Department
for Work &
Pensions

Consultation outcome

Government response: Broadening the investment opportunities of defined contribution pension schemes

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Ministerial Foreword

I am delighted to publish the government's response to our consultation on 'broadening the investment opportunities of Defined Contribution (DC) pension schemes'.

This is an important step in our journey to ensure DC pension schemes can take advantage of the opportunities illiquid asset classes can bring to pension scheme savers, and in helping to unlock pension fund investments in assets that can benefit the UK economy.

In the consultation we invited views on new draft regulations and guidance that will require schemes to disclose and explain their policies on illiquid investment as well as their full asset allocations. The government firmly believes that savers and employers should absolutely be aware of where investments are being made and the justifications for this.

The regulations and guidance also introduce an exemption for performance-based fees from the charge cap calculations for schemes that choose to incur performance-based fees. The change is intended to encourage scheme trustees, managers, and advisors to collaborate with fund managers to explore a fuller range of investment products and opportunities that have the potential to deliver better longer-term net returns for pension savers.

Trustees must always make investment decisions that are in the best interests of their current and future members. It's also important they look to take advantage of new and innovative investment opportunities in green projects, property, infrastructure, and start-up businesses that have the potential to deliver longer term positive returns which are key to successful savers' retirement outcomes. These asset classes can also support our transition to net zero and help to stimulate wider UK economic growth.

This is a time of financial challenge for all, including the millions of hard-working pension savers. It is a time when those entrusted with our pension schemes need to continue to review their investment approaches, so that they deliver the best possible net outcomes for savers and the government is determined to help them do so by removing any barriers, and in doing so, opening up new investment opportunities.

I am grateful to those organisations and individuals who responded and participated so constructively in the consultation process and I'm naturally very pleased that the significant majority of responses received welcomed the proposed changes and support the intent.

Subject to Parliamentary approval, I intend to bring these regulations into force by the spring. Following which I look forward to seeing schemes utilise them, creating a better future for DC schemes, its members and our economy.

Laura Trott

Parliamentary Under Secretary. The Department of Work and Pensions

Chapter 1: Summary

1. This document is the government's response to chapters 2 and 3 of our October 2022 consultation 'Broadening the investment opportunities of defined contribution pension schemes[1]'.

2. The consultation sought views on new draft regulations and guidance introducing disclose and explain proposals, and on the exemption of performance-based fees from the regulatory charge cap. Both these regulatory measures are intended to remove barriers and help stimulate investment in illiquid assets by occupational defined contribution (DC) pension schemes to achieve better outcomes for DC savers.

3. We received 40 responses – a full list of respondents is disclosed in Annex 1 to this document.

4. We have taken into consideration the comments and suggestions made by respondents when finalising the Occupational Pension Schemes (Administration, Investment, Charges and Governance) and Pensions Dashboards (Amendment) Regulations 2023 (the "2023 Regulations") and noted in this document where changes have been made to the regulations and to guidance.

5. Since the draft regulations were consulted on, the title of the 2023 Regulations has been updated to reflect the addition of an amendment to the Pensions Dashboards Regulations 2022[2].

6. The final draft regulations are also published at the same time as this document. Subject to Parliamentary approval these regulations will come into force from April 2023.

7. Accompanying statutory guidance has also been published. Guidance for trustees and managers of occupational DC pension schemes on the exclusion of performance-based fees from their charge cap calculations will be effective from when the regulations come into force. Guidance for trustees and managers of

[1] https://www.gov.uk/government/consultations/broadening-the-investment-opportunities-of-defined-contribution-pension-schemes

[2] https://www.legislation.gov.uk/uksi/2022/1220/contents/made

relevant occupational schemes on new disclose and explain requirements will be effective from 1 October 2023. Both are subject to approval of corresponding draft regulations by Parliament.

8. The impact assessment for the 2023 Regulations will be published on www.legislation.gov.uk to coincide with the laying of the draft regulations.

9. As pensions policy is reserved in Wales and Scotland, the 2023 Regulations and this response apply to Great Britain. We are engaging with the Department for Communities in Northern Ireland on corresponding legislation for Northern Ireland in accordance with the longstanding principle of parity.

Chapter 2: 'Disclose and Explain' policies on illiquid investment

Background

10. Since 2019, our focus has been on encouraging DC pension schemes to broaden their investment approaches to ensure they are considering as diverse a range of assets as possible for the financial benefit of members. The DC landscape is growing in scale and maturing quickly. Trustees and scheme managers are now more aware and alert to the benefits illiquid assets can bring. DC pension schemes can afford to take a longer-term view with investments so they are ideal vehicles for investing in illiquid assets which could deliver members higher net returns as part of a diversified portfolio that balances risk and opportunity. To help facilitate this, the government has acted quickly and is taking the action that is needed.

11. In our March 2022 consultation 'Facilitating Investments in Illiquid Assets[3]', we proposed requiring relevant DC schemes to disclose their policy on investment in illiquid assets within their Statement of Investment Principles (SIP), and to require DC schemes to publicly disclose their asset allocation in their annual chair's statement. The intent behind these proposals was to encourage trustees and managers to accurately reflect on whether their current investment policies and asset allocations align with market changes and if their current offerings are still in their members' best interests.

12. We also explained how we believed these proposals may also help members to be able to better understand the investments made on their behalf, which had the potential to drive up overall pensions' engagement. Further drivers of this policy are to encourage industry-wide transparency and standardised disclosure, which will be beneficial to other schemes, members, employers and regulators wanting

[3] https://www.gov.uk/government/consultations/facilitating-investment-in-illiquid-assets-by-defined-contribution-pension-schemes/facilitating-investment-in-illiquid-assets

to understand the rationale behind investment decisions and the overall value schemes offer.

13. Chapter 2 of our October 2022 consultation ‘Broadening the Investment opportunities of defined contribution pension schemes’ invited views on new draft regulations and guidance intended to implement this policy proposal.

14. Below we summarise the responses we received from stakeholders and the government response including details of amendments we have made to regulations and guidance reflecting the feedback we received.

Consultation questions and responses

15. In the consultation, we asked 2 questions on whether the draft regulations met our policy intent, 2 questions on the clarity and coverage of our draft statutory guidance, a question on the impact of our proposals on protected groups, and a question on the information presented in the Impact Assessment.

Draft Regulations

We asked:

Question 1: Do you have any comments on the draft regulations in relation to the disclose and explain provisions? Please include in your answer any comments on whether you consider they meet the stated policy intent.

Question 2: Are there other elements not covered in these regulations that you would expect to see?

16. Overall, respondents agreed the requirements set out in the draft regulations to require DC schemes to disclose and explain their policies on illiquid investment and their asset allocations was positioned well to help achieve the key drivers of this policy.

