



Department  
for Work &  
Pensions

# Better workplace pensions: Banning member-borne commission in occupational pension schemes

Government response and consultation on draft  
regulations

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January 2016

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# Introduction

This paper forms the Government's response to the consultation 'Better workplace pensions: Banning member-borne commission in occupational pension schemes'. This paper also consults on draft regulations that the Government intends to bring forward to deliver the ban (see Annex B). We would welcome views on whether these draft regulations meet the policy decisions set out in this paper.

## About this consultation

### Who this consultation is aimed at

We would particularly welcome responses from providers and members of occupational pension schemes including third-party administrators, independent financial advisers and adviser firms, trustees and managers of schemes, lawyers, and interested members of the public.

### Purpose of the consultation

The purpose of this consultation is to seek views on whether the draft regulations deliver the policy decisions made by the Government following the consultation 'Better workplace pensions: Banning member-borne commission in occupational pension schemes'.

### Scope of consultation

This consultation applies to England, Wales and Scotland.

### Duration of the consultation

The consultation period begins on 26 January 2016 and runs until 9 February 2016.

How to respond to this consultation

Please send your consultation responses to:

Better Workplace Pensions  
Private Pensions and Stewardship Directorate  
Department for Work and Pensions  
1st Floor, Caxton House  
6-12, Tothill Street London SW1H 9NA

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

# How we consult

## Consultation principles

This consultation is being conducted in line with the [Cabinet Office consultation principles](#).

## 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](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](#).

# Executive summary

1. Automatic enrolment will see 9 million people newly saving or saving more into a workplace pension scheme. This has created new responsibilities on Government and the pensions industry to protect savers and ensure that they are enrolled into good quality schemes that provide value for money.
2. In March 2014, the Government announced a charge cap and range of charge control measures to protect savers automatically enrolled into a workplace pension scheme.<sup>1</sup> This included a ban on member-borne commission in workplace pension schemes used for automatic enrolment.
3. In October 2015, the Government published the consultation 'Better workplace pensions: Banning member-borne commission in occupational pension schemes.'<sup>2</sup> This consultation sought views on the most effective means of regulating to ban member-borne commission in relevant occupational pension schemes that provide money purchase benefits.
4. This paper forms the Government's response to this consultation. It also includes draft regulations for consultation (see Annex B). The regulations, when made, will amend relevant regulations in the Occupational Pension Schemes (Charges and Governance) Regulations 2015.<sup>3</sup> Following consideration of the responses to this consultation, the Government intends to lay the final regulations before Parliament to come into force on 6 April 2016.
5. In summary, the Government is announcing that regulations will be introduced preventing service providers from levying a charge on members in order to recover the costs of commission payments made to advisers for certain advice or services. The regulations will apply to occupational pension schemes that provide money purchase benefits and are being used by an employer as a qualifying scheme for automatic enrolment in relation to at least one jobholder. This will include additional voluntary contributions (AVCs) where these are used to provide money purchase benefits in these schemes.
6. The regulations will:
  - place a regulatory duty on service providers preventing them from levying a charge on members to recover the cost of any commission payments to advisers for certain advice or services in respect of any new commission

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<sup>1</sup> 'Better Workplace Pensions: further measures for savers', DWP, March 2014, <https://www.gov.uk/government/consultations/better-workplace-pensions-a-consultation-on-charging>

<sup>2</sup> 'Better Workplace Pensions: banning member-borne commission in occupational pension schemes', DWP, October 2015, <https://www.gov.uk/government/consultations/banning-member-borne-commission-in-occupational-pension-schemes>

<sup>3</sup> <http://www.legislation.gov.uk/ukdsi/2015/9780111128329/contents>

arrangements, or variations or renewals of existing commission arrangements. Service providers will be required to comply with this duty within 1 month of receiving confirmation from the trustees or managers<sup>4</sup> that the scheme is being used as a qualifying scheme for automatic enrolment;

- place a regulatory duty on trustees requiring them to inform their service provider whether the scheme they are managing is being used as a qualifying scheme for automatic enrolment. Trustees must provide this information within the later of 3 months of the regulations coming into force; the date the scheme is used as a qualifying scheme for automatic enrolment; or the date the service provider becomes appointed as a service provider to the scheme;
  - enable members to opt-in to advice and services provided to them subject to certain conditions. These include that any such agreement must be set out in writing, including the cost of the advice or service and the duration over which the payment will be taken;
  - be enforced by The Pensions Regulator;
  - be introduced via a staged approach as follows:
    - from April 2016 duties on service providers and trustees will come into force in respect of new commission arrangements; and
    - we intend to consult later in 2016 on regulations in respect of existing commission arrangements
7. This ban on member-borne commission will, in conjunction with rules made by the Financial Conduct Authority, protect the 9 million people saving into workplace pensions as a result of automatic enrolment, including around 20,000 members the Government estimates are currently saving into occupational pension schemes that contain commission. The Government has produced an Impact Assessment which sets out the financial impact of the ban, including on members, service providers, trustees, and advisers.
8. The following chapters summarise the views of respondents to the consultation and the Government's response. The Government would welcome views on whether the draft regulations achieve the policy set out in this paper. A list of consultation questions on draft regulations is included at Annex A. The draft regulations are included at Annex B. A summary of the draft regulations is included at Annex C.
9. The Government would like to thank all those who submitted formal responses to the consultation and who engaged with the Department for Work and Pensions as part of the consultation process.

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<sup>4</sup> The term 'trustees' will be used throughout this document for simplicity, but this should be understood to also include managers in the case of the small number of occupational schemes that are not trust-based.

# Chapter 1 – Commission

This chapter summarises responses to the consultation questions on commission arrangements and non-monetary benefits.

## Commission arrangements

**Original Consultation Question:** Do you have any comments on:

- a) whether our understanding of adviser remuneration reflects how commission is typically paid in occupational schemes used for automatic enrolment;
- b) whether there are any other examples of commission payment models that are used in these schemes and how common these are;
- c) the prevalence of initial commission arrangements in occupational pension schemes used for automatic enrolment

**Original Consultation Question:** Do you have any comments on whether non-monetary benefits are a feature of commission arrangements and if so what form they commonly take?

1. As part of the consultation on the most effective means of regulating to ban member-borne commission, the Government sought views on how commission arrangements are structured and administered in occupational pension schemes used for automatic enrolment. The Government also sought views on the prevalence of non-monetary benefits as a feature of commission arrangements, and what form such benefits commonly take.
2. The Government believed it was important to test this understanding given that trustees are generally removed from commission arrangements between advisers and service providers, and may not be aware that a scheme contains commission.
3. In the consultation paper, the Government set out its understanding of typical commission arrangements in occupational pension schemes, explaining that commission typically relates to advice or services that have been agreed between a service provider<sup>5</sup> and an adviser. The service provider remunerates the adviser and recovers this cost through member-borne charges. Commission may take the form of an up-front payment known as initial commission or an on-going payment commonly referred to as trail commission.

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<sup>5</sup> The consultation paper explained that by service provider we meant bundled pension providers, third party administrators or asset managers who provide services directly to trustees or managers of an occupational scheme used for automatic enrolment. More information on this can be found in the 'Service provider' section of this consultation response.

4. There was a general consensus amongst respondents to the consultation that the Government had accurately understood and explained how commission is structured and the various forms of such arrangements, including initial and trail commission arrangements.

*'The arrangements described broadly reflect the types of commission in these schemes.'* **Standard Life**

5. Some respondents noted the importance of distinguishing between commission payments made by service providers to advisers, and charges levied on members to recover the cost of commission payments.

*'It is important to draw a distinction between commission payments, which are from the service provider to the adviser / intermediary and charges which are deducted by the service provider to cover costs out of the arrangements the trustees have put in place to provide member benefits...However, there is rarely a direct link between commission amounts and charges or element of charges which are paying for that.'* **Aegon**

6. Many respondents commented that while commission does exist in occupational pension schemes, it is not prevalent, and generally features in older schemes. Nonetheless, many acknowledged that both trustees and members were generally unaware that such arrangements were contained in a scheme.

*'While these costs are less common in major defined contribution schemes, we agree that most members are unaware of such costs where they do exist or that they may be paying for advice given to other parties.'* **Hymans Robertson**

*'Feedback from our members (acting as service providers to occupational pension schemes) suggests that initial commission arrangements in occupational pension schemes are not common for modern schemes, but some legacy schemes may be affected.'* **ABI**

*'We are not aware of many instances where occupational pension schemes pay commission, or disguised commission. However, new commission payment arrangements could be created.'* **BC&E**

7. The Government is clear, following an assessment of these responses, that its understanding of commission arrangements in occupational pension schemes is accurate. Although the draft regulations do not refer to the term "commission", they reflect this understanding of commission arrangements.

## **Non-monetary benefits**

8. There was also a general consensus amongst respondents that non-monetary benefits are not a feature of commission arrangements in occupational pension schemes. Many pointed to the Bribery Act 2010 and rules made by the Financial Conduct Authority and explained that these prevented the provision or receipt of

non-monetary benefits, or otherwise created an expectation that such practices were prohibited.

*'In our experience non-monetary benefits are not a feature of commission arrangements.'* **Hargreaves Lansdown**

*'In our experience, non-monetary benefits are not a common feature of commission arrangements.'* **Association of Pension Lawyers**

*'The TPR and Government should monitor the market to ensure practices (monetary or otherwise) do not evolve which are intended to circumvent the proper functioning of the market by looking to replicate commission by other means.'* **Royal London**

9. Given the general consensus amongst respondents that non-monetary benefits are not a feature of commission arrangements in occupational pension schemes, the Government will not specifically include non-monetary benefits in these regulations. However, the Government will monitor the situation and if evidence emerges showing the existence or emergence of non-monetary benefits then the Government will take further action.

#### **Summary of decisions**

The Government's understanding of commission arrangements in occupational pension schemes used for automatic enrolment is accurate.

Non-monetary benefits will not be included in this set of regulations to ban charges from being imposed on members to recover the costs of commission payments made to advisers for certain advice or services. However, the Government will monitor the situation and if evidence emerges showing the existence or emergence of non-monetary benefits then the Government will take further action.

# Chapter 2 – Scope of the regulations

This chapter summarises responses to consultation questions on the scope of the ban on member-borne commission; integrated service providers; and whom the ban will protect.

