

**EXPLANATORY MEMORANDUM TO
THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES (DISCLOSURE OF
INFORMATION) (AMENDMENT) REGULATIONS 2015**

2015 No. 482

1. Introduction

This Explanatory Memorandum has been prepared by the Department for Work and Pensions (DWP) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument makes amendments to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (“the Disclosure Regulations”)¹ in connection with the following two matters:

New pension flexibilities - the Taxation of Pensions Act 2014 (“the 2014 Act”) and the Pension Schemes Act 2015 (“the 2015 Act”) include measures giving pension scheme members greater flexibility as to how they access their pension savings. These Regulations amend the Disclosure Regulations to support those changes by requiring trustees and managers of certain pension schemes to give members information about their benefits and about the new pensions guidance service in order to help them decide what to do with their benefits.

Public service pension schemes - amendments ensure that the Disclosure Regulations work as intended in relation to the new public service pension schemes which are being introduced from April 2015 under the Public Service Pensions Act 2013 (“the PSP Act 13”)². This also includes some additional technical amendments.

- 2.2 Regulations 3 (2)(a) and (e), 4 (2) and (5), 5, 6 and 11 (9) of this instrument relate to public service pension schemes and all remaining regulations relate to the new pension flexibilities.

3. Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None

¹ http://www.legislation.gov.uk/ukxi/2013/2734/pdfs/ukxi_20132734_en.pdf.

² <http://www.legislation.gov.uk/ukpga/2013/25/contents/enacted>.

4. Legislative Context

- 4.1 The Disclosure Regulations impose requirements on trustees and managers of occupational and personal pension schemes (including public service schemes) to provide scheme members and beneficiaries with information relating to their pension savings.

New pensions flexibilities

- 4.2 The Pension Schemes Act 2015 (“the 2015 Act”), among other things, establishes a pensions guidance service to members eligible for the flexibilities, extends the right of individuals to transfer their pension savings and imposes a requirement to take independent financial advice before transferring certain pension benefits. These Regulations contain consequential amendments and measures to support those changes.
- 4.3 The 2015 Act imposes a duty on the Financial Conduct Authority (FCA) to make rules to require specified personal pension providers to give information about the pensions guidance. The FCA has made provision for this in their Conduct of Business Handbook (CoB rules).
- 4.4 This instrument makes similar amendments to the Disclosure Regulations, which cover occupational pension schemes and, in some circumstances, personal pension schemes.
- 4.5 This instrument also removes an area of duplication between the Disclosure Regulations and the FCA rules with regard to information automatically given to members before their retirement date.

Public service pension schemes

- 4.6 Certain prescribed public service schemes are exempt from some of the requirements to provide information imposed by the Disclosure Regulations. For example, unfunded defined benefit (DB) public service schemes and certain funded DB public service schemes are exempt from the requirement to provide certain information “on request” such as an annual report, information about scheme funding and the Statement of Investment Principles.
- 4.7 The Public Service Pension Act 2013 (the PSP Act 13) provides for the establishment of new public service pension schemes from April 2015 and allows for the creation of a wider range of public service scheme types. Additionally, HMT Directions made under the PSP Act 13 require, among other things, DB schemes established under that Act to provide members with an annual benefit information statement.
- 4.8 The changes made by this instrument are to ensure that the Disclosure Regulations continue to dis-apply specific disclosure requirements in relation to appropriate public service schemes following the introduction of the wider range of public service scheme types in the PSP Act 13, and to remove any potential duplication, in terms of requirements to provide information about pension benefits to members, between the HMT Directions (which will require information about pension benefits to be given annually to members) and the Disclosure Regulations.

- 4.9 We have also identified an outdated legislative reference in the Disclosure Regulations and we are using this instrument as an opportunity to update that reference.
- 4.10 Further, we are using this instrument as the first opportunity to make several drafting improvements to the Disclosure Regulations.

5. Territorial Extent and Application

This instrument applies to Great Britain. Northern Ireland will be making separate parallel provisions.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure, and does not amend primary legislation, no statement is required.

7. Policy background

- **What is being done and why**

New pensions flexibilities

- 7.1 The existing policy is that trustees or managers of certain pension schemes must give information to:
- a) prospective members and members of occupational pension schemes, at the initial stage of joining a scheme;
 - b) members of occupational and personal pension schemes, with money purchase or cash balance benefits, at least 4 months before retirement;
 - c) members of occupational pension schemes when benefit is about to or has become payable; and
 - d) beneficiaries of occupational and personal pension schemes when the scheme becomes aware of a beneficiary or member's death.
- 7.2 From 6 April 2015, members of pension schemes, and survivors of members of pension schemes, with flexible benefits will have greater flexibility of access to those benefits. These members and survivors will be able to transfer their flexible benefits to take advantage of the pension flexibilities. This instrument amends the Disclosure Regulations to ensure trustees and managers of schemes provide appropriate information to support scheme members to make decisions about what to do with their flexible benefits and to inform them of the availability of the pension guidance service.
- 7.3 The amendments require trustees or managers of an occupational pension scheme to give to certain members:
- a standard statement informing the individual about the nature, availability and contact details of the guidance service; and

