



<b>Title of measure</b>		Occupational Pension Schemes (Scheme Administration and Investment) (Amendment) Regulations [provisional title]
<b>Lead Department/Agency</b>		DWP
<b>Planned coming into force /implementation date</b>		6 April 2020
<b>Origin (Domestic/EU/Regulator)</b>		Domestic
<b>Policy lead</b>		Vicky Bird
<b>Lead analyst</b>		Annie Morton
<b>Departmental Assessment</b>		Self-certified
<b>Total Net Present Social Value (over 10-year period): -£3.6m</b>	<b>Equivalent Annual Net Direct Cost to Business (EANDCB) (over 10-year period): £0.3m</b>	<b>Business Impact Status:</b> Non-Qualifying Regulatory Provision

Summary - Intervention and impacts

### Policy Background and Rationale for Intervention

A Competition and Markets Authority (CMA) investigation<sup>1</sup> into the 'Investment Consultants Market' identified weak competition within both the investment consultancy<sup>2</sup> (IC) and fiduciary management<sup>3</sup> (FM) markets. These services influence or control decisions affecting pension scheme assets worth at least £1.6 trillion<sup>4</sup>, and the retirement incomes of millions of people, so market weakness has extensive adverse impact. The CMA have introduced an Order with remedies to address the above, which comes into force in December 2019.

Two of the remedies will put requirements on pension scheme trustees to:

- carry out a qualifying tender process<sup>5</sup> (when entering into or continuing an agreement with a FM provider under certain circumstances); and
- set objectives for the IC provider<sup>6</sup> (when entering into an agreement for the provision of IC).

DWP need to integrate these into pensions law to enable The Pensions Regulator (TPR) to oversee them. This should improve pension scheme trustees' engagement when buying IC and FM services and enable TPR to monitor and enforce compliance.

We intend to replicate these parts of the CMA Order so the duties on trustees will continue, although they will report compliance to TPR as the regulator, rather than the CMA.

### Brief description of viable policy options considered (including alternatives to regulation)

#### 1. Do nothing

In the 10 years that the CMA Order would be in place (December 2019 – December 2029) there would be dual regulatory bodies working with occupational pension schemes. The Government recognises the substantial influence that these services can have on pension scheme outcomes and therefore agreed<sup>7</sup> to introduce regulations to replicate the CMA order to ensure more effective and efficient oversight. Therefore, this option is not viable.

<sup>1</sup> CMA Investment Consultants Market Investigation [Link](#)

<sup>2</sup> Investment consultancy is the provision of advice to pension scheme governance bodies.

<sup>3</sup> Fiduciary management is the provision of advice combined with delegation of investment decisions.

<sup>4</sup> CMA, Investment Consultants Market Investigation, Final Report, Page 6 [Link](#)

<sup>5</sup> Remedy One: Mandatory competitive tendering for pension schemes first buying fiduciary management services or if they have not tendered previously.

<sup>6</sup> Remedy Seven: Duty on trustees to set their investment consultants strategic objectives.

<sup>7</sup> Investment consultants market investigation response [Link](#)

## 2. Introduce regulations to replace the CMA Order as soon as possible (06 April 2020)

### Preferred Option

This will ensure more effective supervision as soon as practicable after the CMA Order takes effect and would allow Government to meet its commitment to introduce regulations.

## 3. Introduce regulations to replace the CMA Order later than 06 April 2020

There would be dual regulatory bodies for an extended period of time and potential disruption and confusion to the industry along with criticism of an already perceived complex regulatory regime.

### **Preferred option: Summary of assessment of impact on business and other main affected groups**

The counterfactual is based on the CMA Order which will be in force from December 2019 – December 2029. Our regulations will replicate part three (remedy one<sup>8</sup>) and part seven (remedy seven<sup>9</sup>) of the CMA Order to bring compliance and enforcement under the remit of TPR. Therefore, the impacts assessed are those in addition to the CMA position.

#### **Impact on Business**

We expect that all trustees will have to familiarise themselves with the new requirements to report compliance to TPR through the scheme return rather than through a compliance statement to the CMA. We assume schemes will already be complying with the CMA Order and therefore, the familiarisation process will be simple. We estimate a total familiarisation cost of approximately £382,200 in the first year only (2020/21).

The CMA Order will require trustees to submit a compliance statement to confirm they have complied with the Order. The ongoing cost to schemes will be determined by differences between the questions in the CMA statement and the questions in the TPR scheme return. These differences are as a result of the regulator having to ask specific questions to determine the IC and FM information that is not necessarily included in the CMA compliance statement. We estimate an ongoing cost to schemes of approximately £44,400 in each year.

The CMA Order excluded certain schemes which we will require to set objectives. The impact on the 8 schemes in scope is a total one-off cost in the first year of £272,000 and an ongoing cost per year of £280,000.

#### **Impact on Regulatory Bodies**

##### TPR

As a result of the regulations bringing compliance and enforcement under the remit of TPR, TPR will be required to:

- amend the scheme return;
- monitor compliance with the regulations and identify non-compliance;
- take enforcement activity where necessary.

TPR is funded by the General Levy, which is excluded from Equivalent Annual Net Direct Costs to Business (EANDCB)<sup>10</sup> calculations. TPR will be incorporating this work into business as usual

<sup>8</sup> (Remedy One): A requirement upon trustees to, when entering into or continuing an agreement with a fiduciary management provider, under certain circumstances, carry out tender process.

<sup>9</sup> (Remedy Seven): A requirement upon trustees to set objectives for their Investment Consultancy provider.