## Scope of ban on member-borne commission

**Original Consultation Question:** Do you have any comments regarding the proposed scope of the ban?

1. The Government announced in March 2014 that commission would be banned in workplace pension schemes used for automatic enrolment. In February 2015, the Government confirmed that the ban would include AVCs where these are used to provide money purchase benefits.
2. As part of the consultation on the most effective means of regulating to ban member-borne commission, the Government sought views on which occupational pension schemes should be subject to the ban. The Government proposed that the regulations apply to occupational pension schemes that are used as qualifying schemes for automatic enrolment and provide money purchase benefits. It was also proposed that the regulations apply to all arrangements within a scheme – not just the default arrangement.
3. The Government also explained its intention that advice or services provided to trustees would not be covered by the ban so as to ensure that they were able to access advice and services that they need to seek as part of the lawful and effective management of a scheme, and meet the costs via a charge on members of the scheme.
4. Most respondents to the consultation agreed with the proposed scope of the ban, including the exclusion of trustees.

*'We agree that the proposed scope is appropriate.'* **Association of Professional Pensions Trustees**

*'Mercer fully supports the exemption in respect of costs incurred by trustees to pay for advice or services that arise as part of the lawful and effective operation of a scheme.'* **Mercer**

*'...the Association feels that the scope of the ban is broadly appropriate and that the suggested exclusions from the ban are unlikely to lead to difficulties.'*  
**PLSA**

*'We agree that it is appropriate for the ban to cover all occupational pension schemes that provide money purchase benefits and are used as qualifying*

*schemes for auto-enrolment...Our view is that the ban should cover all members of these schemes regardless of whether they have been auto-enrolled or not...'* **Association of Pensions Lawyers**

5. However, others felt that the ban should be extended to all occupational pension schemes, not just those used for automatic enrolment.

*'We would like to see the ban extended to all money purchase benefits under trust-based occupational and contract-based workplace pension schemes, not just those used for auto-enrolment. Otherwise members in numerous legacy schemes will not benefit from the ban. Also, in practice, many auto-enrolment and non-auto enrolment schemes are administered by providers on a common platform while commission agreements between providers and advisers are not often scheme specific.'* **Hymans Robertson**

6. Many respondents also commented on the importance of achieving consistency wherever possible with respective rules made by the Financial Conduct Authority for workplace personal pension schemes<sup>6</sup>, in order to reduce burdens on industry and prevent regulatory arbitrage.

*'Our members having been applying a similar ban to new workplace personal pension schemes since March 2015, and will be required to apply this ban to existing commission arrangements for workplace personal pension schemes from April 2016, under rules published by the Financial Conduct Authority last year. Ensuring consistent regulations and governance regimes apply consistently across occupational and workplace pensions is essential to protecting savers, improving understanding of the pensions system, and minimising regulatory arbitrage.'* **ABI**

*'There should also be consistency between DWP and FCA requirements on the application of their respective bans on commission, particularly to those who stopped contributing before the ban came into force.'* **Society of Pension Professionals**

7. In considering these responses, the Government has reflected on the scope of the original consultation on the charge cap and charge control measures and the objective to protect savers who have been automatically enrolled into a workplace pension scheme selected by their employer.
8. The Government has, therefore, determined that the ban will apply to specified occupational pension schemes that provide money purchase benefits and which are used as qualifying schemes for automatic enrolment. A specified scheme is one which is being used by an employer as a qualifying scheme for at least one jobholder. Members who are, or were, employed by the employer who is using the scheme as a qualifying scheme for one jobholder will be protected by the ban. Please see paragraphs 20 to 26 for further detail about which members will be protected by the ban.

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<sup>6</sup> <http://www.fca.org.uk/your-fca/documents/policy-statements/ps15-05>

9. Small self-administered schemes, executive pension schemes and schemes with only one member are excluded from the scope of the regulations.
10. The Government has also decided that once a scheme is covered by the ban it will remain so, even if the scheme stops being used as a qualifying scheme for automatic enrolment. This is to ensure that once a member is protected by the ban they will remain protected so long as they remain a member of that scheme. This is consistent with the approach taken with the charge cap on default arrangements, whereby once an arrangement has been determined to be the default arrangement within a scheme, it will continue to be determined as such. This is set out in draft regulation 11A(7), which is set out in Annex B.

## **Additional voluntary contributions**

11. Some respondents agreed that AVCs should be covered by the regulations, whereas others felt that AVCs should not be covered, pointing out that members will, in these cases, have made a conscious decision to make additional contributions to their fund.

*'The scope of the ban is right. We agree that commission should not be allowed for arrangements being used as qualifying arrangements for the purpose of automatic enrolment. It is right that AVC arrangements which are part of AE qualifying arrangements are in scope.'* **Royal London**

*'Members who are paying AVCs have taken a personal decision to do so, have a degree of engagement, and therefore could arguably be outside the intended scope of the broader protections DWP is implementing to protect auto-enrolees.'* **Aegon**

12. Again, in considering these responses the Government has reflected on its objective to protect savers who have been enrolled into, or are members of, workplace pension schemes used as qualifying schemes for automatic enrolment. Even where members have made a conscious decision to make additional contributions to their scheme, they may not be aware of particular charges that they are bearing.
13. Therefore, the Government has determined that in order to protect members, the ban will cover AVCs in occupational pension schemes used as qualifying schemes for automatic enrolment where these are used to provide money purchase benefits, even where these are the only money purchase benefits provided under the scheme. This is consistent with the approach taken with the ban on active member discounts (AMDs) and with the scope of Financial Conduct Authority rules banning commission in workplace personal pension schemes used as qualifying schemes for automatic enrolment.
14. Draft regulation 3 in Annex B inserts a definition of "specified scheme" for the purposes of the commission ban.

## Integrated service providers

**Original Consultation Question:** Do you have any comments on how organisations that offer the “integrated” services described above are set up, and any potential challenges in ensuring that such organisations are subject to the ban on member-borne commission in occupational pension schemes?

15. The Government specifically sought views on integrated service providers and how such providers could be covered by the proposed regulations. The Government defined such providers as organisations that may offer not only administration and/or investment services but also advisory services. For example, it could be possible in these organisations for the part of the organisation providing administration services to make a commission payment, or a payment akin to commission, to the part of the organisation that provides advice services. The organisation may be structured as a single legal entity or as separate but connected legal entities within the same group. For example, in relation to the latter, a parent company may provide the investment management and administration services, with advisory services being provided via a subsidiary of the parent company.
16. Many respondents agreed that integrated service providers should be covered by the ban on member-borne commission, and pointed to growing numbers of service providers who are, or may in the future, structure themselves in this way.

*‘A number of occupational pension scheme advisors also manage master trust schemes for auto-enrolment. This could potentially compromise the independence of their advice to employers or trustees, as well as create an incentive to implicitly cross-subsidise their advice offering from their master trust revenue.’* **ABI**

*‘We have seen growth in the number of advisers who are offering their own Master Trust solution to employers. These advisers may offer consultancy services to the employer and there is an opportunity under current legislation to cross subsidise the cost of consultancy services through the member borne charges levied on the Master Trust product. These charges are paid to the same company as that which provides services to the employer, or to another company within the same group. The adviser will obviously be conflicted but there is no duty for them to offer or indeed compare the whole of the market.’* **Aviva**

*‘We agree that organisations offering the integrated services described in the consultation document should be subject to the ban on member-borne commission. However, the line between fees and commission in respect of the services in question will need to be clearly defined.’* **Society of Pensions Professionals**

*‘The risk of commission arrangements existing may be greater in these organisation and therefore it is important that the ban effectively applies to*

them. We have limited insight into how these organisations operate but one potential challenge is that the commission arrangements within them may be less formally recorded. Therefore it may be less clear the extent to which and how commission payments operate.’ **Association of Pension Lawyers**

17. The Government and respondents to the consultation are clear that integrated service providers should be covered by the ban. This will ensure that members in all schemes that are within the scope outlined above are protected by the ban, and ensure that service providers who are structured in this way are not given an unfair advantage.

18. In considering how to capture integrated service providers in regulations, the Government has distinguished between those service providers who are structured as separate legal entities but are connected via a single corporate group or holding company; and those single-entity service providers where administration and advice services are provided within one legal entity. These two types of vertically integrated service providers are illustrated below.

Fig.1 – separate legal entities

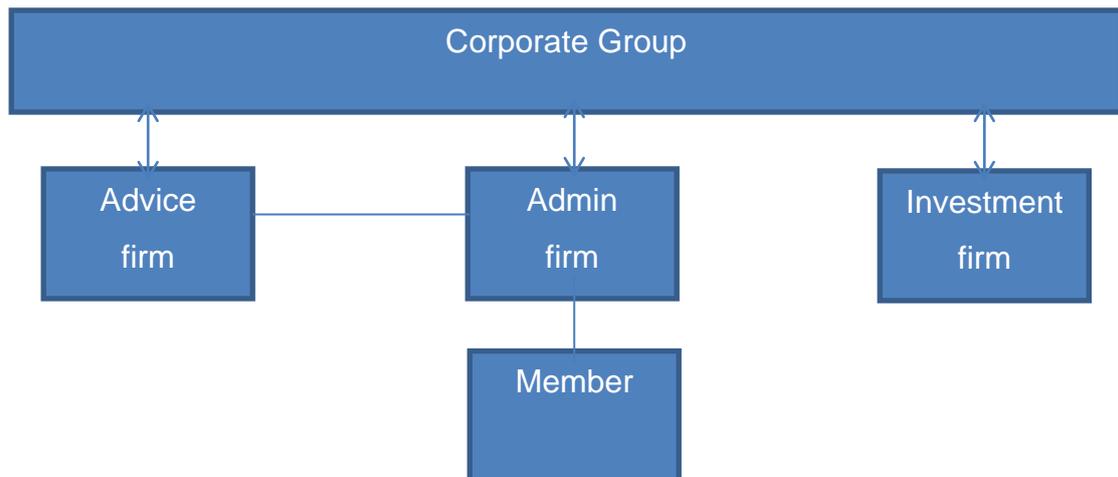
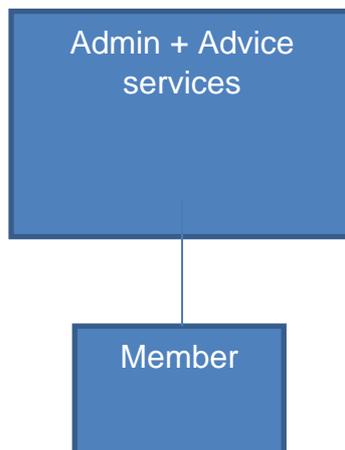


Fig.2 – single legal entity



19. This is a complex area and the Government has attempted to make provision in the draft regulations to capture both these structures for integrated providers in the ban on member-borne commission. Draft regulation 11A prevents service providers from levying a charge on members to recover the costs of commission payments made to advisers for certain advice or services. This prohibition will include the situation described in Figure 1, where the adviser and the service provider are connected, and as such there is no need to specifically refer to it in the draft regulations. Draft regulation 11A(4) is intended to capture the situation described in Figure 2 where administrative and advisory services are provided within a single legal entity, by providing that, where the adviser and the service provider are the part of the same legal entity, they will be treated as if they were separate entities. We would welcome views on whether the draft regulations set out above and included in Annex B achieve this effectively.

