



Department
for Work &
Pensions

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

Government response

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Introduction

1. This consultation, which sought views on the draft Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) (Amendment) Regulations 2016, ran from 12 November 2015 to 11 December 2015.
2. The consultation on these draft regulations formed part of the wider consultation document - Better Workplace Pensions: Reducing regulatory burdens, minor regulation changes, and response to consultation on the investment regulations (at Chapter 4 and Annex B) which can be viewed at: <https://www.gov.uk/government/consultations/occupational-pensions-reducing-regulatory-burdens-and-minor-regulation-changes>
3. The Government response to Chapter 3 of the above consultation, which covered new governance requirements for certain occupational pension schemes, was published on 1 February and can also be viewed via the above link. That response advised that the responses received in respect of reducing regulatory burdens and improving investment disclosure would inform our longer term work in these areas.
4. The draft regulations covered by Chapter 4 of the consultation proposed making a number of changes to the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996 (SI 1996 No.1975) (the “1996 Regulations”); to update the investment disclosure requirements in those regulations and to remove the requirement to obtain an auditor’s statement about contributions from large multi-employer schemes.
5. The proposed amendments were deregulatory and would help to reduce the administrative costs of those pension schemes covered by the changes.
6. Annex A lists the 23 respondents to Chapter 4 of the consultation, and the Government is very grateful to them for providing their comments and advice on the draft regulations.
7. This document outlines why it is considered necessary to amend the 1996 Regulations; the questions asked in the consultation; a summary of the responses received to the consultation, and the Government’s responses to the comments made. It further advises that, following consideration of the comments received, the Government has decided to proceed with the proposed approach as set out in Chapter 4 of the consultation.
8. Accordingly, regulations (The Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) (Amendment) Regulations 2016) (SI 2016/229) have been made and laid in both Houses of Parliament.

Background

9. The 1996 Regulations place a duty on the trustees or managers of certain occupational pension schemes to annually obtain:
 - audited accounts which must be prepared in accordance with the provisions in the regulations, and
 - a statement from the auditor concerning the payment of contributions to the scheme.
10. The 1996 Regulations require the accounts to show a true and fair view of the scheme's financial position, and the Schedule to these regulations prescribes detailed investment information that must be disclosed in the accounts. They also require the auditor to provide a statement that the accounts have been prepared in accordance with the Statement of Recommended Practice (SORP) applicable to pension scheme accounts, published by the Pensions Research Accountants Group (PRAG), or another organisation approved to do so by the Financial Reporting Council.
11. These regulations also require trustees or managers to obtain from the scheme auditor, a statement about scheme contributions, stating whether in their opinion contributions have been paid in accordance with a scheme's schedule of contributions or payment schedule. This should be obtained not more than 7 months after the end of each scheme year. The National Employment Savings Trust has already been exempted from this requirement on the basis that its size and scale would make it impracticable to audit employer contributions.

Investment disclosure

12. In 2014 Financial Reporting Standard 102 (FRS102) was introduced. This revised the financial reporting framework in the UK, replacing all previous accounting standards. The new standard is applicable for accounting periods commencing on or after 1 January 2015 and covers the format, content and accounting policies for UK pension schemes.
13. Following the introduction of FRS102 the Government was advised by PRAG that the 1996 Regulations could be modernised so that they better align with the new reporting standard and pension scheme investments, which would reduce pension scheme costs, as they would no longer need to prepare out of date investment analysis simply to comply with the current prescribed requirements.
14. As advised in Chapter 4 of the consultation, having considered this matter we concluded that there was a strong case for amending the legislation and therefore looked at three options for amending the 1996 Regulations:

Option 1 – Amend the Schedule to the 1996 Regulations to update the prescribed investment disclosure provisions to take account of modern scheme investment practices and accounting requirements as set out in FRS102 and the pensions SORP.

Option 2 – Amend the 1996 Regulations by deleting all of the prescribed investment disclosures in the Schedule, but retain in the body of the regulations a requirement similar to that currently at Paragraph 8 of the Schedule; that the auditor must provide a statement that the accounts have been prepared in accordance with FRS102 and the SORP covering pension schemes, noting any material departures from these.

Option 3 – Delete most of the detailed investment disclosure information set out in the Schedule to the 1996 Regulations but retain three specific pieces of investment information where disclosure is not covered by FRS102 and, as in Option 2, require the auditor to provide a statement that the accounts have been prepared in accordance with FRS102 and the pensions SORP, and note any material departures from these.

