33. This definition would encompass both the commercial master trusts and industry-wide schemes which promote themselves to unconnected employers within the same sector. It would also include schemes which have promoted themselves in the past and are now no longer open to other employers.

34. The exceptions to this remain the same as the original regulations, excluding schemes with distinct sections governed by different trustees or managers, and NEST. The exemption for schemes established by or under enactment will be allowed to expire from April 2016 and thus will no longer exist.

35. For the purposes of this definition, the meaning of “connected” is amended to include employers which are, or have been in the past, part of a group of companies or partnerships or, being outside of the group, are otherwise connected by means of a joint venture with an employer within the group or part control of an employer within the group. The converse also applies, where an employer within the group has part control of an employer outside of the group.

36. We have identified a threshold of at least 20% of voting power to make the connection in order to avoid an employer just buying a very small share of an undertaking to avoid the additional requirements. We would welcome any views

on whether this should be a higher or lower percentage and whether it should be expressed as a shareholding or voting power or otherwise.

37. These corporate scenarios are designed to ensure that the meaning of connected is expanded to include normal corporate activity which may cause one or more participating employers to fall outside of the corporate group but without changing the essential nature of the scheme as a group scheme. Accordingly, a scheme to which these different scenarios apply would not fall within scope of the requirements unless it was also **promoting** itself to unconnected employers.
38. The meaning of “participating employer” is also amended to impart a clearer definition which includes an employer who employs members of the scheme (whether deferred or active) or persons who are eligible to join the scheme. We recognise that this would not extend the additional protections of independent trustees to schemes where there are only deferred members without an associated participating employer, but we think that a multi-employer scheme with only deferred members and no participating employers at all would be a rare occurrence. We think it more likely that there would be sufficient unconnected participating employers to bring the scheme within scope.

Consultation question 3: Do you agree that the right population of multi-employer schemes (commercial master trusts and industry-wide schemes) are now within scope of the additional governance requirements?

In particular, we would appreciate your views on:

- (i) whether the single condition of past and present “promotion” is sufficiently clear (without further definition) and is the right word to use in this context.
- (ii) whether we have included all the necessary corporate scenarios within the definition of “connected” employers, and they have been adequately described.
- (iii) whether the definition of “participating employer” works for the purposes of this policy.

Consultation question 4: Do we need to make further provision to protect members in schemes where there are no participating employers?

Consultation question 5: Would the definition as a whole allow multi-employer schemes which should be within scope to avoid the additional governance requirements? If so, please explain how.

Regulation 5– Amendment of regulation 22 (duty to appoint a chair of the trustees or managers)

39. This amendment exempts the NEST Corporation from the duty to appoint a replacement chair within three months of the date of a chair ceasing to hold office. The Secretary of State is required to comply with the public appointment process in its appointment of a chair.

Regulation 6 – Amendment of regulation 23 (annual statement regarding governance)

40. This amendment allows the annual statement regarding governance to be signed by a deputy chair or someone appointed by the trustees or managers to act as chair during the three month period where a chair has ceased to hold office and has yet to be replaced.

Regulation 7 – Amendment of regulation 27 (appointment of trustees)

41. Regulation 7(1) applies paragraph 6 of Schedule 18 to the Pensions Act 2014 in providing that the regulatory requirements for at least three trustees and a majority of independent (non-affiliated) trustees override any conflicting provision within a trust deed or scheme rules. Accordingly, they will replace the scheme's own provisions to allow it to comply with the law in making the appointments.

42. Regulation 7(2) grants an extra period of six months, from the date these Regulations come into force, to schemes that are established by statute to comply with the same requirements; for at least three trustees and a majority of independent trustees. Such schemes may have to gain the consent of all employers or amend the Articles of Association in the case of a body corporate.

Regulation 8 – Amendment of the Occupational Pension Schemes (Investment) Regulations 2005

43. This amendment corrects an error in the original draft of the amendment to regulation 1(2) (interpretation) of the Occupational Pension Schemes (Investment) Regulations 2005. For the meaning of "default arrangement" which modifies regulation 3 of the Occupational Pension Schemes (Charges and Governance) Regulations 2005, the reference in part (d) to paragraph 8 should in fact be a reference to paragraph 9 of regulation 3.

Regulations 9-12 – Amendments to the Compliance provisions in Part 4 of the Charges and Governance Regulations 2015

44. Currently regulation 28 of the Charges and Governance Regulations sets out how and when a penalty notice should be served, and stipulates the maximum amounts for both individuals and body corporates. It also stipulates that the notice should require the person to whom it is issued to pay the penalty.

45. Regulation 28(5) imposes a requirement upon The Pensions Regulator to issue a penalty notice to *all* trustees, or where it is issued to a body corporate, to *all* officers of the body corporate (who are required to pay in accordance with Regulation 30(1)), and where it is issued to a Scottish Partnership to *all* partners of a Scottish Partnership.
46. The requirement in relation to body corporates (regulation 28(5)(b)) and Scottish Partnerships (regulation 28(5)(c)) does not sit easily with regulation 30 which gives The Pensions Regulator a discretion, where any penalty notice is recoverable from a body corporate or Scottish Partnership, to require relevant officers/partners to pay the penalty in the event that the compliance failure was the result of consent, connivance or neglect on the part of those officers/partners.
47. The interaction of regulations 28 and 30 make it almost impossible for The Pensions Regulator to issue a penalty notice to the body corporate as a single entity and require payment from that corporate entity. The Pensions Regulator is effectively required to identify culpable officers and issue the notice to those officers whilst requiring payment from the same.
48. These amendments will regularise and clarify the position for The Pensions Regulator so that it has discretion to both issue to and require payment from *either*
- the body corporate (and Scottish Partnership) *or*
 - the relevant officers of the body corporate (or partners of the Scottish Partnership) where it is able to identify culpability on the part of any one or more of those individuals.
49. In accordance, with normal interpretation rules, a “person” in regulation 28(3) may be an individual or a body corporate, and therefore the Government has taken the view that regulations 28(5)(b) and (c) are not necessary. The maximum penalties for either an individual or a body corporate, depending upon which person (including a corporate entity) the notice is issued to, remain unchanged (£5,000 and £50,000 respectively).
50. Regulation 30 has been replaced to clarify the issuing of penalty notices to the officers of a body corporate or Scottish partnership and their liability to pay where the compliance failure can be shown to have been committed with their consent/connivance/neglect. New regulation 30(4) enables The Pensions Regulator to notify the relevant body corporate or Scottish partnership where it has served a notice upon one or more of the officers of that body.
51. New regulation 33 imports sections 303 to 305 of the Pension Act 2004 and applies those service provisions to the service of notices within Part 4 of the Charges and Governance Regulations.