## Protected members

<p><b>Original Consultation Question:</b> Do you have any comments on our proposed policy on whom the commission ban will protect?</p>
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20. The Government proposed that the ban on member-borne commission would protect both active and deferred members of an employer's occupational pension scheme that is being used as a qualifying scheme for automatic enrolment in relation to at least one jobholder.

21. The majority of respondents believed that this approach was appropriate; however, some respondents felt that the Government had not made clear which schemes (and therefore which members) would be covered by the ban. Others noted that the proposed approach exceeded that of the charge cap.

*'While we welcome applying the ban to all money purchase benefits rather than just the default, we do have a concern that extending the ban to members who left service before auto-enrolment commenced would be inconsistent with the basis of the charge cap and hence make compliance more expensive to administer. We imagine that this might also cause financial difficulties for advisers who undertook significant work in the past (for example preparing for auto-enrolment) in expectation of recouping costs over the coming years. Similarly, providers would have expected to recoup the cost of past commission payments for members before the ban came into force.'*

**Hymans Robertson**

*'...we highlighted the potential ambiguity over whether the ban applies to qualifying schemes or to the subset of such schemes to which one of more member has been auto-enrolled. We had not expected members who ceased contributions ahead of the ban taking effect to be included within the ban. This goes further than the FCA rules. However, it will be rare for commission to continue after contributions have ceased and we would not object to DWP*

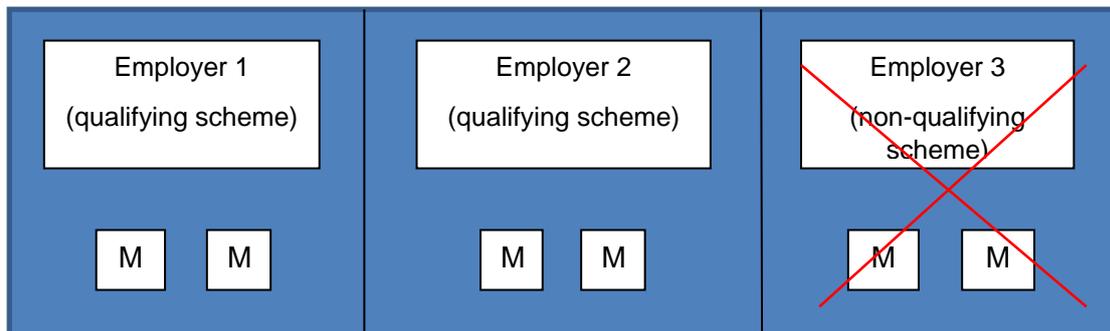
*banning commission in such circumstances as it is unlikely the member will be benefitting from ongoing advice.'* **Aegon**

*'We believe the members included are the right ones to include and the proposal supports Trustees in meeting their duty to treat all members the same.'* **Aviva**

*'We are satisfied that the proposed policy is appropriate.'* **Pensions Management Institute**

22. Having assessed these responses, the Government has determined that all members, whether active or deferred, who are, or were, employed by the employer for whom the scheme is being used as a qualifying scheme will be protected by the ban. The ban will only apply in relation to the funds the member has accrued in that scheme (that is, the ban will not apply to the individual member in relation to every scheme of which they are a member, but only schemes that are in scope of the ban).
23. In a multi-employer scheme, the ban will only apply to members who are current or former employees of the employer who is using the scheme as a qualifying scheme for automatic enrolment - not all members within the scheme. This is to ensure that the scope of the ban remains with members of qualifying schemes that are used for automatic enrolment. The intention is that the regulations do not capture members in a multi-employer scheme whose employer or former employer is not using the scheme as a qualifying scheme for automatic enrolment.
24. We understand from service providers that the majority of multi-employer schemes keep each employer and their employees in separate sections of the scheme. It should, therefore, not be administratively complex to apply the regulations to those employers in the scheme for whom the scheme is being used for automatic enrolment in relation to at least one jobholder.
25. However, the Government recognises that not all multi-employer schemes may be structured in this way, and that these regulations may be more administratively complex to implement for some service providers. Therefore, the draft regulations include a requirement for trustees to provide, on request from the service provider, information about deferred members who should be covered by the ban. This will enable the service provider to identify those members of a multi-employer scheme and implement the ban accordingly. This is set out in paragraphs (4), (5) and (7) of draft regulation 11B in Annex B.
26. Figure 3 below illustrates how the policy works in relation to multi-employer schemes.

Fig.3 Multi-employer schemes and protected members



## Decumulation products

**Original Consultation Question:** Do you have any comments on the proposal to extend the ban to members accessing decumulation products where these are offered in occupational schemes used for automatic enrolment?

27. The Government also proposed that the ban on member-borne commission cover decumulation products where these are provided by schemes that are covered by the ban.

28. The majority of respondents agreed with this proposal, noting that members will be able to opt-in to advice and services and have the costs met by their fund.

*'The ban should extend to decumulation products where these are offered in occupational schemes used for automatic enrolment, to align with Financial Conduct Authority rules on workplace personal pension schemes.'* **ABI**

*'We agree that it is right that the ban be extended to members accessing decumulation products.'* **Association of Professional Pension Trustees**

29. However, some respondents felt that this could inadvertently create a disincentive for members to seek and pay for advice.

*'We do not agree that member-borne charges should be banned entirely for the decumulation stage, as we consider this would lead to poor member outcomes...'*  
**Hargreaves Lansdown**

30. The Government is not aware of decumulation products being offered in occupational pension schemes that are qualifying schemes used for automatic enrolment. However, the Government is aware that some service providers may be considering offering these products in these schemes.

31. In assessing these responses, the Government has sought to strike a balance between protecting members from commission while ensuring that they can access and pay for advice.

32. Accordingly, the Government has determined that the ban will cover decumulation products where these are offered in schemes covered by the ban as described above. Members will be able to opt-in to advice and services including selecting a decumulation product where it is offered within the scheme, so long as it satisfies the conditions for a member opt-in (described in paragraphs 28 to 35 in Chapter 3).

#### **Summary of decisions**

The ban will apply to occupational pension schemes that provide money purchase benefits and are used as a qualifying scheme for automatic enrolment in relation to at least one jobholder. The ban will also apply to AVCs where these are used to provide money purchase benefits.

Once a scheme is covered by the ban it will remain so, even if the scheme stops satisfying the definition in the Regulations.

The ban will also apply to integrated service providers.

Members, whether active or deferred, who are, or were, employed by the employer who is using the scheme as a qualifying scheme for automatic enrolment will be protected by the ban.

The ban will cover decumulation products where these are offered within the scheme.

**Draft Regulations Consultation Question 1:** Do you have any comments on whether the draft regulations achieve the policy intention in relation to the scope of the ban, including whom the ban will protect and whether it meets our policy intention regarding integrated service providers?

# Chapter 3 – Preventing and removing commission

The consultation on the most effective means of regulating to ban member-borne commission invited views on the two main options the Government had developed to prevent members from bearing the cost of commission payments to advisers.

This chapter outlines the Government response to the consultation questions on regulatory duties and seeks views on whether the draft regulations included in Annex B meet the Government's decisions. The areas covered in this chapter are:

- options for preventing member-borne commission payments to advisers
- the timing of the regulations
- member opt-in to advice and services
- member charge levels

## Options for preventing member-borne commission payments to advisers

1. The two options the Government consulted on were:

- Option A - **placing a duty on trustees or managers** to ensure that members are not charged to recover the costs of commission payments to advisers in relation to any new commission arrangements; and to use their best endeavours to remove any such existing member-borne commission arrangements in these schemes; and
- Option B - **placing a duty on service providers** to prevent members being charged to recover the costs of commission payments to advisers in relation to any new commission arrangements; and to remove any such existing member-borne commission arrangements in these schemes

### Option A

**Original Consultation Question:** Do you have any comments on our proposal that trustees ask service providers whether commission is present, and on the practical challenges they might face in meeting the requirement to remove existing member-borne commission arrangements?

2. There was consensus among respondents that as trustees were typically one step removed from commission arrangements between advisers and service

providers, it was unlikely that they would be aware of the presence of commission in their schemes.

*‘Our view is that it would be too onerous on trustees if they alone were placed under an obligation to remove existing member-borne commission arrangements. The main challenges for trustees is that they often do not have a clear understanding and/or visibility of the commission arrangements in place and would rely on information provided by and cooperation from the service provider in order to meet the obligation...’* **Association of Pension Lawyers**

3. Respondents also highlighted that as trustees were not party to the commission contract between the adviser and the service provider, it would not be reasonable or possible to hold them solely responsible for removing commission charges on members from schemes they are managing.

*‘There are also legal reasons why trustees are not best placed to hold the duty to comply. As the commission agreement is between the provider and the adviser there may be legal difficulties in the trustees challenging a contract they are not party to.’* **Royal London**

4. Others suggested that Option A would needlessly add complexity as trustees would not be able to discharge a responsibility to remove commission charges on members without the involvement and cooperation of service providers.

*‘The consultation document presents this option as a duty on trustees. However, in practice it is simply adding another layer of involvement for every scheme. Service providers will still need to work with or negotiate with advisors as set out under option B, as they generally can’t unilaterally stop commission arrangements. However, rather than being able to take action in a way and at a time appropriate to them, service providers would be constrained by the need to respond to requests of individual trustee boards.’* **Mercer**

## Option B

<p><b>Original Consultation Question:</b> Do you have any comments on the practical challenges service providers may face in meeting their obligations under this option?</p>
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5. Most respondents (including almost all service providers who responded) felt that service providers were best placed to prevent and remove charges on members used to recover the costs of commission paid to advisers in occupational schemes used as qualifying schemes for automatic enrolment.
6. However, many of these respondents also stated that service providers would not necessarily know whether the scheme they were administering was being used as a qualifying scheme for automatic enrolment. Most thought that as trustees should know whether their scheme is being used for automatic enrolment, they

ought to be responsible for providing this information to service providers. Some respondents suggested that service providers could approach trustees for this information; but this approach may be burdensome for both providers and trustees since the service provider would have to contact every trustee they deal with in order to establish this information.

*'Service providers should have the duty to confirm whether they are compliant with the ban and to act accordingly, as trustees will not have the oversight to confirm that the ban has been implemented by providers. However, there must be a parallel duty on trustees to notify service providers where existing schemes are being used for automatic enrolment.... Where trustees have not fulfilled their duty to notify service providers, service providers should not have a duty to comply with the ban.'* **Association of British Insurers**

*'So long as we are advised by the Trustees that their scheme is being used as a qualifying pension scheme in good time to meet any legislative timescale we do not foresee any issues in removing commission....'* **Aviva**

## Regulatory duty

**Original Consultation Question:** Do you have any comments on who should have the duty to comply with the ban, and whether our definition of service provider should include any other person who is providing advice or services to the scheme and may be involved in a member-borne commission arrangement?