15. The consultation advised that Government's preferred option was **Option 3**, and provided (at Annex B) a draft of the regulations which would make the legal changes needed to deliver this option.
16. This approach was preferred as we considered that it provided an appropriate balance between modernising the 1996 Regulations and reducing scheme costs, whilst continuing to prescribe limited investment information not specifically covered by FRS102.

Auditor's statement about contributions

17. The current requirement, on trustees or managers of occupational pension schemes covered by the 1996 Regulations, to obtain a statement from the scheme auditor on whether, in their opinion, contributions have been paid in accordance with the scheme's schedule of contributions or payment schedule; is generally relatively straightforward for schemes with a single employer or small number of participating employers, particularly where the employers are connected and there is a single payroll.
18. However, we were informed by stakeholders that this requirement is more difficult to meet where schemes have a large number of participating employers. This was because the amount and nature of the work required (e.g. due to the various ways an employer might define pensionable pay, or the various forms of payment schedule produced) meant there was a high risk of auditors being unable to get enough evidence, at a reasonable cost to the scheme, to enable them to provide this statement.
19. We therefore proposed in the consultation to amend the 1996 Regulations to exempt multi-employer schemes with at least 20 participating employers from

these requirements. We believe that this amendment will better reflect the pensions landscape which has evolved since the regulations were introduced in 1996. For example, there are now statutory requirements for schemes to have adequate internal controls covering administrative processes, and there are also specific regulatory requirements around monitoring the flow of contributions.

Consultation questions

20. In considering the proposed changes to the 1996 Regulations and the draft amending regulations, the consultation asked for views on the following five questions:

- **Consultation Question 6:** Do you agree or disagree that the [1996] Regulations need amending? If you disagree please say why. If you agree, are you content with the proposed approach as set out in Option 3, or would you prefer an alternative approach?
- **Consultation Question 7:** Do you agree or disagree with the investment information that would be prescribed under Option 3? If you think additional information should be prescribed, could you please say (i) what this information is, (ii) why it should be prescribed and (iii) what the impact that prescribing this information would have on scheme costs (i.e. would there be a further reduction, or an increase, in scheme administration costs as a result)?
- **Consultation Question 8:** Do you have any comments on these estimated savings? If you think the cost savings would be higher or lower could you please provide your estimate of the impact that the proposed changes would have.
- **Consultation Question 9:** (i) Do you agree that large multi-employer schemes should be exempt from the requirement for an auditor's statement? (ii) Is at least 20 participating employers the right number on which to base this exemption? (iii) Can you provide any information on likely savings from this change?
- **Consultation Question 10:** Do you have any comments on any aspect of these draft regulations?

Summary of responses

Investment disclosure

21. Twenty two responses were received on these proposed changes, and there was unanimous agreement that the investment disclosure requirements need amending.
22. In response to the suggested approach (Option 3) twenty one respondents made comments. The majority (twelve) supported or were content with the proposed approach. A further three were content with either Option 2 or Option 3. Six respondents preferred Option 2. No respondent preferred Option 1, although one respondent advised that they would prefer Option 1 if Option 3 was rejected.
23. In response to consultation Question 7, no respondent suggested any additional information that should be prescribed under Option 3.
24. In considering the three disclosure requirements that would be prescribed under Option 3, there were a range of views. The majority supported the proposed disclosures as provided for in Option 3. Some others, whilst generally supportive, questioned the need for all three of the investments that would continue to be prescribed under this option, providing views on those that could be removed or how the wording describing the investment might be amended.
25. Whilst no respondent provided any overall alternative estimated cost savings figures that could result from these proposed amendments to the 1996 Regulations, respondents to Question 8 generally agreed that there would be a reduction in scheme administration costs. One respondent estimated that the proposed changes would save it approximately £1,000 p.a. plus a small saving in audit fees.
26. In considering the draft regulations at Annex B of the consultation, respondents made a number of comments on the drafting, suggesting a number of amendments and seeking clarification on specific points, including:
 - Clarification of the date when the amendments would apply (the draft regulations (Regulation 1) provided that the amendments to the 1996 Regulations would come into force on 1 April 2016).
 - Respondents also suggested that the drafting in what would become new regulation 3A(6) of the 1996 Regulations needed amending. This provision covers the requirement for the scheme auditor to provide a statement confirming that the accounts have been prepared in accordance with applicable UK financial reporting standards and the applicable SORP. It was suggested that the draft wording should be amended to cover the possibility of a future mismatch between the requirements in the

accounting standards and the guidance in the SORP, making it clear that should this situation occur the requirements in the financial standard take precedence over any conflicting guidance in the SORP. It was also suggested that the requirement in new regulation 3A(6) could be better expressed if it followed the approach taken in The Companies Act 2006 for the audit of company accounts.

