

STATUTORY INSTRUMENTS

1996 No. 1715

**The Occupational Pension Schemes
(Scheme Administration) Regulations 1996**

PART II

[^{F1}Advisers and Service Providers]

F1 Pt. 2 heading substituted (6.4.2015) by [The Occupational Pension Schemes \(Charges and Governance\) Regulations 2015 \(S.I. 2015/879\)](#), regs. 1(2), **15(a)**

Appointment of professional advisers by trustees or managers

2. For the purposes of section 47(3) of the 1995 Act (legal advisers, fund managers, and persons exercising prescribed functions in relation to the scheme to be appointed by the trustees or managers) the prescribed functions are—

- (a) the examination of, and the expression of an opinion on, the financial statements and accounts of the scheme and any other matter relating to the audit of the scheme;
- (b) the provision of advice on financial questions relating to the funding of, and assets of, the scheme and on questions in respect of probabilities relating to mortality and other contingencies, and any other matter relating to the actuarial affairs of the scheme;
- (c) the custody of cash, securities and any other documents of title to scheme assets.

Exemptions from the professional advisers requirements

3.—(1) Section 47(1)(a) of the 1995 Act (for every occupational pension scheme there shall be an individual, or a firm, appointed by the trustees or managers as auditor) does not apply to—

- [^{F2}(a) a scheme which is—
 - (i) provided for, or by, or under an enactment (including a local Act); [^{F3}and]
 - (ii) guaranteed by a Minister of the Crown or other public authority.]
- [^{F4}(b)
- [^{F5}(c) an occupational pension scheme which provides relevant benefits and which on or after 6th April 2006 is not a registered scheme;]
- [^{F6}(d)
- (e) unfunded occupational pension schemes;
- (f) occupational pension schemes with less than 2 members;
- [^{F7}(g)
- [^{F8}(h) a scheme—

- (i) with fewer than 12 members where all the members are trustees of the scheme and either—
 - (aa) the provisions of the scheme provide that all decisions which fall to be made by the trustees are made by unanimous agreement by the trustees who are members of the scheme; or
 - (bb) the scheme has a trustee who is independent in relation to the scheme for the purposes of section 23 of the 1995 Act (power to appoint independent trustees), and is registered in the register maintained by the Authority in accordance with regulations made under subsection (4) of that section; or
- (ii) with fewer than 12 members where all the members are directors of a company which is the sole trustee of the scheme, and either—
 - (aa) the provisions of the scheme provide that any decisions made by the company in its capacity as trustee are made by the unanimous agreement of all the directors who are members of the scheme; or
 - (bb) one of the directors of the company is independent in relation to the scheme for the purposes of section 23 of the 1995 Act, and is registered in the register maintained by the Authority in accordance with regulations made under subsection (4) of that section;]

^{F9}(hh)

- (i) occupational pension schemes with a superannuation fund such as is mentioned in section 615(6) of the Taxes Act;

^{F10}(j)

^{F11}(k)

^{F12}(l)

[^{F13}(m) the AWE Pension Scheme established by a deed made on 29th March 1993;] and

^{F14}(n)

[^{F15}(o) the Babcock Naval Services Pension Scheme, established by a deed made on 29th August 2002.]

^{F16}(2) Section 47(1)(b) of the 1995 Act (for every occupational pension scheme there shall be an individual appointed by the trustees or managers as actuary) does not apply to—

- (a) money purchase schemes [^{F17}other than to the extent to which they provide collective money purchase benefits];

[^{F16}(b) schemes mentioned in—

(i) paragraph (1)(a), [^{F18} (e) to] (f), ^{F19} ..., (m) and (o); or

(ii) paragraph (1)(c) or (i) where these schemes have fewer than 100 members.]

[^{F20}(2A) In paragraph (2), “collective money purchase benefits” are benefits which are collective money purchase benefits for the purposes of Part 1 of the Pension Schemes Act 2021.]

