

**PERSONAL PENSION SCHEMES (RESTRICTIONS ON CHARGES)
INSTRUMENT 2015**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (General rule-making power);
 - (2) section 137T (General supplementary powers);
 - (3) section 138C (Evidential provisions); and
 - (4) section 139A (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:
- (1) Part 2 of Annex B to this instrument comes into force on 6 April 2016;
 - (2) the remainder of this instrument comes into force on 6 April 2015.

Amendments to the FCA Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Conduct of Business sourcebook (COBS) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Personal Pension Schemes (Restrictions on Charges) Instrument 2015.

By order of the Board of the Financial Conduct Authority
26 February 2015

Annex A

Amendments to the Glossary of definitions

Insert the following new definitions in the appropriate alphabetical place. The text is not underlined.

- accrued rights charge* a charge used by an *operator* for a *qualifying scheme* which is calculated solely by reference to the value of a member's rights accrued under a *qualifying scheme*.
- 'Rights' has the same meaning as in article 82 of the *Regulated Activities Order*, that is, the *specified investment* of rights under a *personal pension scheme* or a *stakeholder pension scheme*.
- administration charge* any charge made which:
- (a) relates to the money purchase benefits accruing to a member of a *qualifying scheme* whose *workplace pension contributions* are invested by way of a *default arrangement*; and
 - (b) is levied on:
 - (i) any of that member's *workplace pension contributions*; or
 - (ii) any income or capital gain arising from the investment of such *workplace pension contributions*; or
 - (iii) the value of the member's rights, insofar as those rights involve money purchase benefits, under the scheme; and
 - (c) is levied to meet the administrative expenses of the scheme, to pay commission or to be deployed in any other way that does not result in the provision of pension benefits for or in respect of such a member;
- but an *administration charge* does not include any charge made for costs:
- (d) incurred directly as a result of buying, selling, lending or borrowing investments;
 - (e) incurred solely in providing benefits in respect of the death of such a member of a *qualifying scheme*;
 - (f) in complying with a court order, where that order has provided that the *operator* may recover those costs;
 - (g) arising from earmarking orders or pension sharing arrangements pursuant to regulations made under section 24 or 41 of the

Welfare Reform and Pensions Act 1999.

combination charge structure a charging structure used by an *operator* of a *qualifying scheme* which is solely a combination of:

- (a) an *accrued rights charge* and a *flat-fee charge*; or
- (b) an *accrued rights charge* and a *contribution percentage charge*.

contribution percentage charge a charge used by an *operator* of a *qualifying scheme* which is calculated as a percentage of contributions made by, or on behalf of, a member of that *qualifying scheme* over a defined period of time.

default arrangement

- (a) an arrangement expressly provided by an *operator* of a *qualifying scheme* for the purpose of investing the *workplace pension contributions* of employees who have expressed no choice in relation to the investment of such contributions;
- (b) where no such arrangement is expressly provided, an arrangement whereby, in relation to members who are employees of the same employer, at least 80% of those members of the *qualifying scheme*, whether they had expressed a choice or not prior to the *qualifying scheme* coming into being, have their *workplace pensions contributions* invested, is deemed to be a *default arrangement*;
- (c) but an arrangement will not be a *default arrangement* under (b) if, prior to a scheme becoming a *qualifying scheme*:
 - (i) all members within that arrangement have been told that their *workplace pension contributions* will be invested in a new arrangement once the scheme becomes a *qualifying scheme*, unless they give express agreement for their contributions to continue to be invested in the original arrangement;
 - (ii) any members who wish to remain in the original arrangement have given express agreement in writing, including an acknowledgement that continuing in the original arrangement might mean that charges are higher than the limits set out in COBS 19.6 (Restriction on charges in qualifying schemes); and
 - (iii) any members who did not agree to remain in the original arrangement have had their *workplace pension contributions* invested in the new arrangement;
- (d) where an arrangement is a *default arrangement* by virtue of (a) and (b), it continues to be such an arrangement regardless of whether it continues to satisfy those paragraphs.

- flat-fee charge* a charge used by an *operator* of a *qualifying scheme* which is a specified charge for a period of time and which is not calculated by reference to member's contributions or accrued rights.
- qualifying scheme* (a) a *personal pension scheme* or *stakeholder pension scheme*, which provides money purchase benefits, used by an employer(s) to comply with duties imposed in Part 1, Chapter 1 of the Pensions Act 2008. In summary, these duties are to take necessary steps for particular employees, by a particular time, to make those employees members of a pension scheme which meets the criteria in that Act and in regulations made under that Act;
- (b) but such a scheme will not be a *qualifying scheme* if the only members of that scheme are directors or former directors of the same employer, including at least one third of the current directors of that employer.
- workplace pension contributions* contributions made to a *qualifying scheme* by, or on behalf of, an employee who has become a member of that scheme, including transfers in from other schemes.