<sup>10</sup> The Equivalent Annual Net Direct Costs to Business (EANDCB) is an estimate of an intervention's annual net direct costs to business in each year that the measure is in force.

and do not anticipate that this will have an impact on the Levy. TPR estimates the total costs in year 1 (2020/21) to be £91,000 using 2014 powers<sup>11</sup>. This includes one-off set up costs. TPR estimates the ongoing costs to be £81,000 per year using 2014 powers. These cost estimates are based on a number of assumptions set out in the additional detail section and are rounded up to the nearest £1,000.

### CMA

CMA will no longer incur the costs associated with their penalty regime for enforcing compliance against the CMA Order. We have not quantified this benefit to the CMA, as the CMA Order is not yet in force and CMA have not provided an estimate of this benefit. Benefits to the CMA do not count towards the EANDCB calculations.

Departmental Policy signoff (SCS): Hilda Massey	Date: 24 June 2019
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Economist signoff (senior analyst): Joy Thompson	Date: 01 July 2019
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Better Regulation Unit signoff: Prabhavati Mistry	Date: 02 July 2019
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Additional detail – policy, analysis, and impacts

### **Preferred Option**

#### **Evidence behind the rationale for intervention**

On 14 September 2017, the Financial Conduct Authority (FCA) published its decision to refer the supply and acquisition of IC and FM services to institutional investors and employers in the UK to the CMA for a market investigation. The CMA carried out an investigation into the IC and FM market in 2017 and 2018. Having concluded this investigation and decided what action needs to be taken, the CMA has introduced an Order<sup>12</sup> which comes into force in December 2019.

The Order implements the CMA remedies to address weak competition found within the IC and FM markets. Low engagement by some pension trustees, and difficulties accessing information, reduce the competitive pressure on investment consultants and fiduciary managers. As a result, pension scheme customers may expect to pay higher prices for these services and receive a lower quality service than in more competitive markets. This lack of competition currently causes financial detriment for employer sponsors of Defined Benefit (DB) schemes and members of Defined Contribution (DC) schemes. Both IC and FM services are used extensively by both DB and DC pension schemes. Any negative impact on scheme outcomes will be significant, accumulating and compounding over the long time horizon over which pension assets are invested<sup>13</sup>, typically spanning several decades<sup>14</sup>. According to the CMA, these services have a major influence on pension scheme outcomes, affecting up to half of all UK households<sup>15</sup>. This change should improve pension scheme trustees' engagement when buying IC and FM services and enable TPR to monitor and enforce compliance.

<sup>11</sup> Paragraph 2 of schedule 18 to the 2014 Pensions Act.

<sup>12</sup> CMA, Final step taken in CMA reform of investment consultants [Link](#)

<sup>13</sup> CMA, Investment Consultants Market Investigation, Final Report, Page 7 [Link](#)

<sup>14</sup> CMA, Investment Consultants Market Investigation, Final Report Section 13.104 [Link](#)

<sup>15</sup> CMA, Investment Consultants Market Investigation, Final Report [Link](#)

## Proposed Intervention

For three aspects there will be slight differences in policy between the CMA Order and our regulations, to align with the principles, legal definitions and categories used in pensions legislation. These are detailed below.

1. The CMA Order excludes certain schemes<sup>16</sup> from remedies one and seven. We believe it is reasonable for the trustees of employer-sponsored master trusts or corporate schemes to set their IC objectives, regardless of whether the IC was connected with the sponsoring employer of the scheme. These schemes will now bear the cost of setting and monitoring investment objectives. We estimate that there are approximately 8 pension schemes affected by this measure.
2. CMA propose to use interconnected body corporate<sup>17</sup> of the provider, or a partnership or joint venture with the provider to determine whether organisations are connected and therefore whether a scheme is sponsored by an IC/FM or connected body. We are proposing to use group undertaking<sup>18</sup> to capture the full range of relationships. Therefore, schemes which (under the CMA Order) might not have been sponsored might now be deemed as sponsored and excluded from remedy 1 (although still included in remedy 7). This means these schemes will no longer be required to carry out a qualifying tender. We do not know precisely how many organisations will be impacted by this policy change. We intend to test this by posing a question in our consultation document.

Unlike the CMA order, we do not propose to include the use of ‘joint venture’ in our regulations. This is because joint venture does not signify the same level of ownership and control, given that control will be shared with one or more other undertakings. We also believe that there could be an avoidance risk, so that where a scheme sponsor and an FM had a joint venture, they would not be required to run, or bid for, a competitive tender. This could inadvertently incentivise firms to create joint ventures to circumvent this duty. We therefore intend that even where sponsors and FMs are connected via a joint venture, there should still be a requirement to run a competitive tender. We do not believe that any schemes will be affected by this change, although we intend to test this at consultation.

3. The CMA have regulated for the Local Government Pension Scheme (LGPS) to be in scope of remedy 7. We do not intend to replicate this measure as DWP legislation does not cover investment matters for Public Service Pension Schemes. Our regulations do not therefore apply to the LGPS. In particular, we have made no provision for applying remedy 7 to the LGPS, as regulations and guidance in relation to the LGPS are a matter for Ministry of Housing, Communities and Local Government.

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<sup>16</sup> Schemes where the principal or controlling employer of a scheme is themselves a provider of FM services and Master Trusts for which an IC-FM firm is the scheme strategist or scheme funder.

