
DRAFT STATUTORY INSTRUMENTS

2019 No.

PENSIONS

The Occupational Pension Schemes (Governance and Registration) (Amendment) Regulations 2019

Made - - - - ***
Laid before Parliament ***
Coming into force - - ***

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SCHEDULE — Use of fiduciary management services: duties of trustees

The Secretary of State makes these Regulations in exercise of the powers in sections 60(2)(h) and (3) and 315(2) and (5) of the Pensions Act 2004^(a) (“the 2004 Act”) and sections 43(b) and 54(5) and (6) of and paragraphs 2(1), (2)(a), (3) and (5), 3 and 7 of Schedule 18 to, the Pensions Act 2014^(b) (“the 2014 Act”).

In accordance with section 317(1) of the 2004 Act and paragraph 8 of Schedule 18 to the 2014 Act, the Secretary of State has consulted such persons as the Secretary of State considers appropriate in respect of these Regulations.

In accordance with section 54(2) of the 2014 Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Governance and Registration) (Amendment) Regulations 2019 and come into force on [6th April 2020].

PART 2

Use of fiduciary management services and investment consultancy services

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

2.—(1) The Occupational Pension Schemes (Scheme Administration) Regulations 1996^(c) are amended as follows.

(2) In regulation 1, in paragraph (2ZB)^(d), after ““relevant scheme””, insert “and the definition of “relevant trust scheme” (see regulation 30).”

(3) After regulation 29 insert—

“PART 6

Governance of relevant trust schemes

CHAPTER 1

Introductory

Scope of Part 6

30.—(1) This Part applies in relation to relevant trust schemes.

(2) A “relevant trust scheme” is an occupational pension scheme established under a trust other than—

(a) 2004 c. 35. “Prescribed” has the meaning given in section 318(1) of the Pensions Act 2004.

(b) 2014 c. 19.

(c) S.I. 1996/1715.

(d) Paragraph (2ZB) of regulation 1 was inserted by S.I. 2015/879.

- (a) a scheme which is not a registrable scheme (within the meaning given by section 59(2) of the 2004 Act),
- (b) an executive pension scheme,
- (c) a public service pension scheme,
- (d) a relevant small scheme, or
- (e) a scheme to which regulation 2(c) of the Occupational Pension Schemes (Trust and Retirement Benefits Exemption) Regulations 2005(a) applies.

General interpretation

31.—(1) In this Part—

“the 2019 Order” means the Investment Consultancy and Fiduciary Management Market Investigation Order 2019(b);

“connected” has the meaning given in paragraph (2);

“existing IC provider” has the meaning given in regulation 36(5);

“fund manager” has the meaning given in section 124 of the 1995 Act;

“IC provider” has the meaning given in regulation 36(2);

“relevant trust scheme” has the meaning given in regulation 30(2);

“statement of investment principles” has the meaning given in section 35 of the 1995 Act;

“trustee owned company” has the meaning given in paragraph (3).

(2) For the purposes of this Part, a person (“A”) is connected to another person (“B”) if A is a group undertaking in relation to B within the meaning of section 1161(5) of the Companies Act 2006(c).

References to a person being “unconnected” to another person are to be read accordingly.

(3) “Trustee owned company”, in relation to a relevant trust scheme, means a company (within the meaning of section 1 of the Companies Act 2006) which is wholly owned by the trustees of the scheme.

(4) For the purposes of paragraph (3), a company is wholly owned by the trustees of a relevant trust scheme only if every member of the company is—

- (a) a trustee of the scheme, or
- (b) a person acting on behalf of such a trustee.

(5) In this Part references to “investment consultancy services” are to be read in accordance with regulation 36.

Meaning of “appointment”

32. For the purposes of this Part, a reference to the appointment of a person in any capacity includes a reference to—

- (a) the reappointment of that person;
- (b) the extension of that person’s term of appointment.

(a) S.I. 2005/2360.

(b) Copies of the Order are available on the CMA’s website: <https://www.gov.uk/cma-cases/investment-consultants-market-investigation#the-investment-consultancy-and-fiduciary-management-market-investigation-order-2019>.

(c) 2006 c. 46.

Time at which services are provided

33. For the purposes of this Part, a person is to be taken to provide services at any time if, at that time, arrangements are in place for the provision of those services.

