

EXPLANATORY MEMORANDUM TO
THE OCCUPATIONAL PENSION SCHEMES (CHARGES AND GOVERNANCE)
(AMENDMENT) REGULATIONS 2016

2016 No. 304

1. Introduction

1.1 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 This instrument amends the Occupational Pension Schemes (Charges and Governance) Regulations 2015 (the “Charges and Governance Regulations”) http://www.legislation.gov.uk/uksi/2015/879/pdfs/uksi_20150879_en.pdf to implement a ban on new member-borne commission arrangements¹ in occupational pension schemes used as qualifying schemes for automatic enrolment from 6 April 2016. In doing so, this instrument protects members of these schemes from commission charges by preventing service providers from levying a charge on pension scheme members to recover the costs of payments made to advisers for advice or services to members or employers under new commission arrangements. This ban in part fulfils the announcement made by the then Government in March 2014² to introduce a range of charge control measures for workplace pensions. The next step will be to ban charges from being levied on members under existing commission arrangements³ and the Government intends to consult on this in due course.

2.2 This instrument also makes some minor changes to some of the compliance provisions in the Charges and Governance Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

¹ New member-borne commission arrangements refers to charges imposed on members under any commission agreement or contract entered into on or after 6 April 2016, which is when this instrument will come into force, as well as existing agreements that are renewed or varied on or after that date.

² ‘Better Workplace Pensions: further measures for savers’, DWP, March 2014, <https://www.gov.uk/government/consultations/better-workplace-pensions-a-consultation-on-charging>

³ Existing member-borne commission arrangements refers to charges imposed on members under any commission agreement or contract entered into before 6 April 2016.

4. Legislative Context

- 4.1 The Government announced in March 2014 it would introduce a range of measures designed to protect those saving in workplace pension schemes used for automatic enrolment. These measures included a ban on member-borne commission from April 2016.
- 4.2 The Charges and Governance Regulations, which came into force on 6 April 2015, implemented most of the measures announced in March 2014 in relation to occupational pension schemes that provide money purchase benefits and which are used for automatic enrolment. The Financial Conduct Authority made corresponding rules for workplace personal pension schemes used for automatic enrolment from April 2015.
- 4.3 This instrument amends the Charges and Governance Regulations to implement a ban on service providers imposing a charge on members to recoup payments that service providers have made to advisers for advice or services to members and employers under new commission arrangements in occupational pension schemes used for automatic enrolment from 6 April 2016.
- 4.4 Following a consultation titled “Better Workplace Pensions: reducing regulatory burdens, minor regulation changes, and response to consultation on the investment regulations”⁴ which ran from 12 November 2015 to 11 December 2015, this instrument also makes some minor changes to some of the compliance provisions in the Charges and Governance Regulations.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Great Britain.
- 5.2 The territorial application of this instrument is Great Britain.
- 5.3 Corresponding provision will be made in Northern Ireland.

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 Automatic enrolment will see 9 million people newly saving or saving more into a workplace pension scheme. This creates new responsibilities on Government and the pensions industry to protect savers and ensure that they are enrolled into good quality schemes that provide value for money and do not expose members to possible detriment.
- 7.2 Commission is typically charged for advice or services that have been agreed between a service provider (such as a pension provider or third-party administrator) and a financial adviser. The service provider remunerates the adviser and recoups this cost through charges that are paid by members. Commission may take the form of an up-

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476447/reducing-regulatory-burdens-and-misc-regs-nov-2015-consultation.pdf

front payment known as initial commission or an on-going payment commonly referred to as trail commission.

