The Occupational Pension Schemes (Charges and Governance) (Amendment) Regulations 2017

Draft regulations

Introducing a cap on early exit charges for members in occupational pension schemes

and

Prohibiting existing member-borne commission charges in certain occupational pension schemes

Public consultation

April 2017

Contents

About this consultation

Purpose of the consultation

This consultation seeks views on the enclosed draft of The Occupational Pension Schemes (Charges and Governance) (Amendment) Regulations 2017, which would introduce restrictions on early exit charges for members of occupational pension schemes who are eligible to access the pension freedoms.

The regulations also restrict charges being imposed on members of certain occupational pension schemes to recoup the cost of commission payments made to advisers in relation to contracts entered into before 6 April 2016.

Who is this consultation aimed at

- pension industry bodies and professionals;
- trustees or scheme mangers;
- pension scheme members and beneficiaries;
- employers and representative organisations; and
- any other interested parties

Scope of the consultation

Pensions policy is a reserved matter under the Welsh and Scottish devolution settlements and, therefore, no devolved administration interest arises in relation to Great Britain. The Northern Ireland Assembly makes its own legislation in relation to pensions.

Duration of the consultation

The consultation period begins on 5 April 2017 and runs until 31 May 2017. Please ensure your response to the draft regulations reaches us by that date as any replies received after that date may not be taken into account.

How to respond to this consultation

Please send your response to :

Mike Moore
Department for Work and Pensions
Private Pensions
1st Floor, Caxton House
Tothill Street
London
SW1H 9NA

Email : earlyexitcharges.regulationsconsultation@dwp.gsi.gov.uk

Government response

We aim to publish the government response to the consultation on the Gov.UK website. The consultation principles encourage Departments to publish a response within 12 weeks or provide an explanation why this is not possible. Where consultation is linked to a Statutory Instrument, responses should be published before or at the same time as the instrument is laid.

The Occupational Pension Schemes (Charges and Governance) (Amendment) Regulations 2017

Background

Capping early exit charges

1. The pension freedoms give individuals aged 55 and over greater choice about how and when they access their pension savings. As a result, the pension freedoms have increased the attractiveness for individuals with non-flexible benefits of transferring or converting these benefits into a form which can be accessed flexibly.

2. Following a public consultation, the Government announced in February 2016 that it would introduce legislation to ensure that early exit charges could be capped in personal pension schemes. The Financial Services and Marketing Act 2000 was amended to give the Financial Conduct Authority (FCA) a duty to make rules to ban or cap early exit charges in personal and stakeholder pension schemes. The FCA has introduced a cap on early exit charges of 1% of the value of the member's benefits being taken, converted or transferred for existing members of personal and stakeholder pension schemes and a ban on such charges for new members of personal and stakeholder schemes which came into effect on 31 March 2017.

3. On 15 November 2016, the Government published its response to its consultation paper *"Capping early exit charges for members of occupational pension schemes - ensuring a fair and consistent approach across all defined contribution pensions"*[1]. This consultation sought stakeholders' views on proposals to introduce a cap or ban on early exit charges imposed on members of occupational pension schemes who choose to leave the scheme early in order to access their pensions flexibly.

4. The consultation ran in parallel with an FCA consultation on the cap for personal and stakeholder pension schemes : *"Capping early exit charges" CP/16/15*[2].

5. The Government's response set out its intention to introduce and set a cap on early exit charges in line with that proposed by the FCA for personal pensions -

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[1] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/567617/government-response-consultation-capping-early-exit-charges-for-members-of-occupational-pension-schemes.pdf

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/526040/consultation-capping-early-exit-charges-for-members-of-occupational-pension-schemes.pdf

[2] https://www.fca.org.uk/publication/consultation/cp16-15.pdf

https://www.fca.org.uk/publication/policy/ps16-24.pdf

1% of the value of the member's benefits being taken, converted or transferred for existing members of occupational pension schemes and a ban for new members of these schemes. It also set out how it envisaged the cap on early exit charges will work in occupational pension schemes based on the feedback provided to the consultation and the evidence previously gathered by The Pensions Regulator and the FCA.