Chapter 4: Changes to the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996

Summary

These changes to the above regulations, (the “AA regulations”) will:

- delete most of the detailed investment disclosure information set out in the AA regulations and require the auditor to provide a statement that the accounts have been prepared in accordance with Financial Reporting Standard 102 (FRS 102) and the pensions Statement of Recommended Practice (SORP), noting any material departures from them;
- exempt multi-employer schemes with at least 20 participating employers from the requirement to obtain a statement from the scheme auditors on whether, in their opinion, contributions have been paid in accordance with the scheme’s schedule.

Introduction

1. The AA regulations place a duty on the trustees or managers of certain occupational pension schemes to annually obtain:-
 - audited accounts which must be prepared in accordance with the provisions in the regulations, and
 - a statement from the auditor concerning the payment of contributions to the scheme.
2. The AA regulations require the accounts to show a true and fair view of the scheme’s financial position, and the Schedule to these regulations prescribes detailed investment information that must be disclosed in the accounts. They also require the auditor to provide a statement that the accounts have been prepared in accordance with the SORP published by the Pensions Research Accountants Group (PRAG), or another organisation approved to do so by the Financial Reporting Council.
3. These regulations also require trustees to obtain from the scheme auditor, a statement of contributions, stating whether in their opinion contributions have

been paid in accordance with a scheme's schedule of contributions or payment schedule. The trustees have to obtain the statement not more than 7 months after the end of each scheme year. This requirement does not apply to NEST.

Investment disclosure

4. In 2014 FRS 102 was introduced. This revised the financial reporting framework in the UK, replacing all previous accounting standards. The new standard is applicable for accounting periods commencing on or after 1 January 2015 and covers the format, content and accounting policies for UK pension schemes.
5. Following the introduction of FRS 102, we have been advised by PRAG, an independent research and discussion group for the development and exchange of ideas in the pensions field (which produces the SORP noted above in respect of pension scheme accounts) that the AA regulations could be amended
6. Having considered this advice we concluded that the AA regulations should be amended in order to:
 - reflect modern accounting practices;
 - remove out of date investment information prescribed in the Schedule to the AA regulations that no longer reflect UK pension scheme investments, which have changed significantly since the AA regulations came into force in 1997 (and which contain investments disclosures that originated in the earlier Occupational Pension Schemes (Disclosure of Information) Regulations 1986);
 - ensure that pension scheme financial statements report investments in a manner that is consistent with trustees' investment strategy, making them more useful; and
 - reduce the amount of time and cost incurred by schemes in preparing out of date investment analysis that is of little use, but is required in order to comply with the current prescribed requirements in the Schedule to these regulations.
7. It has been estimated that the proposed amendments to the investment disclosure requirements will save schemes some £4.25m annually in reduced audit costs. Further information on these estimated savings is provided in the 'Impact' section below.

Options considered and favoured option

8. In view of the strong case that has been made for updating the investment disclosure provisions in the AA regulations, including the resulting cost savings to schemes, the 'take no action' option would seem an inappropriate response.

9. We therefore considered the following three options for amending the investment disclosure provisions. Under all three options, the regulations would retain the overarching requirement that the audited accounts must show a true and fair view of a schemes' financial position

Option 1: Amend the Schedule to the AA regulations to update the prescribed investment disclosure provisions to take account of modern scheme investment practices and accounting requirements as set out in FRS 102 and the pensions SORP.

10. This option retains the current approach, with Government prescribing the investment information that must be disclosed in the audited accounts. Whilst updating these requirements, this option runs the risk of future divergence between scheme investment practices and future accounting standards on the one hand, and the legislative requirements on the other, potentially leading to increase scheme costs and further amendments to the regulations to rectify the position.

Option 2: Amend the AA regulations by deleting all of the prescribed investment disclosures in the Schedule, but retain in the body of the regulations a requirement similar to that currently at Paragraph 8 of the Schedule; that the auditor must provide a statement that the accounts have been prepared in accordance with FRS102 and the SORP covering pension schemes, noting any material departures from these.

11. This option places greater responsibility for the content of scheme accounts on independent bodies, significantly reducing the prescriptive detail, but should ensure that the regulations continue to align with future developments in both accounting standards and scheme investments, thereby ensuring that schemes do not spend funds meeting obsolete legal requirements.

Option 3: Delete most of the detailed investment disclosure information set out in the Schedule to the AA regulations, and as in Option 2, require the auditor to provide a statement that the accounts have been prepared in accordance with FRS 102 and the pensions SORP, and note any material departures from them.

12. *This is our favoured option.* Whilst most of the prescribed investment disclosures would be deleted, the AA regulations would, continue to prescribe three specific pieces of investment information where disclosure is not covered by FRS 102. The three areas are:-

- concentration of risk (currently required under Paragraph 4 of the Schedule);
- employer-related investment (currently at Paragraphs 5 and 5A);
- total of investment purchases and sales (currently at Paragraph 7).

13. We consider that this option strikes an appropriate balance between modernising the AA regulations and aligning them with current and future accounting standards and scheme investments. It would also help to reduce scheme administration costs; whilst prescribing limited key investment information not covered by FRS102.

Consultation Question 6: Do you agree or disagree that the AA regulations need amending? If you disagree please say why. If you agree, are you content with the proposed approach as set out in Option 3, or would you prefer an alternative approach?

Consultation Question 7: Do you agree or disagree with the investment information that would be prescribed under Option 3? If you think additional information should be prescribed, could you please say (i) what this information is, (ii) why it should be prescribed and (iii) what the impact that prescribing this information would have on scheme costs (i.e. would there be a further reduction, or an increase, in scheme administration costs as a result).