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Part 1: Comes into force 6 April 2015

6.1C Consultancy charging and remuneration

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6.1C.5 R Except as specified in *COBS* 6.1C.5AR ~~and~~, *COBS* 6.1C.5BR and *COBS* 6.1C.5CR, a *firm* must:

...

...

6.1C.5C R In connection with a *qualifying* scheme, a *firm* may only solicit or accept consultancy charges from an operator of a *qualifying* scheme if the operator has confirmed that express agreement has been given by members of that scheme under *COBS* 19.6.4R.

In *COBS* 19 (Pensions supplementary provisions) insert the following new section after *COBS* 19.5. All the text is new and is not underlined.

19.6 Restriction on charges in qualifying schemes

Application

19.6.1 R This section applies to an *operator* of a *qualifying* scheme.

19.6.2 R The restrictions on *administration charges* in *COBS* 19.6.4R do not apply in relation to a *default arrangement* under which, at any time before benefits come into payment, those benefits accruing to the member involve, or involve an option to have, a promise by or to be obtained from a third party about the rate or amount of those benefits.

Express agreement

19.6.3 G (1) In this section, where express agreement is required by a *rule*, the *FCA* would expect *firms* to take active steps to obtain the informed, active consent of the affected member(s) of the *qualifying* scheme, and to have that consent in writing in a *durable medium*, capable of being produced or reproduced when requested by the *FCA*.

(2) The *FCA* does not consider the following to amount to express

agreement (this list is not exhaustive):

- (a) a member receiving a communication stating that by becoming or continuing to be a member of the scheme, the member has agreed to a particular service;
- (b) a member being invited to click on a box to opt-out through a website link.

Default arrangements: charging structures and restrictions

- 19.6.4 R A *firm*, for a *default arrangement* within a *qualifying scheme*, may only make, impose or otherwise facilitate payment of an *administrative charge* by way of an *accrued rights charge* or a *combination charge structure* where:
- (1) the limits in COBS 19.6.6R are not exceeded; or
 - (2) the *firm* has obtained appropriate express agreement to exceed the limits and the following conditions are satisfied:
 - (a) the express agreement contains an acknowledgement by the member that the *administrative charge* for the service is likely to exceed the limits;
 - (b) giving such express agreement is not a condition of becoming or remaining a member of the *qualifying scheme*;
 - (c) express agreement has not been given for services which the *operator* must provide under the *regulatory system* or the general law, or which are core services.
- 19.6.5 G The effect of COBS 19.6.4R(2)(c) is that a *firm* may not seek express agreement from a member to charges in excess of the limits for services which are obligatory under law, or form part of the core operation of the scheme. Such core services include, for example, designing and implementing an investment strategy, investing contributions to the scheme (to the extent that this would incur *administrative charges*), holding investments relating to scheme members and transferring a member's accrued rights into or out of a *default arrangement*.
- 19.6.6 R The limits on *administration charges* are as follows:
- (1) for a *qualifying scheme* which uses only an *accrued rights charge*, 0.75% of the value of those accrued rights;
 - (2) for a *qualifying scheme* which uses a *combination charge scheme*:
 - (a) for the *flat-fee charge* element, £25 annually;
 - (b) for the *contribution percentage charge* element, 2.5% of the contributions annually;

- (c) for the associated *accrued rights charge*, the limits as set out in column 2 of the table in *COBS 19.6.7R*.

19.6.7 R This is the table referred to in *COBS 19.6.6R*.

<i>Contribution percentage charge rate (%)</i>	<i>Accrued rights charge rate (%)</i>
1 or lower	0.6
Higher than 1 but no higher than 2	0.5
Higher than 2 but no higher than 2.5	0.4

<i>Flat-fee charge (£)</i>	<i>Accrued rights charge rate (%)</i>
10 or less	0.6
More than 10 but no more than 20	0.5
More than 20 but no more than 25	0.4