- more detailed information about the member's benefits (including an estimate of the value of those benefits available to transfer) and the member's opportunity to transfer their flexible benefits.
- 7.4 This information must be given to a member who has an opportunity to transfer flexible benefits and has reached a certain age and has decided, or is considering what to do with those benefits.
- 7.5 This information will also be sent automatically at least 4 months before the scheme expects the member to take their benefits.
- 7.6 Trustees and managers of schemes must also provide information about the availability of the guidance service to a member when the scheme and the member communicate (either verbally or in writing) about what the member can do with their flexible benefits.
- 7.7 This instrument also requires beneficiaries under personal and occupational pension schemes to be provided with information about the guidance service.
- 7.8 The instrument makes other changes that are consequential on, or connected with, the 2014 Act and 2015 Act. The instrument also removes duplication between the Disclosure Regulations and Financial Conduct Authority rules.

Public service pension schemes

- 7.9 Existing policy, reflected in the current Disclosure Regulations, is that certain prescribed public service pension schemes are exempt from some of the disclosure requirements in those regulations (paragraph 4.6 refers). Those schemes include the current local government scheme.
- 7.10 The PSP Act, which provides for the establishment of new public service pension schemes from April 2015, allows for the creation of a wider range of public service scheme types (paragraph 4.7 refers).
- 7.11 This instrument amends the regulation in the existing Disclosure Regulations that sets out the disclosure requirement exemption for public service pension schemes. It does not, however, alter the policy objective of that existing exemption. It ensures that any future local government schemes set up under the PSP Act (which will be made under statute, pursuant to legislation and guaranteed by public authority) will benefit from the exemption.
- 7.12 Additionally, this instrument makes a further amendment as a consequence of HMT Directions made under the PSP Act which require defined benefit public service schemes established under that Act to provide members with an annual benefit information statement (paragraph 4.8 refers). Since the existing Disclosure Regulations already require disclosure of the same material in relation to occupational pension schemes generally, this instrument amends the relevant regulation of the Disclosure Regulations so that the disclosure obligation there does not apply if a benefit information statement under the HMT Directions has already been provided in the previous 12 months. The policy objective behind that amendment is therefore to prevent double provision. Self-regulation or voluntary

agreement is not appropriate here because, since the double provision arises within legislation, the only way to correct it is by amending the relevant legislation.

- 7.13 Since the Disclosure Regulations is the subject of this instrument, it is convenient and efficient to use it as a vehicle for the drafting improvements, mentioned in paragraphs 4.9 and 4.10, which have been identified in relation to the same Disclosure Regulations.

- **Consolidation**

- 7.14 Informal consolidated text of instruments is available to the public free of charge via ‘The Law Relating to Social Security’ (Blue Volumes) on the DWP website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/> or the National Archive website legislation.gov.uk. An explanation as to which instruments are maintained on each site is available [here](#).

8. Consultation outcome

New pension flexibilities

- 8.1 The amendments made by these regulations were not subject to consultation because, in this case, the Secretary of State considered that by reason of urgency consultation was inexpedient. The amendments made by this instrument ensure that the changes to primary legislation made by the 2014 Act and the 2015 Act, which come fully into force on 6 April 2015, operate as intended. The changes will ensure appropriate protection and information is given to scheme members.
- 8.2 The FCA consulted on their rules in relation to personal pension schemes in July 2014 and signalled that the consultation was of interest to trust-based schemes because similar requirements would be made to DWP legislation in relation to occupational pension schemes. The FCA published a policy statement ([PS 14/17](#)) in November 2014.
- 8.3 Although DWP did not formally consult it did establish an Industry Working Group of approximately 20 members in September 2014, with which it has met regularly to discuss the proposed changes to legislation. This Group included Arms Length Bodies, representatives of pension schemes and related associations, pension lawyers and businesses from the pensions industry. A draft version of this instrument was circulated to the members of the Group and their comments have been taken into account in producing the Regulations. Members were supportive of the policy aim and provided their expertise to ensure the disclosure process outlined in the legislation worked as intended for occupational pension schemes.

Public service pension schemes

- 8.4 DWP undertook formal consultation on a draft of these amendments between 3 November 2014 and 28 November 2014. The consultation was for less than six weeks because the amendments, whilst legally necessary, are of a relatively limited scope and key stakeholders such as HMT and some individual schemes were already aware of the nature of the substantive amendments. Furthermore, prior to the formal consultation, the substantive amendments were developed in consultation with HMT, who have overall policy responsibility for the public

service schemes and some informal discussions in relation the main substantive amendment had previously taken place with the Department of Health and NHS scheme representatives.