CHAPTER 2

Use of fiduciary management services

Duties of trustees to carry out tender process in connection with the appointment of persons to provide fiduciary management services

34. The Schedule sets out the duties of trustees of relevant trust schemes in connection with the appointment of persons to provide fiduciary management services.

CHAPTER 3

Use of investment consultancy services

Application of Chapter 3

35.—(1) This Chapter applies where—

- (a) the trustees of a relevant trust scheme appoint an IC provider on or after 6th April 2020, or
- (b) there are any existing IC providers appointed in relation to such a scheme.

Meaning of “IC provider” and “existing IC provider”

36.—(1) This regulation defines “IC provider” and “existing IC provider” for the purposes of this Part.

(2) “IC provider”, in relation to a relevant trust scheme, means a person (“P”) who provides investment consultancy services to the trustees of the scheme.

(3) P provides investment consultancy services to the trustees of a relevant trust scheme if—

- (a) P gives advice to the trustees of the scheme on, or in connection with, any of the following—
 - (i) the merits of—
 - (aa) the exercise of any of the trustee’s powers of investment (including the making or retaining of any investment);
 - (bb) the appointment of a fund manager;
 - (cc) the delegation of authority under section 34 of the 1995 Act to a fund manager;
 - (ii) strategic asset allocation;
 - (iii) the preparation or revision of the statement of investment principles;
 - (iv) investment strategy, and
- (b) P gives that advice otherwise than in P’s capacity as a legal adviser appointed by the trustees.

(4) For the purposes of this regulation it does not matter whether the relevant advice is given for the purposes of section 36 of the 1995 Act or otherwise.

(5) “Existing IC provider”, in relation to a scheme, means an IC provider who—

- (a) was appointed by the trustees of the scheme before 6th April 2020, and

- (b) continues to provide investment consultancy services to those trustees on and after that date in accordance with the terms of that appointment.

Duty to set objectives for IC providers

- 37.**—(1) The trustees of a relevant trust scheme must set objectives for each IC provider.
- (2) But the duty in paragraph (1) does not apply in respect of any IC provider who is—
- (a) a trustee of the scheme, or
 - (b) a trustee owned company.
- (3) In setting objectives for an IC provider, the trustees must have regard to the statement of investment principles, in so far as it is relevant to services provided by that provider.
- (4) The trustees must review and, if appropriate, revise an IC provider’s objectives—
- (a) at least every three years;
 - (b) without delay after any significant change in investment policy.
- (5) Paragraph (6) applies where the IC provider—
- (a) is an existing IC provider, and
 - (b) immediately before 6th April 2020, had objectives which had been set under article 12 of the 2019 Order.
- (6) Where this paragraph applies—
- (a) the duty in paragraph (1) does not apply, and
 - (b) the objectives which had been set under article 12 of the 2019 Order are to be treated as if they had been set under paragraph (1) on 6th April 2020.

Duty to review performance of IC providers

38. The trustees of a relevant trust scheme must, at least every 12 months, review the performance of each IC provider against the objectives set under regulation 37.

CHAPTER 4

Compliance

Compliance notices

Compliance notice

- 39.**—(1) The Regulator(a) may issue a compliance notice(b) to a person with a view to ensuring that person’s compliance with a listed provision.
- (2) The Regulator may issue a notice under paragraph (1) if it is of the opinion that the person is not complying, or has not complied, with that provision.
- (3) For the purposes of this Chapter, the listed provisions are the following provisions of this Part—
- (a) regulation 37(1) or (4);
 - (b) regulation 38;
 - (c) paragraph 7(1) of the Schedule;
 - (d) paragraph 9(1) of the Schedule;
 - (e) paragraph 10(2) of the Schedule;

(a) “The Regulator” is defined in paragraph 15(1) of Schedule 17 to the Pensions Act 2014.

(b) “Compliance notice” is defined in paragraph 3(2)(a) of Schedule 18 to the Pensions Act 2014.

