

2016 No. 171

PENSIONS

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

Made - - - - - *16th March 2016*

Coming into operation - - - - - *6th April 2016*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by section 51(6) of, and paragraphs 1(1), (3) and (5) and 3(1) and (2) of Schedule 18 to, the Pensions Act (Northern Ireland) 2015^(a).

Citation and commencement

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

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

2. The Occupational Pension Schemes (Charges and Governance) Regulations (Northern Ireland) 2015^(b) are amended in accordance with regulations 3 to 10.

Amendment of regulation 2

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

(a) after the definition of “the administration Regulations” insert—

““adviser” is a person described in regulation 11A(3);”;

(b) after the definition of “qualifying scheme” insert—

““qualifying scheme employer” means an employer in relation to whom a scheme is a qualifying scheme in relation to at least one of its jobholders;”;

(c) after the definition of “relevant small scheme” insert—

““service provider” means a person who provides an administration service directly to the trustees or managers of a specified scheme;”;

(d) after the definition of “single charge structure” insert—

““specified scheme” means a relevant scheme in which at least one qualifying scheme employer participates;”.

(a) 2015 c. 5 (N.I.)
(b) S.R 2015 No. 309

Amendment of regulation 4

- 4.—(1) In regulation 4 (restrictions on charges)—
- (a) in paragraph (1)(b) after “this Part” insert “ with the exception of regulation 11A”;
 - (b) after paragraph (1) insert—

“(1A) Subject to regulation 11C, a service provider must not impose or permit to be imposed, on a member to whom regulation 11A applies charges which are of a description prohibited by that regulation.”;
 - (c) in paragraph (2) for “regulation 11” substitute “regulations 11 and 11A”.

Insertion of regulations 11A to 11C

5. After regulation 11 (non-contributing members) insert—

“Payments to advisers

11A.—(1) This regulation applies to a member of a specified scheme if the member is, or was, a worker of a qualifying scheme employer who participates, or has participated on or after 6th April 2016 in that scheme.

(2) Subject to paragraphs (4) and (6) and regulations 11B(2) and 11C, it is prohibited for the purposes of regulation 4(1A) to impose or permit to be imposed, on a member to whom this regulation applies, a charge that is used—

- (a) directly or indirectly, to pay an adviser, or
- (b) to reimburse the service provider for a payment that the service provider has made to an adviser,

for advice or a service referred to in paragraph (3)(a) or (b).

(3) An adviser is a person who provides, has provided, or agrees to provide—

- (a) advice or a service to the member’s employer or former employer who is participating in the specified scheme, or
- (b) advice or a service to a member of the specified scheme.

(4) This regulation does not apply to the following services provided by an adviser—

- (a) a service relating to the administration of employee remuneration including tax deductions, and
- (b) a technological service which permits or enhances the ability of the service provider’s computing system and the computing system provided by or on behalf of the employer to work together.

(5) Where the adviser is also the service provider, they are to be treated as separate persons for the purposes of this regulation.

(6) This regulation does not apply to charges imposed under an agreement, whether oral or written and whether or not legally enforceable, entered into before 6th April 2016, unless such an agreement is varied or renewed on or after that date.

Relevant information

11B.—(1) The trustees or managers of a specified scheme must notify the service provider in writing that the scheme is a specified scheme within 3 months beginning with whichever is the latest of—

- (a) 6th April 2016;
- (a) the date on which the scheme becomes a specified scheme, or
- (b) the date on which the service provider becomes a service provider in relation to the specified scheme.

(2) Subject to paragraph (4), regulation 11A does not apply until the expiry of the period of one month beginning with the date on which the service provider receives the notification in paragraph (1).

(3) The service provider must confirm in writing to the trustees or managers who provided the notification in paragraph (1) that it is compliant with the prohibition in regulation 11A(2) in relation to all members to whom that regulation applies within one month beginning with the date on which that regulation first applies.