    “We agree that the regulations as drafted will encourage industry-wide transparency and standardised disclosure of investments in illiquid investments and assist in greater public accountability of trustee policy on such investments.” **AEGON**

    “The investment decisions made by trustees on behalf of their members have a significant impact on pension fund returns. Facilitating scheme investment in a diverse range of assets, including illiquid assets, could help improve retirement outcomes for DC and Collective Money Purchase (CMP) scheme members”. **Which?**

17. A number of respondents commented on how the new requirements are likely to have a positive impact in encouraging schemes to place a greater emphasis on their investment approach when it comes to illiquid assets.

“[We are] supportive of the government’s intention to enable occupational schemes like ours to take advantage of long-term illiquid investments within the assets we manage on behalf of our members”. **NOW: Pensions**

18. Several respondents commented on what they saw as the non-coercive nature of the regulations, saying that whilst it encouraged trustees to consider investment in illiquid assets, it left the decision making on which investments work best within their existing fiduciary duties to the trustees.
    “We consider the fiduciary duty borne by trustees as more important than ever as they continue to take responsibility for the long-term financial health of their members. On this basis we view the ‘disclose and explain’ requirement as preferable to any more prescriptive requirement considered”. **Pensions and Lifetime Savings Association**

19. Similarly, we also received supportive comments around the importance of trustees of schemes stating why they have chosen not to invest in illiquid assets and the reasons for this.
    “The explicit requirement for this policy to include an explanation of why the trustees have chosen not to invest in illiquid assets (if applicable) is a clear direction that trustees must at least consider whether they should invest in illiquid assets”. **Hargreaves Lansdown**

20. Several respondents commented that they thought the draft regulations achieved a fair balance in the level of detail schemes would be asked to disclose on investments and that this was in line with how many schemes are already looking to engage with their members.
    “We strongly support the approach taken of seeking to balance prescription/standardisation with pragmatism (keeping the requirements high level enough that pension scheme trustees are not over-burdened by compliance-heavy disclosures, retaining the ability to prepare their disclosures in line with their investment strategy design)” **Association of Consulting Actuaries**

21. Some respondents, while agreeing the draft regulations met the policy intent, questioned how much of an impact new disclose and explain requirements would have in changing behaviours, in particular, those of members and employers deciding whether their scheme was providing value for them.
    “It will remain to be seen if this reform itself drives a material change in decision making amongst either advisors/consultants and employers in selecting a DC provider, or members when they consider switching and consolidating their DC pots.” **CFA Society of the UK**

22. Similarly, some respondents thought it questionable how engaged members would be with this additional level of investment information.

"Getting members to engage with their own benefit statements is challenging enough, and so we question how many members would actually read these disclosures." **Society of Pension Professionals**

23. Several respondents stated that the introduction of disclose and explain requirements may only result in increasing the burden on trustees.

    "We await the results of this exercise with interest but would observe that introducing ever-increasing disclosure requirements will merely add to the administrative burden on schemes, without delivering tangible benefits for consumers." **Royal London**

Scope

24. Several respondents queried whether the new "disclose and explain" regulatory measures were intended to apply to relevant DC schemes with under 100 members. It was stated there was inconsistency between the draft regulations, where relevant schemes would include those with less than 100 members, and the accompanying Impact Assessment and paragraph 93 of the consultation, which suggested they would be excluded.

    "Default SIPs, unlike whole scheme SIPs, are required to be produced by schemes with less than 100 members. Similarly, the chair's statement applies to all "relevant" schemes (again, no 100-member floor). The draft Regulations and Guidance do not contain an exclusion for schemes with under 100 members. If the policy intent is to exclude relevant schemes with under 100 members from the new requirements, the draft Regulations and Guidance will need to be amended accordingly." **Association of Consulting Actuaries**

25. Several respondents set out their expectation for Financial Conduct Authority (FCA) rules to be introduced for contract-based schemes that replicated the proposals set out in the draft regulations.

    "We would like to see mirror regulation from the FCA, as without it, the policy will only apply to around half of the assets invested in workplace pensions, limiting the potential impact on savers and on UK growth." **Aviva**

26. We also received comments calling on the government to keep the impact of these measures under regular review.

    "We recommend the Government monitor allocations and declarations over the coming years to ascertain whether there is a positive change of behaviour within the pensions industry". **UK BioIndustry Association**

Requirement to include illiquid assets policy in default SIP (or SIP, for collective money purchase (CMP) schemes)

27. Most respondents agreed with the proposed definition of "illiquid assets" set out in regulation 3(2)(d) of the draft regulations.

"We believe that the proposed definition: '"illiquid assets" means assets which cannot easily or quickly be sold or exchanged for cash and, where assets are invested in a collective investment scheme, includes any such assets held by the collective investment scheme', is the correct definition to use." **Aviva**

"In our view, this definition is broad enough to capture many types of illiquid assets, such as private equity, private debt, private infrastructure, and private real estate, all of which inherently cannot be easily or quickly sold." **Partners Group**

28. However, we also received comments that the definition might not always work in the case where some illiquid assets can be sold or exchanged for cash on a quick basis, as the recent financial downturn in markets has shown.
"Another point that financial market crises teaches us is that liquid assets can be hard to trade in times of market stress. Therefore, we would suggest that the definition of illiquids should reference 'normal functioning markets." **Society of Pension Professionals**

29. Several respondents pointed out Regulation 3(2)(d) amending regulation 2A of The Occupational Pension Schemes (Investment) Regulations 2005[4] appears to result in two paragraphs (7) in regulation 2A, and as such a technical change was required.
"The draft regulations insert the definition of "illiquid assets" as new Regulation 2A(7) – and this is the logical place for it as it follows other definitions. However, as there is an existing Regulation 2A(7) it should be stated that the existing Regulation 2A(7) is now renumbered as Regulation 2A(8)." **Mercer**

30. We received a few comments that when explaining investing in illiquid assets, trustees should be required to explain their thoughts on managing the risks of such assets.
"We suspect many scheme advisors will be as keen to understand the operational risk mitigants as much as the diversification associated with the scheme's approach to investing in illiquid assets." **CFA Society of the UK**

Asset allocation disclosure

31. There was consensus among respondents that the asset classes set out at the level of granularity in the draft regulations would help ensure a degree of standardisation and transparency in reporting, which would also be helpful for member engagement.

"It is already recommended practice for many pension providers to split their investments by type in pension fund disclosures. Making these requirements an

[4] https://www.legislation.gov.uk/uksi/2005/3378/contents/made

expectation of all schemes, as well as providing firms with clear guidance on how this could be done, could help drive better outcomes for pension savers." **Which?**

"The DWP is right to set the definitions for the asset allocation disclosure at a high level, while providing schemes the flexibility to show further breakdowns within broader categories." **The Investment Association**

32. In respect to specific asset classes, it was highlighted that there was lack of clarity about whether the definition of "bonds" included investment in overseas bonds which some pension schemes are invested in. Respondents suggested that asking for this information to be disclosed alongside UK corporate and Government bonds would be of use.