- (f) paragraph 12(1) of the Schedule.
- (4) A compliance notice must—
 - (a) state the listed provision which the Regulator is of the opinion was not, or is not being, complied with,
 - (b) state the evidence on which that opinion is based, and
 - (c) specify the steps that the Regulator requires the person to whom it is issued to take to remedy the non-compliance with that provision and, where appropriate, ensure that it is not repeated.
- (5) A step specified for the purposes of paragraph (4)(c) may be expressed to be conditional on compliance by a third party with a specified direction contained in a third party compliance notice under regulation 40.
- (6) A compliance notice may also—
 - (a) specify the period within which any step must be taken;
 - (b) require the person to whom it is issued to provide the Regulator within a specified period specified information relating to the non-compliance;
 - (c) require the person to whom it is issued to inform the Regulator, within a specified period, of how they have complied with or are complying with the notice;
 - (d) state that, if the Regulator is of the opinion that the person to whom it is issued has failed to comply with the notice, the Regulator may issue a penalty notice to them under regulation 41;
 - (e) give the person to whom it is issued a choice between different ways of remedying, or preventing the recurrence of, the non-compliance.
- (7) In this regulation “specified” means specified in a compliance notice.

Third party compliance notice

40.—(1) The Regulator may issue a third party compliance notice^(a) to a person (“A”) with a view to ensuring another person (“B”)’s compliance with a listed provision if—

- (a) the Regulator is of the opinion that—
 - (i) B is not complying, or has not complied, with that provision, and
 - (ii) that non-compliance is, or was, wholly or partly, a result of the failure of A, and
- (b) A’s failure is not itself a contravention of any listed provision.
- (2) A third party compliance notice must—
 - (a) state the listed provision which the Regulator is of the opinion was not, or is not being, complied with,
 - (b) state the evidence on which that opinion is based, and
 - (c) specify the steps that the Regulator requires A to take, or refrain from taking, with a view to remedying and, where appropriate, preventing a recurrence of the failure mentioned in paragraph (1)(a)(ii).
- (3) A compliance notice may also—
 - (a) specify the period within which any step must be taken;
 - (b) require A to provide the Regulator within a specified period specified information relating to the non-compliance;
 - (c) require A to inform the Regulator, within a specified period, of how they have complied with or are complying with the notice;

(a) “Third party compliance notice” is defined in paragraph 3(2)(b) of Schedule 18 to the Pensions Act 2014.

- (d) state that, if the Regulator is of the opinion that A has failed to comply with the notice, the Regulator may issue a penalty notice to A under regulation 41;
 - (e) give A a choice between different ways of remedying, or preventing the recurrence of, the non-compliance.
- (4) In this regulation “specified” means specified in a third party compliance notice.

Penalty notices

Penalty notices

41.—(1) The Regulator may issue a penalty notice^(a) imposing a penalty on a person where the Regulator is of the opinion that the person—

- (a) has failed to comply with a compliance notice,
- (b) has failed to comply with a third party compliance notice, or
- (c) has contravened a listed provision.

(2) The Regulator may determine the amount of the penalty to be imposed on a person.

(3) But the amount of the penalty imposed on a person must not—

- (a) if the person is an individual, exceed £5,000;
- (b) in any other case, exceed £50,000.

(4) A penalty notice must—

- (a) if it is issued to the trustees of a relevant trust scheme, be issued to all the trustees of the scheme and specify their joint and several liability for the penalty;
- (b) state the Regulator’s decision to impose a penalty;
- (c) state the reasons for that decision including—
 - (i) if the notice is issued under paragraph (1)(a) or (b), the failure to which the notice relates;
 - (ii) if the notice is issued under paragraph (1)(c), the provision which has been contravened;
- (d) state the amount of the penalty;
- (e) state the date by which the penalty must be paid;
- (f) state the period (if any) to which the penalty relates;
- (g) notify the person to whom the notice is issued of the right to a review under regulation 45 and the right of referral under regulation 46.

(5) The date specified under paragraph (4)(e) must be at least four weeks after the date on which the notice is issued.

(6) See also regulation 43 (recovery of penalty from bodies corporate and Scottish partnerships).

Penalty notices: recovery of penalty

42.—(1) Any penalty required by a penalty notice is recoverable by the Regulator.

(2) In England and Wales, any such penalty is, if the county court so orders, recoverable under section 85 of the County Courts Act 1984 or otherwise, as if it were payable under an order of that court.

(a) “Penalty notice” is defined in paragraph 3(2)(c) of Schedule 18 to the Pensions Act 2014.