7. Most respondents to this question thought that both service providers and trustees should share responsibility for implementing the regulations and delivering the policy objective.

*'We would urge the implementation of both Option A and Option B, so that not only trustees but also service providers would have statutory obligations in this area. It is a common legislative strategy for preventing a transaction viewed as socially undesirable to place an obligation to avoid it on more than one potential party to it. Option A is right in principle and Option B would provide trustees with significant assistance in discharging their duty under Option A and more generally. The strategy of imposing both duties by statute is therefore a sensible one in this case.'* **Association of Member Nominated Trustees**

*'Our preferred option is for the trustee to be required to tell a provider that a scheme is being used for auto-enrolment purposes and then for the provider to make sure that scheme is free of commission.'* **B&CE**

8. Having considered all the responses, the Government agrees with respondents that both trustees and service providers should have a role in preventing and removing member-borne commission arrangements.

9. Specifically, the Government agrees with the majority of respondents that service providers are best placed to prevent and remove charges on members used to recover the costs of commission payments made to advisers. Service providers enter into a commission arrangement with an adviser and know whether there is a commission arrangement in a scheme, whereas trustees may not be aware of the existence of a commission arrangement, and may not have the authority to terminate any such arrangement. Therefore, the Government has determined that service providers will be responsible for preventing and removing charges levied on members to recover the costs of commission payments made to advisers.
10. The Government also agrees with the majority of respondents that trustees should be responsible for informing their service provider whether a scheme is being used as a qualifying scheme for automatic enrolment. While service providers could request this information, this approach could generate information requests to every trustee of every workplace pension scheme that could be used for automatic enrolment. Whereas if trustees are obliged to provide this information, then it only impacts those trustees that are managing schemes used for automatic enrolment. Accordingly, the Government has determined that trustees will be required to inform their service provider whether a scheme they are administering is being used as a qualifying scheme for automatic enrolment.
11. These decisions are set out in draft regulation 11A and 11B(1), (2) and (3) in Annex B. These draft regulations set out the duties on service providers and trustees in terms of notifications and confirmations and includes time limits for complying with these duties as follows:
  - trustees will be required to tell their service provider if the scheme is a qualifying scheme used for automatic enrolment within the later of:
    - three months of the regulations coming into force;
    - the employer's staging date, or
    - the date that the service provider becomes a service provider in relation to the scheme (draft regulation 11B(1));
  - service providers will have one month from receipt of the information from the trustees to ensure that members who are covered by the ban are not imposed any member-borne charges relating to commission payments to an adviser under a commission contract entered into, or an existing commission arrangement that is varied or renewed, on or after 6 April (draft regulation 11A(1) and 11B(2));
  - service providers will be required to confirm to the trustees that they are compliant within one month of the date that the prohibition in regulation 11A applies (draft regulation 11B(3)), and will be required to notify the trustees as soon as practicable (and at the latest within one month) if the confirmation that they have given to trustees is no longer accurate (draft regulation 11B(6)).

12. If service providers need to ask the trustees for further information about deferred members who are in scope of the regulations, they will have additional time to comply with the ban in relation to those members, and to confirm compliance with the ban to trustees. Most service providers will already hold this information, but where they do not, they can request this information from trustees who will be required to provide this information within one month of receiving the request. The compliance duties of trustees and service providers are set out in more detail in Chapter 4.

**Draft Regulations Consultation Question 2:** Do you have any comments about how the draft regulations meet the policy intention regarding who should be responsible for complying with the regulations?

## Commission payments

13. Some respondents suggested that the proposed regulations should align with Financial Conduct Authority rules banning commission from April 2016<sup>7</sup> in workplace personal pension schemes that are used as qualifying schemes for automatic enrolment by regulating to prevent payments to advisers from service providers.

*'However to be entirely effective, unless commission arrangements are overridden by a statutory ban, we believe advisers should also be banned from accepting commission. This would avoid any contractual difficulties in ending commission arrangements within either of the two models proposed.'*

### **Standard Life**

*'Our view is that the most straightforward way of achieving the policy objective would be to impose a ban on advisers accepting commission (either on its own or together with a duty on providers and / or trustees). However, that does not appear to be permitted by paragraph 1 of Schedule 18 to the Pensions Act 2014, which seems to require a direct relationship between the entity imposing the member borne commission and members.'*

### **Association of Pension Lawyers**

14. Having assessed the views of these respondents, we do not consider that such an approach is proportionate or necessary to effectively implement regulations preventing members from bearing the cost of commission payments to advisers. In addition, adopting such an approach would mark an expansion of DWP's powers, which are currently limited to the charges imposed on the member, as the relationship between service providers and advisers falls under the remit of the Financial Conduct Authority. Further, some pension providers have advised

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<sup>7</sup> The Financial Conduct Authority consulted in 2014 on rules to ban existing commission arrangements that were not prohibited by the Retail Distribution Review. Their final rules were published in March 2015 and will come into force in April 2016.

that they have already successfully removed commission arrangements from qualifying schemes used for automatic enrolment in response to the introduction of the charge cap, while others have advised that they are in the process of doing so in anticipation of regulations coming into force from April 2016.

15. Accordingly, the Government will not bring forward regulations that will prevent service providers from making commission payments to advisers.

## Service provider

16. In the consultation document, the Government explained that by service provider it meant bundled pension providers, third party administrators and asset managers. The term service provider was not meant to cover organisations providing only middleware, payroll, actuarial, legal or auditor services in respect of schemes, as we had seen no evidence that these organisations were involved in member-borne commission arrangements.

17. The majority of respondents to the consultation agreed with the proposed definition of service provider. Additionally, many respondents agreed that middleware services and payroll should be exempt from the regulations.

18. However, some respondents disagreed with the proposal that asset managers be captured by the definition.

*'...[commission] is not an issue that affects asset managers, with our members reporting that they do not pay any commission or offer any inducements to investment consultants... There is also a practical issue arising which means that asset managers will not always know who the end investor in their pooled funds is... This makes it very difficult for them to comply with a legal duty that requires them to ensure that occupational DC scheme members do not bear any adviser commission. Furthermore, since asset managers do not pay adviser commissions we do not believe there is a case for giving them a legal duty to ensure that members do not bear the cost of any such commissions.'*

### **Investment Association**

*'...if the evidence shows that asset managers, as distinct from bundled providers with in-house asset management, are not involved in commission arrangements then we would not object to their exclusion from the ban.'* **PLSA**

19. Having considered these views, the Government agrees that service providers should include pension providers, bundled pension providers and third party administrators, and not include asset managers. The Government has not received any evidence that asset managers are party to or facilitate commission payments or charges on members. Indeed, in a pooled investment fund an asset manager may not know who the end investor is and would not, therefore, be in a position to prevent or remove charges on members that are used to recover the costs of commission payments made to advisers.

20. The Government also agrees that middleware and payroll services should not be caught by the draft regulations. Payroll services are fundamentally linked to the

core administration activities needed for the effective operation of an occupational pension scheme, and middleware can play an important part in enabling employers to meet their automatic enrolment obligations.

21. Draft regulation 3 at Annex B defines “service provider” as a person who provides administration services directly to the trustees of a specified scheme. Draft regulation 11A(3)(a) and (b) provides for exclusions for payroll and middleware services provided by an adviser. The term “adviser” is defined in draft regulation 11A(2).

**Draft Regulations Consultation Question 3:** Do you have any comments about how the draft regulations meet the policy intention regarding a) the definition of service provider and b) the exemptions for middleware and payroll?

## When will the ban take effect

**Original Consultation Question:** Do you have any comments on our proposed timing for introducing the commission ban?

22. In the consultation paper, the Government proposed a phased introduction to regulations preventing members from bearing the costs of commission payments to advisers. We proposed:
- introducing regulations to prevent new member-borne commission arrangements from 6 April 2016 (or employers' staging date if later); and
  - consulting on draft regulations to implement the ban on existing member-borne commission arrangements (those entered into before 6 April 2016) later in 2016.
23. We explained that we were proposing a phased introduction because there are a number of complex issues that needed to be worked through before regulations can be made to ban existing member-borne commission arrangements.
24. Many respondents said they preferred all member-borne commission to be banned from April 2016 rather than take the staged approach proposed. Respondents said that this would align with the approach the Financial Conduct Authority has taken in relation to its commission ban in workplace personal pension schemes. Others said that delaying the full introduction of the ban could result in additional work and cost for those service providers who had already started preparations in anticipation of the ban being implemented from April 2016.

*‘All commission arrangements for automatic enrolment schemes should be banned simultaneously (i.e. new and legacy commission should cease at the*

same time) from April 2016. This will minimise the compliance burden for service providers, some of whom have already implemented system and pricing changes, based on the timeline signalled for the ban in the Government's March 2014 Command Paper. A staggered or delayed implementation timeframe would therefore impose additional rework, as well as potential legal challenges from advisers.' **ABI**

'We believe all member-borne commission should be banned from April 2016.'  
**Association of Professional Pension Trustees**

25. One respondent agreed with our phased approach and that removing existing member-borne commission arrangements would be more complex, while another felt that service providers and trustees should be given sufficient time to comply with the regulations.

'We agree with the proposed ban on new member-borne commission arrangements from 6 April 2016. As has been recognised, the issues around existing arrangements are more complex and the final implementation will benefit from further consultation.' **Standard Life**

'In terms of timing, depending on the contractual terms of the relevant arrangement, it may be difficult or indeed impossible for providers to stop commission in relation to existing arrangements. We suggest providers are given a generous transitional period in order to remove existing commission. If the date for compliance is too soon, providers may incur significant exit charges and members may be impacted by an inferior service.' **Association of Pension Lawyers**

26. Having carefully considered all the responses received, the Government still believes that it is necessary to take a staged approach to introducing the commission ban. We acknowledge that this decision may result in additional burdens for some service providers, but the complexity of making regulations to ban existing member-borne commission arrangements means that they are unlikely to be resolved in time to make and lay regulations to come into force on 6 April 2016. This is emphasised by our belief that the regulations relating to the existing commission ban would benefit from consultation as well, which we intend to publish later in 2016.
27. The regulations that come into force on 6 April 2016, therefore, will not apply to commission arrangements entered into before this date. If, however, these agreements are varied or renewed on or after 6 April 2016 then they will be caught by the regulations. This is set out in draft regulation 11A(5) at Annex B.

## Member opt-in

**Original Consultation Question:** Do you have any comments on:

- a) how fees for advice or services that the member opts-in to should be paid for;
- b) whether there are any services or types of advice that should not be covered by our proposed approach to member opt-in?