(4) Where the service provider is unable to comply with the prohibition in regulation 11A(2) in relation to all members because the service provider requires information about which members are former workers to whom regulation 11A applies, the service provider may request the information from the trustees or managers of the specified scheme to enable it to comply.

(5) Where a request is made under paragraph (4), the time period referred to—

- (a) in paragraph (2) in respect of those members about whom a request has been made and to whom regulation 11A applies, or
- (b) in paragraph (3),

commences on the date on which the information requested is received by the service provider.

(6) The service provider must inform the trustees or managers of the specified scheme in writing if the confirmation that it has given in compliance with paragraph (3) is no longer accurate, as soon as practicable, and in any event within one month, beginning with the date on which it is no longer accurate.

(7) Where a request is made under paragraph (4), the trustees or managers must provide the information requested within one month beginning with the date of receipt of the request.

Member agreement for payments to advisers

11C.—(1) Subject to paragraphs (3) and (4), the prohibition in regulation 11A(2)(a) does not apply in relation to advice or a service given to a member of a specified scheme where—

- (a) the service provider, and
- (b) the trustees or managers of the specified scheme,

have received a copy of an agreement for the provision of that advice or service made between the member and an adviser, provided the conditions in paragraph (2) are satisfied.

(2) The conditions referred to in paragraph (1) are that the agreement must—

- (a) be in writing;
- (b) include a description of the advice or service that shall be provided to the member;
- (c) state that entering into the agreement is not a condition of becoming or remaining a member of a specified scheme;
- (d) state that by entering into the agreement the member shall incur charges of an amount specified in the agreement which shall be imposed over a period specified in the agreement and that such charges would otherwise not be permitted under regulation 11A(2)(a), and
- (e) be entered into before the charges are imposed.

(3) Where the charge limits apply to a member and the trustees or managers are of the opinion that charges imposed under an agreement under this regulation would be likely to place the trustees or managers in breach of those limits in relation to that member, the trustees or managers may inform—

- (a) the member;
- (b) the adviser, and

- (c) the service provider,

within one month beginning with the date on which they receive a copy of the agreement under this regulation, that they require that a member agreement for services under regulation 9 is entered into by the member before the agreement under this regulation can take effect.

(4) Where the trustees or managers are of the opinion that the value of the member's rights in the scheme is not or will not be sufficient to pay the amount specified in an agreement under this regulation, the agreement does not take effect if the trustees or managers inform—

- (a) the member;
- (b) the adviser, and
- (c) the service provider,

of their opinion within one month beginning with the date on which they receive a copy of the agreement.

- (5) In this regulation, “charge limits” has the meaning given in regulation 10(10).”.

Amendment of regulation 26

6.—(1) Regulation 26 (compliance notices) is amended in accordance with paragraphs (2) to (5).

(2) In paragraph (1) for “the trustees or managers” substitute “a person”.

(3) in paragraph (2)—

- (a) in sub-paragraph (a) for “trustees or managers have” substitute “person has”, and
- (b) in sub-paragraph (b) for “trustees or managers are not complying with, or have not complied with,” substitute “person is not complying with, or has not complied with,”;

(4) In paragraphs (3) and (6)(b), (c), and (e) for “trustees or managers” substitute “person”.

(5) In paragraph (6)(d) for “trustees or managers have” substitute “person has”.

Amendment of regulation 27

7.—(1) Regulation 27 (third party compliance notices) is amended in accordance with paragraphs (2) and (3).

(2) In paragraph (1)(a) for “someone other than the trustees or managers” substitute “another person”, and

(3) In paragraph (2)—

- (a) in paragraph (1)(a) for “trustees or managers have” substitute “person has”;
- (b) in sub-paragraph (b) for “trustees or managers are” substitute “person is”;
- (c) in sub-paragraph (c) for “trustees or managers are not complying with, or have not complied with,” substitute “person is not complying with, or has not complied with,”.

Amendment of regulation 28

8.—(1) Regulation 28 (penalty notices) is amended in accordance with paragraphs (2) and (3).