6. The Government has taken into account responses to the consultations when drafting these regulations.

Banning member-borne commission charges

7. In their 2013 market study of the defined contribution workplace pensions market the then Office of Fair Trading (OFT) recommended that pension schemes with commission should not be used for automatic enrolment. The OFT found that some members may be paying commission without realising it and that commission was a barrier to switching. Advisers were unlikely to want to lose their commission income stream by recommending a switch to another commission free pension arrangement that may offer better value for money for members.

8. In March 2014, the Government announced that from April 2016 occupational pension schemes used for automatic enrolment would be prohibited from containing member-borne commission payments to advisers.

9. In response to its October 2015 consultation *"Better workplace pensions: Banning member borne commission payments in occupational pension schemes"*[3] the Government announced in January 2016 that it would take a phased approach to fulfil its commitment to ban member-borne commission payments to advisers in certain occupational pension schemes used for automatic enrolment. The Government explained that the complexity of making legislation to ban existing member-borne commission payments meant it was unlikely they would be ready to come into force on 6 April 2016.

10. The first phase involved introducing legislation in April 2016 preventing charges from being imposed on members of certain occupational pension schemes under new arrangements between the trustees or managers of the scheme and the person providing administrative services to the scheme (the service provider) i.e. those that were entered into on or after 6 April 2016. The legislation also covered existing agreements, those entered into before 6 April 2016, which are varied or renewed after this date. The FCA introduced rules banning commission in workplace personal pension schemes used for automatic enrolment from April 2016.

11. These draft regulations aim to implement the second phase of the commission ban. This will prohibit charges being imposed on members of certain occupational pension schemes to recoup the cost of commission payments to

[3] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/470489/banning-member-borne-commission-consultation-oct-2015.pdf

advisers in relation to agreements entered into before 6 April 2016, unless the payment was made before the regulations come into force.

12. As announced in the January 2016 response to the October 2015 consultation, the draft regulations banning existing member-borne commission arrangements seeks to align with FCA's rules banning commission in workplace personal pension schemes. This is why the draft regulations would not prevent providers from imposing member-borne charges in order to recover initial commission paid to advisers before the draft regulations take effect (i.e. the ban will not apply to a charge imposed under a contract entered into before 6 April 2016 and paid for before 1 October 2017). This approach should ensure consistent treatment of members across workplace pension schemes.

13. The regulations will, however, prevent member-borne charges being imposed to recover the cost of any ongoing (i.e. trail commission) payments made to advisors after the regulations come into force. In its response to the October 2015 consultation, the Government made clear that it expected members to benefit from the member-borne commission ban and would expect to see a reduction in member charges following the removal of existing member-borne commission arrangements. The Government also said it would monitor the response of service providers and take action if members do not benefit.

Changes to the Pensions Act 2014

14. In considering how best to legislate to cap early exit charges and ban existing member-borne commission charges, the Government is determined that the existing powers[4] under which the regulations would be made needed to be amended. This is because the existing power contains an override provision that allows regulations to be made that can override a provision of a scheme, e.g. scheme rules, to the extent it is in conflict with a provision in those regulations.

15. However, the Government's consultations established that member-borne commission charges arise under the contract between the trustees or managers of certain occupational pension schemes and the service provider, and not under the scheme itself. The Government, therefore, needed to amend Schedule 18 so that it has the power to override any term of a contract between those parties, but only where it conflicts with provisions of the regulations, as this is where the member-borne charges arise in these cases.

16. The Government has included a clause in the Pension Schemes Bill which is currently progressing through Parliament, to amend the existing powers to allow the Secretary of State to make regulations to provide that any term in a relevant contract which is inconsistent with the regulations made under Schedule 18 is overridden. This will apply to both the capping of early exit charges and the banning of new member-borne commission charges.