Impact

14. In making the case for amending the AA regulations following the introduction of FRS 102, the Government was advised that modernising the investment disclosure requirements in these regulations would reduce the costs incurred by pension schemes. This is because scheme auditors would not have to prepare the detailed, but out of date, investment analysis currently required by the AA regulations, which does not meet either current accounting or scheme investment practices.

15. The three main areas where cost savings would arise were noted as:-

- provision of information by custodians and investment managers
- preparation of disclosures by pension scheme accountants; and
- audit of the disclosures by auditors

16. We directly liaised with PRAG to obtain an estimate of the savings to pension schemes should we amend the investment disclosure requirements, and were advised that modernising these requirements could save schemes between £3m p.a. and £5.5m p.a. with an estimated average saving of £4.25m p.a.

Consultation Question 8: Do you have any comments on these estimated savings? If you think the cost savings would be higher or lower could you please provide your estimate of the impact that the proposed changes would have.

Auditor's Statement about contributions

17. Under the current regulations, trustees are required to obtain a statement from the scheme auditors on whether, in their opinion, contributions have been paid in accordance with the scheme's schedule of contributions.
18. Whilst this requirement is more straightforward for schemes with a single or small number of sponsoring employers to comply with, we understand from stakeholders that it is more difficult for large multi-employer schemes. The amount and nature of the work required in producing the statement is highly dependent upon how a multi-employer scheme defines pensionable pay and the form of payment schedule produced, making it disproportionately burdensome for large multi-employer schemes whose auditors may not be able to obtain sufficient level of evidence.
19. As a result, there is a high risk of auditors being unable to get enough evidence at a reasonable cost to the scheme to provide a basis for an auditor's statement on whether contributions have been paid in accordance with the payment schedule.
20. **We therefore propose to amend the AA regulations to exempt multi-employer schemes with at least 20 participating employers from this requirement. This amendment will better reflect the pensions landscape which has evolved since the regulations were introduced in 1996. For example, there is now a statutory requirement for schemes to have adequate internal controls covering administrative processes, and there are also specific regulatory requirements around monitoring the flow of contributions.**

Consultation Question 9:

- (i) Do you agree that large multi-employer schemes should be exempt from the requirement for an auditor's statement?
- (ii) Is at least 20 participating employers the right number on which to base this exemption?
- (iii) Can you provide any information on likely savings from this change?

What the draft regulations say

21. This section provides a narrative on the draft Occupational Pension Schemes (Requirement to Obtain Audited Accounts and a Statement from the Auditor) (Amendment) Regulations 2016. A draft of these regulations is at Annex B. Whilst specific consultation questions are set out in this Chapter, views are welcomed on any aspect of these draft regulations

Consultation question 10: Do you have any comments on any aspect of these draft regulations?

Regulation 1 – Citation and commencement

22. This is a general regulation which gives the title of these regulations and specifies the date on which the regulations are proposed to come into force

Regulation 2 – Amendment of the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996

23. This regulation makes amendments to the AA regulations.
24. The effect of paragraphs (2) and (3), specifically the insertion of new Regulation 2(2C) into the AA regulations, is to exempt certain schemes that fall within the scope of section 47(1)(a) of the Pensions Act 1995 (professional advisers), from the requirement in Regulation 2(1)(b) to annually obtain an auditor's statement about contributions.
25. The exemption applies to those schemes that, on the first day of the scheme's year, have at least 20 participating employers.
26. Paragraph (5) inserts new Regulation 3A into the AA regulations. The effect is to put into the body of the AA regulations some of the investment disclosure requirements that are currently contained in the Schedule to the Regulations. Specifically:-
- new Regulation 3A(2) covers disclosure of risk concentration, which is currently at Paragraph 4 of the Schedule;
 - new Regulation 3A(3),(4) and (7) covers disclosure of employer-related investments, which are currently at Paragraphs 5 and 5A of the Schedule; and
 - new Regulation 3A(5) covers the disclosure of total purchases and sales of investments during the relevant scheme year, which is currently at Paragraph 7 of the Schedule.

27. This Regulation also inserts into the body of the AA regulations (new Regulation 3A(6)) a requirement that the audited accounts include a statement that the accounts have been prepared in accordance with FRS 102 and the SORP issued by PRAG (or another organisation approved to issue guidance) covering pension schemes accounts and, if this is not the case, and indication of where there are any material departures from FRS 102 or the SORP.
28. This provision expands on the current requirement, at Paragraph 8 of the Schedule to the AA regulations, which requires a statement to be made in respect of the accounts complying with the SORP published by PRAG.
29. Paragraph (6) omits the Schedule to the AA regulations which currently lists a range of investments that must be disclosed in the audited accounts. Consequently, the only investments that will still be prescribed by the AA regulations are those inserted into the body of the AA regulations by new regulation 3A.

Chapter 5: Investments: Government response and call for evidence

Introduction

1. This is the Government response to the consultation on two potential changes to the Investment Regulations, which was conducted between 27th February and 24th April 2015. That consultation followed the Law Commission's report, "Fiduciary Duties of Investment Intermediaries."

Background

2. The 2012 Kay Review of UK equity markets³ highlighted confusion about what 'fiduciary' duties entail and to whom they apply. In particular, it found that some investment intermediaries (typically investment managers, brokers and custodians) were interpreting their duties to beneficiaries to mean the duty to maximise short-term returns, precluding consideration of other factors (e.g. environmental) which could impact on the performance of the company – and the return on the investment - over the longer term.
3. The Government asked the Law Commission to investigate how the law of fiduciaries applies to investment intermediaries. The Law Commission concluded in its 2014 report "Fiduciary Duties of Investment Intermediaries"⁴ that trustees should take into account factors which are financially material to the performance of an investment, including over the long term. Where trustees think ethical or environmental, social and governance (ESG) issues are financially material they should take these into account.
4. The Law Commission also concluded that, while the pursuit of a financial return should be the predominant concern, the law is sufficiently flexible to allow other, non-financial concerns to be taken into account provided trustees have good reason to think that scheme members share their view and there is no risk of significant financial detriment to the fund.
5. The Law Commission also found that the wording of the regulations governing the content of the Statement of Investment Principles (SIP) may not help trustees to understand which factors they should consider in their investment decisions. In particular the Law Commission suggested that the current requirements relating to "social, environmental or ethical considerations" may be unhelpful and should

³ <https://www.gov.uk/government/consultations/the-kay-review-of-uk-equity-markets-and-long-term-decision-making>

⁴ Law Com No. 350

be reviewed in the context of helping trustees distinguish between financial and non-financial factors.