(3) In Scotland, any such penalty is enforceable as if it were an extract registered decree arbitral bearing a warrant for execution signed by the sheriff court of any sheriffdom in Scotland.

(4) The Regulator must pay into the Consolidated Fund any penalty recovered under this regulation.

Penalty notices: recovery of penalty from bodies corporate and Scottish partnerships

43.—(1) This regulation applies where—

- (a) a penalty under regulation 41 is recoverable from a body corporate or a Scottish partnership by reason of any act or omission of the body or partnership, and
- (b) the act or omission was done with the consent or connivance of, or is attributable to any neglect on the part of, any specified person.

(2) Where this regulation applies, the Regulator may impose a penalty on each specified person who has consented to or connived in the act or omission, or to whose neglect the act or omission was attributable.

(3) In this regulation, “specified person”—

- (a) in relation to a body corporate, means—
 - (i) a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, or
 - (ii) where the affairs of the body are managed by its members, a member who has management functions;
- (b) in relation to a Scottish partnership, means a partner of that partnership.

(4) If the Regulator imposes a penalty on one or more specified persons, the Regulator—

- (a) may not also impose a penalty on the body corporate or Scottish partnership (as the case may be) in respect of the same act or omission, and
- (b) must issue the penalty notice under regulation 41 to each specified person on whom a penalty is imposed.

(5) The Regulator may notify the relevant body corporate or Scottish partnership of the Regulator’s decision under this regulation to impose a penalty on one or more specified persons.

Service of notices

Service of notices

44. Sections 303 to 305 of the Pensions Act 2004 (service of documents and electronic working) apply to notices issued under this Chapter as they apply to a notification given under any provision of that Act.

Review of notices

Review of notices

45.—(1) The Regulator may review a specified notice issued under these Regulations—

- (a) on an application, in writing, from the person to whom the notice was issued (“the applicant”), or
- (b) otherwise, if the Regulator considers it appropriate to do so.

(2) In this regulation “specified notice” means—

- (a) a compliance notice;
- (b) a third party compliance notice;

(c) a penalty notice.

(3) An application for a review of a specified notice must be made by the applicant before the end of the period of 28 days beginning with the day on which the notice was issued to the applicant.

(4) The Regulator may review a notice under paragraph (1)(b) at any time before the end of the period of 18 months beginning with the day on which the notice was issued to the applicant.

(5) On a review of a notice, the effect of the notice is suspended for the period—

(a) beginning with the day on which the Regulator determines to carry out the review, and

(b) ending with the day on which the review is completed.

(6) In carrying out the review, the Regulator must consider any representations made by the person to whom the notice was issued.

(7) On a review under this regulation, the Regulator may—

(a) confirm the notice;

(b) vary the notice;

(c) revoke the notice;

(d) substitute a different notice.

References to the Tribunal

Reference to the First-tier or Upper Tribunal

46.—(1) A person to whom a penalty notice is issued (“the applicant”) may, if one of the conditions in paragraph (2) is satisfied, make a reference to the Tribunal in respect of—

(a) the issue of the notice;

(b) the amount of the penalty imposed under the notice.

(2) The conditions are—

(a) the Regulator has completed a review of the notice under regulation 45;

(b) the applicant made an application for a review under regulation 45(1)(a) but the Regulator determined not to carry out such a review.

(3) On a reference under this regulation, the effect of the notice is suspended for the period—

(a) beginning with the day on which the Tribunal receives the notice of the reference, and

(b) ending with the relevant day.

(4) For the purposes of paragraph (3), “the relevant day” is—

(a) if the applicant withdraws the reference, the day on which it is withdrawn;

(b) if the reference is made out of time and the Tribunal determines not to allow the reference to proceed, the day on which that determination is made;

(c) otherwise, the day on which the reference is completed.

(5) A reference is completed when—

(a) the reference has been determined, and

(b) the Tribunal has remitted the matter to the Regulator.

(6) In this Regulation, “the Tribunal” means—

(a) the Upper Tribunal, in any case where it is determined by or under Tribunal Procedure Rules that the Upper Tribunal is to hear the reference;

- (b) otherwise, the First-tier Tribunal.
- (7) For the purposes of paragraph (6), “Tribunal Procedure Rules”—
 - (a) in relation to the First-tier Tribunal, means the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009(a);
 - (b) in relation to the Upper Tribunal, means the Tribunal Procedure (Upper Tribunal) Rules 2008(b).”