[4] Schedule 18 to the Pensions Act 2014 ("Schedule 18")

17. We welcome your comments on the introduction of these regulations as set out in Annex 1.

Commentary on the draft Occupational Pension Schemes (Charges and Governance) (Amendment) Regulations 2017

The following summary explains the purpose of each of the provisions.

Regulation 1 Citation and commencement
This is a general regulation which gives the title of the regulations and specifies the date on which the regulations are proposed to come into force.

It is proposed that the regulations will come into force on 1 October 2017.

Regulation 2 Amendment of the Occupational Pension Schemes (Charges and Governance) Regulations 2015
This regulation introduces the amendments to be made by regulations 3 to 11 to the Occupational Pension Schemes (Charges and Governance) Regulations 2015 ("the 2015 Regulations"). In summary, these regulations will be amended to :

(i) prevent charges being imposed on members to recoup the cost of commission payments made to advisers in relation to commission arrangements entered into before 6 April 2016.

(ii) introduce the requirement to impose a cap/ban on early exit charges for members of occupational pension schemes who are eligible to access the pension freedoms.

Regulation 3 Creation of Chapter 1 of Part 2
Part 2 of the 2015 Regulations will have two Chapters. Chapter 1 will be called "Default arrangements, non-contributing members and payments to advisers". Chapter 2 introduces the new provisions capping early exit charges.

Regulations 4 to 6 and 9 Amendment of regulations 4, 6, 9 and 11C
These are technical amendments to the 2015 Regulations. Regulation 4 reflects the splitting of Part 2 of the 2015 Regulations into two Chapters. Regulations 4 and 5 also make amendments consequential on the introduction of the cap on early exit charges. Regulations 6 and 9 insert reference to the provision of advice into regulations 9 and 11C of the 2015 regulations.

Regulation 7 Amendment of regulation 11A
Regulation 7 amends regulation 11A of the 2015 Regulations relating to payments to advisers. This regulation extends the prohibitions on the application of certain charges to members of certain occupational pension schemes who participated in that scheme before 6 April 2016. This will not apply to a charge imposed under a contract entered into before 6 April 2016 where the payment was made before 1 October 2017. Regulation 11A is amended to provide that the prohibition overrides any conflicting term of a relevant contract.

Regulation 8 Amendment of regulation 11B
Regulation 8 amends regulation 11B of the 2015 Regulations relating to compliance and the exchange of information required between trustees and managers and service providers. This regulation sets out the timescales within which service providers must send confirmation of compliance with the prohibition in regulation 11A where the relevant contract was entered into before 6 April 2016.

Regulation 10 New regulations 13A to 13F
Regulation 10 inserts new Chapter 2 which places restrictions on the early exit charges which may be applied to members of occupational pension schemes who are eligible to access the pension freedoms.

New regulation 13A Early exit charges
New regulation 13A sets out the definition of an early exit charge and how this is applied to members of occupational pension schemes.

New regulation 13B Prohibition on early exit charges
New regulation 13B ensures that early exit charges cannot be imposed on a member of an occupational pension scheme who joined the scheme on or after 1 October 2017.

New regulation 13C Limits on early exit charges
New regulation 13C ensures that a member who joined an occupational pension scheme before 1 October 2017 cannot incur an early exit charge which exceeds 1% of the value of the benefits being taken, converted or transferred. Existing early exit charges below 1% cannot be increased and new early exit charges cannot be imposed. The Government has stated its intention to exclude Market Value Adjustments (MVAs) and terminal bonuses from the early exit charge cap. Guidance issued by the Secretary of State will cover matters such as how MVAs and terminal bonuses are to be treated.

In cases where the default 0.75% cap on auto enrolment charges applies this takes precedence over the early exit charge cap. The regulations also ensure that where the early exit charge is below 0.75% or there is no early exit charge regulation 13C takes precedence. In addition, no early exit charge may be imposed where the prohibition on charges during the triggering event period for Master Trusts under clause 33 of the Pensions Schemes Bill.