    "The bond definitions does not consider overseas (i.e. non UK) government bonds (e.g. Treasuries), securitised bonds or sub-sovereign bonds. We also don't think it is necessarily the case that the term bond is more likely to be used with reference to a corporate bond. We think this section requires further finessing". **Scottish Widows/ Lloyds Banking Group**

33. A few respondents thought it would be helpful if DWP clarified in the regulations or in guidance whether the definition of real estate and infrastructure assets excludes listed shares. Without this, it was considered there is a risk that disclosures would conflate liquid structures such as listed Real Estate Investment Trusts (REITS) with more illiquid private market investments.

34. One respondent pointed out that more granularity in the asset classes was needed so that more specific breakdowns of the exact investments could help members understand exactly what their schemes are investing in.

    "…we advocated a granularity to the asset allocation statement that would allow consumers to make informed decisions about how their savings are to be invested, including differentiating between venture capital and private equity." **UK Bioindustry Association**

35. Some respondents queried whether schemes that have more than one default arrangement would need to report these, or just their main default arrangement. It was explained that for master trust providers with multiple employer schemes reporting on each default could be a considerable task.

    "It appears that all default arrangements would be impacted by the regulations, which can be a large number, including funds that may have a very low level of assets invested in them (e.g. for technical defaults that legacy funds have been mapped to)" **Association of Consulting Actuaries**

    "In draft Regulation 4(6) in the definition of "relevant assets" it is not explicit that the calculation of asset percentages operates at the level of each default fund, rather than across all defaults combined (although paragraph 22 of the Guidance clearly says that it applies to each default)." **Mercer**

36. Several respondents commented that the new disclosure requirements add further information into the chair's statement, something which is unhelpful given concerns many in the sector had raised previously that the chair's statement had become a less effective member engagement tool over time and fundamentally needed review.

    “In our experience, and through evidence provided to your colleagues that are currently reviewing the chair statement provisions, very few members read the statement. In our experience, members are more likely to read factsheets and other investment guides and we believe this is where the disclosures should be contained (where available).” **Legal and General**

Draft Statutory Guidance

We asked:

Question 3a: Do you have any comments on the proposed regulatory asset allocation disclosure requirements included in the draft statutory guidance? **Question 3b:** Are there any areas where further clarity might be required?

37. Most respondents stated they were broadly happy with the detail set out in the guidance, particularly with the proposed asset class categories and definitions used.

    “...it is important to have a standard list of asset classes to help comparison between schemes. The proposed list of asset classes is helpful as it defines the specific asset classes that schemes should report but allows further clarity to be added if the scheme wishes to do so.” **Lane Clark & Peacock**

    “Whilst we note there are pros and cons to the proposed approach with regards to the level of granularity and definitions, we believe that this is the most pragmatic approach and are therefore comfortable with the asset allocation disclosure requirements.” **Smart Pensions**

38. However, we did receive a few comments that the prescriptive and categorised nature of the asset classes covered in regulations and guidance might be too restrictive, and a better approach might be to allow schemes to determine how they go about disclosing their asset investment allocations.

    “There are asset class opportunities that do not obviously fit within any of the definitions and asset class opportunities that might fit across more than one bucket” …We note that the need to invest in assets in a way that fits with a prescribed bucket might stifle innovation”. **Society of Pension Professionals**

39. We received comments that schemes should look to ensure they are making the best use of the asset allocation classes set out rather than relying too much on the category of ‘other’, which would be unhelpful in providing transparency to members.

"We would expect the 'Other' category to be used extremely sparingly if at all; we are keen that it would not be used by schemes who are unable or unwilling to provide transparency to their stakeholders around their asset allocations". **CFA Society of the UK**

40. A few respondents urged DWP to place more emphasis in the guidance that the use of averaging to disclose asset allocations was optional rather than being an advised position.

"While schemes will welcome the flexibility in terms of format. We do, however, think it would be reassuring to schemes if some more emphasis were placed on the optional nature of asset allocation averaging." **Pensions and Lifetime Savings Association**

41. Several respondents highlighted that there may be complexities in disclosing by the recommended age cohort of 25, 45, 55 and 1 day to State Pension Age. Comments included that investment strategies and asset allocation are generally based on the term to retirement rather than the age of the member.

"…investment strategies and asset allocation are generally based on the term to retirement rather than the age of the member." **Legal and General**

42. A few respondents commented that the recommendation in guidance for schemes to report the '1 day prior to state pension age' age disclosure, could be changed to age of '65' to match the pension age used by most DC schemes.

"…most DC schemes will have glidepaths running to the Scheme Retirement Age, which overwhelmingly will be 65. This has no linkage to State Pension Age which will be different for different people depending on what year they were born." **Pensions Management Institute**

43. We received a few comments suggesting it would be helpful if guidance contained advice for schemes in the process of winding up/moving to a new scheme on the need to comply with the asset allocation requirements.

Impact Assessment

44. A draft impact assessment considering the direct and indirect financial impacts on business and on others was published alongside the consultation.

We asked:

Question 4: Do you agree with the information presented in the impact assessment?

45. We received general agreement with the information presented in the Impact Assessment.

“We agree with the information in the impact assessment. While there may be some variance, e.g., schemes using “off the shelf” defaults provided by bundled providers which may not incur any cost in collating details of their asset split, while others may incur additional trustee fees, we do not believe these have a material impact.” **Aviva**

“The information presented in the impact assessment seems broadly appropriate.” **Phoenix Group**

46. We did, however, receive a few responses stating that in their view the impact assessment underestimated the true costs of the disclose and explain proposals. A particular concern regarded the estimations for the time and cost requirements for trustees to gain familiarity with the new regulations.

“…paragraph 29 states that it will take just 1.6 hours for a trustee to become familiar with the new requirements, and that there are on average 3 trustees per scheme at a cost of £29 per hour. All three of these assumptions seem too low to us…” **The Pensions Management Institute**

“We believe it is unrealistic to exclude certain costs e.g., legal and training costs from the cost benefit analysis. While legal advice may not be required under regulations for these disclosures, trustees and their consultants will not wish to fail to meet all of the requirements of new regulation so legal advice will be widely sought.” **Society of Pension Professionals**

47. Further to this, one response brought into question the validity of data used in the Impact Assessment.

“…regarding the average number of trustees, we note that you have based this on research that is now seven years old, and we think that using a figure of three trustees distorts the impact of corporate trustees which may count as just one trustee but actually has several individuals involved “behind the curtain”. **Lane Clark & Peacock**

48. We received comments that the requirement for disclosure for multi-employer schemes with multiple defaults might be underestimated in the impact assessment.