(3) Section 47(2) of the 1995 Act (for every occupational pension scheme the assets of which consist of or include investments ^{F21}... there shall be an individual or a firm appointed by or on behalf of the trustees or managers as fund manager) does not apply to—

- [^{F22}(a) relevant schemes of a kind mentioned in paragraph (4) of regulation 4 of the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (Managing investments: occupational pension schemes);]

(b) wholly insured schemes; and

(c) schemes mentioned in [F23]paragraph (1)(a) to (f) and (i)].

(4) Section 47(3) of the 1995 Act (legal advisers, fund managers, and persons exercising prescribed functions in relation to the scheme to be appointed by the trustees or managers) does not apply to schemes mentioned in [F23]paragraph (1)(a) to (f) and (i)].

[F24](5) Subject to paragraph (6), where the trustees or managers of a scheme appoint a custodian on terms—

(a) which allow the custodian to use the services of an appointed person; and

(b) which—

(i) in the case of a custodian appointed before the relevant date, set out in writing, or

(ii) in the case of a custodian appointed on or after the relevant date, specify that, before taking up the appointment the custodian must disclose in writing to the trustees or managers,

whether, and if so, the extent to which the custodian accepts liability in respect of functions exercised or exercisable on his behalf by an appointed person; and

(c) which require that, immediately upon any subsequent change in the extent of the liability accepted by the custodian in respect of functions exercised or exercisable on his behalf by an appointed person, the custodian must disclose in writing to the trustees or managers whether and, if so, the extent to which his liability has changed,

section 47(3) of the 1995 Act shall not apply with respect to any reliance placed on the skill or judgement of the appointed person in the exercise of any of the functions given to the appointed person.

(6) In a case where—

(a) sub-paragraph (b)(ii) of paragraph (5) applies; or

(b) there has been a change of a kind mentioned in sub-paragraph (c) of that paragraph,

section 47(3) of the 1995 Act shall not be disapplied by virtue of that paragraph unless the custodian has made the disclosure required by that sub-paragraph (b)(ii) or, as the case may be, that sub-paragraph (c).

(7) In paragraphs (5) and (6)—

“appointed person” means any person appointed by a custodian, or by any other person empowered by the terms of his own appointment to appoint another person, to exercise any of the functions given to the custodian;

“custodian” means a person appointed by the trustees or managers to exercise any of the functions set out in regulation 2(c) of these Regulations (custody of cash, securities, etc); and

“relevant date” means 22nd July 1998.]

F2 Reg. 3(1)(a) substituted (30.8.2005, 22.9.2005 for specified purposes, 6.4.2006 in so far as not already in force) by [Occupational Pension Schemes \(Administration and Audited Accounts\) \(Amendment\) Regulations 2005 \(S.I. 2005/2426\)](#), regs. 1(2), **3(3)(a)**

F3 Word in reg. 3(1)(a)(i) inserted (6.4.2011) by [The Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/672\)](#), regs. 1(2)(b), **5**

F4 Reg. 3(1)(b) omitted (30.8.2005, 22.9.2005 for specified purposes, 6.4.2006 in so far as not already in force) by virtue of [Occupational Pension Schemes \(Administration and Audited Accounts\) \(Amendment\) Regulations 2005 \(S.I. 2005/2426\)](#), regs. 1(2), **3(3)(g)**

F5 Reg. 3(1)(c) substituted (6.4.2006) by [Occupational Pension Schemes \(Administration and Audited Accounts\) \(Amendment\) Regulations 2005 \(S.I. 2005/2426\)](#), regs. 1(2)(c), **4(3)(a)**