<sup>17</sup> Interconnected body corporate (used by the CMA, in line with their standard practice) captures corporate bodies which are subsidiaries of the other, or subsidiaries of subsidiaries, and those with a common parent company. For further information see [Link](#)

<sup>18</sup> Group undertaking has the meaning of s1161 in the Companies Act 2006. “Group undertaking”, in relation to an undertaking, means an undertaking which is—

(a) a parent undertaking or subsidiary undertaking of that undertaking, or  
(b) a subsidiary undertaking of any parent undertaking of that undertaking.

The penalty process that will be adopted under DWP regulations will follow the same process as is already in place and enforced by TPR for the automatic enrolment charges measures.

## Costs and Benefits to Businesses

### Trustees - Familiarisation

We assume that it will take all trustees approximately 30 minutes to familiarise themselves with the new requirements which would involve reading and understanding the regulations. This is an assumption based on the length of regulations (15 pages) and an assumed time of 2 minutes to read a page<sup>19</sup>. We do not have a definitive figure for the total number of trustees that will be impacted so we estimated this using the number of schemes impacted multiplied by the average number of trustees per scheme. There are 5,524 DB schemes with 2+ members<sup>20</sup> and there are 3,680 DC Schemes with 2+ members<sup>21</sup>. For DB schemes with 2+ members, we estimate an average of 3.0 trustees per scheme and for DC schemes with 2+ members, we estimate an average of 2.7 trustees per scheme.<sup>22</sup> We assume the average hourly wage of a trustee is approximately £28.75 per hour.<sup>23</sup> This gives a total familiarisation cost of approximately £382,200<sup>24</sup> in the first year only (2020/21). We believe this is a cautious approach because not all trustees may need to familiarise themselves with the new requirements. Assuming only one trustee per scheme needs to familiarise themselves, this would give an estimate of approximately £132,000<sup>25</sup> in the first year only (2020/21).

### Trustees – Ongoing cost

Trustees will be required to check their compliance, complete details on the statement, sign and send to the CMA. As a result of bringing compliance and enforcement under the remit of TPR, trustees will be required to report compliance through additional questions in their existing scheme return. Table 1 sets out the CMA and DWP/TPR reporting requirements. The questions for inclusion in the TPR scheme return ask for additional information to what is required for the CMA compliance statement such as names and addresses of ICs and FM providers and the dates they were appointed.

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<sup>19</sup> Assuming 1 minute to read 300 words and 600 words to a page, gives 2 minutes to read a page.

<sup>20</sup> Pension Protection Fund, The Purple Book, December 2018 [Link](#)

<sup>21</sup> 1,980 DC and Hybrid Schemes with 12+ members: The Pensions Regulator, DC trust: presentation of scheme return data 2018 – 2019 [Link](#)

1,700 DC Micro Schemes with 2-11 members: The Pensions Regulator estimate [Link](#)

Small self administered schemes (SSASs – also known as Relevant Small Schemes or RSSs) and executive pension schemes (EPSs) are excluded from the CMA order and from these regulations.

<sup>22</sup> The Pensions Regulator, Trustee Landscape Quantitative Research, October 2015 [Link](#) (Estimate based on figure 3.2.2)

<sup>23</sup> The median hourly gross pay for corporate managers and directors is £22.64 in the Annual Survey of Hours and Earnings 2018 provisional, Table 2.5. [Link](#) This is uplifted by 27% for overheads from the previous version of the Green Book, no updated estimate is available.

<sup>24</sup> Calculation:  $(5,524 * 3.0) * (0.5 * 28.75) + (3,680 * 2.7) * (0.5 * 28.75) = £382,176$

<sup>25</sup> Calculation:  $(5,524 * 0.5 * 28.75) + (3,680 * 0.5 * 28.75) = £132,320$

Table 1: CMA and DWP/TPR Reporting requirements

<u>CMA Reporting Requirements</u>	<u>DWP Reporting Requirements to be used by TPR</u>
<p>Trustees must submit a compliance statement in the following format and signed certificate to the CMA annually, confirming to what extent they have been compliant with the requirements of remedy one and remedy seven, during the reporting period.</p> <p><b>Investment Consultancy and Fiduciary Management Market Investigation Remedy Compliance Statement for [insert name]</b>                      [I/We], [insert name(s)], confirm on behalf of [insert name] that during the period commencing on [insert date] and ending on [insert date], [insert name] [has] [have] complied with Part [insert Part number] of the Investment Consultancy and Fiduciary Management Market Investigation Order 2019.                      FOR AND ON BEHALF OF [insert name]                      Signature: .....                      Name: .....                      Title: .....</p> <p>If the trustees are aware of any failure to comply with the requirements, they must report such compliance to the CMA within 14 days of becoming aware of it, and provide a brief description of the steps taken to address the failure.</p>	<p>For Remedies one and seven the current scheme return process will be followed<sup>26</sup> and trustees will have the following additional questions:</p> <p>For IC Services</p> <ul style="list-style-type: none"> <li>(a) the name and address of the IC provider;</li> <li>(b) the most recent date on which the IC provider was appointed;</li> <li>(c) whether the trustees have set objectives for the IC provider, and if not, why not;</li> <li>(d) whether the trustees have reviewed the objectives set for the IC provider and if not, why not;</li> <li>(e) whether the trustees have reviewed the services provided by the IC provider and if not, why not.</li> </ul> <p>For FM Services</p> <ul style="list-style-type: none"> <li>(a) the name and address of the FM provider; and</li> <li>(b) (for schemes which are under the 20% threshold of scheme assets on the coming into force date)                             <ul style="list-style-type: none"> <li>i. the most recent date on which the FM provider was appointed;</li> <li>ii. whether the trustees carried out a qualifying tender process<sup>27</sup> in connection with the appointment, and if not, why not;</li> </ul> </li> <li>(c) (for schemes which are over the 20% threshold of scheme assets on the coming into force date)                             <ul style="list-style-type: none"> <li>i. the date on which the FM provider was first appointed;</li> <li>ii. whether the trustees have carried out a qualifying tender process in connection with the arrangements, and if not, why not.</li> </ul> </li> </ul>

