

**2016 No. 304**

**PENSIONS**

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

*Made* - - - - *29th February 2016*

*Laid before Parliament* *8th March 2016*

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

The Secretary of State for Work and Pensions, in exercise of the powers conferred by section 54(5) and (6) of, and paragraphs 1(1), (3) and (5) and 3(1) and (2) of Schedule 18 to, the Pensions Act 2014(a), makes the following Regulations.

In accordance with paragraph 8 of Schedule 18 to the Pensions Act 2014, the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

**Citation and commencement**

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

**Amendment of the Occupational Pension Schemes (Charges and Governance) Regulations 2015**

2. The Occupational Pension Schemes (Charges and Governance) Regulations 2015(b) are amended as follows.

**Amendment of regulation 2**

3. In regulation 2(1) (interpretation), insert in the appropriate alphabetical places—

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

““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;”;

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

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

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(a) 2014 c. 19.

(b) S.I. 2015/879. These Regulations were amended by S.I. 2015/889.

#### **Amendment of regulation 4**

- 4.—(1) Regulation 4 (restrictions on charges) is amended as follows.
- (2) In paragraph (1)(b), after “this Part” insert “, with the exception of regulation 11A”.
- (3) 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.”.
- (4) In paragraph (2), for “regulation 11” substitute “regulations 11 and 11A”.

#### **Amendment of regulation 10**

5. In regulation 10(8) (charge limits adjustment), for “should” substitute “must”.

#### **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)."

#### **Amendment of regulation 26**

7.—(1) Regulation 26 (compliance notices) is amended as follows.

(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**

8.—(1) Regulation 27 (third party compliance notices) is amended as follows.

(2) In paragraph (1)—

- (a) in sub-paragraph (a), for "someone other than the trustees or managers" substitute "another person"; and
- (b) in sub-paragraph (b), before "Part 2" omit "a".

(3) In paragraph (2)—

- (a) in sub-paragraph (a), for "trustees or managers have" substitute "person has";
- (b) in sub-paragraph (b), for "trustees or managers are" substitute "person is"; and
- (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**

9.—(1) Regulation 28 (penalty notices) is amended as follows.

(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 (c) and (6).

### **Substitution of regulation 30**

**10.** For regulation 30 (penalty notices: recovery from bodies corporate and Scottish partnerships) substitute—

#### **“Penalty notices: recovery from bodies corporate and Scottish partnerships**

**30.**—(1) Where—

- (a) a penalty under regulation 28 is recoverable from a body corporate or 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 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) in relation to a body corporate—
  - (i) any director, manager, secretary, or other similar officer of the body, or a person purporting to act in any such capacity; and
  - (ii) where the affairs of a body corporate are managed by its members, any member who has management functions; and
- (b) in relation to a Scottish partnership, the partners of that partnership.

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

- (a) may not also require the body corporate, or Scottish partnership, 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 or Scottish partnership.”.

### **Amendment of regulation 32**

**11.** For regulation 32(4) (references to First-Tier Tribunal or Upper Tribunal) substitute—

“(4) For the purposes of paragraph (3)(c), a reference is completed when—

- (a) the reference has been determined; and
- (b) the Tribunal has remitted the matter to the Regulator.”.

### **New regulation 33**

**12.** After regulation 32 insert—

#### **“Service of notices**

**33.** Sections 303 to 305 of the Pensions Act 2004(a) (service of documents and electronic working) are treated as applying to notices issued under Part 4 of these Regulations.”.

### **Review**

**13.**—(1) The Secretary of State must from time to time—

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(a) 2004 c. 35. Sections 303 to 305 of the Pensions Act 2004 have been modified by section 144A of the Pensions Act 2008 (c. 30), which was inserted by section 36 of the Pensions Act 2011 (c. 19).

- (a) carry out a review of these Regulations;
  - (b) set out the conclusions of the review in a report; and
  - (c) publish the report.
- (2) The report must in particular—
- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
  - (b) assess the extent to which those objectives are achieved; and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (3) The first report under this regulation must be published before 6th April 2021.
- (4) Reports under this regulation are afterwards to be published at intervals not exceeding 5 years.

Signed by authority of the Secretary of State for Work and Pensions

*Altmann*  
Minister of State,  
Department for Work and Pensions

29th February 2016

#### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Occupational Pension Schemes (Charges and Governance) Regulations 2015 (S.I. 2015/879) (“the Principal Regulations”).

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

Regulation 4 makes consequential amendments to the Principal Regulations and regulation 5 corrects a typographical error.

Regulation 6 inserts new regulations 11A to 11C into the Principal 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 1 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 7 to 10 make consequential and technical amendments to the compliance provisions in Part 4 of the Principal Regulations. Regulation 11 corrects a formatting error in the Principal Regulations. Regulation 12 sets out that the service provisions in sections 303 to 305 of the Pensions Act 2004 (c. 35) apply for the purpose of service of notices in the Principal Regulations.

Regulation 13 requires the Secretary of State to review the operation and effect of these Regulations and to publish a report every 5 years. Following a review, it will fall to the Secretary of State to consider whether these Regulations should remain as they are, be revoked or be amended. A further instrument would be needed to revoke or amend these Regulations.

An assessment of the impact of the regulations in this instrument on the private sector and civil society organisations has been made. A copy of the impact assessment is available in the libraries of both Houses of Parliament and alongside this instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk). Copies may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D, Caxton House, Tothill Street, London SW1H 9NA.

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