Auditor's statement about contributions

27. Nineteen of the total number of respondents to the consultation expressed an opinion on this proposal. The vast majority of these either supported the proposal wholeheartedly or supported the underlying principles but suggested some changes to scope. A couple of stakeholders also pointed out that the existing requirements were not consistent across the whole pensions landscape, as contract based schemes did not have these requirements.
28. A very small number of respondents did not think that amending the regulations in this way was necessary as they thought that the additional work in producing this statement was minimal. One respondent in particular thought that this statement was a valuable check to allow members to be confident that contributions had been paid over.
29. On the question of whether 20 was the appropriate number there were a variety of views expressed. Four respondents thought that the exemption should apply to all schemes, (in other words including single-employer schemes). This was on the basis that if the internal controls were robust enough for larger schemes then the same argument should also apply to all schemes. These respondents said that there were costs involved in having to produce an auditor's statement for smaller schemes as well as larger ones, and thus it was unfair that only the larger schemes should benefit from an exemption.
30. Just over a third of the respondents thought that this exemption should apply to all multi-employer schemes rather than just those with 20 or more participating employers. One respondent in particular mentioned that sometimes schemes with a large number of employers are managed by a single payroll and conversely smaller ones can have divisionalised payrolls. A small number of respondents thought that the use of any limit might cause schemes to deliberately alter their membership to move in or out of scope or try to exploit the system to get out of the requirement altogether. A small number also thought that 20 was an arbitrary figure and pitched too low – but we did not receive any responses which suggested what an alternative suitable figure might be.
31. One respondent also thought we should be looking at something different to the number of employers – for example a limit based on the size of the scheme at the start of the year. A couple of respondents thought we should use a different definition of multi-employer scheme, perhaps mirroring the definition in the governance provisions which, broadly speaking, excluded those schemes where the employers are part of the same corporate group.

32. Some respondents mentioned more specific issues. For example, what to do about ear-marked schemes, where, if we removed the auditors' requirement there would be no requirement for interaction with auditors at all.
33. On the question about likely savings from this change, only nine respondents expressed a view. A small number thought the savings would be minimal. However, a large multi-employer scheme estimated the internal and external cost of providing this statement to be £375,000 in the first year and, that if their current rate of growth is maintained, they would expect these costs to increase substantially over time. Another large multi-employer scheme pointed out that large multi-employer schemes were never able to meet these requirements in full anyway and the cost of producing the statement as originally required would have been commercially unviable. A respondent also confirmed that this proposal would reduce the number of qualified reports.

Government response

Investment disclosure

34. Given the supportive nature of the majority of consultation comments, the Government has decided to proceed with its proposed approach (Option 3 in Chapter 4 of the consultation).
35. We have, however, made a number of small changes to the text of the regulations following the comments received. In particular we have revised the wording, in new Regulation 3A(6) of the 1996 Regulations, requiring the auditor to provide a statement that the accounts have been prepared in accordance with the relevant financial reporting framework applicable to occupational pension schemes current as at the end of the scheme year to which the accounts relate. This revision adopts the approach taken for company accounts which will also resolve concerns about a future mismatch between the financial standard and guidance, and cover future changes to the financial reporting framework.
36. We considered whether further clarification on the date that the amendments to the investment disclosure provisions would come into force was required in Regulation 1, including whether we should specify the financial year ends, or beginning, that would fall under the amended provisions. Our conclusion was that this was not needed. As amended, Regulation 2(1)(a) of the 1996 Regulations places a duty on trustees or managers to obtain accounts, which have been prepared in accordance with Regulation 3 of those regulations, and which contain the information specified in the inserted regulation 3A, within seven months of the end of the scheme year (as defined).
37. Consequently, with effect from 1 April 2016, the duty placed on trustees and managers to obtain audited accounts is to comply with the requirements of the 1996 Regulations as amended and, as such, our view is that this is clear and

does not therefore require further clarification.