“If you have to disclose the breakdown of asset allocations for all defaults within the chair statement, further broken down by age (rather than being term dependent-dependent, it is our view that the suggested costs set out in the impact assessment are underestimated”. **Legal & General**

49. A few responses brought into question the legal costs involved for schemes.

“It is likely that trustees, many of whom will be unfamiliar with the issues arising from investing in illiquids, will quite understandably seek additional legal and specialist consultancy advice in relation to the new regulations and guidance, both on a one-off and recurring basis.” **Association of Pension Lawyers**

We asked:

Question 5: Do you have any comments on the impact of our 'disclose and explain' proposals on protected groups and how any negative effects may be mitigated?

50. Only a few respondents answered this question. Those that did stated that they saw the impact of our proposals on protected groups would be no different to current disclosure requirements.

    "Other than normal issues of making documents accessible, we see no reason for any additional impacts or considerations in relation to protected groups" **Aon**

Government Response

51. We are grateful for the valuable feedback we received to the questions on the new disclose and explain requirements. There was broad support that the regulations and guidance as set out were well positioned to achieve the policy intent to improve the availability of investment information to savers and employers and drive increased certainty that schemes are delivering value.

52. We have considered suggestions from respondents as to areas where the regulations and guidance could be strengthened, and our changes are reflected below.

Scope

53. We wish to clarify that the regulations correctly reflect our policy intent that all 'relevant schemes'[5] (most occupational pensions schemes providing money purchase benefits, except executive schemes, self-administered schemes with fewer than 12 members, public service schemes and schemes that only provide additional voluntary contributions) are in scope and must therefore state their illiquid asset policies and report and disclose their asset allocation.

54. For most schemes, the requirement to disclose their asset allocation in their chair's statement will apply only to assets in their default funds. For CMP schemes, the requirement will apply to all scheme assets, because they do not have default investment funds.

55. Most schemes will be required to state their policy in relation to illiquid assets in their default SIP. However, as CMP schemes are not required to prepare a default SIP, they will be required to include this policy in their main SIP. As schemes with fewer than 100 members are not required to produce a SIP, the new requirement to state their policy in relation to illiquid assets will not apply to CMP schemes with fewer than 100 members. We have included an amendment at regulation 3(4) in the regulations to explicitly reflect this exemption.

56. In respect to Financial Conduct Authority (FCA) rules for contract-based schemes to mirror our disclose and explain requirements, this is a matter for the FCA.

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[5] https://www.legislation.gov.uk/uksi/1996/1715/part/I

57. We have taken on board the suggestions that the impact of these new measures should be reviewed and have introduced at regulation 7, a post implementation review that requires the government to report on the extent the policy objectives have been achieved, and if the regulations are still appropriate. The first report must be published within 5 years of the regulations coming into force.

Requirement to disclose policy in relation to illiquid assets

58. Given the general broad support to our definition of "illiquid assets" we have taken the decision to retain that definition in the regulations. However, we thank some respondents for highlighting how they thought the definition might not always completely take account of 'abnormal market' situations. The definition of "illiquid assets" should be used as the norm. However, there may be instances of unusual market conditions and trustees should use their objective judgement and discuss with their advisers when considering any temporary market conditions.

59. Regulation 3(2)(d), inserting the "illiquid assets" definition in Regulation 2A of the Occupational Pension Schemes (Investment) Regulations 2005, has now been updated so the new paragraph will be numbered (6A).

60. Newly inserted regulation 2A(1A)(b)(iv) of the Occupational Pension Schemes (Investment) Regulations 2005 (as inserted by regulation 3(2)(c) of the 2023 Regulations (and the equivalent provision for CMP schemes)) requires an assessment of the advantages to members of investing in illiquid assets. This only applies to those schemes which invest in illiquid assets and forms part of their explanation of why the trustees have chosen to invest in illiquid assets. Trustees should be weighing up the advantages of their decision to invest in illiquid assets which in doing also inherently includes consideration of the risks.

61. We have listened to respondents that suggested that specific new guidance or updating existing guidance on SIP reporting to include our new requirements would be useful for trustees. We will consider how this can best be provided in consultation with The Pensions Regulator.

Asset allocation reporting

62. We have made an amendment to the asset classification at new regulation 25A(3)(b) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996[6] (the description of 'bonds') to reflect the suggestions received that it would be helpful to clarify that global corporate bonds are included and to include bonds which are international equivalents of ones issued by His Majesty's Government in the UK.

63. We have amended the guidance to make it clearer as to where REITs should feature in the breakdown of asset allocations.

[6] https://www.legislation.gov.uk/uksi/1996/1715/contents

Disclosure Aspects

64. For schemes that have more than one default arrangement, in guidance we explain that trustees should look to disclose the asset allocation for each default arrangement, regardless of how or when they became default arrangements, where members are still invested in the fund at the end of the scheme year. This is to ensure members in a default arrangement other than the main default arrangement are not disadvantaged. Guidance has also been updated to confirm that schemes should report the percentage of asset types for each default fund, not a cumulative total of assets held by their default funds overall.

65. We acknowledge frustration that disclosure requirements are being added to the chair's statement. Our regulations will come into force before DWP has concluded work to review the effectiveness of the chair's statement. This review will take account of all existing disclosure requirements, including these measures.

66. Our guidance has been updated to clarify that schemes, if they so choose, may attach fact sheets to their chair's statement if they believe it would be beneficial to members. Our understanding is that fact sheets are a more in-depth breakdown of assets and are useful for multi-asset schemes that operate several bespoke default investment strategies. However, these fact sheets cannot be used as a substitute for our regulatory requirements.

Statutory Guidance

67. We have clarified the advice to trustees that they can use the averaging approach to present their asset allocations, where the allocations change throughout the year if they so choose. However, this is an optional approach for schemes rather than an advised DWP position.

68. While not a requirement, our recommended advice in guidance is that schemes use age specific data disclosures for members aged 25, 45 and 55 (in line with recommended reporting of net investment returns) and the further disclosure of 1 day prior to state pension age. The reason for the latter is to align with proposed value for money framework metrics. It is also intended to make the disclosures more consistent where different schemes have different default end ages and members select different retirement ages.

69. In respect to disclosure requirements for schemes in the process of winding up, existing TPR guidance sets out the rules regarding production of the chair's statement.

Impact assessment

70. The responses to this question provided valuable feedback and insight. There were a number of helpful points raised which we have considered in the impact assessment and responded to below.