28. One of the key principles in the October 2015 consultation paper was that we did not want to stop members from expressly choosing to access or pay for advice or services if they wished to do so.
29. In line with the approach taken by the Financial Conduct Authority and the charge cap, we proposed that members should have the facility to opt-in to advice and services provided to them by an adviser if they wish. We also asked how the services that members opt-in to should be paid.
30. Almost all of the respondents to the consultation agreed that members should be able to opt-in to advice and services provided by an adviser if they wanted to do so. Respondents also agreed with our proposal that any agreement between a member and an adviser should be subject to certain conditions to protect members, including that the agreement be in writing and include the cost of the advice or service.

*'Enabling members to opt-in for additional services (beyond those for which there is a legal requirement to provide), may be particularly relevant for those members needing advice on retirement planning. We are conscious that many members might otherwise find these costs prohibitive if paid directly and without the benefit of economies of scale. The provision of services in this way might help reduce the incidence of pension scams. We therefore believe that the ban should not apply to opt-in services actively selected by members, although it is important that members understand the costs being deducted in these circumstances.'* **Hymans Robertson**

31. Some respondents thought that the fee for such opt-in to advice or service should be on a fixed fee basis only. Other respondents noted that the method of payment itself should not be prescribed.

*'We believe that opt-in services should be paid for by a fixed fee agreed between the member and provider.'* **Association of Professional Pension Trustees**

*'Most services can be paid for by deductions from members pots but it is a matter of agreement between the member and trustees/service provider as to whether the deduction should be a one-off charge or spread over time.'*

**Mercer**

32. Having considered all the responses, we agree that members should have the right to choose to access advice or services if they wish and our regulations should not prevent this. We also believe that there is no need to prescribe how the cost of the advice or service should be recovered from the member's funds. However, we consider that any such opt-in agreement must be subject to certain

conditions that will help ensure members' rights are protected. Therefore, where a member chooses to opt-in to advice or services provided by an adviser, it must:

- be set out in writing;
  - describe the advice or service that is being provided;
  - specify the total amount (in cash terms) of the cost of the advice or service and the period over which the cost will be recovered from the member's funds;
  - make clear that entering into the agreement is not a condition of becoming or remaining a member of the scheme;
  - be entered into before any charge is imposed on the members' funds.
33. We have also determined that the opt-in will only apply when a signed copy of the agreement is given to the service provider and trustees. See draft regulations 11C(1) and 11C(2).
34. In addition, draft regulation 11C(3) states that where the cost of the advice or service is likely to exceed the charge cap, where the cap applies to a member, the trustees may notify the other parties, within 1 month of receiving the agreement, that they require that a charge cap opt-in agreement under regulation 9 of the Occupational Pension Schemes (Charges and Governance) Regulations 2015 must be completed before this opt-in agreement can be implemented. Where a regulation 9 agreement cannot be entered into because it relates to a "core service" (see regulation 9(4)), this means that the opt-in agreement under regulation 11C cannot take effect. So, where an opt-in agreement under regulation 11C is likely to take a member who is covered by the charge cap over that cap and where the trustees take action under regulation 11C(3), the agreement would not be able to relate to advice or a service that is a core service under regulation 9.
35. Clearly, this opt-in agreement will not apply where the cost of the advice or service exceeds the amount of funds the member has accrued or is likely to accrue. In these circumstances, the trustees of the scheme can notify the member, adviser and service provider that this is the reason why the agreement cannot be implemented. Draft regulation 11C(4) provides for this and stipulates that the notification from trustees must be sent within one month of receiving the opt-in agreement. In practice, we envisage that it would be advisers who provide the service provider and trustees with a copy of the agreement to facilitate payment for the provision of the advice or service they have agreed with the member.

<p><b>Draft Regulations Consultation Question 4:</b> Do you have any comments about how the draft regulations meet our policy intention regarding member opt-in to advice or services?</p>
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## Member-borne charges following the ban

**Original Consultation Question:** Do you have any comments on our proposed approach to member-borne charges after the ban is introduced; and what steps service providers can take to ensure that member-borne charges, intended to cover the cost of initial commission paid before the ban comes into effect, stop as soon as this cost is recovered?

36. The October 2015 consultation paper outlined the Government's proposed intention:
- not to prevent service providers from using member-borne charges to recover the cost of initial commission that they may have paid before the regulations come into force (where this can be achieved within the charge cap, if applicable); and
  - not to prescribe in the regulations that service providers must reduce member-borne charge levels when they remove existing commission arrangements.
37. We explained that this approach was in line with the approach the Financial Conduct Authority took in their rules and this would ensure parity across workplace pensions in this regard. We also recognise the complexity involved in trying to draw an exact parallel between a commission payment to an adviser with a corresponding reduction in the charge on members. However, we made clear that we would expect service providers to consider the interests of members when deciding whether or not to reduce charge levels in these circumstances.
38. Of those who responded to this question, many agreed with our proposed approach and desire to maintain parity with rules made by the Financial Conduct Authority. These respondents underlined the complexities involved in trying to establish when an initial commission outlay might be recovered through member-borne charges. They explained that the assumptions that underpin these calculations were by their nature fluid and subject to change. For example, key assumptions that may be subject to change include member numbers, level of contributions and persistence. Some respondents also explained that assumptions made in the past were often more optimistic and may not reflect current conditions.

*'We agree that it is appropriate to adopt the approach taken by the FCA in relation to its ban on commission in workplace personal pensions used for automatic-enrolment.'* **Association of Pension Lawyers**

*'When charges for a scheme were set initially, the service provider's actuaries would have made assumptions regarding the expected experience across either a particular employer's scheme or across the book of schemes of that type. This would have involved estimating not just costs which would be incurred initially and on an on-going basis, but also what charges would be*

*collected. Charges are often linked to fund value, so an assumption would be made around contribution levels and investment returns. Fund values are also affected by whether or not contributions continue to be paid which means persistency of contributions influences charges collected. If an individual transfers away, no further charges will be collected. In practice, assumptions made in the past (particularly if we look back 10 or more years) were far more optimistic than actual experience. Persistency has been worse and investment returns far lower. This means schemes will take much longer than anticipated to 'break even' and in fact many will never do so.'* **Aegon**

39. Most respondents agreed that members should benefit when existing commission arrangements are removed and believed that market forces would help ensure reductions in charge levels.

*'The ABI supports DWP's proposed approach not to regulate to require service providers to reduce charges correspondingly when they terminate on-going commission arrangements. Calculating the appropriate reduction in cost for a scheme could require significant actuarial effort. This is not warranted, as competitive pressures, as well as the charge cap, will apply to the pricing of all schemes used for automatic enrolment. There is therefore an incentive on service providers to ensure that their pricing reflects the expectation that member-borne commission will be banned for workplace occupational pension schemes in the future.'* **ABI**

40. Having considered these responses, the Government has decided to adopt the same approach taken by the Financial Conduct Authority as proposed in the consultation paper. However, we believe it is fair that members should benefit from the removal of existing commission arrangements, and we expect to see a reduction in member charges following the removal of existing commission arrangements when those regulations are introduced. We will monitor the response of service providers and will take action if members do not benefit.

## Impact of our regulations on the market

**Original Consultation Question:** Do you have any comments regarding any costs or burdens that may be imposed on advisers or other parties, such as service providers, under the options that have been outlined, with particular regard to existing member-borne commission arrangements?

41. The Government wanted to understand what costs or burdens may be imposed on advisers or other parties, such as service providers, as a result of our proposed approach.
42. Discussion with industry stakeholders, including adviser representative organisations, showed that the adviser market had evolved following the Retail

Distribution Review and that most advisers now operate on a fixed fee payment model rather than commission. In addition, automatic enrolment and the new pensions flexibilities have created new business opportunities for the adviser industry. Others noted that the ban on member-borne commission will impose some transition costs on service providers, but these are likely to be insignificant.

*'Whilst all regulatory changes will result in some transition costs for providers, the cost or burdens imposed by the proposed commission ban to service providers is likely to be insignificant, should the final requirements and timeline for workplace occupational pension schemes mirror those introduced by the Financial Conduct Authority..... However, delaying or staggering the implementation for workplace occupational pension schemes will impose significant costs and burdens on providers.'* **ABI**

*'Clearly, some advisers will be affected by the cessation of commission which is currently a revenue stream for them. Not all will be able to negotiate replacing this revenue stream with fees direct from the employer. Some employers will not be prepared to increase their 'total' outlay on pensions which could mean those who do agree to pay a fee might seek to make a commensurate reduction in their employer contributions to the pension scheme. However, this is no different from the situation with workplace personal pensions.'* **Aegon**

43. The Government has reflected on these responses and sought to strike a balance between making effective regulations that protect members while minimising regulatory burdens on industry. The information gathered as part of the consultation process has informed an Impact Assessment that will be published in due course.

### **Summary of Decisions**

Service providers will be responsible for preventing new commission arrangements, removing existing ones, and for notifying trustees whether or not they are compliant.

Trustees will be required to tell their service provider if the scheme is a qualifying scheme used for automatic enrolment and provide information about deferred members if requested.

Service providers should include pension providers, bundled pension providers and third party administrators but not asset managers.

The ban on new member-borne commission arrangements will come into force from 6 April 2016 and we intend to consult later in 2016 regarding the ban on existing commission arrangements.

Subject to certain conditions, members will be able to opt-in to advice and services provided by an adviser if they wish and we will not prescribe the method of payment used.

In line with the approach taken by the Financial Conduct Authority, we do not propose stopping service providers from using member-borne charges to recover the cost of initial commission paid before the regulations come into force. In addition, we will not regulate for providers to reduce member-borne charges when existing commission arrangements are removed. However, if we see that members are not benefitting from the removal of commission arrangements we will take action.

# Chapter 4 – Compliance and enforcement

This chapter summarises responses to the consultation questions on compliance and enforcement of the ban on member-borne commission.

**Original Consultation Question:** Do you have any comments on our proposed approach to compliance and enforcement under these options, including the role of trustees?

1. The Government proposed that The Pensions Regulator (the “Regulator”) be responsible for enforcement of the ban. The Government believed that it was important to seek views on this approach given the prospect of the Regulator enforcing the ban against service providers, who are typically regulated by the Financial Conduct Authority.
2. The Government further proposed that, as part of the compliance process, trustees will be responsible for notifying the Regulator whether or not they have received confirmation from the service provider that they have complied with their regulatory duty.
3. There was a general consensus amongst respondents that it would be appropriate, in this specific instance of the ban on member-borne commission, for the Regulator to be responsible for enforcing the ban.

