

2017 No. 774

PENSIONS

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

<i>Made</i>	- - - -	<i>19th July 2017</i>
<i>Laid before Parliament</i>		<i>20th July 2017</i>
<i>Coming into force</i>	- -	<i>1st October 2017</i>

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(a).

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(b) are amended in accordance with regulations 3 to 11.

Amendment of regulation 2

3. In regulation 2(1) (interpretation), in the definition of “service provider” for “specified” substitute “relevant”.

Amendment of Part 2 – Chapter 1

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

Amendment of regulation 4

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

(a) 2014 c. 19. Paragraphs 6(1A) and (3) of Schedule 18 were inserted by section 41 of the Pensions Schemes Act 2017 (c. 17).
(b) S.I. 2015/879, amended by S.I. 2016/304.

- (2) In regulation 4(1) for “this Part”, in each place it occurs, substitute “this Chapter”.
- (3) In regulation 4(2) for “this Part” substitute “this Chapter”.

Amendment of regulation 6

- 6. At the beginning of regulation 6(1) insert “Subject to regulation 13C(6)”.

Amendment of regulation 9

- 7.—(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

- 8.—(1) Regulation 11A (payments to advisers)(a) 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(b) 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 paragraph (2) applies it overrides any term of a relevant contract to the extent that the term conflicts with it.”.

Amendment of regulation 11B

- 9.—(1) Regulation 11B (relevant information)(c) 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 1st October 2017.”.
- (4) At the beginning of paragraph (3) insert “Except in a case to which paragraph (2A) applies,”.

(a) Regulation 11A was inserted by S.I. 2016/304.
(b) Paragraph 6(3) of Schedule 18 to the Pensions Act 2014, inserted by section 41 of the Pension Schemes Act 2017, defines “relevant contract”.
(c) Regulation 11B was inserted by S.I. 2016/304.

(5) After paragraph (3) insert—

“(3A) In a case to which paragraph (2A) applies, subject to paragraph (5), the service provider must confirm in writing to the trustees or managers of the specified scheme within 1 month beginning with 1st April 2018 that it is complying with the prohibition in regulation 11A(2) in relation to all members to whom paragraph (2A) applies.”.

(6) In paragraph (5)—

(a) for “paragraph (2)” substitute “paragraphs (2) or (2B)”; and

(b) for “paragraph (3)” substitute “paragraphs (3) or (3A)”.

(7) In paragraph (6), after “paragraph (3)” insert “or (3A)”.

Amendment of regulation 11C

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

New regulations 13A to 13E

11. 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 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(b);

“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(c)); and

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

Prohibition of early exit charges

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

(a) Regulation 11C was inserted by S.I. 2016/304.

(b) 2004 c. 12.

(c) “Administration charge” is defined in paragraph 1(5) of Schedule 18 to the Pensions Act 2014.

(d) Regulation 2(2) of S.I. 2015/879 defines “relevant scheme” for the purposes of paragraph 1(5) of Schedule 18 to the Pensions Act 2014.

(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.

(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 or a relevant contract as at 1st October 2017.

(3) Where no provision for an early exit charge was made under the scheme rules or a relevant contract 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 paragraphs (2)(a) and (6)(a)—

- (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.

Conflicting contract terms

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

Relevant information

13E.—(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

12.—(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 8 to 10 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(a) 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

Guy Opperman
Parliamentary Under Secretary of State
Department for Work and Pensions

19th July 2017

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 7 and 10 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 8 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 8(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

(a) 2015 c. 26.

for any payment made to an adviser before 1st October 2017. Regulation 8(6) inserts regulation 11A(7) to provide that the prohibition overrides any conflicting term of a relevant contract.

Regulation 9 amends regulations 11B of the Principal Regulations to provide that the requirements of regulation 11A do not apply to a contract entered into before 6th April 2016 (and not subsequently renewed or varied) until the expiry of 6 months beginning with 1st October 2017. A longer period is allowed where the service provider requests more information from the trustees or managers about former members to enable it to comply (see regulation 9(6)). The amendments made by regulation 9 also set out the timescales within which service providers must send confirmation of compliance with the prohibition in regulation 11A in the case of such a contract.

Regulation 11 inserts new regulations 13A to 13E 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 the restrictions in regulations 13B and 13C override any conflicting contractual term.

Regulation 13E 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 6 make amendments to the Principal Regulations consequential on the insertion of new regulations 13A to 13E.

Regulation 12 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.

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