71. We have considered the initial familiarisation costs and decided to update them following the comments regarding estimations for the time and cost requirements for trustees to gain familiarity with the new regulations. We have updated the costs to reflect a higher hourly wage and the number of hours for trustees to gain familiarity with the new requirements.

72. Pension schemes in scope will experience a cost from producing asset allocation information and breakdowns and updating the chair's statement with new asset allocation information and breakdowns annually. There were two comments proposing that schemes with multiple defaults could face higher costs to provide their asset allocation. We have considered these comments and accept that different schemes will face different costs. However, the initial cost estimates are still deemed an appropriate central estimate. These were based on the previous consultation which considered the range of costs different schemes could face.

73. We do not consider legal costs to represent a direct regulatory cost to business under the impact assessment. The regulations do not require schemes to seek legal advice to ensure they are fulfilling their fiduciary duty, though some schemes may choose to do this.

74. As stated, we are pleased with the support for the clarity and the intent of the government's proposed introduction of new disclose and explain regulations and guidance. We have taken on board drafting changes to address areas where further clarity was called for. Subject to Parliamentary approval, we will now proceed with bringing these regulations, supported by guidance, into force for April 2023.

Changes to regulations and commentary

75. This section summarises the regulatory changes related to our 'disclose and explain' proposals being introduced through the draft Occupational Pension Schemes (Administration, Investment, Charges and Governance) and Pensions Dashboards (Amendment) Regulations 2023 (the "2023 Regulations").

76. The 2023 Regulations amend the following regulations in relation to the 'disclose and explain' proposals.

- the Occupational Pension Schemes (Investment) Regulations 2005[7] ("Investment Regulations").
- the Occupational Pension Schemes (Scheme Administration) Regulations 1996[8] ("Scheme Administration Regulations")
- the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013[9] ("Disclosure Regulations")

[7] https://www.legislation.gov.uk/uksi/2005/3378/contents/made
[8] https://www.legislation.gov.uk/uksi/1996/1715/contents
[9] https://www.legislation.gov.uk/uksi/2013/2734/contents/made

Regulation 1 – commencement and application of the proposed changes

77. Regulation 1 explains when the new requirements will apply to schemes. Regulation 1(7) sets out that relevant occupational pension schemes will be required to action the new asset allocation disclosure requirements in their chair's statement for the first scheme year which ends after 1 October 2023.

78. Regulation 1(9) and (10) sets out that the new illiquid investment policy disclosures will be required to be added to the default SIP of relevant occupational pension schemes (or SIP, in the case of CMP schemes) the first time that it is revised after 1 October 2023 and at the latest by 1 October 2024.

Regulation 3 – amending the Investment Regulations

79. Regulation 3 amends regulation 2A of the Investment Regulations to require relevant occupational pension schemes (except CMP schemes) to include an explanation of their policies on investing in illiquid assets in their default SIP.

80. Regulation 3(2)(c) sets out what a scheme's policy on illiquid investments must include.

81. Regulation 3(2)(d) includes the definition of "illiquid assets" as "assets of a type which cannot easily or quickly be sold or exchanged for cash and where assets are invested in a collective investment scheme, includes any such assets held by the collective investment scheme". The definition aims to ensure all current illiquid assets are covered, but at the same time is flexible enough so that the industry can continue to innovate.

82. Regulation 3(3) inserts regulation 2B into the Investment Regulations to require qualifying CMP schemes to include an explanation of their policies on investing in illiquid assets in their SIP.

83. Regulation 3(4) clarifies that CMP schemes with fewer than 100 members (which are not required to produce a SIP) do not have an obligation to disclose and explain their illiquid asset policy.

Regulation 4 – amending the Scheme Administration Regulations

84. Regulation 4(5) inserts Regulation 25A into the Scheme Administration Regulations to require trustees or managers of occupational DC schemes to calculate the percentage of relevant scheme assets within their default arrangements (or, in the case of a CMP scheme in the scheme as a whole) allocated to different asset classes. Regulation 4(2)(c) amends regulation 23 of the Scheme Administration Regulations to require trustees or managers to report the results of their asset allocation assessment in their annual chair's statement.

85. New regulation 25A(3), inserted by regulation 4(5), sets out the main asset classes for which the allocation would be required to be disclosed by all relevant

schemes. These main asset classes have been determined through discussions and collaboration with industry stakeholders and past consultations.

86. New regulation 25A(4) sets out that trustees or managers of the scheme must have regard to any statutory guidance produced that accompanies these regulations.

87. New regulation 25A(5) requires that when a scheme is invested in a collective investment scheme, the underlying assets held by the collective investment scheme are what must be referred to when making any asset allocation calculations. Advice from our engagement with stakeholders and from previous consultations indicated that the regulations should require schemes to look-through a multi-asset investment to the underlying assets held, otherwise indirect allocation to certain asset classes would be easily overlooked.

Regulation 5 – amending the Disclosure Regulations

88. Regulation 5 amends regulation 29A of the Disclosure Regulations to require trustees or managers of schemes in scope to publish the section of the chair's statement which covers the new disclosures about asset allocation.

Chapter 3: 'Exempting performance-based fees from the charge cap'

Background

89. In our 'Enabling Investment in Productive Finance[10]' consultation published in November 2021, we set out our intention to enable trustees and managers of occupational DC pension schemes to exclude performance-based fees that are paid when a fund manager exceeds pre-determined performance targets from their charge cap calculations where this is in the best interests of their members.

90. We explained that removing performance-based fees, and their interaction with the charge cap limit of 0.75%, which was often cited as limiting trustee's consideration of certain illiquid assets, had the potential to open doors for schemes to work with fund managers to gain access to private markets in greater numbers.

91. Our 'Broadening the investment opportunities of defined contribution pension schemes' consultation published in October 2022 detailed the work we have done with the sector on the design of this measure, including ensuring suitable safeguards are in place around member protection and invited views on draft regulations and informative guidance to help trustees to apply this.

[10] https://www.gov.uk/government/consultations/enabling-investment-in-productive-finance

92. Our draft regulations included a proposed definition of ‘specified performance-based fees’ - a set of criteria that must be met for performance-based fees that can be excluded from charge cap calculations. This included that a performance fee must relate to a fee paid when returns from investment exceed a specific rate/benchmark (commonly a hurdle rate) or a specific amount (typically applied using a high-water mark or other mechanism). It also ensured that these terms must be agreed between the trustees or managers of the scheme and the fund manager prior to investing.

93. Further member protection, attached to the definition of specified performance-based fees, included the provision that trustees or managers must agree with the fund manager methods to mitigate the risk that the amount of the fee is increased as a result of short-term fluctuations in performance or valuations of the investment. To ensure transparency of which fees are paid to fund managers and why, we proposed that any specified performance-based fees would need to be disclosed and their value to members would need to be assessed in the scheme’s annual chair's statement.