(2) In paragraph (1)(b) for “the trustees or managers where it is of the opinion that they have” substitute “a person where it is of the opinion that the person has”.

(3) Omit paragraphs (5)(b) and (6).

Substitution of regulation 30

9. For regulation 30 (penalty notices: recovery from bodies corporate) substitute—

“Penalty notices: recovery from bodies corporate

30.—(1) Where—

- (a) a penalty under regulation 28 is recoverable from a body corporate by reason of any act or omission of the body, and
- (b) the act or omission was done with the consent or connivance of, or is attributable to any neglect on the part of, any persons mentioned in paragraph (2),

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

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

- (a) any director, manager, secretary, or other similar officer of the body, or a person purporting to act in any such capacity, and
- (b) where the affairs of a body corporate are managed by its members, any member who has management functions.

(3) Where the Regulator requires any person mentioned in paragraph (2) to pay a penalty, it—

- (a) may not also require the body corporate in question to pay a penalty in respect of the same act or omission, and
- (b) must issue the penalty notice to the person who is required to pay, but may also notify the relevant body corporate.”.

Insertion of regulation 33

10. After regulation 32 (references to first-tier tribunal or upper tribunal) add—

“Service of notices

33. Articles 2(7)(a), 277 and 278 of the 2005 Order (service of documents and electronic working) are treated as applying to notices issued under Part 4 of these Regulations.”.

Sealed with the Official Seal of the Department for Social Development on 16th March 2016

(L.S.)

Anne McCleary
A senior officer of the Department for Social Development

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Occupational Pension Schemes (Charges and Governance) Regulations (Northern Ireland) 2015 (“the 2015 Regulations”).

Regulation 3 inserts definitions into regulation 2(1) of the 2015 Regulations, including definitions of “adviser” and “service provider”.

Regulation 4 makes consequential amendments to the 2015 Regulations.

Regulation 5 inserts regulations 11A to 11C into the 2015 Regulations.

Regulation 11A sets out that charges may not be imposed on members of certain occupational pension schemes where they are used to pay an adviser or to reimburse the service provider for a payment that they have made to an adviser. The duty to comply with regulation 11A is placed on service providers to those schemes.

Regulation 11B sets out requirements for information to be shared between the trustees and managers of those schemes and their service providers. The requirements of regulation 11A do not apply until the expiry of one month beginning with the date on which the trustees or managers provide the notification required by paragraph (1).

Regulation 11C provides that, subject to certain exceptions, the member can enter into an agreement with the adviser to pay charges that would otherwise be prohibited by these Regulations.

Regulations 6 to 9 make consequential and technical amendments to the compliance provisions in Part 4 of the 2015 Regulations. Regulation 10 sets out that the service provisions in Articles 2(7)(a), 277 and 278 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) apply for the purpose of service of notices in the 2015 Regulations.

The Pensions (2015 Act) (Commencement No. 1) Order (Northern Ireland) 2015 (S.R. 2015 No. 307 (C. 25)) provides for the coming into operation of Schedule 18 to the Pensions Act (Northern Ireland) 2015, which contains some of the enabling provisions under which these Regulations are made, on 16th July 2015.

As these Regulations make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Work and Pensions in relation to Great Britain, the requirement for consultation does not apply by virtue of paragraph 8 of Schedule 18 to the Pensions Act (Northern Ireland) 2015.

An assessment of the impact of these Regulations is detailed in a Regulatory Impact Assessment, a copy of which has been laid in the Business Office and the Library of the Northern Ireland Assembly. Copies of the Assessment are available from the Department for Social Development, Social Security Policy and Legislation Division, Level 1, James House, 2-4 Cromac Avenue, Gasworks Business Park, Ormeau Road, Belfast BT7 2JA or from the website: <https://www.dsdni.gov.uk/articles/pension-information>. A copy of the Assessment is also annexed to the Explanatory Memorandum which is available alongside this Statutory Rule on the website: <http://www.legislation.gov.uk/nisr>.

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