PART 3

Registrable information

Amendment of the Register of Occupational and Personal Pension Schemes Regulations 2005

3.—(1) Regulation 3 of the Register of Occupational and Personal Pension Schemes Regulations 2005(c) is amended as follows.

(2) In paragraph (1)—

(a) omit sub-paragraphs (a)(ii) and (iii) and (e);

(b) after sub-paragraph (i), insert—

“(k) in the case of an occupational pension scheme which is a relevant trust scheme—

(i) the information mentioned in paragraph (3B) in respect of each FM provider for the time being appointed in relation to the scheme;

(ii) the information mentioned in paragraph (3C) in respect of each IC provider for the time being appointed in relation to the scheme.”

(3) After paragraph (3) insert—

“(3A) For the purposes of this regulation, “FM provider”, “IC provider” and “relevant trust scheme” have the meanings given in Part 6 of the Occupational Pension Schemes (Administration) Regulations 1996 (“the 1996 Regulations”).

(3B) The information referred to in paragraph (1)(k)(i) is—

(a) the name and address of the FM provider;

(b) if the scheme is a Part 2 Scheme (within the meaning of paragraph 6 of the Schedule to the 1996 Regulations)—

(i) the date on which the FM provider was appointed or last appointed (as the case may be);

(ii) whether the trustees carried out a qualifying tender process under paragraph 7(1) or 10(2) of the Schedule to 1996 Regulations in connection with the FM provider’s appointment or arrangements with the FM provider (as the case may be);

(iii) if no such tender was carried out, why it was not carried out;

(c) if the scheme is a Part 3 Scheme (within the meaning of paragraph 11 of the Schedule to the 1996 Regulations)—

(i) the date on which the FM provider was first appointed;

(a) S.I. 2009/1976.

(b) S.I. 2008/2698.

(c) S.I. 2005/597; regulation 3 has been amended by S.I. 2006/1733, 2015/879, 2018/1102, and S.I. 2019/192. The amendments made by S.I. 2019/192 are prospective and come into force on exit day.

(ii) whether the trustees have carried out a qualifying tender process under paragraph 12(1) of the Schedule to the 1996 Regulations in connection with the arrangements with that provider;

(iii) if no such tender was carried out, why it was not carried out.

(3C) The information referred to in paragraph (1)(k)(ii) is—

- (a) the name and address of the IC provider;
- (b) the date on which the IC provider was appointed or last appointed (as the case may be);
- (c) whether the trustees have set objectives for the IC provider in accordance with regulation 37(1) of the 1996 Regulations and if no such objectives have been set, the reasons why they have not been set;
- (d) whether the trustees have reviewed the objectives set for the IC provider in accordance with regulation 37(4) of those Regulations, and if no such review has been carried out, why that is the case.
- (e) whether the trustees have reviewed the services provided by the IC provider in accordance with regulation 38 of those Regulations, and if no such review has been carried out, why that is the case.

(3D) For the purposes of paragraphs (3B) and (3C), “appoint”, in relation to an FM provider or an IC provider, includes—

- (a) the reappointment of the provider;
- (b) the extension of the provider’s term of the appointment.”

Consultation Draft
Secretary of State
Department for Work and Pensions

SCHEDULE

Regulation 2(3)

Use of fiduciary management services: duties of trustees

This Schedule sets out the Schedule to be inserted at the end of the Occupational Pension Schemes (Scheme Administration) Regulations 1996—

“SCHEDULE

Regulation 34

Duties of trustees of relevant trust schemes in connection with appointment of FM providers

PART 1

Introductory

Scope

1. This Schedule sets out the duties of the trustees of a relevant trust scheme in respect of the carrying out of qualifying tenders in connection with the appointment of FM providers.

Meaning of “FM provider” and related expressions

2.—(1) This paragraph defines “FM provider”, “existing FM provider” and related expressions for the purposes of this Schedule.

(2) “FM provider”, in relation to a relevant trust scheme, means a person (“P”) who provides fiduciary management services to the trustees of the scheme.