Trustees will need to know this information in order to report compliance to the CMA but it may take additional resource to compile the information and complete the questions in the scheme return. We assume it would take one administrator per scheme approximately 20 minutes to source and compile the required names, addresses and dates, as we would

<sup>26</sup> The scheme return is annual except DC micro schemes (schemes with fewer than 12 members) submit a return every 3 years

<sup>27</sup> "Qualifying tender process", means the process of inviting, and using reasonable endeavours to obtain, bids for the provision of the relevant FM services from at least three unconnected persons, and evaluating the bids which are obtained.

expect a scheme to maintain records on their suppliers and recent tender processes. We will test this assumption at consultation. There are 5,524 DB schemes with 2+ members<sup>28</sup> and there are 3,680 DC Schemes with 2+ members<sup>29</sup>. We assume the average hourly wage of an administrator is £14.48 per hour.<sup>30</sup> This gives an ongoing cost of approximately £44,400<sup>31</sup> in each year.

Costs to business from extension of scope to include schemes where the principal or controlling employer of a scheme is themselves a provider of FM services and Master Trusts for which an IC-FM firm is the scheme strategist or scheme funder

The CMA order has excluded certain schemes from both remedies one and seven. These include schemes where the principal or controlling employer of a scheme is themselves a provider of FM services, and Master Trusts for which an IC-FM firm (or a group undertaking of the IC-FM firm) is the scheme strategist or scheme funder. It would be impractical in these circumstances to expect the scheme trustees to carry out a qualifying tender. However, we believe it is reasonable for the trustee of employer-sponsored master trusts or corporate schemes to set their IC objectives, regardless of whether the IC was connected with the sponsoring employer of the scheme. This means these schemes will now bear the cost of setting and monitoring investment objectives.

We estimate that there are approximately 8 pension schemes affected by this measure. We will test this assumption at consultation.

- We are aware of 4 master trusts sponsored by IC-FM firms, 2 of which have already received authorisation.
- There are 10 to 15 other IC/FM providers but some of these will use another organisation's master trust or a personal pension scheme as a qualifying scheme for automatic enrolment. All firms will need to use a pension scheme for automatic enrolment and they have 3 options – own trust, personal pension or someone else's master trust. In the absence of any more knowledge, we assume the remaining 10 to 15 firms are split between these 3 options. This means 3 to 5 firms also have their own trust giving a central estimate of 4. We therefore estimate approximately 4 more IC-FM sponsored single employer schemes.

The CMA provided a sample<sup>32</sup> of data on costs for remedy 7, gathered over the course of their investigation. Table 2 summarises the minimum, maximum and average costs to trustees to set strategic objectives and report against them, based on this sample of data. This includes both one-off costs in the first year and ongoing costs per year.

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<sup>28</sup> Pension Protection Fund, The Purple Book, December 2018 [Link](#)

<sup>29</sup> 1,980 DC and Hybrid Schemes with 12+ members: The Pensions Regulator, DC trust: presentation of scheme return data 2018 – 2019 [Link](#)

1,700 DC Micro Schemes with 2-11 members: The Pensions Regulator estimate [Link](#)

Small self administered schemes (SSASs – also known as Relevant Small Schemes or RSSs) and executive pension schemes (EPSs) are excluded from the CMA order and from these regulations.

<sup>30</sup> The median hourly gross pay for administrative occupations is £11.40 in the Annual Survey of Hours and Earnings 2018 provisional, Table 2.5. [Link](#) This is uplifted by 27% for overheads from the previous version of the Green Book, no updated estimate is available.

<sup>31</sup> Calculation:  $(5,524 \times 0.33 \times 14.48) + (3,680 \times 0.33 \times 14.48) = £44,419$

<sup>32</sup> Sample size is 8.



Table 2: Estimate of costs to trustees to set and report against strategic objectives

	<b>One-off costs in first year</b>	<b>Ongoing costs per year</b>
Minimum	£0	£0
Maximum	In excess of £100,000	In excess of £100,000
<b>Average</b>	<b>£34,000</b>	<b>£35,000</b>
Average excluding zeros	£54,400	£56,000

Source: Responses to Competition and Markets Authority information requests

Some respondents in the sample reported that they already set objectives for all clients, therefore the cost to trustees to set strategic objectives and report against them was zero in these cases.

We assume the 8 pension schemes affected by this measure are equally as likely to have already set objectives as the schemes in the CMA sample which means our best estimate of the cost to schemes would be an average including these zero responses.

Across the 8 schemes in scope, this therefore gives a one-off cost in the first year of £272,000<sup>33</sup> and an ongoing cost per year of £280,000<sup>34</sup>.

Costs to business from change in scope as a result of the difference between interconnected body corporate and group undertaking

We propose to use group undertaking rather than interconnected body corporate to define interconnected firms. This is because ownership relationships involving partnerships can still signify influence and control.

This change extends the range of schemes that are considered part of a group. A very small number of schemes who were not previously treated as connected to an IC/FM provider and were therefore previously required both to tender and to set objectives in accordance with the CMA Order will now only be required to set objectives (we are excluding these schemes from remedy 1, but not remedy 7). We might reasonably anticipate that the majority of ICs and FMs will already be interconnected bodies corporate, because they are corporate bodies rather than partnerships or other unincorporated organisations. In the absence of any other evidence, we have assumed that fewer than 5 schemes will be excluded from remedy 1 as a result of this.