94. Below we summarise the responses we received from stakeholders and present the government response, including details of amendments we have made to regulations and guidance reflecting the feedback we received.

Consultation questions and summary of responses

95. In the consultation, we asked 2 questions on the draft regulations and whether they meet the policy intent, 2 questions on the draft statutory guidance and its clarity, and 1 question on the impact of these proposals on protected groups.

Draft Regulations

We asked:

Question 6: Do you have any comments on the draft regulations in relation to the performance fee measures? Please include in your answer any comments on whether you consider they meet the stated policy intent.

Question 7: Are there other elements not covered in these regulations that you would expect to see?

96. Most respondents reported satisfaction with how the regulations were positioned to achieve the government’s objective, to enable DC schemes to access a range of asset classes that come with performance fees, whilst also ensuring protection for trustees and members.

"Our members recognise that any exemption for specified performance fees to broaden the investment possibilities for DC pension schemes must also incorporate measures which retain an appropriate degree of investor protection. We believe that the draft regulations and guidance proposed by the DWP strike an appropriate balance between these two considerations." **AIMA**

"We are supportive of the government's ambitions to ensure there are no obvious structural barriers now, or in the future, that would limit or disadvantage the ability of trustees of DC schemes to consider illiquid investments." **NOW: Pensions**

97. Several respondents commented on how they welcomed the move away from the level of prescription of a well-designed performance-based fee in previous proposals, to one which is less prescriptive and requires schemes and fund managers to work together and agree within the perimeters of the regulations, the design of the fee structure that works best for them.

"What the Government rightly recognises in Regulation 2, is that the most important part of any performance fee agreement is not Government policy but the negotiation between trustees and scheme managers. By mandating that performance fees must be agreed by these two parties, the Government provides the security necessary to ensure that such fees are not misused when negotiated outside of the bounds of the charge cap". **Octopus Group**

98. Respondents also welcomed the pace at which the government is intent on bringing these changes into force, so that schemes and fund managers can begin exploring the use of these to drive investment.

"We welcome the proposals and would hope that these changes can be progressed as rapidly as possible". **John Forbes Consultancy LLP**

99. Whilst supporting the regulations some respondents suggested that this change may not lead to an immediate increase in the number of schemes looking to take advantage of this.

"We believe that at a high-level the regulations meet the policy intent. However, in practice, we suspect there will be slow uptake of illiquid investment opportunities by medium and small schemes due to a lack of knowledge and/or willingness to spend additional money on obtaining expert specialist advice about performance fees. We expect that the largest of DC schemes will be the trailblazers in this area." **The Pensions Management Institute**

100. As highlighted in feedback to previous consultations, several respondents highlighted again the further challenges DC pensions schemes faced when considering investing in illiquid assets.

"Major hurdles for access to illiquid assets by DC members are liquidity and the slow/uneven distribution of investment gains/losses…Ensuring fair treatment across all members will be a duty of both Trustees under trust law and providers under the FCA's "treating customers fairly" rules, but these can be overcome e.g. through the development of well-diversified private markets solutions (blending performance fees) or by asset managers adopting flat fee structures. We believe

that these issues are best resolved by the pension and investment industry, but will need collaboration with the DWP, FCA and TPR to ensure that otherwise restrictive regulations are amended”. **Hyman Robertson**

Specified performance-based fees

101. We received overall support for the criteria attached to the definition of “specified performance-based fees” covered in the draft regulations, which schemes must adhere to if they want to exclude performance-based fees from their charge cap calculations. Respondents commented that the regulations contained a strong focus on ensuring trustees reached agreement with fund managers on the expected rates of return, before entering into arrangements.

“Consequently, by avoiding regulation of a specific structure this enables greater flexibility for schemes to meet the private markets managers on terms they are familiar with”. **AON**

“The key issue (which is acknowledged by the paper in paragraph 116) is the performance-related fee needs to be well-designed so that fees are paid only when genuine performance has been achieved.” **Society of Pension Professionals**

102. Several respondents commented how they thought the definition of specified performance-based fees may cause some difficulties for schemes. Firstly, the term ‘pre-agreed rate’ may not always be compatible when pension funds invest in a fund-of-funds type of collective investment arrangement. Secondly, in respect to providing trustees with an ability to re-negotiate performance fees with fund managers if that works in trustee and member best interests.

“The current drafting of Regulation 2, requiring the rate, amount, period of time or term to be “pre-agreed” between the DC pension scheme trustees or manager and the fund manager before the scheme invests may exclude Fund of Fund investments from the regulatory charge cap exemption. This is because there will be performance-based fees and profit-share arrangements in each of the funds underlying the Fund of Funds.” **British Venture Capital Association**

“In open-ended funds which are perpetual in nature, investors may conclude that the current arrangements are no longer market and may seek to re-negotiate the fees with the manager. It would seem perverse that if investors obtain a more favourable fee arrangement that this would prevent the fee being excluded from the charge cap.” **John Forbes Consulting LLP**

103. Some respondents pointed out the need to include ‘carried interest’ or ‘profit-share’ arrangements within the definition of ‘specified performance-based fee’. Whilst similar in that it is only applicable when predefined investment performance is achieved, respondents pointed out that profit sharing arrangements differ from performance fees in the mechanism by which they act – a profit share distributes excess realised profits rather than charging a fee to investors.

"We… propose that the definition of "specified performance fees" is amended to be sufficiently broad enough to include carried interest, since — on a strict interpretation — the current wording does not. We do not believe this is the intention, and indeed not to clarify accordingly will undermine the very intended flexibility that Government is seeking to enable." **British Growth Fund**

Disclosure of fees

104. There was good support among respondents to our requirement that trustees must disclose to members any performance-based fees paid as a percentage of the average value of the assets held by that default arrangement or, for collective money purchase schemes, held by the scheme as a whole during the scheme year. It was suggested that, while quite simplistic, this requirement would not be overburdensome.

"The disclosure of performance fees relative to an average strategy asset value over the year is a crude measure, but one that is simple to calculate and keeps the administrative burden and costs low, which we are supportive of." **Aon**

105. Some respondents highlighted an alternative method would be to require trustees to disclose performance-based fees as a percentage against the average value of the assets to which the fees relate.

"From a transparency perspective, it would be more appropriate to measure the performance fee(s) against the average value of the assets to which the fee(s) are related. This then provides a meaningful figure which could be used to assess whether the fees charged are proportionate to the potential return generated." **TISA**

106. It was raised by some respondents that the draft regulations infer a direct relationship between the payment of performance-based fees from trustees to fund managers, which may not always be the mechanism by how fees work in practice. It was explained that in many instances, fees can be paid via a third party.

