
STATUTORY INSTRUMENTS

2016 No. 304

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

New regulations 11A to 11C

6. 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 sub-paragraph (a) or (b) of paragraph (3).

(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 later of—

- (a) 6th April 2016;

- (b) the date on which the scheme becomes a specified scheme; or
- (c) 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 1 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 1 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 1 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 1 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 will 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 will incur charges of an amount specified in the agreement which will 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, they may inform—

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

within 1 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 1 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).”.