



Department  
for Work &  
Pensions

# Treatment of Additional Voluntary Contributions under the charge cap

Public consultation on a technical change to the  
Occupational Pension Schemes (Charges and  
Governance) Regulations

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March 2015

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# Introduction

This consultation seeks views on a technical modification to the draft Occupational Pension Schemes (Charges and Governance) Regulations 2015. It has come to light that one element of the legislation does not function as we intended. We propose a minor amendment to the Regulations to help ensure the legislation achieves the policy intent. This paper explains why we need to make this change and includes a specific consultation question.

## About this consultation

### Who this consultation is aimed at

We welcome comments from those involved in designing and running pension schemes, pension industry professionals and advisers, pension scheme members, consumer groups and member representative organisations, and anyone with an interest in pensions.

### Purpose of the consultation

This consultation seeks views on whether the proposed amendment to the Occupational Pension Schemes (Charges and Governance) Regulations meets our stated policy intent as regards the treatment of Additional Voluntary Contributions under the default arrangement charge cap.

### Scope of consultation

This consultation applies to England, Wales and Scotland.

### Duration of the consultation

The consultation period begins on 18 March 2015 and runs until 24 March 2015.

### How to respond to this consultation

Please send your consultation responses to:

Megan Rooney

Private Pensions Policy and Analysis

Department for Work and Pensions

1<sup>st</sup> Floor, Caxton House

6-12 Tothill Street

London

SW1H 9NA

Email: [reinvigorating.pensions@dwp.gsi.gov.uk](mailto:reinvigorating.pensions@dwp.gsi.gov.uk)

## Government response

We will 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.

The report will summarise the responses. Following this consultation, the Government intends to lay amending Regulations before Parliament.

# How we consult

## Consultation principles

This consultation is being conducted in line with the new [Cabinet Office consultation principles](#). The key principles are:

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before
- departments will need to give more thought to how they engage with and use real discussion with affected parties and experts to make well informed decisions
- departments should explain what responses they have received and how these have been used in formulating policy
- consultation should be ‘digital by default’, but other forms should be used where these are needed to reach the groups affected by a policy
- the principles of the [Compact: the agreement between government and the voluntary/community sector](#) will continue to be respected

## 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  
2<sup>nd</sup> Floor  
Caxton House  
Tothill Street  
London  
SW1H 9NA

Email: [caxtonhouse.legislation@dwp.gsi.gov.uk](mailto: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](mailto: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](#).

# Technical change to the treatment of Additional Voluntary Contributions under the charge cap

## Summary

As announced in March 2014, the Government is introducing a charge cap that will apply to the default arrangements of pension schemes used for automatic enrolment. The charge cap will be set at 0.75% of funds under management, or an equivalent combination charge.

There are two main types of workplace pension – occupational schemes and workplace personal pensions. The Department for Work and Pensions has made regulations which apply to certain occupational schemes which provide money purchase benefits<sup>1</sup>. The firms that provide workplace personal pensions are regulated by the Financial Conduct Authority (FCA). The FCA has made equivalent rules for workplace personal pension schemes (subject to certain exceptions).

The final regulations (the Occupational Pension Schemes (Charges and Governance) Regulations 2015) for occupational pension schemes were laid before Parliament on 4 February 2015 and will be made shortly, following affirmative debates in Parliament. They come into effect on 6 April 2015<sup>2</sup>.

Since laying these Regulations, it has come to light that one element of the legislation does not function as intended. This relates to a sub-set of arrangements receiving Additional Voluntary Contributions. This consultation therefore concerns a technical amendment to the Regulations in order to achieve the policy intent.

## Timing

1. The Regulations for occupational pension schemes are due to come into effect on 6 April 2015. To ensure that they function as intended and in line with industry preparations, we propose to bring the amending Regulations into effect at the same time.
2. This consultation will therefore close on **24 March 2015**. We would welcome views from any interested parties ahead of this deadline.

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<sup>1</sup> There are a small number of exceptions, including for small self-administered schemes and executive pension schemes.

<sup>2</sup> With the exception of regulations 11 and 23, and the words “with the exception of regulation 11” in regulation 4(2), which come into force on 6 April 2016.