*‘We agree that the proposed approach to compliance is correct.’* **Association of Professional Pension Trustees**

*‘We agree it is appropriate for the Pensions Regulator to be responsible for compliance and enforcement.’* **Aegon**

*‘The ABI supports the approach proposed by DWP within the workshop sessions, whereby trustees would be required to make a declaration that they had informed service providers where the scheme has been used for automatic enrolment purposes, and what response they had received from providers, within their scheme return.’* **ABI**

4. Some respondents noted that the Regulator did not have the same penalties as the Financial Conduct Authority.

*‘The proposals appear sensible – however we believe that TPR requires genuine powers of enforcement. The success of the FCA lies in its powers of enforcement, which are generally absent for those under TPR jurisdiction.’*  
**BC&E**

*‘Whilst our view is that enforcement would ideally be done by the Pensions Regulator (due to its understanding of and history of dealing with trust based schemes), our main concern is that the Regulator does not currently have the resources to enforce the ban. Our view is that trustees could act as a conduit to report compliance to the Regulator once it receives confirmation from the provider, for example, through the annual scheme return.’* **Association of Pension Lawyers**

5. Having assessed these responses, the Government has decided to place responsibility for regulating the ban with the Regulator. The draft regulations included in Annex B amend the compliance provisions in the Occupational Pension Schemes (Charges and Governance) Regulations 2015 to ensure that the Regulator may take enforcement action against service providers. This could involve issuing compliance notices to service providers, potentially followed by a penalty notice.
6. The Government believes that the Regulator’s existing powers are sufficient to take regulatory action in relation to non-compliance with the ban on member-borne commission. We do not believe this will be a particularly burdensome duty since commission is not prevalent in occupational pension schemes, although it does exist.
7. The draft regulations at Annex B also contain some minor technical changes to other compliance provisions in the Occupational Pension Schemes (Charges and Governance) regulations 2015, which were consulted on in a separate consultation that ran from 12 November 2015 to 11 December 2015. That consultation paper was called ‘Better Workplace Pensions: reducing regulatory burdens, minor regulation changes, and response to the consultation on the investment regulations.’<sup>8</sup> Draft regulations 7 to 11 in Annex B relate to the compliance changes outlined above and which we are making to support the regulation of the ban.

## **Scheme return**

8. Some respondents to the consultation commented that trustees could confirm whether or not there was a commission arrangement in a scheme via the Chair’s statement in addition to, or instead of, the scheme return.

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<sup>8</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/476447/reducing-regulatory-burdens-and-misc-regs-nov-2015-consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476447/reducing-regulatory-burdens-and-misc-regs-nov-2015-consultation.pdf)

*'We agree that tPR is best placed to make compliance judgements and enforcement decisions. We also believe that reporting of compliance should fall to the Trustees and become part of their scheme return. Reassurance to members could come as part of the Chair's statement and in particular the statements in respect of value for money.'* **Aviva**

*'We suggest that as part of the new governance requirements placed on trustees under the The Occupational Pension Schemes (Charges and Governance) Regulations 2015, Trustees could be required to make a statement to the effect that, where the scheme is to be used for the purpose of automatic enrolment, they have informed the scheme provider/manager(s):*

- *of their intention to use the scheme for the purpose and the staging date*
- *The scheme provider/manager has agreed to accept the scheme for this purpose*
- *That they have been given assurances that commission has ceased to be paid on the scheme from April 2016 or later staging date.*

*This should form part of the "Annual Statement Regarding Governance" required under the regulations.'* **Royal London**

9. In considering these responses, the Government has reflected on trustees' responsibility for scrutinising costs and charges and assessing value for money; and their need to understand whether or not a scheme contains a commission arrangement.
10. Accordingly, the Government has determined that trustees will be responsible for confirming whether a service provider has confirmed to them whether or not they have complied with the prohibition on commission. The Government has also determined that the scheme return is the appropriate means for confirming this information, given that it is already used to confirm compliance with other charge controls. This will not require any changes to the existing legislation since TPR can request information as part of the scheme return where it reasonably requires this for the purposes of the exercise of its functions in relation to the scheme.<sup>9</sup>

#### **Summary of decisions**

The Pensions Regulator will regulate compliance with the ban on member-borne commission and take enforcement action where it considers it appropriate on a proportionate and risk based approach. The Regulator will enforce the ban under its existing powers in the Occupational Pension Schemes (Charges and Governance) Regulations 2015.

Trustees will be required to confirm in the scheme return whether or not the service provider has confirmed to them that they have complied with their regulatory duty.

<sup>9</sup> Section 65(4)(b) Pensions Act 2004

**Draft Regulations Consultation Question 5:** Do you have any other comments on how the regulations meet our policy objectives regarding the regulation of the ban?

# Annex A – Consultation questions

1. **Draft Regulations Consultation Question 1:** Do you have any comments on whether the draft regulations achieve the policy intention in relation to the scope of the ban, including whom the ban will protect and whether it meets our policy intention regarding integrated providers?
2. **Draft Regulations Consultation Question 2:** Do you have any comments about how the draft regulations meet the policy intention regarding who should be responsible for complying with the regulations?
3. **Draft Regulations Consultation Question 3:** Do you have any comments about how the draft regulations meet the policy intention regarding a) the definition of service provider and b) the exemptions for middleware and payroll?
4. **Draft Regulations Consultation Question 4:** Do you have any comments about how the draft regulations meet our policy intention regarding member opt-in to advice or services?
5. **Draft Regulations Consultation Question 5:** Do you have any other comments on how the regulations meet our policy objectives regarding the regulation of the ban?

# Annex B – Draft regulations

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## STATUTORY INSTRUMENTS

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**2016 No.0000**

### **PENSIONS**

#### **The Occupational Pension Schemes (Charges and Governance) (Amendment) Regulations 2016**

*Made* - - - - - \*\*\*  
*Laid before Parliament* \*\*\*  
*Coming into force* - - - - - *6th April 2016*

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 43(a) and 54(5) and (6) of, and paragraphs 1(1), (3) and (5) and 3(1) and (2) of Schedule 18 to, the Pensions Act 2014<sup>(10)</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 2016 and come into force on 6th April 2016.

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

2. The Occupational Pension Schemes (Charges and Governance) Regulations 2015<sup>(11)</sup> are amended as follows.

#### **Amendment of regulation 2**

3. In regulation 2(1) (interpretation), insert in the appropriate alphabetical places—

““adviser” is a person described in regulation 11A(2);

“qualifying scheme employer” means an employer who participates in a scheme which is a qualifying scheme in relation to at least one of its jobholders;

“service provider” means a person who provides an administration service directly to the trustees or managers of a specified scheme;

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<sup>(10)</sup> 2014 c. 19.

<sup>(11)</sup> S.I. 2015/879. These Regulations were amended by S.I. 2015/889.

“specified scheme” means a relevant scheme in which at least one qualifying scheme employer participates;”.

#### **Amendment of regulation 4**

- 4.—(1) Regulation 4 (restrictions on charges) is amended as follows.
- (2) In paragraph (1)(b), after “this Part” insert “, with the exception of regulation 11A”.
- (3) After paragraph (1) insert—
  - “(1A) Subject to regulation 11C, a service provider must not impose or permit to be imposed on a member to whom regulation 11A applies charges which are of a description prohibited by that regulation.”.
- (4) In paragraph (2), for “regulation 11” substitute “regulations 11 and 11A”.

#### **Amendment of regulation 10**

5. In regulation 10(8) (charge limits adjustments), for “should” substitute “must”.

#### **New regulations 11A to 11C**

6. After regulation 11 (non-contributing members) insert—

##### **“Payments to advisers**

**11A.**—(1) This regulation applies to a member of a specified scheme if the member is, or was, a worker of a qualifying scheme employer who participates in that scheme.

(2) Subject to paragraphs (4) and (6) and regulations 11B(2) and 11C, it is prohibited for the purposes of regulation 4(1A) to impose or permit to be imposed on a member to whom this regulation applies a charge that is used—

- (a) directly or indirectly, to pay an adviser; or
- (b) to reimburse the service provider for a payment that the service provider has made to an adviser,

for advice or a service referred to in sub-paragraph (a) or (b) of paragraph (3).

(3) An adviser is a person who provides, has provided, or agrees to provide—

- (a) advice or a service to the member’s employer or former employer who is participating in the specified scheme; or
- (b) advice or a service to a member of the specified scheme.

(4) This regulation does not apply to the following services provided by an adviser—

- (a) a service relating to the administration of employee remuneration including tax deductions; and
- (b) a technological service which permits or enhances the ability of the employer’s and the service provider’s computing systems to work together.

(5) Where the adviser is also the service provider, they are to be treated as separate persons for the purposes of this regulation.

(6) This regulation does not apply to charges imposed under an agreement, whether oral or written and whether or not legally enforceable, entered into before 6th April 2016, unless such an agreement is varied or renewed on or after that date.

(7) Where a scheme is, or has been, a specified scheme, this regulation continues to apply to the scheme regardless of whether that scheme continues to be a specified scheme.

### **Relevant information**

**11B.**—(1) The trustees or managers of a specified scheme must notify the service provider in writing that the scheme is a specified scheme within 3 months beginning with whichever is the later of—

- (a) 6th April 2016;
- (a) the date on which the scheme becomes a specified scheme; or
- (b) the date on which the service provider becomes a service provider in relation to the specified scheme.

(2) Subject to paragraph (4), regulation 11A does not apply until the expiry of the period of 1 month beginning with the date on which the service provider receives the notification in paragraph (1).

(3) The service provider must confirm in writing to the trustees or managers who provided the notification in paragraph (1) that it is compliant with the prohibition in regulation 11A(2) in relation to all members to whom that regulation applies within 1 month beginning with the date on which that regulation first applies.

(4) Where the service provider is unable to comply with the prohibition in regulation 11A in relation to all members because the service provider requires information about which members are former workers to whom regulation 11A applies, the service provider may request the information from the trustees or managers of the specified scheme to enable it to comply.

(5) Where a request is made under paragraph (4), the time period referred to—

- (a) in paragraph (2) in respect of those members about whom a request has been made and to whom regulation 11A applies; or
- (b) in paragraph (3),

commences on the date on which the information requested is received by the service provider.

(6) The service provider must inform the trustees or managers of the specified scheme in writing if the confirmation that it has given in compliance with paragraph (3) is no longer accurate, as soon as practicable, and in any event within 1 month, beginning with the date on which it is no longer accurate.

(7) Where a request is made under paragraph (4), the trustees or managers must provide the information requested within 1 month beginning with the date of receipt of the request.

### **Member agreement for payments to advisers**

**11C.**—(1) Subject to paragraphs (3) and (4), the prohibition in regulation 11A(2)(a) does not apply in relation to advice or a service given to a member of a specified scheme where—

- (a) the service provider; and
- (b) the trustees or managers of the specified scheme,

have received a copy of an agreement for the provision of that advice or service made between the member and an adviser, provided the conditions in paragraph (2) are satisfied.

