

**EXPLANATORY MEMORANDUM TO**  
**THE OCCUPATIONAL PENSION SCHEMES (CHARGES AND GOVERNANCE)**  
**(AMENDMENT) REGULATIONS 2015**

**2015 No. 889**

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
  - 2.1 The Occupational Pension Schemes (Charges and Governance) Regulations 2015 (S.I. 2015/879) (“the original Regulations”) introduce measures aimed at protecting members of occupational pension schemes which offer money purchase benefits. These measures include a cap on charges in the default arrangements within these schemes. This instrument makes an amendment to the treatment of certain contributions (Additional Voluntary Contributions) under the charge cap.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 The original Regulations are due to come into force on 6 April 2015<sup>1</sup>. Unfortunately, it has very recently come to light that they do not function as intended in one respect. These Regulations (“the amending Regulations”) are therefore needed to ensure that the provisions function in line with industry preparations. The amending Regulations attract the negative procedure and are therefore subject to the 21 day rule. However, due to the need to bring the amending Regulations into force at the same time as the original Regulations, we regret that this statutory instrument will breach the 21 day rule.
4. **Legislative Context**
  - 4.1 As the Government moves towards its goal of around 10 million workers newly saving, or saving more into workplace pensions, it is introducing measures to ensure those savings are protected from high or unfair charges. The original Regulations seek to protect members of relevant occupational pension schemes by placing obligations on trustees and managers in relation to charges imposed on certain members of those schemes and how those schemes are governed.
  - 4.2 These amending Regulations make a change to the treatment of Additional Voluntary Contributions under the original Regulations to deliver the previously published policy intent.
5. **Territorial Extent and Application**
  - 5.1 This instrument applies to Great Britain. The Department for Social Development in Northern Ireland will be producing legislation equivalent to the original Regulations as amended by the amending Regulations for Northern Ireland.

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<sup>1</sup> With the exception of Regulations 11 and 23, and the words “with the exception of regulation 11” in regulation 4(2), which come into force on 6 April 2016.

## 6. European Convention on Human Rights

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

### What is being done and why

- 7.1 The original Regulations include a range of measures aimed at controlling the level and range of charges in pension schemes which are used by employers to meet their automatic enrolment duties ('qualifying schemes'). These include a cap on charges that may be imposed on members in the default arrangements within these schemes. The cap will be set at 0.75 per cent annually of funds under management, or an equivalent combination charge, and will apply from 6 April 2015.
- 7.2 The charge cap is intended to protect those savers who have had little or no engagement with their pension savings. That is why it applies to default arrangements. 'Default arrangement' is defined in regulation 3 of the original Regulations in accordance with 3 'tests' set out in paragraph (2) of that regulation. The first of those tests reflects what is usually meant by the term 'default arrangement', as it applies where the member has not expressed a choice as to where his or her contributions are allocated (i.e. the investments were selected automatically for the member on joining the scheme). The other two tests (in paragraph (2)(b) and (c)) require a minimum percentage of workers to be contributing to the arrangement.
- 7.3 The problem the amending Regulations rectify occurs in the first test (paragraph 3(2)(a)) and is discussed in more detail in paragraphs 7.3 – 7.9 below. The amending Regulations insert into regulation 3(6) a provision which expressly provides that an arrangement will not be a default arrangement for the purposes of the original Regulations (and therefore cannot be subject to the charge cap) if it only receives Additional Voluntary Contributions.

### Additional Voluntary Contributions

- 7.4 In our February command paper, *Government response to the consultation on Better workplace pensions: Putting savers' interests first*<sup>2</sup>, the Government confirmed that an arrangement established for the purpose of receiving Additional Voluntary Contributions (AVCs) would not generally meet the criteria to be defined as a default arrangement subject to the charge cap.
- 7.5 AVCs are voluntary payments which savers may choose to make to build up extra savings for retirement. In most cases, members making AVCs are required to choose the arrangement in which their AVCs are invested.
- 7.6 In the February paper, we explained that the only circumstance in which AVCs could be subject to the charge cap was where a particular arrangement is both used by a qualifying scheme to fulfil an employer's automatic enrolment duties in respect of at least one employee, and second, meets the definition of a default (as defined in regulation 3(2)). Where this happens, workers of that employer who have chosen to make AVCs which are invested in the same arrangement would also be protected by the charge cap. This was intended to ensure parity of treatment,

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<sup>2</sup> Department for Work and Pensions, February 2015, Government response to the consultation on Better workplace pensions: Putting savers' interests first, Cm 9000, TSO.

such that employees of the same employer, contributing to the same arrangement in the same scheme should pay the same charges.