## **Additional Voluntary Contributions – Background**

3. In our February command paper, *Government response to the consultation on Better workplace pensions: Putting savers' interests first*<sup>3</sup>, we confirmed that an arrangement established for the purpose of receiving Additional Voluntary Contributions (AVCs) would not generally meet the criteria to be defined as a default arrangement subject to the charge cap.
4. We explained that the only circumstance in which AVCs could be subject to the charge cap was where a particular arrangement is, first, used by a qualifying scheme to fulfil an employer's automatic enrolment duties in respect of at least one employee, and second, meets one of the three tests in regulation 3(2). Where this happens, workers of that employer who have chosen to make AVCs which are invested in the same arrangement would also be protected by the cap (in line with regulations 3(5) and 4(2)). This was intended to ensure parity of treatment, such that employees of the same employer, contributing to the same arrangement in the same scheme should pay the same charges.
5. This would mean that no arrangement solely receiving AVCs could be subject to the charge cap.

## **Issue and proposed change**

6. It has recently come to light that there is one additional scenario in which AVCs may be subject to the default fund charge cap. This could potentially affect schemes where the AVCs meet the following criteria:
  - They are money purchase AVCs which are made within a qualifying scheme (which is defined as having the meaning in the Pensions Act 2008) used for automatic enrolment
  - They are made to an arrangement which only receives AVCs
  - The members making AVCs were not required to make a choice as to the arrangement in which these contributions were invested
7. We understand that this is an unusual scenario as, in most cases, members making AVCs are required to choose the arrangement in which their AVCs are invested. However, this impact was not intended and schemes will have been preparing for the introduction of the charge cap on the basis that such arrangements would not be in scope.
8. Consequently, we propose to amend the Regulations so that no arrangement solely receiving contributions which are AVCs will be a 'default arrangement' and so subject to the charge cap. The proposed amendment is included below.

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<sup>3</sup> Department for Work and Pensions, February 2015, *Government response to the consultation on Better workplace pensions: Putting savers' interests first*, Cm 9000, TSO.

9. We still intend for AVCs to be subject to the charge cap where they are made to an arrangement which is designated as a default arrangement for other workers of that employer.
10. This amendment is technical in nature and solely intended to achieve the policy as outlined in the command paper, *Government response to the consultation on Better workplace pensions: Putting savers' interests first*, published on 4 February.

## **Consultation Question**

Does the amendment to the definition of a default arrangement in regulation 3 achieve the policy intention as regards the treatment of Additional Voluntary Contributions under the charge cap?

# Draft amendment to regulations

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STATUTORY INSTRUMENTS

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**2015 No.**

## **PENSIONS**

### **The Occupational Pension Schemes (Charges and Governance) (Amendment) Regulations 2015**

*Made* - - - - - \*\*\*  
*Laid before Parliament* \*\*\*  
*Coming into force* 6th April 2015

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 43 and 54(5) of, and paragraphs 1(1), (2)(a) and (3) of Schedule 18 to, the Pensions Act 2014<sup>(a)</sup>, makes the following Regulations.

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

#### **Citation and commencement**

1. These Regulations may be cited as the Occupational Pension Schemes (Charges and Governance) (Amendment) Regulations 2015 and come into force on 6th April 2015.

#### **Amendment of regulation 3**

2. In regulation 3 of the Occupational Pension Schemes (Charges and Governance) Regulations 2015<sup>(b)</sup>, for paragraph (6) substitute—  
“(6) An arrangement is not a default arrangement if—
  - (a) at any time before a benefit under that arrangement comes into payment, it provides for a pensions promise to be obtained from a third party in relation to any such benefit; or
  - (b) it provides no benefits other than benefits which are attributable to additional voluntary contributions.”.

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

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(a) 2014 c. 19.  
(b) S.I. 2015/XXXX.

Address  
Date

*Name*  
Minister of State  
Department for Work and Pensions

### **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/XXXX).

They insert a new provision into regulation 3 which has the effect that an arrangement which only provides benefits attributable to Additional Voluntary Contributions will not be a default arrangement under that regulation.

A full impact assessment has not been published for these Regulations as they have no impact on the private sector or civil society organisations. An assessment has been made of the impact of Part 2 of the Occupational Pension Schemes (Charges and Governance) Regulations 2015 (which this instrument amends). Copies of that impact assessment are available in the libraries of both Houses of Parliament and alongside this instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk). Copies may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D, Caxton House, Tothill Street, London SW1H 9NA.