- 7.3 The Office of Fair Trading (OFT)⁵, in their 2013 market study into defined contribution workplace pension schemes, found that scheme members may not be aware that they are paying commission; and that commission could represent a barrier to an adviser recommending that an employer or trustees or managers switch to better value for money scheme if this would result in a loss of commission income. As a result, the OFT recommended that schemes that contain commission should not be used for automatic enrolment.
- 7.4 Following the OFT market study, the Government consulted in October 2013⁶ on a range of measures designed to protect savers who have been enrolled into a workplace pension scheme. These measures included a cap on charges and a ban on member-borne commission. In March 2014, the Government announced that it would introduce a range of measures to protect savers in workplace pension schemes used for automatic enrolment, including a ban on member-borne commission from April 2016.⁷
- 7.5 These measures, including the ban on member-borne commission, are designed to ensure that savers who are members of a workplace pension scheme used for automatic enrolment do not suffer detriment from high, unfair or hidden charges and costs. These measures are also intended to improve confidence in pension saving by ensuring that member protections are in place and work effectively.
- 7.6 Building on the Retail Distribution Review (RDR)⁸, the Financial Conduct Authority published rules in April 2015 that banned, in workplace personal pension schemes used as qualifying schemes for automatic enrolment, consultancy charges⁹ from this date and commission arrangements from April 2016 that had not been prohibited by the RDR.¹⁰

⁵ 'Defined contribution workplace pension market study', Office of Fair Trading, September 2013, http://webarchive.nationalarchives.gov.uk/20131101164215/http://www.offt.gov.uk/shared_offt/market-studies/oft1505

⁶ 'Better workplace pensions: a consultation on charging', DWP, October 2013, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254332/cm8737-pension-charges.pdf

⁷ 'Better Workplace Pensions: further measures for savers', DWP, March 2014, <https://www.gov.uk/government/consultations/better-workplace-pensions-a-consultation-on-charging>

⁸ The Retail Distribution Review (RDR), which was introduced on 31 December 2012, banned firms from offering or paying commission and advisers from seeking commission payments or receiving them. The ban covered new personal pensions, Group Personal Pensions and Group Stakeholder Pensions. However, whilst the ban meant no new commission arrangements could be set up members could still be enrolled into schemes with commission arrangements established before the ban took effect.

⁹ The RDR introduced consultancy charges, which are an up-front fee for advice services agreed between an employer and adviser with the cost of the advice service recovered through a member-borne charge.

¹⁰ <http://www.fca.org.uk/your-fca/documents/policy-statements/ps15-05>

- 7.7 In October 2015, the Government published the consultation ‘Better workplace pensions: Banning member-borne commission in occupational pension schemes.’¹¹ This consultation sought views on the most effective means of regulating to ban member-borne commission in occupational pension schemes that provide money purchase benefits and are being used for automatic enrolment.
- 7.8 After analysing the responses to the October 2015 consultation, the Government announced its intention to take a staged implementation to the member-borne commission ban, introducing a ban on charges levied on members under new commission arrangements from 6 April 2016, with a ban on charges levied on members under existing commission arrangements to follow. This approach introduces protection for members at the earliest possible date while allowing sufficient time to resolve the complex issues that arise in making regulations to ban charges from being levied on members under existing commission arrangements and to consult on these in due course.
- 7.9 The Government published its consultation response in January 2016 and launched a consultation on draft regulations to ban charges from being imposed on members under new commission arrangements in occupational pension schemes used for automatic enrolment from 6 April 2016. The consultation closed on 9 February and this instrument incorporates feedback from that consultation.

Consolidation

- 7.10 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: [National Archive website legislation.gov.uk](http://www.nationalarchives.gov.uk/legislation/) An explanation as to which instruments are maintained on each site is available from <http://www.dwp.gov.uk/docs/lawvolnews.pdf>.

8. Consultation outcome

- 8.1 The Government consulted in October 2015 on the most effective means of regulating to ban member-borne commission in occupational pension schemes used as qualifying schemes for automatic enrolment. The Government felt it was necessary and important to consult to test its understanding of how commission arrangements are structured in occupational pension schemes; and to understand how best to deliver the ban, given that trustees and managers of occupational pension schemes, on whom the Government generally places regulatory duties, are not party to commission arrangements between service providers and advisers. This consultation ran for five weeks.
- 8.2 As part of the consultation process, the Government held four roundtable sessions and invited attendees from the pensions industry, including service providers, trustees, advisers, asset managers, consultants, lawyers, and representative bodies. The Government also held a number of one-to-one sessions with stakeholders. This level of engagement was welcomed by stakeholders and played a fundamental part in finalising our policy approach. The Government received 22 written responses to its

¹¹ ‘Better Workplace Pensions: banning member-borne commission in occupational pension schemes’, DWP, October 2015, <https://www.gov.uk/government/consultations/banning-member-borne-commission-in-occupational-pension-schemes>

published consultation. The views set out in the responses were consistent with the feedback we received from the roundtable and one to one sessions. Many of those who attended these sessions also provided a formal response to the published consultation. Three respondents in particular commented that the consultation had been well-run. The vast majority of respondents – around 95% - agreed with the proposal that regulatory duties be placed on both service providers and trustees and managers.