The effect of changing references in the **definition of FM services** means that the services of firms who are not an interconnected body corporate but are a group undertaking will fall into scope of an FM service so the trustees who use them will now be required to run a qualifying tender. Given that there are fewer than ten FM services, we might assume for the purposes of consultation that the CMA captured all such schemes and our amendment is to future-proof the regulations. Therefore, we could assume that no additional firms are in scope and assume no additional costs to business. We will test this assumption at

<sup>33</sup> Calculation: £34,000\*8=£272,000

<sup>34</sup> Calculation: £35,000\*8=£280,000



consultation, and see if anyone can provide evidence as to whether or not the CMA captured these services (and therefore whether they are in or out of scope of our counterfactual).

The effect of changing references to **qualifying tender** means that in certain instances where trustees were previously planning to run a qualifying tender with two firms who were not an interconnected body corporate but were a group undertaking, these would under our regulations count as only one firm, requiring the trustees to make endeavours to obtain an additional bid from a fiduciary management provider. However, given that our regulations will be out for consultation soon after the CMA order is made, trustees would know to avoid more than one approach to firms which formed a group undertaking and would instead seek a different tender. They would not need to use reasonable endeavours to secure a tender from a fourth firm. This change would simply require them to use different criteria in identifying firms to approach, before they make reasonable endeavours to encourage them to do so and to evaluate the tender received. Therefore, we could assume no additional costs to business of a change to the scope of this measure. We will test this assumption at consultation.

We are not replicating the use of 'joint venture' to determine whether organisations are connected. We do not believe that any schemes will be affected by this change because the draft order on which the CMA consulted did not mention joint ventures and it was not raised in any of the responses made by stakeholders. We intend to test this at consultation.

## **Costs and Benefits to Other Affected Parties**

### Benefits to schemes (in counterfactual)

On the benefits resulting from competitive tendering, evidence in the CMA report<sup>35</sup> indicates that, for schemes that moved into FM with their existing IC, those that ran a formal tender paid significantly lower fees (on average) than those that did not. The baseline results indicate that the average scheme could save almost £600,000 over a ten-year period as a result of running a formal tender. The CMA's indication of the cumulative impact of such savings across pensions schemes, assuming there are 40 additional tenders a year as a result of remedy one, would be an annual saving in the range of £540,000 to £3.24m. They also state that the benefits are far wider than a potential reduction in fees and overall benefits for schemes will be much larger as this does not take into account the wider benefits resulting from higher quality of service.

On the benefits resulting from setting objectives, according to the CMA this will drive greater engagement by trustees, helping them to monitor the quality of their investment consultant and increasing competitive pressure to ensure the investment consultant is offering a high quality of service<sup>36</sup>. It was not possible for the CMA to quantify all of the potential benefits with precision<sup>37</sup>.

These benefits will arise as a result of the CMA Order and are therefore already realised in the counterfactual of the preferred option.

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<sup>35</sup> CMA, Investment Consultants Market Investigation, Final Report Section 13.105-13.116 and Table 11 [Link](#)

<sup>36</sup> CMA, Investment Consultants Market Investigation, Final Report Section 13.101 [Link](#)

<sup>37</sup> CMA, Investment Consultants Market Investigation, Final Report Section 13.104 [Link](#)

### Benefits to scheme members (in counterfactual)

According to the CMA, millions of pension scheme members and their dependents are affected by advice and decisions from investment consultants and fiduciary managers. The CMA estimate this includes around 10 million people in DB schemes and around 15 million people in DC schemes<sup>38</sup>.

These benefits will arise as a result of the CMA Order and are therefore already realised in the counterfactual of the preferred option.

### Benefits to schemes (additional to counterfactual)

As a result of increased scope of our regulations compared to the CMA Order, an additional 8 pension schemes will now be required to set and monitor investment objectives. We expect the benefits to schemes to be in line with the CMA's expectations that this will help trustees to monitor the quality of service provided by their investment consultant. As it was not possible for the CMA to quantify the direct benefits resulting from setting strategic objectives, we have not quantified this benefit.

### Costs to TPR

Table 3 sets out the estimated set up costs provided by TPR. Table 4 sets out the estimated costs provided by TPR for monitoring and enforcing compliance with remedies 1 and 7 using 2014 powers. TPR will be incorporating this work into business as usual and do not anticipate that this will have an impact on the Levy. These cost estimates are rounded up to the nearest £1,000.

Table 3: Estimated one-off costs to TPR in Year 1

<b>One-off costs in year 1 (2020/21)</b>	<b>Estimated cost to TPR</b>
Set up costs	£10,000

Source: The Pensions Regulator, unpublished data

Table 4: Estimated ongoing costs to TPR

<b>Ongoing Costs</b>	<b>Estimated cost to TPR (per year)</b>
Monitoring and enforcement for remedies 1 and 7 using 2014 powers	£81,000

Source: The Pensions Regulator, unpublished data

These cost estimates are based on the following assumptions:

- The costings are estimated on existing processes and do not include the potential costs of more complex cases that might arise.
- There is insufficient data to make robust assumptions on the number of schemes in scope for the two remedies and in turn the estimated number of cases which might arise. (TPR do not have a robust estimate for the number of breaches per annum).

<sup>38</sup> These figures are high-level approximations. For further detail see CMA, Investment Consultants Market Investigation, Final Report Section 13.104 and footnote 989 [Link](#)

- TPR will adopt a flexible risk appetite in response to volumes of non-compliance reporting.
- One-off costs are based on adopting existing processes and adding questions to the scheme return. These costs would be higher if new processes have to be established.