6. In order to address this issue, the Law Commission recommended the Investment Regulations should be amended to distinguish more clearly between financial and non-financial factors. In particular they considered that the regulations as they stand imply that there is scope for trustees not to consider what weight, if any, to attach to ESG and ethical factors.
7. The SIP has to include the trustees' policies in respect of a number of investment related issues including
 - the kinds of investments to be held
 - the extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of investments, and
 - (only if they have such a policy) the exercise of the rights (including voting rights) attaching to the investments.
8. **In response to the report, the Government agreed to consult on amending the reference to “social, environmental or ethical considerations” in the Investment Regulations to ensure the SIP more clearly reflects the distinction between financial factors and non-financial factors.**
9. The Law Commission report also looked at stewardship in the context of institutional investment, i.e. monitoring and engaging with companies on matters such as strategy, risk and governance (including remuneration). The report found that, while there is no legal obligation for trustees to undertake stewardship duties, it is in the interests of pension funds as a whole to do all they can to promote the long-term success of the companies in which they invest. In line with this, the Commission suggested that trustees should be encouraged to consider whether and how to engage with companies to promote their long-term success, either directly or through their investment managers, and that requiring trustees to state their policy on stewardship (if they have one) may help promote this.
10. **In response to the report, the Government agreed to consult on changes to the Investment Regulations to require trustees to say in their SIP whether they have signed up to the Stewardship Code published by the FRC⁵ (and if not why not) and if so, how, and to what extent they have signed up to the principles set out in the Code**

⁵ The UK Stewardship Code, first issued in 2010, sets out the principles of effective stewardship by investors. It is directed at two key groups in the investment chain: asset managers; and asset owners (trustees of the scheme). The Code assists investors to exercise their stewardship responsibilities. Signatories to the Code are required to state how they implement the seven principles and guidance of the Code, which apply on a 'comply or explain' basis

Views sought in the February consultation

11. The consultation published in February 2015 asked two key questions:
 - how regulation 2(3)(b) of the Investment Regulations could be amended so that it more clearly reflects the distinction between financial and non-financial factors; and
 - whether amending the Investment Regulations to require trustees to comply with the current requirements in the Stewardship Code or explain why they have not done so, is the most appropriate way to implement the Law Commission's recommendation and if not, what approach would be more appropriate to encourage trustees to consider their approach to stewardship?
12. The consultation prompted 47 responses from a range of organisations, including providers, professional bodies, legal firms, unions, and organisations interested in social and ethical investments. The respondents are listed at Annex C.

Reflecting the distinction between financial and non-financial factors

Investment consultation: Consultation question 1 How could regulation 2(3)(b) of the Investment Regulations be amended so that it more clearly reflects the distinction between financial and non-financial factors?

13. Many responses were supportive of the thinking behind the proposal to amend the wording of the investment regulations to make clear the distinction between things that have an impact on the long term financial value of a company - including Environmental, Social and Governance (ESG) factors - and non-financial factors, such as ethical views and other matters of concern to the beneficiaries.
14. The view was that amending the regulations in this way could help move assessment of long-term risks up the agenda and further clarify that pension trustees should take ESG considerations into account if they believe they may be financially material to the performance of their investments. Respondents felt that changes could also clarify that investment decisions can take into account non-financial factors, providing there is good reason to believe there is member interest in doing so, and that there is no risk of significant detriment to the fund.
15. However, some respondents thought that strict labelling of financial and non-financial factors in regulations was unhelpful and could become outdated. They considered that the use of these terms in regulations, rather than in guidance would necessarily be simplistic and could cause confusion. Others suggested that the regulations might set out in detail the types of financial and non-financial factors that should be taken into account.

16. Nor was there any clear consensus on what an amendment to the regulations might look like, or what the outcome would be. We received a variety of different drafting suggestions, each aimed at achieving slightly different outcomes

A requirement to state the schemes approach to the Stewardship Code

Investment consultation: Consultation question 2 - Do you agree that amending the Investment Regulations to require trustees to comply with the current requirements in the Stewardship Code or explain why they have not done so is the most appropriate way to implement the Law Commission's recommendation?

If not, what approach would be more appropriate to encourage trustees to consider their approach to stewardship?

17. Responses to this question were mixed. Most expressed support for promoting stewardship activity, reflecting the fact that many pension schemes already sign up to the Stewardship Code, or indicate that their investment managers are signatories on their behalf. There was, however no consensus about whether it would be proportionate or effective to explicitly require pension schemes to report on their use of the Code in their SIP.

Government response

18. Whilst we agree that there is some support for changing the regulations to reflect differences between financial and non-financial factors, as articulated by the Law Commission, there was no consensus on how this might best be done, or how precisely these different factors should be defined in the regulations. Each suggestion achieved slightly different outcomes.

19. Taking all the responses into account, we consider that, overall, amending the regulations to include a distinction between "financial" and "non-financial" factors would not necessarily lead to greater clarity for trustees. It is also clear from the responses that there are concerns as to whether requiring trustees to comply with the current requirements in the Stewardship Code or explain why they have not done so is the most appropriate way to encourage trustees to consider whether and how to engage with companies to promote their long-term success.

20. It is important that trustees are supported in understanding their responsibilities in taking investment decisions. Publication of the Law Commission's conclusions last year has already provided greater clarity about trustees' responsibilities. The Pensions Regulator has updated its trustee training materials to reflect the Law Commission's conclusions about trustees' responsibilities when making decisions

about investments. The Pensions Regulator is also updating its DC code and supporting guidance with new material on investments and is incorporating the Law Commission's findings into their investment guidance generally.