- F6** Reg. 3(1)(d) omitted (30.8.2005, 22.9.2005 for specified purposes, 6.4.2006 in so far as not already in force) by virtue of Occupational Pension Schemes (Administration and Audited Accounts) (Amendment) Regulations 2005 (S.I. 2005/2426), regs. 1(2), **3(3)(g)**
- F7** Reg. 3(1)(g) omitted (30.8.2005, 22.9.2005 for specified purposes, 6.4.2006 in so far as not already in force) by virtue of Occupational Pension Schemes (Administration and Audited Accounts) (Amendment) Regulations 2005 (S.I. 2005/2426), regs. 1(2), **3(3)(g)**
- F8** Reg. 3(1)(h) substituted (6.4.2006) by Occupational Pension Schemes (Administration and Audited Accounts) (Amendment) Regulations 2005 (S.I. 2005/2426), regs. 1(2)(c), **4(3)(b)**
- F9** Reg. 3(1)(hh) omitted (6.4.2006) by virtue of Occupational Pension Schemes (Administration and Audited Accounts) (Amendment) Regulations 2005 (S.I. 2005/2426), regs. 1(2)(c), **4(3)(c)**
- F10** Reg. 3(1)(j) omitted (6.4.2010) by virtue of The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2010 (S.I. 2010/499), regs. 1, **3(2)(a)**
- F11** Reg. 3(1)(k) omitted (30.8.2005, 22.9.2005 for specified purposes, 6.4.2006 in so far as not already in force) by virtue of Occupational Pension Schemes (Administration and Audited Accounts) (Amendment) Regulations 2005 (S.I. 2005/2426), regs. 1(2), **3(3)(g)**
- F12** Reg. 3(1)(l) omitted (30.8.2005, 22.9.2005 for specified purposes, 6.4.2006 in so far as not already in force) by virtue of Occupational Pension Schemes (Administration and Audited Accounts) (Amendment) Regulations 2005 (S.I. 2005/2426), regs. 1(2), **3(3)(g)**
- F13** Reg. 3(1)(m) substituted (30.8.2005, 22.9.2005 for specified purposes, 6.4.2006 in so far as not already in force) by Occupational Pension Schemes (Administration and Audited Accounts) (Amendment) Regulations 2005 (S.I. 2005/2426), regs. 1(2), **3(3)(e)**
- F14** Reg. 3(1)(n) omitted (30.8.2005, 22.9.2005 for specified purposes, 6.4.2006 in so far as not already in force) by virtue of Occupational Pension Schemes (Administration and Audited Accounts) (Amendment) Regulations 2005 (S.I. 2005/2426), regs. 1(2), **3(3)(g)**
- F15** Reg. 3(1)(o) inserted (30.8.2005, 22.9.2005 for specified purposes, 6.4.2006 in so far as not already in force) by Occupational Pension Schemes (Administration and Audited Accounts) (Amendment) Regulations 2005 (S.I. 2005/2426), regs. 1(2), **3(3)(f)**
- F16** Reg. 3(2)(b) substituted for reg. 3(2)(b)(c) (30.8.2005, 22.9.2005 for specified purposes, 6.4.2006 in so far as not already in force) by Occupational Pension Schemes (Administration and Audited Accounts) (Amendment) Regulations 2005 (S.I. 2005/2426), regs. 1(2), **3(4)(a)**
- F17** Words in reg. 3(2)(a) inserted (1.8.2022) by The Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022 (S.I. 2022/255), reg. 1(3), **Sch. 7 para. 1(3)(a)**
- F18** Words in reg. 3(2)(b)(i) substituted (6.4.2006) by Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2006 (S.I. 2006/778), regs. 1(1)(a), **4(3)**
- F19** Word in reg. 3(2)(b)(i) omitted (6.4.2010) by virtue of The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2010 (S.I. 2010/499), regs. 1, **3(2)(b)**
- F20** Reg. 3(2A) inserted (1.8.2022) by The Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022 (S.I. 2022/255), reg. 1(3), **Sch. 7 para. 1(3)(b)**
- F21** Words in reg. 3(3) revoked (1.12.2001) by The Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649), arts. 1, **528(a)**, reg. 1
- F22** Reg. 3(3)(a) substituted (1.12.2001) by The Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649), arts. 1, **528(b)**, reg. 1
- F23** Words in reg. 3(3)(c) and 3(4) substituted (30.8.2005, 22.9.2005 for specified purposes, 6.4.2006 in so far as not already in force) by Occupational Pension Schemes (Administration and Audited Accounts) (Amendment) Regulations 2005 (S.I. 2005/2426), regs. 1(2), **3(5)**
- F24** Reg. 3(5) added (22.7.1998) by The Occupational Pension Schemes (Scheme Administration) Amendment Regulations 1998 (S.I. 1998/1494), regs. 1, **2**