We have not quantified the cost to TPR of consulting on and producing guidance for trustees in support of the remedies because this is based on the CMA recommendation which TPR have accepted rather than being a requirement of the regulations.

### Benefits to CMA

With regards to the CMA penalty regime, CMA do not have any powers to impose a penalty, they issue directions. If the directions are then not complied with, in principle the CMA would start court proceedings to take the scheme to court. As a result of the regulations bringing compliance and enforcement under the remit of TPR, CMA will no longer incur the costs associated with their penalty regime for enforcing compliance against the CMA Order so we expect they will benefit from this. We have not quantified this benefit to the CMA, as the CMA Order is not yet in force and CMA have not provided an estimate of this benefit. Benefits to the CMA do not count towards the EANDCB calculations.

### **Wider Economic and Societal Impacts**

The intended impact is better value for pension scheme members through better access to the information trustees need to assess value for money (fees, costs, quality etc.) DB sponsoring employers and DC members are less likely to pay higher prices for lower quality services for IC and FM than they otherwise would. In turn this can have a major impact on pension scheme outcomes through the IC/FM influence on the overall strategy, asset allocation and risk management. Any positive impact on scheme outcomes will accumulate and compound over time, especially given the length of many IC/FM appointments, and the time horizon over which pension scheme investment decisions are made.

Increased competition may lead to more switching in the IC market and challenge dominance of incumbent firms providing services, allowing smaller firms or specialist consultants to enter the market. This may in turn encourage schemes to be more adventurous around alternative investments which require specialist advice, such as infrastructure. The CMA took the view that this was a proportionate regulatory intervention to address the adverse effect on competition of the current market situation and that this remedy was intended to have a positive overall effect on competition.

### **Key Assumptions and Sensitivity Analysis**

The following are key areas of sensitivity for the potential costs to trustees of the regulations and extension of scope compared to the CMA Order.

#### 1. One-off cost to trustees to familiarise themselves

We assume it will take all trustees approximately 30 minutes to familiarise themselves with the new requirements giving a total familiarisation cost of approximately £382,200 in the first year only (2020/21). When allowing for sensitivity around this assumption of 50 per cent (i.e. 15 or 45 minutes), holding everything else constant the cost estimate decreases to £191,100<sup>39</sup> and increases to £573,300<sup>40</sup>. The remaining assumptions used in this

<sup>39</sup> Calculation:  $(5,524 \times 3.0) \times (0.25 \times 28.75) + (3,680 \times 2.7) \times (0.25 \times 28.75) = \text{£}191,100$  to nearest 100

<sup>40</sup> Calculation:  $(5,524 \times 3.0) \times (0.75 \times 28.75) + (3,680 \times 2.7) \times (0.75 \times 28.75) = \text{£}573,300$  to nearest 100

calculation are based on the latest data from the Pension Protection Fund, The Pensions Regulator and the Office for National Statistics.

## 2. Ongoing cost to trustees to source and compile the additional information required for TPR scheme return

We assume it would take one administrator per scheme approximately 20 minutes to source and compile the required names, addresses and dates giving a total ongoing cost of approximately £44,400 in each year. When allowing for sensitivity around this assumption of 50 per cent (i.e. 10 or 30 minutes), holding everything else constant the cost estimate decreases to £22,200<sup>41</sup> and increases to £66,600<sup>42</sup>. The remaining assumptions used in this calculation are based on the latest data from the Pension Protection Fund, The Pensions Regulator and the Office for National Statistics.

## 3. One-off and ongoing cost to the additional 8 schemes in scope to set objectives and report against them (extension of scope to include schemes where the principal or controlling employer of a scheme is themselves a provider of FM services and Master Trusts for which an IC-FM firm is the scheme strategist or scheme funder)

We assume there are 8 schemes in scope based on master trusts sponsored by IC/FM firms and other IC/FM providers that we are aware of. We assume the 8 pension schemes affected by this measure are equally as likely to have already set objectives as the schemes in the CMA sample giving a total one-off cost in the first year of £272,000 and an ongoing cost per year of £280,000.

When allowing for sensitivity around the volume assumptions of 50 per cent (i.e. 4 and 12 schemes in scope), holding everything else constant it has the following impact on the cost estimates:

- One-off cost decreases to £136,000 and increases to £408,000;
- Ongoing cost per year decreases to £140,000 and increases to £420,000.

When allowing for sensitivity around the cost assumptions based on the CMA evidence, the minimum one-off and ongoing costs would be £0 and the maximum one-off and ongoing costs would be in excess of £800,000. Using the average excluding zeros (i.e. if the 8 schemes impacted all incur a cost), holding everything else constant it has the following impact on the cost estimates:

- One-off cost increases to £435,200;
- Ongoing cost per year increases to £448,000.

## 4. Ongoing cost to trustees from change in scope (as a result of the difference between interconnected body corporate and group undertaking)

We do not know precisely how many organisations will be impacted by this policy change. We intend to test the following assumptions at consultation.

- We have assumed that the CMA captured all schemes which now fall into scope of an FM service in the counterfactual and therefore that no additional trustees are required to run a qualifying tender and there is no additional cost to business.

<sup>41</sup> Calculation:  $(5,524 \times 0.17 \times 14.48) + (3,680 \times 0.17 \times 14.48) = £22,200$  to nearest 100

<sup>42</sup> Calculation:  $(5,524 \times 0.5 \times 14.48) + (3,680 \times 0.5 \times 14.48) = £66,600$  to nearest 100

- We have assumed that, based on our consultation regulations, trustees would know to avoid more than one approach to firms which formed a group undertaking and would instead seek a different tender and therefore that no additional trustees are required to make endeavours to obtain an additional bid from an FM provider and there is no additional cost to business.