21. We have also taken note of evidence that pension schemes trustees now have a good awareness of their duty to consider factors, including ESG factors, which may be financially material to the performance of their investments over the long-term. In particular, the response from the Pensions and Lifetime Savings Association reported that all respondents to their most recent annual engagement survey agreed that active consideration of risks to a company's long-term sustainability, including ESG factors, is compatible with fiduciary duty. This suggests that the Law Commission's conclusions and the subsequent changes to guidance for trustees are having a beneficial impact.
22. Separately, however, we are seeking evidence today (see below) on how pension schemes currently make certain information available to beneficiaries about how the scheme makes investments, including information about their approach to stewardship
23. **In the light of this evidence and having considered the responses carefully we think that this is an area where guidance can be more effective than regulatory change, in particular because it can be kept up to date over time. Taking the above factors into account, we do not propose making any changes to the Investment Regulations at this stage.**

Implementation costs of these amendments

Investment consultation: consultation question 3 – What steps would trustees need to take to comply with any amendments to the Investment Regulations as set out in Chapter 2? What, if any, costs would be involved in meeting any new requirements?

24. In the consultation document we asked about the implementation costs associated with the proposed changes to the Investment Regulations. These changes were not generally regarded as onerous, since they mostly serve to clarify existing responsibilities. However, some respondents warned against further disclosure pressures, suggesting that, for some trustees, complying with additional disclosure duties on their stewardship approach may detract from fulfilling their fiduciary duty instead of supporting consideration of the issues.
25. However, despite the fact that these proposals were considered not to be particularly onerous, on balance we do not think that amending the regulations would be the most effective way to proceed for the reasons set out in earlier in this document.

Improving how information about investments is disclosed

Introduction

26. Earlier this year, together with the FCA, we issued a Call for Evidence on disclosing costs and charges in pension schemes⁶. We are working closely with the FCA on how we will respond to this exercise and will announce shortly the next phase of work on transaction cost disclosure.
27. In that Call for Evidence we also confirmed that work on disclosure of information by trustees about their investment functions should be aligned with our programme to introduce greater transparency of costs and charges in workplace pensions.
28. We want to ensure that any changes to introduce greater transparency are introduced in a co-ordinated way. We are therefore seeking views and evidence now about how better disclosure of information about schemes' investments could be achieved and what issues, if any will need to be addressed.
29. This will allow the Government the opportunity to make the best assessment of what additional disclosure is needed with reference to a full range of views and evidence and to do this in conjunction with work on charges and costs transparency.

Consultation

30. We are seeking views and evidence about the extent to which schemes are currently able to make certain information available to beneficiaries about how the scheme makes investments.
31. In particular, we are interested in the extent to which trustees and managers already make the following information available to members and prospective members, their spouses, beneficiaries and recognised trade unions on request. We are also interested in details of any changes schemes would need to make to ensure this information was made available.
32. This information is:
- the selection, monitoring, retention and realisation of investments (this will include information about the companies that funds are invested in);
 - the stewardship of investments (this will include how voting rights associated with investments are used); and

⁶ Transaction Costs Disclosure: Improving Transparency in Workplace Pensions – Call for Evidence – March 2015

- the selection, appointment and monitoring of investment managers and other agents to whom powers are delegated.

33. The disclosure regulations⁷ already require trustees and managers of occupational schemes to disclose some, but not all of the information on request to members and to the other groups identified above. Trustees of occupational schemes are required to disclose:

- a Statement of Investment Principles (SIP) for the scheme, which includes the trustees' policies in relation to the kinds of investments held, the balance between different kinds of investments, the risks and how these are measured and managed, the expected return on investments, and the realisation of these investments;
- the trustees' policy, if any, in relation to the exercise of the rights attaching to investments, including the exercise of voting rights;
- the extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of investments;
- details of any investments made which do not accord with the Statement of Investment Principles and the reasons for those investments;
- any review of the investment performance of the scheme's fund including an assessment of the nature, disposition, marketability, security and valuation of the scheme's assets;
- names of professional advisers, banks, custodians who have acted for or been retained by the trustees, together with details of any changes since the previous year;
- the investment managers of the scheme, together with any delegation of investment functions.

34. Finally, trustees of schemes offering money purchase benefits are required to disclose a SIP governing decisions about investments for the purposes of the default arrangement, which includes the aims and objectives of the trustees or managers in respect of those investments, and the trustees' policies in relation to the matters in the first three bullet points in the paragraph above.

35. We recognise that there are a number of factors that may influence how easily trustees can access and disclose this information, including whether the assets are invested in pooled funds or funds which have their own mandates, whether they are invested in passively or actively managed funds, and whether they are routinely asked for this information or whether they need to prepare much of it on an ad hoc basis in response to individual member requests.

36. We are therefore taking the opportunity now to seek evidence which will be used to shape this work.

⁷ The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (SI 2013/2734)

Consultation Question 11: To what extent do trustees and scheme managers currently make information on selection, monitoring, retention, stewardship and realisation of investments; and selection, appointment and monitoring of investment managers and other agents available to beneficiaries on request?

Consultation Question 12: What are the challenges trustees and scheme managers might face in accessing this information including how it may be affected by different investment approaches?

Consultation Question 13: Do you have any information on the costs involved in disclosing this information to beneficiaries where such information is requested?

Draft Occupational Pension Schemes
(Charges and Governance)
(Amendment) Regulations 2016

D R A F T S T A T U T O R Y I N S T R U M E N T S

2016 No.

PENSIONS

**The Occupational Pension Schemes (Charges and Governance)
(Amendment) Regulations 2016**

Laid before Parliament

Coming into force in accordance with Regulation 1

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 35(1), (3) and (4), 36(1) and (1A), 41(1) and (2)(b), 124(1) and 174(2) and (3) of the Pensions Act 1995^(a), sections 43, 53(1) and 54(5) and (6) of, and paragraphs 2 (1) to (3) and (5), 6 and 7 of Schedule 18 to, the Pensions Act 2014^(b) (“the Act”), makes the following Regulations.

In accordance with section 120(1) of the Pensions Act 1995 and paragraph 8 of Schedule 18 to the Act, 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) of the Act.

Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Charges and Governance) (Amendment) Regulations 2016 and come into force on 6th April 2016.

Amendment of the Occupational Pension Schemes (Scheme Administration) Regulations 1996

2. The Occupational Pension Schemes (Scheme Administration) Regulations 1996^(c) are amended in accordance with regulations 3 to 7.

Amendment of regulation 1 (citation, commencement and interpretation)

3. In regulation 1(2) (interpretation)—

(a) for the definition of “relevant multi-employer scheme”^(a) substitute—

(a) 1995 c.26.
(b) 2014 c.19.
(c) S.I. 1996/1715.