Modifications etc. (not altering text)

- C1** Reg. 3(2)(a) applied (1.10.2000) by The Stakeholder Pension Schemes Regulations 2000 (S.I. 2000/1403), regs. 1(2), 32, **Sch. 2**

- C2** Reg. 3(2)(a) applied (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **40(2)(a)** (with regs. 6, 41, 44(1), 47(1), 69(2), 72(1), 76(1))
- C3** Reg. 3(3) applied (1.10.2000) by [The Stakeholder Pension Schemes Regulations 2000 \(S.I. 2000/1403\)](#), regs. 1(2), 32, **Sch. 2**
- C4** Reg. 3(3)(c) excluded by SI 1993/3253 Sch. 1 para. 8 (as substituted (1.4.2001) by [The Parliamentary Pensions \(Amendment\) Regulations 2001 \(S.I. 2001/835\)](#)), regs. 1(1), **2(2)**
- C5** Reg. 3(5)-(7) applied (1.10.2000) by [The Stakeholder Pension Schemes Regulations 2000 \(S.I. 2000/1403\)](#), regs. 1(2), 32, **Sch. 2**

Qualifications and experience or approval required for appointment as the auditor or actuary

4.—(1) For the purposes of section 47(5)(b) of the 1995 Act the qualifications and experience or approval required for appointment as—

- (a) the auditor, subject to paragraph (2), are—
 - (i) those specified in section 25 of the Companies Act 1989 ^{M1}; or
 - (ii) approval by the Secretary of State;

- (b) the actuary are—
 - ^{F25}(i) Fellowship of the Institute and Faculty of Actuaries; or]
 - (iii) approval by the Secretary of State.

(2) A person shall not be appointed as the auditor where—

- (a) he is a member of the scheme ^{M2};
- (b) he is employed under a contract of service by the trustees or managers of the scheme;
- (c) he is an employer in relation to the scheme; or
- (d) [^{F26}subject to paragraph (3),] he is, by virtue of section 27 of the Companies Act 1989, ineligible to audit the accounts of a company which is an employer in relation to the scheme.

^{F27}(3) Paragraph (2)(d) does not apply in relation to the accounts and auditor's statement for a relevant scheme for a scheme year—

- (a) in which, on the first day of that scheme year, the scheme has at least 500 participating employers; or
- (b) which immediately precedes a scheme year in which sub-paragraph (a) is satisfied.

(4) In paragraph (3), “relevant scheme” means a trust scheme which applies to earners in employment under different employers.]

- F25** Regs. 4(1)(b)(i)(ii) substituted (6.4.2012) by [The Pensions \(Institute and Faculty of Actuaries and Consultation by Employers – Amendment\) Regulations 2012 \(S.I. 2012/692\)](#), regs. 1(2), **4**
- F26** Words in reg. 4(2)(d) inserted (6.4.2014) by [The Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 2014 \(S.I. 2014/540\)](#), regs. 1, **2(2)(a)**
- F27** Reg. 4(3)(4) inserted (6.4.2014) by [The Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 2014 \(S.I. 2014/540\)](#), regs. 1, **2(2)(b)**

Modifications etc. (not altering text)

- C6** Reg. 4(1) applied (1.10.2000) by [The Stakeholder Pension Schemes Regulations 2000 \(S.I. 2000/1403\)](#), regs. 1(2), 32, **Sch. 2**

C7 Reg. 4(2)(a)(b) applied (1.10.2000) by [The Stakeholder Pension Schemes Regulations 2000 \(S.I. 2000/1403\)](#), regs. 1(2), 32, **Sch. 2**

Marginal Citations

M1 1989 c.40.