Auditor's statement about contributions

38. Having considered the responses carefully we intend to proceed with the proposed approach. In schemes with a large number of participating employers, we believe the effort involved in producing the statement of contributions is disproportionate to the risk to members. Provisions introduced since 1996 provide assurance for members; for example there is now a statutory requirement for schemes to have adequate internal controls, which covers controls on administrative processes including financial transactions. There are also specific regulatory requirements around monitoring the flow of contributions.
39. We accept that it is difficult to establish the ideal limit for the number of participating employers in multi-employer schemes to determine compliance with the requirements for an auditor's statement of contributions; the figure of 20 was based on what we considered to be a reasonable threshold for removing this requirement. We wanted to remove the burden for larger schemes because in general, the more employers there are, the more likely it would be that the auditor will not be able to provide the statement of contributions.
40. We also appreciate that the statutory internal controls apply to all sizes of scheme not just the larger ones, but we still think that the auditor's statement provides a helpful level of assurance for smaller schemes. If a smaller scheme has difficulties in providing information to the auditor that may even point to inefficiencies in the scheme itself rather than the fact that there are a variety of different payroll systems in operation. We also understand that in general the number of employers does relate directly to the number of payrolls in operation, although we accept that there will be smaller schemes with divisionalised payrolls and larger ones with single payrolls.
41. It is also important to note that this proposal is not intended to remove a layer of protection as such, the point at issue is that in many cases it is practically impossible for auditors to complete the statement of contributions where they are dealing with schemes with many participating employers.
42. We propose that the definition refers to the number of *employers* rather than any other factor as it is the number of employers that is key to how easy it is for auditors to obtain this statement.
43. On balance, we consider that the best course of action would be to have 20 employers as we originally proposed; it is the number of employers that is the key factor as to whether the auditor can provide the statement, and so we would not want to pitch this figure too low. We accept that there are pros and cons with

setting any figure for the number of participating employers, and we think that on balance, a figure of at least 20 is reasonable.

44. We also propose that the definition should not be refined further to reflect the definition in the governance provisions – we would want all large multi-employer schemes to benefit from this easement including group schemes.
45. Earmarked schemes are DC schemes where all the benefits are secured by an insurance policy and under the umbrella of the policy each member accumulates an individual pension fund. We understand that these are largely historic schemes and so do not propose to exempt these schemes from this easement.
46. We therefore propose to amend the 1996 Regulations to exempt multi-employer schemes with at least 20 participating employers from the requirement for an auditor's statement of contributions.
47. The Department will publish an impact assessment alongside the regulations.

Review of the 1996 Regulations as amended

48. The Small Business, Enterprise and Employment Act 2015 places a statutory duty on UK Government Ministers to either include review provisions in secondary legislation that regulates business or else publish a statement that it is not appropriate to do so.
49. We consider that it would be appropriate to review the 1996 Regulations as amended and Regulation 3 of the amending regulations therefore requires the Secretary of State to review the operation and effect of the 1996 Regulations as amended and publish a report within five years of the amendments coming into force and within every five years after that.
50. Following a review it will fall to the Secretary of State to consider whether the 1996 Regulations as amended should remain as they are, or be revoked or amended (a further Statutory Instrument would be needed to revoke or amend them).

Next steps

51. The Government would like to thank all the organisations who have offered their views and advice in response to this consultation. Having considered these comments the Government decided to proceed with the proposed approach as set out in Chapter 4 of the consultation document, and has made and laid regulations before Parliament (The Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) (Amendment)

Regulations 2016 (SI 2016/229) which amends the 1996 Regulations in line with the draft regulations attached to the consultation document.

These regulations are available on the UK Legislation website:

<http://www.legislation.gov.uk/uksi/2016/229/contents/made>

This government response is available on the GOV.UK website:

<https://www.gov.uk/government/consultations/occupational-pensions-reducing-regulatory-burdens-and-minor-regulation-changes>

Annex A: Respondents to Chapter 4 of the consultation

Aon Hewitt

Association of Consulting Actuaries

Association of Member Nominated Trustees

Association of Pension Lawyers

Association of School and College Leaders

Aviva

B&CE

BT Pension Scheme

Church of England Pensions Board

Deloitte LLP

Financial Reporting Council

Institute of Chartered Accountants in England and Wales

KPMG LLP

Mercer

NOW: Pensions

Pensions and Lifetime Savings Association

Pension Protection Fund

Pension Research Accountants Group

PriceWaterhouseCoopers LLP

RSM UK

Superannuation Arrangements of the University of London

Society of Pension Professionals

Transport for London