"In some instances (for example, investment through unit-linked policies), the performance fee may not be payable by the trustees to the manager – it is likely payable to an insurance company as part of the bundled investment and administration product". **Association of Pension Lawyers**

Value for Members

107. A few respondents sought clarity on whether specified performance-based fees are included for assessment purposes under the "value for member" provisions contained in existing pensions legislation, and whether it was intended to read across to the comparative exercise that schemes with under £100 million in assets under management, are now required to undertake as a more holistic VFM assessment.

"Our reading of the draft Regulations is that "specified performance-based fees" will be included for assessment purposes under the "value for member"

provisions under Regulation 25(1)(b) of The “Occupational Pension Schemes (Scheme Administration) Regulations 1996, but not under the newer “value for member” provisions relating to smaller schemes (under Regulation 25(1A)).” **Mercer**

Contract based schemes

108. We received requests that the option to exclude performance-based fees from the charge cap should also be replicated for contract-based pensions, regulated by the Financial Conduct Authority.

“…it is important to introduce equivalent provisions for contract-based workplace pensions to avoid regulatory differences.” **AEGON**

Statutory Guidance

We asked:

Question 8a: Do you have any comments on the performance fee sections of the draft statutory guidance? **Question 8b**: Are there any areas where further clarity might be required?

109. Most respondents were complimentary of the guidance, which they thought provided adequate clarity to trustees both familiar or unfamiliar with how performance fees work, and in respect of the new criteria of “specified performance-based" fees.

“We support DWP’s approach to the draft statutory guidance, and welcome the principles-based, non-prescriptive approach taken.” **BlackRock**

“We believe that the guidance is clear and also provides sufficient flexibility where required” **Smart Pensions**

110. Respondents drew attention to the guidance’s expectation that trustees, before entering into any performance fee agreements, should seek professional advice to ensure member interests are protected.

“The fact that trustees are expected to seek professional advice on the measurement and payment of performance-based fees is entirely appropriate. This advice should ensure any performance-based fee structure is fair for all scheme members invested and that the structure will protect members throughout their investment journey from paying inappropriate performance fees.” **AON**

111. Some respondents said it would be helpful if further examples of approaches of good practice on how performance-based fees can be applied, with a particular focus on member fairness, could be included in the guidance. It was suggested

that this could give trustees more confidence to enter discussions with fund managers.

112. We received comments in relation to what could be agreed in a fund of funds arrangement where there could be many investment agreements in place between the trustees and various fund managers.

"It may be useful to clarify for example the expectations around what an agreement will look like where a fund or solution is a fund of funds, and therefore the judgement around the suitability of hurdle rates is made by the fund manager and articulated to the trustee or manager" **Aviva**

113. Several respondents pointed out that profit share mechanisms, such as "carried interest" should be covered in the regulations and expanded upon in the guidance.

"…we suggest that paragraph 46 of the draft statutory guidance makes a specific reference to "carried interest" and equivalents and/or performance fees which take the form of a "profit share". **British Growth Fund**

114. In respect to disclosure of fees, some respondents suggested it would be helpful if the guidance placed emphasis on the importance of the investment sector providing pension schemes with information/data that can be translated easily to members.

"We are strongly supportive of cost disclosures, and transparency to DC schemes on all fees paid. We would be supportive of additional encouragement from the industry to provide greater transparency on costs and charges, for example through detailed and itemised fee disclosures." **Partners Group**

115. Several respondents found the example of the J curve effect outlined in the guidance helpful in understanding the challenges that member fairness could pose.

"I am encouraged by the "Fund journey example" section following paragraph 69 and I am very supportive of the guidance highlighting the J curve effect exhibited by most venture capital funds." **Amadeus Capital**

116. Some respondents however thought that the J curve example and overall guidance on "member fairness" did not go far enough and that further support on this issue would be helpful. Ensuring member fairness in particular for open-ended funds was highlighted as potentially the biggest challenge trustees would face when it comes to incorporating performance fees.

"The comments on how trustees need to consider the merits of the J -curve effect on the disparity of member outcomes is a useful prompt, but there was limited insight given or consideration given on how to mitigate these risks. This is particularly relevant given most illiquid investments will typically experience some form of J-curve between the point when assets are deployed and returns generated." **Aon**

Impacts

We asked

Question 9: Do you have any comments on the impact of our proposals, in relation to the exemption of performance-based fees on protected groups and how any negative effects may be mitigated?

117. Responses to this question suggested that there was likely to be no negative effects on protected groups.

“We do not believe that the exemption of performance fees discriminates between individuals, provided that those fees are appropriately governed within the proposed framework” **Legal and General**

Government Response

118. We are grateful for the feedback we received on the questions raised in the consultation. There was broad support that the regulations and guidance, as set out, met the government’s policy intent to offer the option to remove performance-based fees, that are “well-designed” by the trustees and/or managers of schemes with fund managers, from the charge cap.

119. We have taken on board feedback and made changes to the regulations and accompanying guidance where we agreed these were needed. These are detailed as follows.

Fund of Fund arrangements

120. As requested by a number of respondents, we have amended our regulations to ensure that fund of fund/collective investment arrangements can benefit from the change. The regulations set out that where trustees or managers invest into a fund of funds, terms must be set out in the investment policy of the fund of funds, to which the trustees or managers agree before they invest into these funds.

Re-negotiation

121. In respect to circumstances whereby pension schemes may wish to renegotiate performance-based fees agreements with the fund manager, we have set out in our guidance when this is permitted. It is noted in the guidance that frequent changes to pre-agreed terms or purely for commercial reasons, may imply that the terms are not pre-agreed, and not within the definition of a specified performance-based fee.

Profit-sharing arrangements

122. As a result of responses to the consultation we have amended the regulations to ensure that profit-sharing arrangements that include carried interest arrangements, are explicitly covered in the definition of a specified performance-based fee. This is in line with our policy intention to ensure schemes can access certain private markets including venture capital and private equity where profit-sharing arrangements are more commonly used. Further information is provided in the guidance.

Disclosure of performance fees

123. Our proposal to require schemes to disclose performance-based fees as an average against the total assets invested was generally accepted and so we are retaining this. However, schemes may choose to supplement this with a further disclosure showing where fees relate to the direct investments they apply to.

Member fairness

124. We acknowledge that achieving member fairness when it comes to performance fees is a challenge for DC schemes. The example of the J Curve effect within the guidance was welcomed by many and, taking on board comments we received, we have also included reference in our guidance to the Productive Finance Working Group guidelines, which may provide further insight in achieving member fairness.

Payment of performance fees

125. We have amended regulations to address the issue where fees are paid through a third party such as an insurance company. The regulations require that fees can be paid by, or on behalf of, the trustee or manager of a pension scheme.