(3) P provides fiduciary management services to the trustees of a relevant trust scheme if the following two conditions are met.

(4) The first condition is that P is appointed to manage any of the assets of the scheme.

(5) The second condition is that P, or a person connected to P—

- (a) is, on the appointment date, providing investment consultancy services to the trustees of the scheme,
- (b) has provided such services at any time within the period of 12 months ending immediately before the appointment date, or
- (c) provides such services at any time within the period of 12 months beginning on the appointment date.

(6) For the purposes of this regulation, “the appointment date” means the date on which P is appointed as mentioned in sub-paragraph (4).

(7) References in this Schedule to “fiduciary management services” are to be read accordingly.

(8) “Existing FM provider”, in relation to a relevant trust scheme, means an FM provider who—

- (a) was appointed by the trustees of the scheme before 6th April 2020, and
- (b) continues to provide fiduciary management services to those trustees on and after that date in accordance with the terms of that appointment.

Meaning of “management of the assets”

3.—(1) For the purposes of this Schedule, a person (“P”) manages assets of a relevant trust scheme if—

- (a) P is a fund manager to whom any discretion has been delegated under section 34 of the 1995 Act^(a), or
- (b) P is not such a fund manager but can make decisions about investments in exercise of any discretion of the trustees which has been delegated to P by, or on behalf of, the trustees.

(2) For the purposes of sub-paragraph (1)(b), “decisions about the investment of assets of the scheme” include decisions about, or in connection with, the appointment of a fund manager.

Meaning of “qualifying tender process”

4.—(1) In this Schedule, “qualifying tender process”, means the process of—

- (a) inviting, and using reasonable endeavours to obtain, bids for the provision of the relevant FM services from at least three unconnected persons, and
- (b) evaluating the bids which are obtained.

(2) For the purposes of sub-paragraph (1), “the relevant FM services” are fiduciary management services—

(a) “The 1995 Act” is defined in regulation 2(1) of the 1996 Regulations.

- (a) where the trustees propose to appoint an FM provider in relation to any assets of the relevant trust scheme, involving the management of those assets;
- (b) where the trustees propose to increase the amount of assets managed by an FM provider (“P”), involving the management of the total amount of assets that P would manage were the proposed increase to be made;
- (c) where the duty in paragraph 10(2) or 12(1) applies, involving the management of the total amount of assets currently managed under the arrangements in respect of which the duty applies.

(3) For the purposes of this paragraph, “a bid” means an offer in writing to provide the relevant FM services at a stated price.

General interpretation

5.—(1) In this Schedule—

“excepted person”, in relation to a relevant trust scheme, means—

- (a) a trustee of the scheme;
- (b) a trustee owned company;
- (c) the employer that has the power to act on behalf of all employers in the scheme in relation to the scheme rules;
- (d) the principal employer for the purposes of the scheme in accordance with the scheme rules;
- (e) where the scheme is a Master Trust scheme (within the meaning given in section 1 of the Pension Schemes Act 2017(a))—
 - (i) the scheme funder (as defined by section 39 of that Act), or
 - (ii) the scheme strategist (as defined by that section of that Act);
- (f) a person who is connected to any of the persons mentioned in paragraph (c), (d) or (e);

“existing FM provider” has the meaning given in paragraph 2(8);

“FM provider” has the meaning given in paragraph 2(2);

“manageable assets” has the meaning given in sub-paragraph (2);

“qualifying tender process” has the meaning given in paragraph 4.

(2) “Manageable assets”, in relation to a relevant trust scheme, means the assets of the scheme other than any buy-in policies.

(3) For the purposes of sub-paragraph (2), “buy in policy” means an insurance policy taken out, or annuity contract entered into, in the name of the trustees of a relevant scheme—

- (a) in respect of any of the pensions or other benefits which are payable to, or in respect of, any of the members of the scheme, and
- (b) under which the insurer must make payments (including payments in kind) to, or on behalf of, the trustees for the purpose of enabling the trustees to discharge their liability to pay the pensions and benefits mentioned in paragraph (a).

(a) 2017 c. 17.

PART 2

Schemes under the asset management threshold

Application of Part 2

6. This Part of this Schedule applies in relation to a relevant trust scheme if, immediately before 6th April 2020—

- (a) the scheme does not have any FM providers, or
- (b) where any FM providers are appointed in relation to the scheme, they, when taken together, have been appointed to manage less than 20% of the manageable assets of the scheme.