M2 See section 27 of the Pensions Act 1995 which provides that a trustee of a trust scheme, and any person connected with, or associate of such a trustee, is ineligible to act as auditor. See also regulation 7 of these Regulations.

Manner and terms of appointment and removal of professional advisers

5.—(1) An appointment of a professional adviser shall be made in writing (“the notice of appointment”) and shall specify—

- (a) the date the appointment is due to take effect;
- (b) to whom the professional adviser is to report; and
- (c) from whom the professional adviser is to take instructions.

(2) A person appointed as a professional adviser shall—

- (a) acknowledge in writing receipt of the notice of appointment within 1 month of receipt; and
- ^{F28}(b) [^{F29}(i) in the case of a fund manager, or a person carrying out functions referred to in regulation 2(c), who is subject to rules made under section 138 of the Financial Services and Markets Act 2000 (General rule making power) which impose requirements in relation to conflicts of interest, confirm in writing that he will notify the trustees or managers of any conflicts of interest to which he is or may be subject in relation to the scheme, in accordance with those requirements, and—]
- (ii) in the case of any other professional adviser, confirm in writing that he will notify the trustees or managers of any conflict of interest to which he is subject in relation to the scheme immediately he becomes aware of its existence.]

(3) The resignation of a professional adviser shall be made by serving on the trustees or managers a notice of resignation in writing.

(4) The notice of resignation referred to in paragraph (3) shall, in the case of the auditor or actuary, contain either—

- (a) a statement by the auditor or actuary specifying any circumstances connected with the resignation which, in his opinion, significantly affect the interests of the members or prospective members of, or beneficiaries under, the scheme; or
- (b) a declaration by the auditor or actuary that he knows of no such circumstances as are referred to in sub-paragraph (a).

(5) The resignation shall be effective from the date (if any) specified in the notice by the professional adviser as the date from which he wishes his resignation to be effective, or, if no date is specified, the date on which the trustees or managers receive the notice.

(6) Trustees or managers wishing to remove a professional adviser shall do so by serving on him a notice in writing stating the date with effect from which his appointment terminates.

(7) Where the auditor or actuary is removed in accordance with paragraph (6), he shall, within 14 days of receipt of the removal notice referred to in that paragraph, provide the trustees or managers with either—

- (a) a statement specifying any circumstances connected with the removal which, in his opinion, significantly affect the interests of the members or prospective members of, or beneficiaries under, the scheme; or

- (b) a declaration that he knows of no such circumstances as are referred to in subparagraph (a).
- (8) Where the auditor or actuary—
 - (a) is removed by the trustees or managers,
 - (b) resigns, or
 - (c) dies,

the trustees or managers shall appoint a replacement auditor or actuary (as the case may be) within 3 months from the date of the removal, resignation or death.

(9) In a case where paragraph (8) applies, section 47(1)(a) (where the replacement is to be an auditor) or (b) (where the replacement is to be an actuary) of the 1995 Act shall not apply pending the appointment of the replacement.

^{F30}(10) Where a statement or declaration is made in accordance with paragraph (4) or (7), the trustees or managers shall—

- (a) furnish the remaining auditor or actuary to the scheme with a copy of the statement or declaration no later than 14 days after the trustees or managers receive it; and
- (b) furnish the succeeding auditor or actuary with a copy of the statement or declaration—
 - (i) no later than 14 days after the date on which the trustees or managers receive it; or
 - (ii) no later than the date of the succeeding auditor's or actuary's appointment, whichever is the later.]

(11) This regulation shall not apply in the case of an appointment of a person as a professional adviser to a scheme which falls within the description referred to in ^{F31}regulation 3(1)(c) to (f) and (i)].