(2) The conditions referred to in paragraph (1) are that the agreement must—

- (a) be in writing;
- (b) include a description of the advice or service that will be provided to the member;
- (c) state that entering into the agreement is not a condition of becoming or remaining a member of a specified scheme;
- (d) state that by entering into the agreement the member will incur charges of an amount specified in the agreement which will be imposed over a period specified in the agreement and that such charges would otherwise not be permitted under regulation 11A(2)(a); and
- (e) be entered into before the charges are imposed.

(3) Where the charge limits apply to a member and the trustees or managers are of the opinion that charges imposed under an agreement under this regulation would be likely to place the trustees or managers in breach of those limits in relation to that member, they may inform—

- (a) the member;
- (b) the adviser; and
- (c) the service provider,

within 1 month beginning with the date on which they receive a copy of the agreement under this regulation, that they require that a member agreement for services under regulation 9 is entered into by the member before the agreement under this regulation can take effect.

(4) Where the trustees or managers are of the opinion that the value of the member's rights in the scheme is not or will not be sufficient to pay the amount specified in an agreement under this regulation, the agreement does not take effect if the trustees or managers inform—

- (a) the member;
- (b) the adviser; and
- (c) the service provider,

of their opinion within 1 month beginning with the date on which they receive a copy of the agreement.

(5) In this regulation, “charge limits” has the meaning given in regulation 10(10).”.

#### **Amendment of regulation 26**

**7.**—(1) Regulation 26 (compliance notices) is amended as follows.

(2) In paragraph (1), for “the trustees or managers” substitute “a person”.

(3) In paragraph (2)—

- (a) in sub-paragraph (a), for “trustees or managers have” substitute “person has”; and
- (b) in sub-paragraph (b), for “trustees or managers are not complying with, or have not complied with,” substitute “person is not complying with, or has not complied with,”.

(4) In paragraphs (3) and (6)(b), (c), and (e), for “trustees or managers” substitute “person”.

(5) In paragraph (6)(d), for “trustees or managers have” substitute “person has”.

#### **Amendment of regulation 27**

**8.**—(1) Regulation 27 (third party compliance notices) is amended as follows.

(2) In paragraph (1)(a), for “someone other than the trustees or managers” substitute “another person”.

(3) In paragraph (2)—

- (a) in sub-paragraph (a) for “trustees and managers have” substitute “person has”;
- (b) in sub-paragraph (b) for “trustees or managers are” substitute “person is”; and
- (c) in sub-paragraph (c) for “trustees or managers are not complying with, or have not complied with,” substitute “the person is not complying with, or has not complied with,”.

#### **Amendment of regulation 28**

**9.**—(1) Regulation 28 (penalty notices) is amended as follows.

(2) In paragraph (1)(b), for “the trustees or managers” substitute “a person”.

(3) Omit paragraphs (5)(b), (5)(c) and (6).

#### **Substitution of regulation 30**

**10.** For regulation 30 (penalty notices: recovery from bodies corporate and Scottish partnerships), substitute—

**“Penalty notices: recovery from bodies corporate and Scottish partnerships**

**30.**—(1) Where—

- (a) a penalty under regulation 28 is recoverable from a body corporate or Scottish partnership by reason of any act or omission of the body or partnership, and
- (b) the act or omission was done with the consent or connivance of, or is attributable to any neglect on the part of any persons mentioned in paragraph (2),

the Regulator may issue the notice to each of those persons who consented to or connived in the act or omission or to whose neglect the act or omission was attributable.

(2) The persons referred to in paragraph (1) are—

- (a) in relation to a body corporate—
  - (i) any director, manager, secretary, or other similar officer of the body, or a person purporting to act in any such capacity, and
  - (ii) where the affairs of a body corporate are managed by its members, any member who has management functions; and
- (b) in relation to a Scottish partnership, the partners of that partnership.

(3) Where the Regulator requires any person mentioned in paragraph (2) to pay a penalty, it—

- (a) may not also require the body corporate, or Scottish partnership, in question to pay a penalty in respect of the same act or omission; and
- (b) must issue the penalty notice to the person who is required to pay, but may also notify the relevant body corporate or Scottish partnership.”.

**New regulation 33**

**11.** After regulation 32 (references to first-tier tribunal or upper tribunal), insert—

**“Service of notices**

**33.** Sections 303 to 305 of the Pension Act 2004<sup>(12)</sup> (service of documents and electronic working) are treated as applying to notices issued under Part 4 of these Regulations.”.

**Review**

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

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(3) The first report under this regulation must be published before 6th April 2021.

(4) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

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

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<sup>(12)</sup> Sections 303 to 305 of the Pensions Act 2004 have been modified by section 144A of the Pensions Act 2008 (c. 30), which was inserted by section 36 of the Pensions Act 2011 (c. 19).

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. 2015/879) (“the Principal Regulations”).

Regulation 3 inserts new definitions into regulation 2(1) of the Principal Regulations, including definitions of “adviser” and “service provider”.

Regulations 4 and 5 make technical and consequential amendments to the Principal Regulations.

Regulation 6 inserts new regulations 11A to 11C into the Principal Regulations.

Regulation 11A set out that charges may not be imposed on members of certain occupational pension schemes where they are used to pay an adviser or to reimburse the service provider for a payment that they have made to an adviser. The duty to comply with regulation 11A is placed on service providers to those schemes.

Regulation 11B sets out requirements for information to be shared between the trustees and managers of those schemes and their service providers. The requirements of regulation 11A do not apply until the expiry of 1 month beginning with the date on which the trustees or managers provide the notification covered by paragraph (1).

Regulation 11C provides that, subject to certain exceptions, the member can enter into an agreement with the adviser to pay charges which would otherwise be prohibited by these Regulations.

Regulations 7 to 11 make technical amendments to the compliance provisions in Part 4 of the Principal Regulations. Regulation 11 sets out that the service provisions in sections 303 to 305 of the Pensions Act 2004 (c. 19) apply for the purpose of service of notices in the Principal Regulations.

Regulation 12 requires the Secretary of State to review the operation and effect of these Regulations and to publish a report every 5 years. Following a review, it will fall to the Secretary of State to consider whether these Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke or amend these Regulations.

An assessment of the impact of the regulations in this instrument 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](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.

# Annex C – Summary of draft regulations

## What the draft regulations say

1. In previous chapters of this consultation response and consultation document, the Government has summarised the consultation responses to the consultation that began in October 2015 and explained the decisions that it has made in relation to the commission ban as a result of those consultation responses.
2. The Government explains below how the draft regulations at Annex B, as currently drafted, will amend the Occupational Pension Schemes (Charges and Governance) Regulations 2015 (SI 2015/879) (the **Charges Regulations**), subject to the outcome of the consultation.
3. There are specific consultation questions on particular aspects of the draft regulations (see Annex A for a list of consultation questions). The Government welcomes views on whether the proposed changes to the Charges Regulations (except for the compliance changes described in paragraph 35 below which have previously been consulted on) will implement the policy intention in relation to the commission ban described earlier in this document.
4. Following consideration of the responses to this consultation on the draft regulations, the Government intends to lay the final regulations, which will come into force on 6th April 2016, before Parliament.

## Draft regulation 1

5. Draft regulation 1 provides that these regulations come into force on 6th April 2016. These regulations will introduce the commission ban in relation to commission arrangements that are entered into, or varied or renewed, on or after 6th April 2016 (see paragraph 18 below).

## Draft regulations 2 and 3

6. Draft regulation 2 amends the Charges Regulations.
7. Draft regulation 3 inserts new definitions into the interpretation provision in the Charges Regulations. A “qualifying scheme employer” is defined as a participating employer in a scheme that is used as a qualifying scheme for at least one of the employer’s jobholders. The definition of “service provider” provides that this is a person who provides administrative services directly to the trustees or managers. By this, we intend to capture bundled pension providers and third party administrators of schemes. The Government has decided that asset managers will not be covered by the definition of service

provider, so the definition only refers to those who provide administration services, not investment services.

8. The prohibition in draft regulation 11A protects certain members of a “specified scheme”, which is defined as a relevant scheme in which at least one qualifying scheme employer participates, that is, an employer who is using the scheme as a qualifying scheme in relation to one of its jobholders. Relevant scheme is defined in regulation 2(2) of the Charges Regulations.

#### **Draft regulation 4**

9. Draft regulation 4 amends regulation 4 of the Charges Regulations to provide that the duty to comply with the commission ban in new regulation 11A will be placed on service providers (paragraphs (2) and (3)). The amendment in paragraph (4) means that, as with the ban on active member discounts in regulation 11 of the Charges Regulations, the commission ban is not limited to the value of a member’s rights under the default arrangement.

#### **Draft regulation 5**

10. Draft regulation 5 makes a minor, technical correction to regulation 10 of the Charges Regulations, which relates to the adjustment measure. This change means that, where the trustees or managers have decided to give members the option to remain in the default arrangement after the adjustment date, they must inform those members in writing.

#### **Draft regulation 6**

11. Draft regulation 6 inserts new regulations 11A to 11C in the Charges Regulations.

#### *New draft regulation 11A*

12. Paragraph (1) of new draft regulation 11A provides that the prohibition applies to a member of a specified scheme where the member is, or was, a worker of an employer who is using that scheme as a qualifying scheme in relation to a jobholder. In a multi-employer scheme, the intention is that members will be protected where their employer or former employer is using the scheme for automatic enrolment. The Government’s intention is to protect deferred members, as well as active members, so the reference to a member who “was” a worker is intended to capture the situation when the member may have ceased employment with the employer.
13. Paragraph (2) introduces a prohibition, subject to certain exceptions described further in this summary, on imposing charges on the members to whom this prohibition applies (see paragraph 12 above), where these are used to pay an adviser (directly or indirectly) or to reimburse the service provider for a payment that they have made to an adviser. Although the regulations do not mention the word “commission”, this is intended to capture the different types of commission payments, eg trail and initial commission. Paragraph (2)(b) has

been included because the Government's understanding, which was confirmed by the consultation, is that commission usually involves a payment being made by the service provider to the adviser and then the service provider recouping this cost by way of a charge that is imposed on members. Paragraph (2)(a) has been included for completeness and to avoid creating a loophole. Since the policy intention is not to capture non-monetary benefits, there is no specific reference to non monetary benefits in this paragraph.