New regulation 13D Multiple charges
New regulation 13D covers possible scenarios where the scheme member could be subject to multiple early exit charges. The regulation as drafted places a duty on the trustees and managers of the scheme to ensure that the combined level of the charges does not exceed 1% of the value of the benefits to be taken, converted or transferred. We would be interested to hear your views on:

Q. Are you aware of any situation where an early exit charge is imposed on a member by more than one service provider in relation to a single scheme.

Q. If more than one service provider imposes an early exit charge on a member in relation to a single scheme what can a trustee or manager of that scheme do to ensure the combined value of the charges is less than 1% of the value of the member's benefits being taken, converted or transferred?

New regulation 13E Conflicting scheme provisions and contract terms
New regulation 13E provides that the restrictions specified in Regulations 13B and 13C override any conflicting contractual term.

New regulation 13F Relevant information
New regulation 13F places a requirement on a service provider to confirm compliance with regulations 13B and 13C to the trustees or managers of a relevant pension scheme within a specified time period.

The service provider must also inform the trustees or managers of the relevant scheme in cases where it ceases to be complaint within a specified time period.

Regulation 11 Review
Regulation 11 provides for the Government review of the amendments to regulations 11A to 11C of the 2015 Regulations. The first review to be completed by 6 April 2021 to coincide with the deadline for the first review of the regulations that originally inserted regulations 11A to 11C (The Occupational Pension Schemes (Charges and Governance) (Amendment) Regulations 2016.

Impact Assessment

Capping early exit charges for members of occupational pensions schemes who are eligible to access the pension freedoms
The Government has modelled the potential impact of various caps on existing occupational pension schemes. The detail of the analysis was included in the Impact Assessments *"Introducing a cap on early exit charges in trust-based occupational pension schemes"*[5] and *"Additional analysis of the impact of capping early exit charges for members of occupational pension schemes: summary of the expected impact of a 1% cap on early exit charges"*[6]*.* These were published alongside the May 2016 consultation.

Banning member-borne commission in occupational pension schemes used for automatic enrolment
Drawing on consultation, stakeholder engagement and other service sources an Impact Assessment was made on the effect the commission ban, on both new and existing arrangements, might have on advisers and service providers. *"Banning*

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[5] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/525859/impact-assessment-cap-on-early-exit-charges-in-trust-based-occupational-pension-schemes.pdf
[6] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/526134/occ-pen-exit-charges-ad-hoc-analysis.pdf

member-borne commission in occupational pension schemes used for automatic enrolment" was published in December 2015.

Summary of questions

Q. Do you have any comments on how the draft regulations meet the Government's policy objectives on capping early exit charges and banning existing member-borne commission charges?

Q. Are you aware of any situation where an early exit charge is imposed on a member by more than one service provider in relation to a single scheme.

Q. If more than one service provider imposes an early exit charge on a member in relation to a single scheme what can a trustee or manager of that scheme do to ensure the combined value of the charges is less than 1% of the value of the member's benefits being taken, converted or transferred?

Q. Do you have any comments on the content of the draft regulations?

STATUTORY INSTRUMENTS

2017 No. xxx

PENSIONS

Draft : The Occupational Pension Schemes (Charges and Governance) (Amendment) Regulations 2017

Made - - - -	***
Laid before Parliament	***
Coming into force - -	*1st October 2017*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 43 and 54(5) and (6) of, and paragraphs 1, 3 and 6 of Schedule 18 to, the Pensions Act 2014([7]).

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 2017 and come into force on 1st October 2017.

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

2.The Occupational Pension Schemes (Charges and Governance) Regulations 2015([8]) are amended in accordance with regulations 3 to 10.

Amendment of Part 2 – Chapter 1

3. Regulations 4 to 13 become Chapter 1, entitled “Default arrangements, non-contributing members and payments to advisers”.

Amendment of regulation 4

4.—(1) Regulation 4 (restrictions on charges) is amended as follows.