Compliance with the restrictions on charges

19.6.8 E (1) To ensure that *administrative charges* are within the limits set out in *COBS 19.6.6R*:

- (a) a *firm* should calculate the value of accrued rights in an *accrued rights charge* as the arithmetic mean over a 12-month period of membership of the *qualifying scheme*, using at least four evenly-distributed reference points over that period;
- (b) a *firm* should calculate the value of contributions in a *contribution percentage charge* over a 12-month period of membership of the *qualifying scheme* of a member's *workplace pension contributions*;
- (c) for members who have been members of the *qualifying scheme* for a period of less than 12 months, a *firm* should calculate *administrative charges* on a pro rata basis;
- (d) the total *administration charges* imposed should not exceed the relevant restriction when measured over a 12-month period. However, where the *qualifying scheme* has been in operation for less than 12 months, and the *firm's* internal processes would involve assessment of *administration charges* before 12 months has elapsed, then for its initial assessment, the *firm* may use a period of up to 18 months.

- (2) Contravention of (1) may be relied on as tending to establish contravention of *COBS 19.6.4R(1)*.

Consultancy charges

19.6.9 R (1) A *firm* must not make or otherwise facilitate any payment to a third party for advice or services provided pursuant to any agreement made between that third party and an employer for whom the *firm* is

operating a *qualifying scheme*, including *consultancy charges*, which would have the effect of reducing the value of the accrued rights of a member of that *qualifying scheme* to whom this section applies.

- (2) The restriction in (1) does not apply where the *firm* has obtained express agreement from the relevant member to such a payment.

- 19.6.10 G *COBS* 19.6.9R complements *COBS* 6.1C.5CR and *COBS* 6.1D, which prevent a *firm* which gives advice or provides services within the meaning of those sections to an employer in relation to a *qualifying scheme* from soliciting or accepting *consultancy charges* in relation to those services. *COBS* 19.6.9R prevents the provider of the *qualifying scheme* from providing such payments and prevents such payments to other advisers who give advice or provide services to employers, such as solicitors and accountants.

Part 2: Comes into force 6 April 2016

Amend the following as shown.

2.3 Inducements

Interpretation

2.3.-1 R ...

2.3.-1A R This section does not apply to giving advice, or providing services, to an employer in connection with a group personal pension scheme or group stakeholder pension scheme where that scheme is a qualifying scheme.

2.3.-1B G The rules governing fees, commissions and non-monetary benefits which may be paid or provided in respect of qualifying schemes are found in COBS 19.6.

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6.1C Consultancy charging and remuneration

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6.1C.5A R A firm and its associates may, except in relation to a qualifying scheme:

...

...

6.1D Product provider requirements relating to consultancy charging and remuneration

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6.1D.4 R ...

- (2) ~~Paragraph~~ Except in connection with a *qualifying* scheme, paragraph (1)(a) does not prevent a *firm* from making a payment to a third party that has facilitated the payment of a *consultancy charge* from a *group personal pension scheme* or *group stakeholder pension scheme*, provided that that payment is only in respect of that facilitation.

...

...

6.1D.6A R A *firm* and its *associates* may, *except in connection with a *qualifying scheme**:

...

...

19.6 Restriction on charges in pension schemes

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~~Consultancy charges~~ Prohibition of payments to third parties from *qualifying schemes*

19.6.9 R (1) ~~A *firm* must not make or otherwise facilitate any payment to a third party for advice or services provided pursuant to any agreement made between that third party and an employer for whom the *firm* is operating a *qualifying scheme*, including *consultancy charges*, which would have the effect of reducing the value of the accrued rights of a member of that *qualifying scheme* to whom this section applies. A *firm* must not make any *administrative charge*, or otherwise make or facilitate any payment or provide any non-monetary benefit, in respect of any service provided by a third party in connection with a *qualifying scheme* which would have the effect of decreasing the value of the accrued rights of any member of that scheme.~~

...

19.6.10 G ~~*COBS* 19.6.9R complements *COBS* 6.1C.5CR and *COBS* 6.1D, which prevent a *firm* which gives advice or provides services within the meaning of those sections to an employer in relation to a *qualifying scheme* from soliciting or accepting *consultancy charges* in relation to those services.~~

~~COBS 19.6.9R prevents the provider of the *qualifying scheme* from providing such payments and prevents such payments to other advisers who give advice or provide services to employers, such as solicitors and accountants. [deleted]~~

Differential charges

- 19.6.11 R A firm must not impose greater *administrative charges* on a member of a *qualifying scheme* whose *workplace pension contributions* ceased on or after 6 April 2016 than those imposed on a member for whom such contributions are still being made.
- 19.6.12 G The effect of *COBS 19.6.11R* is to prohibit active member discounts within automatic enrolment schemes.