- 7.7 This would mean that no arrangement solely receiving AVCs would be subject to the charge cap.
- 7.8 However, it has recently come to light that there is one additional scenario in which AVCs may be subject to the default fund charge cap. This could potentially affect arrangements where the AVCs meet the following criteria:
- They are money purchase AVCs (broadly speaking, ‘money purchase benefits’ are benefits where the rate or amount of the benefit is based on the member’s contributions and investment returns, less charges) which are made within a scheme used by an employer to meet their duties under automatic enrolment (‘qualifying schemes’)
  - They are made to an arrangement which *only* receives AVCs
  - The members making AVCs did not express a choice as to the arrangement in which these contributions were invested
- 7.9 Although we understand that this scenario is rare and so unlikely to affect many schemes, this impact was not intended and trustees and managers will have been preparing for the introduction of the charge cap on the basis that such arrangements would not be in scope.
- 7.10 The amending Regulations therefore achieve the policy intent as outlined in the February command paper that no arrangement solely receiving contributions which are AVCs will be a ‘default arrangement’ subject to the charge cap. Since the amending Regulations are to meet the policy intent set out in that command paper, this statutory instrument will be issued free of charge.

## Scope

- 7.11 The amending Regulations have the same scope as the charges measures contained in the original Regulations.
- 7.12 These Regulations apply to those occupational schemes offering money purchase benefits which are qualifying schemes.
- 7.13 Some schemes are not covered by the charges measures. These include small self-administered schemes and executive pension schemes<sup>3</sup>. In these cases we expect there to be a higher level of member engagement so legislative protections are less necessary.

## Consolidation

- 7.14 Informal consolidated text of instruments is available to the public free of charge via ‘The Law Relating to Social Security’ (Blue Volumes) on the Department for Work and Pensions website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/> or the National Archive website [legislation.gov.uk](http://legislation.gov.uk). An explanation as to which instruments are maintained on each site is available here.”

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<sup>3</sup> Where a company is both the only employer in relation to the scheme and the sole trustee, and the members of the scheme are either current or former directors of that company and include at least one-third of the current directors.

## **8. Consultation outcome**

- 8.1 The Government consulted publicly on this amendment between 18 and 24 March 2015. We received 6 written responses from industry bodies, pension providers and legal firms. All those respondents who commented on our policy intent were supportive of excluding arrangements solely receiving AVCs from the charge cap.
- 8.2 As respondents supported this change and agreed that the draft amendment on which we consulted met the policy intent, no changes to the Regulations on which we consulted have been made.
- 8.3 The Government response to this consultation, can be found at: <https://www.gov.uk/government/consultations/occupational-pensions-additional-voluntary-contributions-under-the-charge-cap>
- 8.4 This consultation follows an extensive series of consultations on the charges and governance measures throughout 2013 and 2014.

## **9. Guidance**

- 9.1 DWP Guidance on the default fund charge cap will be updated to reflect this amendment in due course.<sup>4</sup>

## **10. Impact**

- 10.1 An impact assessment for the charges measures has been produced and was re-published alongside the Explanatory Memorandum to the original Regulations on [www.legislation.gov.uk](http://www.legislation.gov.uk).
- 10.2 These amending Regulations do not alter the impacts contained in the impact assessment.

## **11. Regulating small business**

- 11.1 A Small and Micro Business Assessment was included in the charges impact assessment. This was covered in more detail in the Explanatory Memorandum accompanying the original Regulations.
- 11.2 The amending Regulations do not alter the previously published Small and Micro Business assessment.

## **12. Monitoring & review**

- 12.1 There is no planned evaluation of the policy as reflected in this Statutory Instrument.
- 12.2 In 2017, the Government and regulators will conduct a post-implementation review of the charges and governance measures to assess their effectiveness in protecting savers from high and unfair charges, improving governance in members' interests and increasing transparency of costs and charges.

## **13. Contact**

- 13.1 Megan Rooney at the Department for Work and Pensions (Tel: 02074495008 or email [megan.rooney@dwpgsi.gov.uk](mailto:megan.rooney@dwpgsi.gov.uk)) can answer any queries regarding the instrument.

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<sup>4</sup> <https://www.gov.uk/government/publications/the-charge-cap-guidance-for-trustees-and-managers-of-occupational-schemes>