## 5. One-off and ongoing costs to TPR

The cost estimates provided by TPR using 2014 powers, give a one-off cost of £10,000 in the first year and an ongoing cost of £81,000. When allowing for sensitivity around the cost assumptions of 50 per cent it has the following impact on the cost estimates:

- One-off cost decreases to £5,000 and increases to £15,000;
- Ongoing cost per year decreases to £40,500 and increases to £121,500.

## **Small and Micro Business Assessment**

### *Scope of Regulations*

The proposed regulations will affect DB and DC pension schemes with 2+ members including hybrid schemes but excluding Executive Pension Schemes (EPSs) and Small Self-Administered Schemes (SSASs). The regulations will affect pension scheme trustees and sponsoring employers regardless of sector or size.

These small and micro pension schemes (EPSs and SSASs) have been deemed out of scope of the regulations as it would be disproportionate for it to apply to them. For these schemes, where the members are all trustees, or directors of a corporate trustee, it would be unreasonable to make trustees undertake the time and cost to tender or set objectives when they are already directly incentivised to do so to improve their own outcomes.

Most small businesses do not administer their own pension schemes, but instead use an external provider to meet their duties.

### *Findings from the CMA Report*

The CMA found that small schemes and DC schemes are less engaged in the IC market<sup>43</sup> and the supply of IC services to smaller pension schemes is particularly unconcentrated<sup>44</sup>. The CMA report defines 'small' schemes as those with assets below £100 million.

The CMA survey found that smaller schemes are less likely than larger schemes to purchase IC and FM services. 49% of smaller pension schemes use IC services compared to 94% of large schemes and 18% of smaller pension schemes buy FM services compared to 26% of schemes<sup>45</sup>. These schemes rely on a range of other professional advisors such as wealth managers, independent financial advisors and actuaries<sup>46</sup>.

In their report<sup>47</sup>, the CMA highlighted concern that the costs or time required for mandatory tendering may result in a scheme incurring costs which could represent a greater relative burden on smaller schemes. The CMA however concluded that the mandatory tendering

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<sup>43</sup> CMA, Investment Consultants Market Investigation, Final Report Paragraph 32 [Link](#)

<sup>44</sup> CMA, Investment Consultants Market Investigation, Final Report Section 4.83 [Link](#)

<sup>45</sup> IFF Research Report on the CMA survey, Page 13 [Link](#)

<sup>46</sup> CMA, Investment Consultants Market Investigation, Final Report [Link](#)

<sup>47</sup> CMA, Investment Consultants Market Investigation, Final Report Section 12.46-12.50 [Link](#)

remedy should have no minimum threshold for scheme size as this would likely reduce effectiveness (the problems are more prominent amongst smaller schemes so including a minimum threshold and exempting these schemes would mean these benefits would not be realised). This suggests small and micro schemes may be disproportionately impacted by these regulations as they may need to invest relatively more resources in meeting the new requirements. As the CMA have not excluded these small and micro schemes in their Order (with the exception of EPSs and SSASs) these schemes are already in scope in the counterfactual of the preferred option.

*Data on DB and DC Schemes by Size*

Table 5 shows that the majority of DB schemes have more than 100 members though there are a significant number of schemes with fewer than 100 members. Table 6 shows that the majority of DC schemes in scope have fewer than 100 members. These tables refer to scheme size and are not a direct measure of the number of employees in the underlying sponsoring employer.

Table 5: Number of DB schemes by scheme size<sup>48</sup>

<b>Number of Members</b>	<b>Number of Schemes (Purple Book- Estimated 2018 Universe)</b>
2-99	1,985
100-999	2,411
1,000-4,999	759
5,000-9,999	171
10,000+	198
<b>Total</b>	<b>5,524</b>

Source: Pension Protection Fund, The Purple Book, 2018

Table 6: Number of DC schemes by scheme size<sup>49</sup>

<b>Number of Members</b>	<b>Number of Schemes (includes hybrid schemes)</b>
2-11	1,700
12-99	1,000
100-999	560
1,000-4,999	270
5,000+	150
<b>Total</b>	<b>3,680</b>

Source: The Pensions Regulator, Scheme Return and Micro Scheme estimate, 2018

The costs to business fall to the trustees of DB and DC schemes so small and micro businesses that sponsor DB and DC schemes may be affected. However, assessing the impact of the proposed changes on this group is difficult, as small and micro pension schemes may not necessarily correspond to small and micro businesses<sup>50</sup>. As there is currently no robust evidence to link pension scheme size to employer size, it is disproportionate to accurately assess the impact on small and micro businesses.

<sup>48</sup> Pension Protection Fund, The Purple Book, December 2018 Figure 2.1 [Link](#)

<sup>49</sup> 1,980 DC and Hybrid Schemes with 12+ members: The Pensions Regulator, DC trust: presentation of scheme return data 2018 – 2019 [Link](#)

1,700 DC Micro Schemes with 2-11 members: The Pensions Regulator estimate [Link](#)

<sup>50</sup> For example, a large firm may sponsor a small scheme with only a few members. Similarly, many small and micro businesses participate in large multi-employer schemes or master trusts.

The Annual Survey of Hours and Earnings (ASHE) dataset provides information on the size of DB and DC sponsoring employers with active members. This will only include those who are contributing to a DB or DC pension so will exclude members who are in schemes closed for future accrual but it helps to provide an indication of the size of sponsoring employers.