14. Paragraph (3) defines an adviser as a person who provides, has provided, or has agreed to provide (whether they have actually provided it or not) advice or services to the member or their employer or former employer. Advice and services are not defined and are intended to have their ordinary meaning, which is very broad. For example, it is intended that advice to an employer to use a particular service provider would be covered by the word "advice".
15. Paragraph (4) provides exceptions to the prohibition, where the adviser provides payroll services (in sub-paragraph (a)), or middleware (in sub paragraph (b)).
16. Paragraph (5) provides that, where the adviser is the same person as the service provider, they are to be treated as separate people for the purposes of the commission ban. Person is defined in the Interpretation Act 1978 and includes corporate bodies. This paragraph is intended to ensure that integrated providers, where the service provider and the adviser are within the same legal entity or both services are provided by the same natural person, are captured by the ban.
17. The other possible structure for integrated providers (as described in pages 13-15) is where different undertakings within the same corporate group provide advisory and administrative services. The intention is that this situation will also be captured by the commission ban. We have not included a provision to specifically deal with this situation because it will already be covered by the ban in draft regulation 11A(2). The prohibition prevents the service provider from imposing charges on members to pay an adviser or to recoup a payment made to the adviser. This means that the ban will apply to certain charges that are imposed on a member where a person pays, or has paid, another person. This would apply whether or not the two persons are connected.
18. The effect of paragraph (6) is that the prohibition in paragraph (2) does not apply to charges imposed under a commission agreement (whether or not legally enforceable or written) which was entered into before 6 April 2016. However, there is an exception to this, in that the prohibition will apply where such an agreement is varied or renewed on or after 6 April 2016. This is because the Government's view is that a renewal or variation of an agreement will allow the parties to renegotiate the terms of the commission agreement.
19. Paragraph (7) makes provision so that, once the scheme has satisfied the definition of a specified scheme, the commission ban will continue to apply, whether or not the scheme continues to meet the definition. For example, if

the scheme is no longer used as a qualifying scheme for automatic enrolment by the member's employer or former employer, the commission ban will continue to protect that member. The definition of specified scheme can only be met after the regulations come into force (or the employer's staging date, if later) and so there is no need to specifically refer to this timing in the paragraph.

#### *New draft regulation 11B*

20. Draft regulation 11B(1) imposes a requirement on the trustees or managers to notify the service provider that the scheme is a specified scheme within certain time periods.
21. Paragraph (2) provides that, subject to paragraph (4), the commission ban in regulation 11A does not apply until one month after the trustees or managers provide the notification under paragraph (1) to the service provider.
22. Paragraph (3) imposes a requirement on the service provider to confirm that they have complied with regulation 11A(2) in relation to all members who are protected by the ban within one month from the date that ban first applies, so two months from the date that the trustees or managers provide the notification under paragraph (1).
23. Paragraph (4) makes provision so as to allow the service provider to request further information about which former workers are protected by the commission ban so that it can comply with regulation 11A in respect of those members.
24. Paragraph (5) provides that the time periods in paragraph (2) and (3) commence on a different date if the service provider makes a request for information about former workers under paragraph (4).
25. Paragraph (6) imposes a duty on the service provider to inform the trustees or managers if their confirmation of compliance is no longer accurate as soon as possible, and at the latest within one month beginning with the date that it is no longer accurate.
26. Paragraph (7) imposes a duty on the trustees or managers to provide the information about former workers upon a request from the service provider under paragraph (4). Such information must be provided within one month of a request being received by the trustees or managers.

#### *New draft regulation 11C*

27. Subject to scheme rules, draft regulation 11C(1) allows, except in certain circumstances, a member to be imposed charges that would otherwise be prohibited under regulation 11A(2)(a) for advice or services provided to that member. This is where the service provider and trustees or managers have received a copy of a signed agreement for the advice or service which meets the conditions in paragraph (2).
28. The reference to regulation 11A(2)(a) in this paragraph means that a member agreement under regulation 11C may only be made in relation to charges that

are imposed on the member to pay an adviser, not where the service provider is recouping an amount that has already been paid to an adviser. This has been included to protect members.

29. Paragraph (2) sets out the conditions that the agreement must satisfy. These are that the agreement must (1) be in writing, (2) describe the advice or service to be provided, (3) state that entry into the agreement is not a condition of being a member of the scheme, (4) specify the amount of charges that the member will incur and the period over which such charges will be incurred, and state that such charges would otherwise not be permitted under regulation 11A(2)(a), and (5) be entered into before charges are imposed on the member.
30. In contrast to the member agreement that can be made under regulation 9 of the Charges Regulations, where charges may be agreed either at a rate or an amount, the agreement under regulation 11C(2) may only specify charges to be incurred at an amount, not a rate. The Government's view is that amount does not include a percentage, so a cash amount for the advice or service must be specified in the agreement.
31. Paragraph (3) provides that, in the case of a member to whom the charge cap applies, if the trustees or managers consider that the charges imposed under an agreement under regulation 11C would be likely to exceed the cap, they may notify the member, adviser and service provider, within one month of their receipt of the regulation 11C agreement, that they require the member to enter into an agreement under regulation 9 before an agreement under regulation 11C takes effect.
32. Paragraph (4) allows the trustees or managers to stop the regulation 11C agreement from having effect where the member's rights are or will be insufficient to pay the amount specified in the agreement, provided that they notify the persons listed in sub-paragraphs (a) to (c), within one month of their receipt of the agreement. This provision has been included because the member could agree to pay an amount for advice or a service for which they have (or will have) insufficient funds to pay for it.

### **Draft regulations 7 to 11**

33. Draft regulations 7 and 8 amend regulations 26 and 27 respectively of the Charges Regulations so that the Pensions Regulator may issue compliance notices to a service provider.
34. Paragraph (2) of draft regulation 9 amends regulation 28, so that the Pensions Regulator may issue a penalty notice to a service provider.
35. Paragraph (3) of draft regulation 9, along with draft regulations 10 and 11, were previously consulted on as part of the consultation which ran from 12 November to 11 December 2015 entitled **Better Workplace Pensions: Reducing regulatory burdens, minor regulation changes, and response**

**to consultation on the investment regulations**<sup>13</sup>. A small number of very minor drafting changes have been made to the draft which was consulted on. These draft regulations are not subject to this consultation.

### **Draft regulation 12**

36. Sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 creates a statutory obligation on Ministers to include a review provision in regulations that affect business, except in circumstances where a review is not appropriate. Draft regulation 12 requires that the Secretary of State must carry out a review of these Regulations and publish a report setting out the conclusions before 6th April 2021, followed by subsequent reports at least every five years. If the Secretary of State decides to revoke or amend these regulations, a further statutory instrument would be made.

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<sup>13</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/476447/reducing-regulatory-burdens-and-misc-regs-nov-2015-consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476447/reducing-regulatory-burdens-and-misc-regs-nov-2015-consultation.pdf)

# Annex D – List of respondents

Association of British Insurers (ABI)	Hymans Robertson
Aegon	Investment Association
Association of Member Nominated Trustees (AMNT)	JLT Employee Benefits
Association of Pension Lawyers (APL)	Law Society of Scotland
Association of Professional Pension Trustees (APPT)	Mercer
Association of School and College Leaders (ASCL)	Pensions Management Institute
Aviva	Pensions and Lifetime Savings Association (PLSA)
B&CE	Royal London
CTC Software	Sackers LLP
Financial Services Consumer Panel	Standard Life
Hargreaves Lansdown	The Society of Pensions Professionals

# Annex E – Glossary

Active member	A member of a pension scheme who is at present accruing benefits under that scheme.
Active member discount (AMD)	A charge structure whereby active members of a scheme are charged a lower amount than they would be if they were not contributing.
Additional Voluntary Contributions (AVC)	An extra pension contribution which a member may choose to make to increase their retirement income, often within a final or average salary scheme.
Administration	The day to day running of a pension scheme. This may include collecting contributions and payment of benefits.
Adviser	A professional who renders advice services to clients.
Asset Manager	An individual (or company) to whom the management of all or part of a scheme's assets is delegated.
Automatic enrolment	Employers are required to make arrangements by which eligible jobholders become active members of an automatic enrolment scheme with effect from the automatic enrolment date. Automatic enrolment is not applicable if the jobholder is an active member of a qualifying scheme on that date.
Bundled schemes	Where the employer or trustees procure administration and investment services through a single pension provider.
Commission	A payment, which may be either an upfront or on-going fee (often called trail commission) or both, for advice services agreed between a scheme provider and an adviser. The cost is recouped through member-borne charges.

Consultancy charging	An upfront fee for advice services agreed between an employer and an adviser. The cost is recouped through member-borne charges.
Contributions	The money paid by members and employers to the pension scheme.
Decumulation	The process of converting pension savings into a retirement income.
Default arrangement	This generally means the investment vehicles that are selected automatically for a member joining a pension scheme, unless that member selects an alternative investment strategy.
Financial Conduct Authority (FCA)	The FCA is responsible for regulating the standards of conduct in retail and wholesale, financial markets and for supervising the infrastructure that supports those markets.
Master trust	An occupational trust-based pension scheme established by declaration of trust which is or has been promoted to provide benefits to members who are staff of employers which are not connected and where each employer group is not included in a separate section with its own trustees. For this purpose, employers are connected if they are part of the same group of companies (including partially owned subsidiaries and joint ventures).
Member	An individual who has contributed and/or continues to contribute.
Member-borne deductions	All deductions paid by members of pension schemes to the pension provider or another third party.
Money purchase benefits	Where the rate or amount of the benefit is based on the contributions made by or on behalf of the member and investment returns, less charges. The benefit is calculated solely by reference to assets which must necessarily suffice for the

	purposes of its provision to or in respect of the member – i.e. there is no promise which can give rise to a deficit in the scheme.
Money purchase scheme	Pension scheme where all the benefits are money purchase benefits.
Non-contributing members	In defined contribution schemes, this is someone who no longer contributes to the scheme but is not yet a beneficiary of that scheme. In some contract-based arrangements the member may be reclassified as a member of an Individual Personal Pension rather than a Group Personal Pension.
Occupational pension	A pension which is provided via a person's employment, normally taking the form of a trust arrangement.
Pension scheme	The arrangement by which an employer and, usually, an employee pay into a fund that is invested to provide the employee with a retirement benefit in the form of an income or a cash amount, depending on the scheme design.
Retail Distribution Review (RDR)	On 1 January 2013, the RDR introduced new rules from the then FSA on how financial advisory companies could operate. These rules included a stipulation that advisers are not able to take commission as a form of remuneration but instead will have to quote a fee for any advice given.
The Pensions Regulator (TPR)	TPR regulates occupational pension schemes in the UK.
Trustees	A member of the board of trustees responsible for the management, administration and investment of the pension assets.
Trust based schemes	A scheme that is managed by a board of trustees. The trustees have full responsibility for the management, administration and investment of the scheme. The trustees'

fiduciary duty is to run the scheme according to the trust deed and rules which may have been setup by, for example, the employer – and to act in the interests of members and while they can delegate tasks to various specialists, such as investment managers, the responsibility remains with the trustee.

Workplace pensions

A pension provided by an employer.