Contract-based schemes

126. Any changes to read across to contract-based schemes is a matter for the FCA.

Value for members

127. We have amended the guidance to clarify that, as provided for by the amendments in the 2023 Regulations, relevant occupational schemes must assess the extent to which they represent good value for members, whilst schemes with under £100m in assets will not be required to include any specified performance-based fees as part of their extended value for member comparison against three larger schemes.

128. We have been clear throughout the development of this policy that, in making use of the exclusion of specified performance-based fees from the charge cap, trustees must ensure this is in their current and future members’ best interests. The government’s primary consideration and expectation in allowing for this change is that paying higher fees is only justifiable as a result of the scheme receiving higher net performance returns. We cannot be clearer that the change provides a clear incentive for schemes and managers to reach fee agreements that link payment of additional fees directly to the net benefit the scheme members receive.

129. We are grateful for all the engagement and support we have received. This change places no obligation on schemes to enter into investments that come with performance fees if this does not fit with their investment strategies, or they consider this is not in their members’ interest. Similarly, this change is not intended to interfere in trustees’ fiduciary duties or to reduce the bargaining power of DC schemes to invest in assets that come without performance fees. The change is intended first and foremost to induce dialogue between the

trustees and fund managers to work together to ensure investments work, and in equal measure protect the interests of members.

130. With broad support to this principle and to ensure schemes are able to take advantage of accessing private markets as soon as possible, we will proceed to bring this change to the regulations into force, subject to Parliamentary approval, as early as April 2023.

Changes to regulations and commentary

131. The 2023 Regulations amend the following in relation to the exemption of performance-based fees.

- the Occupational Pension Schemes (Charges and Governance) Regulations 2015[10] ("Charges and Governance Regulations")
- the Occupational Pension Schemes (Scheme Administration) Regulations 1996 ("Scheme Administration Regulations")
- the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 ("Disclosure Regulations")

Regulation 1 - commencement and application of the proposed changes

132. Schemes in scope are able to apply the exemption to exclude 'specified performance-based fees' (definition covered in regulation 2 below) from the charge cap calculations from 6 April 2023.

133. Regulation 1(6) outlines that the requirements to report on specified performance-based fees apply in relation to the first scheme year of an occupational pension scheme which ends after 6 April 2023.

134. Regulation 1(8) provides details of the transitional arrangements that apply to trustees or managers of schemes that are making use of the current option to smooth the incurrence of performance fees over a five-year moving average when assessing compliance with the charge cap. This smoothing measure was originally introduced by Regulation 7 of the Occupational Pension Schemes (Administration, Investment, Charges and Governance) (Amendment) Regulations 2021[11]. The smoothing option can only be applied up to the date which is 5 years after the end of the first charges year in which the trustees or managers first chose to calculate the charge imposed annually (or 5 April 2028 if earlier).

Regulation 2 – amending the Charges and Governance Regulations

135. Regulation 2 of the 2023 Regulations repeals the previous definition of 'performance fee' contained in regulation 2(1) of the Charges and Governance Regulations and replaces this with the conditions-based definition of "specified performance-based fee" that trustees or managers of DC schemes must adhere

to if they want to exclude these performance-based fees from their charge cap calculations. The definition applies to any asset class invested in.

136. Specified performance-based fees join a list of ‘charges’ that can be considered out of scope of the charge cap. The exemption does not apply to components of a performance fee structure that are not linked directly to investment performance, such as any fixed rate management fee or other costs. These would continue to remain subject to the charge cap.

137. Regulation 2 sets out that trustees or managers of the scheme must have regard to any statutory guidance produced that accompanies these regulations.

138. As a result of the changes to how performance fees are treated, provisions introduced through the Occupational Pension Schemes (Administration, Investment, Charges and Governance) (Amendment) Regulations 2021 that allow schemes to smooth (save for transitional arrangements set out above) or pro-rate the effects of performance fees for the purposes of the charge cap are repealed.

Regulation 4 – Amending the Scheme Administration Regulations

139. Regulation 4(3) and (4) amends regulations 23 and 25 of the Scheme Administration Regulations respectively, to require trustees or managers of DC schemes in scope to calculate and disclose in the annual chair's statement any specified performance-based fee charges members incur as they would all other costs and charges. Fees are to be calculated and reported for each default arrangement (if any) during the scheme year, as a percentage of the average value of the assets held by that default arrangement during the scheme year. For CMP schemes, fees are to be calculated and reported in relation to the scheme as a whole.

140. Trustees or managers also need to extend the assessment already required of where costs and charges provide value for members to also cover performance-based fees.

141. Stakeholders agree unanimously with us on the importance of transparent communications to members on performance-based fees which would not be subject to the charge cap.

Regulation 5 – Amending the Disclosure Regulations

142. Regulation 5 amends regulation 29A of the Disclosure Regulations to require trustees or managers of DC schemes to publish the section of the chair's statement which covers disclosure of performance fees on a free to access website.

143. The publication of costs and charges information is important to members and can also enable trustees and others to compare the value for money they are receiving through their scheme’s arrangements with their peers, thereby driving better market outcomes. By giving wider industry participants and commentators

access to the data, this could also assist in the development of benchmarking services.

Regulation 7 – Review

144. Regulation 7 introduces a provision for a Post Implementation Review of the amendments relating to relevant occupational DC pension schemes set out in regulations 2 to 5 of the 2023 Regulations. It requires that a review must be carried out and that the first report setting out the conclusions of the review must be published before 6 April 2028. It also sets out what the report must contain and requires that subsequent reports must be published at intervals not exceeding 5 years.

Annex 1: List of respondents to ‘Broadening the investment opportunities of defined contribution Pension Schemes

AEGON
Alternative Investment Management Association (AIMA) /ACC
Amadeus Capital
Aon
Association of British Insurers (ABI)
Association of Consulting Actuaries (ACA)
Association of Pension Lawyers (APL)
Association of Real Estate Funds (AREF)
Aviva
BGF
BlackRock
BVCA
CFA Society of the UK
Financial Services Consumer Panel
Hargreaves Landsdown
Hymans Robertson LLP
Investment Property Forum (IPF)
John Forbes Consulting LLP
Lane Clark & Peacock LLP (LCP)
Legal and General (L&G)
Mercer
Nest
Now:Pensions
Octopus Groups
Osborne Clarke LLP
Partners Group
Pensions and Lifetime Savings Association (PLSA)
Phoenix Group
Railpen
Rene Poisson as Chair of the Morgan UK Pension Plan
Royal London
Scottish Widows / Lloyds Banking Group
Smart Pension
Society of Pension Professionals’ (SPP)
The Investing and Saving Alliance (TISA)
The Investment Association
The Pensions Management Institute
UK BioIndustry Association (BIA)
Which?
WTW