- 8.3 Most respondents also agreed with our proposed approach to the scope of the ban, including the option for members to be given the choice to opt-in to advice or services they wished to be provided to them by an adviser. The majority of respondents also agreed that The Pensions Regulator should be responsible for enforcing the ban. However, many respondents differed on our proposal for a staged implementation of the ban preferring that the ban should be implemented in a single measure, in April 2016. Some respondents also suggested that the regulations should also prevent service providers from making commission payments to advisers.
- 8.4 Having carefully considered all the responses, the Government published its response to the October 2015¹² consultation in January 2016 and launched a short consultation on draft regulations. This consultation ran for two weeks. Given the degree of engagement with stakeholders, in particular with legal and industry representatives, during and after the October 2013 and October 2015 policy consultations; and the fact that the draft regulations incorporated policies that most respondents agreed with, we considered a two week consultation on draft regulations was proportionate.
- 8.5 The response explained that there would be a staged implementation of the ban, beginning with regulations banning members from being levied charges under new commission arrangements from April 2016 alongside the Financial Conduct Authority's rules for banning commission in workplace personal pension schemes used for automatic enrolment.
- 8.6 The Government received 12 responses to the consultation on draft regulations. The vast majority of respondents agreed that the draft regulations reflected the policy decisions announced in the Government's consultation response. There were several changes suggested by respondents, of which some have been incorporated into this instrument. Suggestions that were not included either were not required for the effective implementation of the ban in the Department's view, or related to a lack of understanding on how the regulations would work in practice. The Department is publishing some guidance to provide clarity in these areas.

9. Guidance

- 9.1 In response to feedback from the consultation and discussions with stakeholders, the Government has worked with The Pensions Regulator to produce guidance that will provide further clarity on certain areas of the regulations, including the definition of service provider. The Pensions Regulator will also be issuing communications to trustees or managers of occupational pension schemes used for automatic enrolment, and service providers, to help them prepare for the introduction of the regulations in April 2016. The guidance is available here:

¹² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/494887/banning-commission-regs-consultation-jan-2016.pdf

<https://www.gov.uk/government/publications/banning-member-borne-commission-in-automatic-enrolment-pension-schemes>.

10. Impact

- 10.1 An Impact Assessment setting out the ban on new and existing member-borne commission arrangements has been produced and shows that a ban on both categories of commission arrangement would impose an annual net cost to business of around £1.12m over a ten-year period. These regulations ban new member-borne commission arrangements and account for approximately £0.01m of the total cost. No impact on charities or voluntary bodies is foreseen.
- 10.2 Although public sector pension schemes that provide money purchase benefits and which are used as qualifying schemes for automatic enrolment will be subject to these regulations, we are not aware of any such public sector schemes.
- 10.3 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses where such small businesses are service providers or trustees or managers under the legislation. However, the Government anticipates that very few, if any, small businesses will be affected by the legislation.
- 11.2 No specific action is proposed to minimise regulatory burdens on small business.
- 11.3 The basis for the final decision on what action to take to assist small businesses is informed by the October 2013, October 2015 and January 2016 consultations the Government undertook. These confirmed the Government's understanding that small businesses are unlikely to be acting as service providers or trustees or managers and impacted by the legislation.

12. Monitoring & review

- 12.1 The Government will review these amendments to the Charges and Governance Regulations and publish the first report by 6 April 2021 (with subsequent reports to be published at least every five years).

13. Contact

- 13.1 Nada Balasingham at the Department for Work and Pensions, telephone: 0207 449 5276 or email: Nada.Balasingham@dwp.gsi.gov.uk can answer any queries regarding the instrument.