(2) In regulation 4(1) for “this Part” substitute “this Chapter”.

(3) In regulation 4(2) for “this Part” substitute “this Chapter”.

([7]) 2014 c. 19. Paragraphs 6(1A) and (3) to Schedule 18 were inserted by section 41 of the Pensions Schemes Act 2017 (c. x)

([8]) S.I. 2015/879, amended by S.I. 2016/304.

Amendment of regulation 6

5. At the beginning of regulation 6(1) insert "Subject to regulation 13C(6)".

Amendment of regulation 9

6.—(1) Regulation 9 (member agreement for services) is amended as follows.

(2) In paragraph (1)—

(a) after "in relation to" insert "advice or"; and

(b) after "provision of that" insert "advice or".

(3) In paragraph (3), after "does not apply to" insert "advice or".

Amendment of regulation 11A

7.—(1) Regulation 11A (payments to advisers)([9]) is amended as follows.

(2) In paragraph (1), omit "on or after 6th April 2016".

(3) In paragraph (2), after "11B(2)" insert ", 11B(2B)".

(4) In paragraph (4), for "This regulation" substitute "The prohibition in paragraph (2)".

(5) For paragraph (6) substitute—

"(6) The prohibition in paragraph (2) does not apply to a charge imposed to reimburse a service provider for any payment made to an adviser for advice or a service referred to in paragraph (3)(a) or (b) where—

(a) the charge is imposed under a relevant contract which—

(i) was entered into before 6th April 2016; and

(ii) has not been varied or renewed on or after that date; and

(b) the payment was made before 1st October 2017."

(6) After paragraph (6) insert——

"(7) Where the prohibition in regulation paragraph (2) applies it overrides any term of a relevant contract to the extent that the term conflicts with it.".

Amendment of regulation 11B

8.—(1) Regulation 11B (relevant information)([10]) is amended as follows.

(2) In paragraph (2), for "paragraph (4)" substitute "paragraphs (2B) and (5)".

(3) After paragraph (2) insert—

"(2A) This paragraph applies where the relevant contract—

(a) was entered into before 6th April 2016; and

(b) has not been varied or renewed on or after that date.

(2B) Subject to paragraph (5), where paragraph (2A) applies regulation 11A does not apply until the expiry of the period of 6 months beginning with whichever is the later of—

(a) the date on which the service provider receives the notification required by paragraph (1); or

(b) 1st October 2017.".

(4) In paragraph (3) substitute—

"(3) Subject to paragraph (5), the service provider must confirm in writing to the trustees or managers who provided the notification required by paragraph (1) that it is complying with the prohibition in regulation 11A(2) in relation to all members to whom regulation 11A applies—

([9]) Regulation 11A was inserted by S.I. 2016/304.

([10]) Regulation 11B was inserted by S.I. 2016/304.

(a) where paragraph (2) applies, within 1 month beginning with the date on which regulation 11A first applies; or

(b) where paragraph (2A) applies, within 6 months beginning with whichever is the later of—

(i) the date on which the service provider receives the notification in paragraph (1); or

(ii) 1st October 2017.”.

(5) In paragraph (5), for “paragraph (2)” substitute “paragraphs (2) or (2B)”.

Amendment of regulation 11C

9. In regulation 11C(3) (member agreement for payments to advisers)([11]), after “agreement for” insert “advice or”.

New regulations 13A to 13F

10. After regulation 13 (amendment of other regulations) insert—

“CHAPTER 2

RESTRICTIONS ON EARLY EXIT CHARGES

Early exit charges

13A.—(1) For the purposes of this Chapter an early exit charge in relation to a member of a relevant pension scheme is a charge which—

(a) is imposed under the scheme or a relevant contract when a member who has reached normal minimum pension age takes the action mentioned in subsection (2), but

(b) is only imposed, or only imposed to that extent, if the member takes that action before the member’s normal pension age.

(2) The action is the member taking benefits under the scheme, converting benefits under the scheme into different benefits or transferring benefits to another pension scheme.