- 8.5 There were 7 substantive formal responses to the consultation. These came from 2 of the public service schemes themselves, the National Association of Pension Funds, Hymans Robertson Independent Pensions Consultants, Society of Pension Professionals, the Local Government Association and the Mini Official Committee on Occupational Pensions (MOCOP), the forum for Public Service Schemes which is administered by HMT. On-going informal discussions took place both before and during the consultation with MOCOP.
- 8.6 The majority of those who expressed a view were content with the amendments. However, concerns were raised in relation to the requirement to notify members of material alterations to scheme information, particularly in relation to the requirement to notify members where such alterations are made to information on scheme websites. This requirement is a pre-existing requirement contained in the Disclosure Regulations, designed to ensure members are made aware if important information about their scheme, which is contained on a website, changes. No further amendment to the regulations has been made in response to this.
- 8.7 One response to the consultation suggested an amendment so that basic scheme information need not be given in the case of those members who have transferred from existing public service schemes to the new schemes under provisions in the PSP Act where the scheme managers have no up to date contact details for that member despite attempts to contact them. Following consideration of this, it was decided not to make further amendments to the regulations as suggested, on the basis that we would expect schemes to make efforts to trace members with whom they have lost contact, particularly in order to provide important information regarding new schemes to which they had been transferred.
- 8.8 Some respondents expressed concerns over the wording of regulation 16 of the Disclosure Regulations and the proposed amendment to it, the issue being whether trustees are required to give certain information to members on request where the information requested is different to information already provided to the same member under regulation 16 in the previous 12 months. Those responses, and the interpretations set out in them, have been carefully considered. We do not agree that the drafting of current regulation 16 and of the proposed amendment to it, operates in the way that the respondents described. Therefore, we have decided that is not appropriate to change regulation 16 as a result of these comments. We do not consider that there is any other action that would be appropriate or proportionate to take to allay the concerns of the respondents who commented on the wording of regulation 16.
- 8.9 The Government's response to the consultation is published at:
<https://www.gov.uk/government/consultations/occupational-and-personal-pension-schemes-disclosure-of-information-regulations-amendments>

9. Guidance

- 9.1 **New pensions flexibilities:** The Pension Regulator will be providing an overarching guidance document for trustees and scheme administrators, setting out the major changes that will be in place from April 2015. This will feature an explanation of the amendments in this instrument and further issues schemes should consider when updating their communications to members. This will be available on the Pensions Regulator website <http://www.thepensionsregulator.gov.uk/> and registered schemes will be signposted to the guidance by email. From April 2015, the Pensions Regulator will be reviewing its Code of Conduct and Trustee Guidance, which will feature more detailed interpretation of trustee requirements.
- 9.2 **Public service pension schemes:** No guidance is proposed for this aspect of the regulations. Those schemes affected are aware of and understand the effect of the amendments introduced by the instrument.

10. Impact

New pensions flexibilities

- 10.1 Where possible the proposed changes have been aligned with existing points of communication between the scheme and members or beneficiaries. Any extra demand for on-going communications from schemes to these groups is therefore a consequence of the wider pension flexibilities rather than the requirement to provide information within this instrument. The impact on business is expected to be a one-off low cost of less than £1million due to schemes changing current communications. There are no on-going costs.
- 10.2 The impact on the public sector is negligible.
- 10.3 An impact assessment will be published alongside this memorandum, it is available on: <http://www.legislation.gov.uk>.

Public service pension schemes

- 10.4 There is no impact on business or civil society.
- 10.5 There is no impact on the public sector.
- 10.6 An Impact Assessment has not been prepared for this part of the amendments.

11. Regulating small business

New pension flexibilities

- 11.1 As small businesses do not usually administer pension schemes the impact therefore on small business is expected to be negligible.
- 11.2 A Small and Micro Business Assessment is included in the Impact Assessment for these regulations. It concludes that it would not be appropriate to exempt small businesses from the requirements, particularly as the impact on them would be negligible.

11.3 **Public service pension schemes:** The amendments do not apply to small business.

12. Monitoring & review

12.1 No formal post-implementation review of these amendments is planned. However, the operation of these regulations will be monitored on an on-going basis by means of representation and feedback from the pensions' community and the Pensions Regulator.

12.2 **New pension flexibilities only:** DWP, the FCA and the Pensions Regulator will continue to work together to ensure these regulations take into account policy recommendations on how individuals receive information from their schemes and reflect the development of new products that may become available to members of occupational pension schemes, or survivors, as a result of the new pension flexibilities.

13. Contact

13.1 **New pensions flexibilities:** James Calverley at the Department for Work and Pensions, 1st floor Caxton House, London SW1H 9NA Tel: 0207 245 3827; email: James.Cavlerley@dwp.gsi.gov.uk can answer any queries regarding the instrument.

13.2 **Public service pension schemes:** Paul Needham at the Department for Work and Pensions, 3rd Floor West, Quarry House, Leeds, LS2 7UA Tel: 0113 2324949 or email: paul.needham@dwp.gsi.gov.uk can answer any queries regarding the instrument.