““relevant multi-employer scheme” means a relevant scheme which is or has been promoted to employers as a scheme where participating employers need not be connected, except where—

- (a) the scheme has distinct sections relating to employers which are not connected and each of those sections is governed by different trustees or managers (or, where the scheme does not currently have participating employers which are not connected employers, it will have such sections where there are participating employers which are not connected employers); or
- (b) the scheme is established under section 67 of the Pensions Act 2008;”.

4. In regulation 1(2ZA)(b), after ““relevant multi-employer scheme”—” substitute—

““connected”, in the context of employers, means—

- (a) employers which are or have been—
 - (i) part of a group of companies consisting of a holding company and one or more subsidiaries within the meaning of section 1159(1) of the Companies Act 2006 (meaning of “subsidiary” etc); or
 - (ii) partnerships, each having the same persons as at least half of its partners; or
- (b) where an employer is not a company within the group referred to in paragraph (a)(i) but who—
 - (i) forms or formed a joint venture with an employer within the group, those employers;
 - (ii) holds or held or controls or controlled at least 20% of the voting power in an employer within that group, those employers; or
 - (iii) is or was an employer 20% of whose voting power is or was held or controlled by an employer within that group, those employers;

“participating employer” means any employer who employs members of the scheme or persons who are eligible to join the scheme.”.

Amendment of regulation 22 (duty to appoint a chair of the trustees or managers)(c)

5.—(1) At the end of regulation 22(5) insert “(but see also paragraph (7))”.

(2) After regulation 22(6) insert—

“(7) Paragraph (5) does not apply to a scheme established under section 67 of the Pensions Act 2008.”.

Amendment of regulation 23 (annual statement regarding governance)(d)

6. For regulation 23(1)(e) substitute—

“(e) be signed on behalf of the trustees or managers by—

- (i) the chair; or
- (ii) where the chair has ceased to hold office as chair for any reason and a replacement has not yet been appointed, a person appointed by the trustees or managers to act as the chair in the interim period.”.

(a) Definition inserted by Occupational Pension Schemes (Charges and Governance) Regulations 2015/879 (“the 2015 Regulations”), Part 3(2), regulation 21(a). Paragraph c) of the definition will be revoked from 6 April 2015 by virtue of regulation 23 of the 2015 Regulations.

(b) Regulation 1(2ZA) was added by the 2015 Regulations, Part 3(2), regulation 21(b).

(c) Regulation 22 was added by the 2015 Regulations, Part 3(1), regulation 16(1)(b).

(d) Regulation 23 was added by the 2015 Regulations, Part 3(1), regulation 17(1).

Amendment of regulation 27 (appointment of trustees)(a)

7.—(1) After regulation 27(2) insert—

“(2A) Paragraphs (1) and (2) override any provision of a relevant multi-employer scheme to the extent that it conflicts with those paragraphs.”.

(2) After regulation 27(7) insert—

“(7A) Where a relevant multi-employer scheme was established by or under an enactment, other than a scheme established under section 67 of the Pensions Act 2008, before 6th April 2016 and the requirements of paragraphs (1) or (2) are not met on that date, the requirement in question must be met before the end of the period of six months starting with that date.”.

Amendment of the Occupational Pension Schemes (Investment) Regulations 2005

8. In regulation 1(2) of the Occupational Pension Schemes (Investment) Regulations 2005(b) (interpretation), in paragraph (d) of the meaning of “default arrangement”(c), for “(8)” substitute “(9)”.

Amendment of the Occupational Pension Schemes (Charges and Governance) Regulations 2015

9. The Occupational Pension Schemes (Charges and Governance) Regulations 2015(d) are amended in accordance with regulations 10 to 12.

Amendment of regulation 28 (penalty notices)

10.—(1) Omit regulation 28(5)(b) and (c).

(2) Omit regulation 28(6).

Amendment of regulation 30 (penalty notices: recovery from bodies corporate and Scottish partnerships)

11.—(1) For regulation 30, substitute—

“Penalty notices: recovery from bodies corporate and Scottish partnerships

30.—(1) Where—

- (a) a penalty under regulation 28 is recoverable from a body corporate or 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 persons mentioned in paragraph (2),

the Regulator may issue the notice to each of those persons who consented to or connived in the act or omission or to whose neglect the act or omission was attributable.

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

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

(a) Regulation 27 was added by the 2015 Regulations, Part 3(2), regulation 22.

(b) S.I. 2005/3378.

(c) Definition inserted by the 2015 Regulations, Part 3(1), regulation 20(a).

(d) S.I. 2015/879.

- (ii) where the affairs of a body corporate are managed by its members, any member who has management functions; and
 - (b) in relation to a Scottish partnership, the partners of that partnership.
- (3) Where the Regulator requires any person mentioned in paragraph (2) to pay a penalty, it—
- (a) may not also require the body corporate, or Scottish partnership, in question to pay a penalty in respect of the same act or omission; and
 - (b) must issue the penalty notice to the person who is required to pay, but may also notify the relevant body corporate or Scottish partnership.”.

Insertion of regulation 33

12. After regulation 32, insert—

“Service of notices

33.—(1) Sections 303 to 305 of the Pension Act 2004(a) apply where provision made by or under Part 4 of these Regulations authorises or requires a notice to be given to a person.”

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

Date Minister of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (S.I. 1996/1715) (“Scheme Administration Regulations”), the Occupational Pension Schemes (Investment) Regulations 2005 (S.I. 2005/3378) (“Investment Regulations”) and the Occupational Pension Schemes (Charges and Governance) Regulations 2015 (S.I. 2015/879) (“Charges and Governance Regulations”).

Regulations 3 to 7 make technical amendments to the Scheme Administration Regulations, which had been amended by the Charges and Governance Regulations. Regulation 3 substitutes an amended definition of “relevant multi-employer scheme” for the purposes of the governance requirements in Part 5 of the Scheme Administration Regulations. Regulation 4 substitutes amended definitions of “connected” employers and “participating employer” for the purposes of the definition of “relevant multi-employer scheme”. Regulation 5 amends Regulation 22 and disapplies the requirement to appoint a chair of the trustees or managers for a scheme established under section 67 of the Pensions Act 2008. Regulation 6 amends Regulation 23 and makes provision for the signing of the annual statement regarding governance in the absence of a chair. Regulation 7 amends Regulation 27 concerning the appointment of trustees and provides a further exemption solely from the appointment requirements for six months for schemes established by statute. This partial exemption in respect of appointment of trustees replaces the complete exemption for schemes established by statute from the definition of “relevant multi-employer scheme” for one year from the 6 April 2015.