(3) For the purposes of this regulation—

“normal minimum pension age” has the meaning given in section 279(1) of the Finance Act 2004;

“normal pension age” means the earliest age at which, or the earliest occasion on which, the member is entitled to receive the benefit without adjustment for taking it early or late (disregarding any special provision as to early payment on the grounds of ill-health or otherwise and any administration charges); and

a reference to “benefits” includes any or all of those benefits.

Prohibition of early exit charges

13B.—(1) This regulation applies to a member of a relevant scheme who joined that scheme on or after 1st October 2017.

(2) Service providers and trustees and managers of a relevant scheme must not impose an early exit charge, or permit such a charge to be imposed, on a member of the scheme to whom this regulation applies.

Limits on early exit charges

13C.—(1) This regulation applies to a member of a relevant scheme who joined that scheme before 1st October 2017.

([11]) Inserted by S.I. 2016/304.

(2) Service providers and trustees and managers of a relevant scheme must not impose, or permit to be imposed, on a member of the scheme to whom this regulation applies an early exit charge that exceeds the lower of—

(a) 1% of the value of the member's benefits being taken, converted or transferred; or

(b) such amount as was provided for under the scheme rules as at 1st October 2017.

(3) Where no provision for an early exit charge was made under the scheme rules as at 1st October 2017, service providers and trustees and managers of a relevant scheme must not impose an early exit charge, or permit such a charge to be imposed, on a member of the scheme to whom this regulation applies.

(4) Trustees and managers of a relevant scheme must not—

(a) include provision in a relevant scheme for an early exit charge, where such provision did not exist on 1st October 2017; or

(b) vary provision for an early exit charge in such a scheme to increase or potentially increase the charge.

(5) Nothing in this regulation permits an early exit charge to be imposed—

(a) that is higher than the limits prescribed by regulation 6 (limits on charges) where that regulation applies; or

(b) where section [33] of the Pension Schemes Act 2017 (prohibition on increasing charges etc during triggering event period) applies.

(6) Nothing in regulation 6 permits—

(a) an early exit charge which is lower than 0.75% of the value of the member's benefits being taken, converted or transferred, to be increased; or

(b) an early exit charge to be imposed where one did not exist.

(7) The value of a member's benefits in paragraph (2)(a) and (6)—

(a) means the value calculated at the point when the trustee or manager of the scheme receives confirmation from the member of the instruction to take the action giving rise to the early exit charge; and

(b) is to be calculated in accordance with guidance issued from time to time by the Secretary of State.

Multiple charges

13D.—(1) This regulation applies where more than one early exit charge is imposed on a member of a relevant scheme to whom regulation 13C (limits on early exit charges) applies—

(a) by—

(i) the trustees or managers of the scheme; and

(ii) one or more service providers; or

(b) more than one service provider.

(2) Where this regulation applies the trustees and managers of the scheme must ensure that the combined value of the exit charges imposed does not exceed the limit set out in regulation 13C(2)(a).

Conflicting contract terms

13E. Regulations 13B to 13D override any term of a relevant contract to the extent that the term conflicts with those regulations.

Relevant information

13F.—(1) A service provider must confirm in writing to the trustees or managers of a relevant scheme that it is complying with the restrictions in regulations 13B and 13C within 1 month beginning with whichever is the later of—

(a) 1st October 2017; or

(b) the date on which the service provider becomes a service provider in relation to the relevant scheme.

(2) The service provider must inform the trustees or managers of the relevant scheme in writing if the confirmation that it has given in compliance with paragraph (1) is no longer accurate as soon as practicable, and in any event within 1 month, beginning with the date on which that confirmation is no longer accurate."

Review

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

(a) carry out a review of the regulatory provision made by the amendments in regulations 7 to 9 of these Regulations; and

(b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 6th April 2021.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015([12]) requires that a report published under this regulation must, in particular—

(a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);

(b) assess the extent to which those objectives are achieved;

(c) assess whether those objectives remain appropriate; and

(d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this regulation, "regulatory provision" has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

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

Name
Parliamentary Under Secretary of State
Department for Work and Pensions

Date

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").