Such a scheme is referred to in this Part as a “Part 2 scheme”.

Duty to carry out qualifying tender: new FM provider appointment and mandate changes

Duty of trustees of a Part 2 scheme to carry out a qualifying tender in connection with use of FM providers

7.—(1) The trustees of a Part 2 scheme must carry out a qualifying tender process, or arrange for such a process to be carried out on their behalf, before—

- (a) appointing a person as an FM provider, or
- (b) increasing the amount of assets managed by an FM provider.

(2) But the duty in sub-paragraph (1) applies only if—

- (a) were that appointment or increase to be made, the asset management threshold would be met for the first time, and
- (b) none of the exceptions in paragraph 8 apply.

(3) For the purposes of sub-paragraph (2)(a)—

- (a) the asset management threshold, in relation to the scheme, is met if 20% or more of the manageable assets of the scheme are managed by FM providers;
- (b) for the purposes of determining whether that threshold would be met the trustees must take into account the amount of the manageable assets of the scheme covered by any other appointments or increases which are proposed to be made at the same time.

Exceptions

8. The exceptions mentioned in paragraph 7(2)(b) are—

- (a) in the case of an appointment, the person to be appointed is an excepted person;
- (b) in the case of an increase, the person who will manage an increased amount of assets is an excepted person;
- (c) the trustees are a contracting authority for the purposes of the Public Contracts Regulations 2015(a) and the appointment will be made following a procurement carried out in accordance those Regulations;
- (d) the trustees are a contracting authority for the purposes of the Public Contracts (Scotland) Regulations 2015(b) and the appointment will be made following a procurement under those Regulations.

(a) S.I. 2015/102.
(b) SSI 2015/446.

Notification to FM providers

9.—(1) The trustees of a Part 2 scheme must give a tender completion notice to any FM provider who—

- (a) is appointed on or after 6th April 2020, or
- (b) is given authority to manage additional assets on or after that date.

(2) A “tender completion notice” is a notice in writing which states either—

- (a) that the appointment or increase is made following the carrying out of a qualifying tender process under paragraph 7, or
- (b) that no such tender was required before the appointment or increase was made.

Duty to carry out qualifying tender process in respect of existing FM providers

Duty to carry out qualifying tender process in respect of existing FM provider arrangements

10.—(1) This paragraph applies where—

- (a) a Part 2 scheme has one or more existing FM providers,
- (b) the trustees of the scheme propose to appoint an FM provider or increase the amount of assets managed by an FM provider, and
- (c) the duty in paragraph 7(1) is triggered for the first time.

(2) The trustees must, at the same time as carrying out the tender process under paragraph 7(1), carry out a qualifying tender process, or arrange for such a process to be carried out on their behalf, in respect of the arrangements in place with each of their existing FM providers.

(3) But the duty in sub-paragraph (2) does not apply in respect of any arrangements—

- (a) with an excepted person,
- (b) which were entered into following a qualifying tender process, or
- (c) in relation to which the duty in paragraph 7(1) has been triggered.

PART 3

Schemes at or above the asset management threshold

Application of Part 3

11. This Part of this Schedule applies in relation to a relevant trust scheme if, immediately before 6th April 2020, the FM providers for the scheme, when taken together, have been appointed to manage 20% or more of the manageable assets of the scheme.

Such a scheme is referred to in this Part as a “Part 3 scheme”.

Duty to carry out qualifying tender process in respect of existing FM provider arrangements

12.—(1) The trustees of a Part 3 scheme must, before the end of the relevant day, carry out a qualifying tender process, or arrange for such a process to be carried out on their behalf, in respect of each of the arrangements in place with their existing FM providers.

(2) But the duty in sub-paragraph (2) does not apply in respect of any arrangements—

- (a) with an excepted person, or
- (b) in relation to which a qualifying tender process was carried out.

- (3) In this paragraph, “the relevant day” means—
- (a) the last day of the period of five years beginning with the day on which the earliest of the arrangements to be reviewed under this paragraph was entered into, or
 - (b) if that period expires before the end of 9th June 2021, 9th June 2021.”

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