Table 7 shows the proportion of Private sector and Not for Profit active DB members by employer size. The majority of active DB members work in businesses with more than 50 employees. Approximately 12% and 3% of active DB members work in Small and Micro businesses respectively.

Table 7: Proportion of DB sponsoring employers, by employer size<sup>51</sup>

Size of Employers	Proportion of DB members <sup>52</sup>
0	0%
1-9	3%
10-49	12%
50-99	5%
100-499	15%
500-999	9%
1000+	57%
<b>All sizes</b>	<b>100%</b>

Source: ONS Annual survey of Hours and Earnings, Great Britain, 2018

Table 8 shows the proportion of Private sector and Not for Profit active DC members by employer size. The majority of active DC members work in businesses with more than 50 employees. Approximately 18% and 11% of active DC members work in Small and Micro businesses respectively.

Table 8: Proportion of DC sponsoring employers, by employer size<sup>53</sup>

Size of Employers	Proportion of DC members <sup>54</sup>
0	0%
1-9	11%
10-49	18%
50-99	7%
100-499	13%
500-999	6%
1000+	46%
<b>All sizes</b>	<b>100%</b>

Source: ONS Annual survey of Hours and Earnings, Great Britain, 2018

If these small and micro employers sponsor smaller sized schemes (rather than participating in a commercial multi-employer scheme) then they may encounter a higher cost as a result of this measure relative to their overall costs, however they will also benefit from the introduction of the requirements. As noted above, small and micro businesses are not the same as small and micro pension schemes. The Employers' Pension Provision Survey<sup>55</sup> shows type of pension provision by size of employer. 30 per cent of private sector employers and 22 per cent of micro organisations offered access to NEST in 2017. Small employers were the most likely to offer access to NEST with 64 per cent of small

<sup>51</sup> DWP estimates derived from ONS Annual Survey of Hours and Earnings (GB)

<sup>52</sup> Figures are rounded to the nearest 1%

<sup>53</sup> DWP estimates derived from ONS Annual Survey of Hours and Earnings (GB)

<sup>54</sup> Figures are rounded to the nearest 1%

<sup>55</sup> Employers' Pension Provision Survey 2017 Tables 2.4 and 2.5 [Link](#)



organisations offering access to NEST in 2017. As many small and micro businesses use large pension schemes, we anticipate no disproportionate impact.

### **Monitoring and Evaluation**

We will work with TPR and the industry in order to understand and review the post implementation impact.

## Summary of Total Costs<sup>56</sup>

Table 10: One-off familiarisation cost to trustees and ongoing cost to trustees (to source and compile the additional information required for TPR scheme return)

Type Of Cost	Scheme Volumes	Cost	Frequency	Assumptions and Rationale
One-off	DB: 5,524 DC: 3,680	£382,200	Once (2020/21)	We assume it will take all trustees approximately 30 minutes to familiarise themselves with the new requirements, based on the length of regulations. We assume schemes will already be complying with the CMA Order and therefore, the familiarisation process will be simple.
Ongoing		£44,400	Yearly	We assume it would take one administrator per scheme approximately 20 minutes to source and compile the required names, addresses and dates, based on trustees already knowing this information in order to report compliance to the CMA.
<b>Total Cost</b>	£382,200 in 2020/21 and £44,400 per year			

Table 11: One-off and ongoing cost to additional 8 schemes to set objectives and report against them from extension of scope (to include schemes where the principal or controlling employer of a scheme is themselves a provider of FM services and Master Trusts for which an IC-FM firm is the scheme strategist or scheme funder)

Type Of Cost	Scheme Volumes	Cost	Frequency	Assumptions and Rationale
One-off	8	£272,000	Once (2020/21)	We assume there are 8 schemes in scope based on master trusts sponsored by IC/FM firms and other IC/FM providers that we are aware of. We assume the 8 pension schemes affected by this measure are equally as likely to have already set objectives as the schemes in the CMA sample.
Ongoing		£280,000	Yearly	
<b>Total Cost</b>	£272,000 in 2020/21 and £280,000 per year			

<sup>56</sup> All costs are rounded to the nearest 100.

Table 12: Ongoing cost to trustees from change in scope (as a result of the difference between interconnected body corporate and group undertaking)

Type Of Cost	Scheme Volumes	Cost	Frequency	Assumptions and Rationale
One-off	0	£0	Once (2020/21)	We assume that the CMA captured all schemes which now fall into scope of an FM service in the counterfactual. We assume that trustees would know to avoid more than one approach to firms which formed a group undertaking and would instead seek a different tender, based on our consultation regulations.
Ongoing		£0	Yearly	
<b>Total Cost</b>	£0 in 2020/21 and £0 per year			

Table 13: One-off and ongoing cost to TPR

Type Of Cost	Scheme Volumes	Cost	Frequency	Assumptions and Rationale
One-off	N/A*	£10,000	Once (2020/21)	The costings are estimated on existing processes and do not include the potential costs of more complex cases that might arise. There is insufficient data to make robust assumptions on the number of schemes in scope for the two remedies and in turn the estimated number of cases which might arise. (TPR do not have a robust estimate for the number of breaches per annum). TPR will adopt a flexible risk appetite in response to volumes of non-compliance reporting. One-off costs are based on adopting existing processes and adding questions to the scheme return. These costs would be higher if new processes have to be established.
Ongoing		£81,000 using 2014 powers	Yearly	
<b>Total Cost</b>	£10,000 in 2020/21 and £81,000 per year using 2014 powers			