- F28** Reg. 5(2)(b) substituted (6.4.1997) by [The Occupational Pension Schemes \(Reference Scheme and Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/819\)](#), regs. 1(1), **5(a)**
- F29** Reg. 5(2)(b)(i) substituted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\)](#), arts. 1, **529**, reg. 1
- F30** Reg. 5(10) substituted (30.12.1999) by [The Personal and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/3198\)](#), regs. 1(1), **10(2)**
- F31** Words in reg. 5(11) substituted (30.8.2005, 22.9.2005 for specified purposes, 6.4.2006 in so far as not already in force) by [Occupational Pension Schemes \(Administration and Audited Accounts\) \(Amendment\) Regulations 2005 \(S.I. 2005/2426\)](#), regs. 1(2), **3(6)**

Modifications etc. (not altering text)

- C8** Reg. 5(1)-(10) applied (1.10.2000) by [The Stakeholder Pension Schemes Regulations 2000 \(S.I. 2000/1403\)](#), regs. 1(2), 32, **Sch. 2**

Duty to disclose information

- 6.—(1) It shall be the duty of any person—
 - (a) who is the employer or has been the employer in relation to an occupational pension scheme and any person who acts as auditor or actuary to such a person, to disclose on request to the trustees or managers such information as is reasonably required for the performance of the duties of trustees or managers or professional advisers;
 - (b) who is the employer in relation to an occupational pension scheme within 1&4u;month of the occurrence, to disclose to the trustees or managers the occurrence of any event relating to the employer which there is reasonable cause to believe will be of material

significance in the exercise by the trustees or managers or professional advisers of any of their functions.

(2) The information referred to in paragraph (1)(a), in a case where the employer makes provision for the administration of the scheme, includes information in respect of who administers the scheme and the terms on which administrative services are provided.

(3) It shall be the duty of the trustees or managers of an occupational pension scheme—

- (a) to disclose to the professional advisers such information as may reasonably be required for the performance of their duties; and
- (b) to make available to the professional advisers such of the scheme's books, accounts and records, including any books and records which the trustees are required to keep under section 49(2) of the 1995 Act (receipts, payments and records), as may reasonably be required for the performance of their duties.

^{F32}(4) This regulation shall not apply in relation to an occupational pension scheme which falls within the description referred to in [^{F32}regulation 3(1)(c) to (f) and (i)].

F32 Words in reg. 6(4) substituted (30.8.2005, 22.9.2005 for specified purposes, 6.4.2006 in so far as not already in force) by [Occupational Pension Schemes \(Administration and Audited Accounts\) \(Amendment\) Regulations 2005 \(S.I. 2005/2426\)](#), regs. 1(2), **3(6)**

Modifications etc. (not altering text)

C9 Reg. 6(3) applied (1.10.2000) by [The Stakeholder Pension Schemes Regulations 2000 \(S.I. 2000/1403\)](#), regs. 1(2), 32, **Sch. 2**

[^{F33}Appointment of service providers in respect of relevant schemes

6A. The trust deed or scheme rules must not contain a provision that—

- (a) requires that the administrative, fund management, advisory or other services in respect of the scheme are provided by a person identified in any document; or
- (b) restricts the choice of person who may be appointed to provide such services.

(2) Paragraph (1) overrides any provision of a relevant scheme to the extent that it conflicts with that paragraph.

(3) In relation to a relevant scheme which is not a money purchase scheme, this regulation applies only in relation to services which are provided in connection with the provision of money purchase benefits.]

F33 Reg. 6A inserted (6.4.2015) by [The Occupational Pension Schemes \(Charges and Governance\) Regulations 2015 \(S.I. 2015/879\)](#), regs. 1(2), **15(b)**

Changes to legislation:

There are currently no known outstanding effects for the The Occupational Pension Schemes (Scheme Administration) Regulations 1996, PART II.