Regulation 8 corrects an error in the definition of “default arrangement” in Regulation 1(2) of the Investment Regulations.

(a) 2004 c.35. Sections 303 – 305 of that Act have been modified in relation to the service of notifications and other documents by the Pensions Act 2008 c. 30, Part 6, section 144A.

Regulations 9 to 12 make technical amendments to the compliance provisions of the Charges and Governance Regulations, and add clarity to the issuing and service of penalty notices. Regulation 12 imports the service provisions from sections 303-305 of the Pensions Act 2004 for the purpose of service of notices.

A full impact assessment has not been produced for this instrument as no significant impact on the private, voluntary or public sectors is foreseen.

Draft Occupational Pension Schemes
(Requirement to obtain Audited
Accounts and a Statement from the
Auditor) (Amendment) Regulations
2016

2016 No. 0000

PENSIONS

**The Occupational Pension Schemes (Requirement to obtain
Audited Accounts and a Statement from the Auditor)
(Amendment) Regulations 2016**

Made - - - -

Laid before Parliament

Coming into force -

1st April 2016

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 41(1), 124(1) and 174(2) and (3) of the Pensions Act 1995^(a) having consulted with such persons as he considered appropriate.

Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) (Amendment) Regulations 2016 and come into force on 1st April 2016.

Amendment of the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996

2.—(1) The Occupational Pension Schemes (requirement to obtain the auditor’s statement about contributions under the scheme) Regulations 1996^(b) are amended in accordance with this regulation.

(2) In regulation 2(1), for “(2A) and (2B)” substitute “(2A), (2B) and (2C)”.

(3) After paragraph (2B) insert—

“(2C) Paragraph (1)(b) (requirements of trustees or managers to obtain documents) does not apply to a scheme for a scheme year in which, on the first day of that scheme year, the scheme has at least 20 participating employers.”.

(4) In regulation 3(a) (form and content of the accounts audited by the auditor) for the words, “the Schedule to these Regulations” substitute “regulation 3A”.

(5) After regulation 3 insert—

(a) 1995 c.26. Section 124(1) is cited for the meaning it gives to “prescribed”.

(b) S.I. 1996/1975 as amended by SI 2005/2426

“Information to be supplied by the Auditor

3A.—(1) The information specified for the purpose of regulation 3(a) is as follows.

(2) Particulars of any investment (other than in UK Government securities) in which more than 5 per cent. of the total value of the net assets of the scheme is invested, and if any such investment is an insurance policy, a statement of its main characteristics.

(3) Except in relation to a trust scheme that applies to earners in employments under different employers, where the scheme has employer-related investments, within the meaning of section 40(2) of the Pensions Act 1995, a statement —

- (a) as to the percentage of the scheme’s resources invested in such investments at the end of the scheme year; and
- (b) if that percentage exceeds 5 per cent., as to the percentage of the scheme’s resources which are investments to which regulation 13 of the Occupational Pension Schemes (Investment) Regulations 2005(a) (investments to which restrictions do not apply) applies.

(4) Where the scheme is a trust scheme that applies to earners in employments under different employers, a statement in accordance with paragraph (3) or a statement —

- (a) listing the 100 largest investments by value held by the scheme at the end of the scheme year and stating what percentage of the resources of the scheme each such investment represents;
- (b) identifying which of the investments mentioned in sub-paragraph (a) are employer-related investments;
- (c) if, as at the end of the scheme year, more than 5 per cent. of the resources of the scheme are invested in employer-related investments in contravention of section 40(1) of the Pensions Act 1995, listing the employer-related investments and the employer concerned.

(5) The total amount of the purchases and the total amount of the sales of investments during the scheme year to which the accounts relate.

(6) A statement confirming whether the accounts have been prepared in accordance with both the financial reporting standards applicable in the United Kingdom as set out by the Financial Reporting Council Limited(b) and the Statement of Recommended Practice, the guidelines (“Financial Reports of Pension Schemes”) published by the Pensions Research Accountants Group(c) or another organisation approved for this purpose by the Financial Reporting Council Limited, current at the end of the scheme year to which the accounts relate and, if not, an indication of where there are any material departures from the financial reporting standards or those guidelines.

(7) In paragraph (4) “employer-related investments” has the same meaning as in section 40(2) of the Pensions Act 1995 but as if the following words were omitted from subsection (2)—

- (a) in paragraph (a) “or by any person who is connected with, or an associate of, the employer”; and
- (b) “or any such person” in each place where they occur.

(6) The Schedule is omitted.

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

Name

(a) S.I. 2005/3378 as amended by S.I. 2006/778, S.I. 2009/615 and 2010/2161

(b) The Financial Reporting Council Limited is a company limited by guarantee. Registered in England number 2486368. Registered Office: 8th Floor, 125 London Wall, EC2Y 5AS.

(c) Pensions Research Accounts Group c/o 187 Rednal Road, Kings Norton, Birmingham B38 8EA

Address
Date

Minister of State
Department of Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996 (S.I. 1996/1975).

Paragraphs (2) and (3) of regulation 2 remove the requirement for trustees or managers of occupational pension schemes to obtain an auditor's statement about contributions under the scheme for each scheme year that the scheme has more than 20 participating employers.

In respect of other schemes the requirement to provide the information detailed in the Schedule to the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996 (S.I. 1996/1975) is replaced with simplified requirements, in line with contemporary accounting practice, for provision of the information outlined in paragraphs (4) to (6) of regulation 2.

An Impact assessment of the effect that this instrument will have on business and the voluntary sector is published with the Explanatory Memorandum along side this instrument in <http://www/legislation.gov.uk>.