Regulations 6 and 9 insert reference to the provision of advice into regulations 9 and 11C of the Principal Regulations to clarify that charges may relate to the provision of advice as well as the provision of services.

Regulation 7 amends regulation 11A of the Principal Regulations to apply the prohibition on the imposition of commission charges on members of occupational pension schemes to workers, and former workers, of an employer who used that scheme for automatic enrolment purposes for at least one jobholder before 6th April 2016. Regulation 7(5) substitutes regulation 11A(6) to provide that the prohibition does not apply to a charge imposed under a contract entered into before 6th April 2016 (and not subsequently varied or renewed) to reimburse a service provider for any payment made to an adviser before 1st October 2017. Regulation 7(6) inserts regulation 11A(7) to provide that the prohibition overrides any conflicting term of a relevant contract.

([12]) 2015 c. 26.

Regulation 8 amends regulations 11B of the Principal Regulations to set out the timescales within which service providers must send confirmation of compliance with the prohibition in regulation 11A where the relevant contract was entered into before 6th April 2016 (and not subsequently varied or renewed).

Regulation 10 inserts new regulations 13A to 13F into the Principal Regulations.

New regulation 13A sets out a definition of early exit charges for the purposes of new Chapter 2 of Part 2 of the Principal Regulations.

New regulation 13B sets out that early exit charges may not be imposed on members of occupational pension schemes where the member joined the scheme on or after 1st October 2017.

New regulation 13C sets out that, where a member of an occupational pension scheme joined that scheme before 1st October 2017, early exit charges exceeding 1% of the member's benefits may not be imposed. Existing early exit charges which are below 1% may not be increased and new early exit charges may not be imposed.

Regulation 13C(5) provides that the prohibition in section [33] of the Pension Schemes Act 2017, and (where lower than the cap in regulation 13C) the existing cap on charges in regulation 6 of the Principal Regulations, take precedence over the early exit charge cap. Regulation 13C(6) ensures that a charge meeting the conditions set out in paragraph (6) is not permitted by regulation 6 of the Principal Regulations. Regulation 13C(7) contains provision as to how the value of a member's benefits is to be calculated.

Regulation 13D provides that where multiple early exit charges are imposed on a member of a scheme the trustees and managers of the scheme are responsible for ensuring the combined value of the charges do not exceed the 1% limit in regulation 13C.

Regulation 13E provides that the restrictions in regulations 13B and 13C override any conflicting contractual term.

Regulation 13F provides a service provider must confirm compliance with the restrictions in regulations 13B and 13C to the trustees or managers of a relevant scheme and inform them if it ceases to be compliant.

Regulations 3 to 5 make amendments to the Principal Regulations consequential on the insertion of new regulations 13A to 13F.

Regulation 11 makes provision for review of the amendments to regulations 11A to 11C of the Principal Regulations by the Government.

[An assessment of the impact of these regulations 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. 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.]

Annex 2

How we consult

Consultation principles

This consultation is being conducted in line with the revised [Cabinet Office consultation principles] published in January 2016. These principles give clear guidance to government departments on conducting consultations.

Feedback on the consultation process

We value your feedback on how well we consult. If you have any comments about the consultation process (as opposed to comments about the issues which are the subject of the consultation), including if you feel that the consultation does not adhere to the values expressed in the consultation principles or that the process could be improved, please address them to:

DWP Consultation Coordinator
2nd Floor
Caxton House
Tothill Street
London
SW1H 9NA

Email: caxtonhouse.legislation@dwp.gsi.gov.uk

Freedom of information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.

To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact the Central Freedom of Information Team:
Email: freedom-of-information-request@dwp.gsi.gov.uk

The Central FoI team cannot advise on specific consultation exercises, only on Freedom of Information issues. Read more information about the Freedom of Information Act.