List of respondents to the Consultation on changes to the Investment Regulations following the Law Commission's report 'Fiduciary Duties of Investment Intermediaries'

Association of Consulting Actuaries	Pensions Management Institute
Aon Hewitt	Pension Protection Fund
Association of Pension Lawyers	PLSA (formerly NAPF)
Association of Accounting Technicians	Principles for Responsible Investment
Aviva	RPMI Railpen Investments
B&CE	Rob Lake Advisers
British Telecom	Sarasin and Partners
Client Earth	Charles Scanlan
Cunningham, William	SFM
Environmental Agency Pension Fund	Shareaction Supporters
Hampshire CC	Shareaction
Hermes Equity	Social Investment Forum
ICAEW	Social Finance
ICGN	Society of Pension Professionals
Institute and Faculty of Actuaries	Towers Watson
Lancashire County Council	TUC
Lane Clark Peacock	UKSIF
LGIM	UNISON
Linklaters	USS Investment Management
Local Authority Pension Fund Forum	USS Members
Mercer	Warren, L
NEST	Watchman, Paul and Wood, Vanessa
Pearson Pension Scheme	West Midlands
Pensions Trust	

List of consultation questions

Chapter 2: Reducing regulatory burdens on schemes

1. Do you have any views on ways that regulatory burdens on occupational pension schemes (including managers and trustees) can be reduced without compromising member protection?

Chapter 3: Changes to the Occupational Pension Schemes (Scheme Administration) Regulations 1996 and the Occupational Pension Schemes (Charges and Governance) Regulations 2015

2. Other than the specific consultation questions, do you have any views on these regulations as a whole?
3. Do you agree that the right population of multi-employer schemes (commercial master trusts and industry-wide schemes) are now within scope of the additional governance requirements? In particular, we would appreciate your views on:
 - (i) whether the single condition of past and present “promotion” is sufficiently clear (without further definition) and is the right word to use in this context;
 - (ii) whether we have included all the necessary corporate scenarios within the definition of “connected” employers, and they have been adequately described;
 - (iii) whether the definition of “participating employer” works for the purposes of this policy.
4. Do we need to make further provision to protect members in schemes where there are no participating employers?
5. Would the definition as a whole allow multi-employer schemes which should be within scope to avoid the additional governance requirements? If so, please explain how.

Chapter 4: Changes to the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996

6. Do you agree or disagree that the AA regulations need amending? If you disagree please say why. If you agree, are you content with the proposed approach as set out in Option 3, or would you prefer an alternative approach?

7. Do you agree or disagree with the investment information that would be prescribed under Option 3? If you think additional information should be prescribed, could you please say (i) what this information is, (ii) why it should be prescribed and (iii) what the impact that prescribing this information would have on scheme costs (i.e. would there be a further reduction, or an increase, in scheme administration costs as a result).

8. Do you have any comments on the estimated savings? If you think the cost savings would be higher or lower could you please provide your estimate of the impact that the proposed changes would have.

9. (i) Do you agree that large multi-employer schemes should be exempt from the requirement for an auditor's statement?
(ii) Is at least 20 participating employers the right number on which to base this exemption?
(iii) Can you provide any information on likely savings from this change?

10. Do you have any comments on any aspect of these draft regulations?

Chapter 5 - Investments: Government response and call for evidence

11. To what extent do trustees and scheme managers currently make the information on selection, monitoring, retention, stewardship and realisation of investments and selection, appointment and monitoring of investment managers and other agents available to beneficiaries on request?

12. What are the challenges trustees and scheme managers might face in accessing this information including how it may be affected by different investment approaches?

13. Do you have any information on the costs involved in disclosing this information to beneficiaries where such information is requested?

Glossary

Administration	The day to day running of a pension scheme. This may include collecting contributions and payment of benefits.
Adviser	A professional who renders advice services to clients.
Asset Manager	An individual (or company) to whom the management of all or part of a scheme's assets is delegated.
Automatic enrolment	Employers are required to make arrangements by which eligible jobholders become active members of an automatic enrolment scheme with effect from the automatic enrolment date. Automatic enrolment is not applicable if the jobholder is an active member of a qualifying scheme on that date.
Contributions	The money paid by members and employers to the pension scheme.
Default arrangement	This generally means the investment vehicles that are selected automatically for a member joining a pension scheme, unless that member selects an alternative investment strategy.
Deferred members	Someone who no longer contributes to the scheme but is not yet a beneficiary of the scheme
Defined Contribution (DC)	A defined contribution scheme's benefits are based on how much the member and employer pay into the scheme, and also on the performance of the investments made with that money. The Pension Schemes Act 2015 defines a Defined Contribution Scheme as one in which there are no pension promises in relation to any of the retirement benefits that may be provided to members.

Financial Conduct Authority (FCA)	The FCA is responsible for regulating the standards of conduct in retail and wholesale, financial markets and for supervising the infrastructure that supports those markets.
Investment Strategy	The rules and procedures for the selection of the range of investment products for a pension scheme.
Master trust	An occupational trust-based pension scheme established by declaration of trust which is or has been promoted to provide benefits to members who are staff of employers which are not connected and where each employer group is not included in a separate section with its own trustees. For this purpose, employers are connected if they are part of the same group of companies (including partially owned subsidiaries and joint ventures).
Member	An individual who has contributed and/or continues to contribute.
Money purchase benefits	Where the rate or amount of the benefit is based on the contributions made by or on behalf of the member and investment returns, less charges. The benefit is calculated solely by reference to assets which must necessarily suffice for the purposes of its provision to or in respect of the member – i.e. there is no promise which can give rise to a deficit in the scheme.
Occupational pension	A pension which is provided via a person's employment, normally taking the form of a trust arrangement.
Pension scheme	The arrangement by which an employer and, usually, an employee pay into a fund that is invested to provide the employee with a retirement benefit in the form of an income or a cash amount, depending on the scheme design..
The Pensions Regulator (TPR)	TPR regulates occupational pension schemes in the UK.

Trustee	A member of the board of trustees responsible for the management, administration and investment of the pension assets.
Trust- based schemes	A scheme that is managed by a board of trustees. The trustees have full responsibility for the management, administration and investment of the scheme. The trustees' fiduciary duty is to run the scheme according to the trust deed and rules which may have been setup by, for example, the employer – and to act in the interests of members and while they can delegate tasks to various specialists, such as investment managers, the responsibility remains with the trustee.
Workplace pensions	A pension provided by an employer.