

**EXPLANATORY MEMORANDUM TO**  
**THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES**  
**(DISCLOSURE OF INFORMATION) REGULATIONS 2013**

**2013 No. 2734**

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

This instrument revokes and replaces two existing instruments (The Personal Pension Schemes (Disclosure of Information) Regulations 1987 <http://www.legislation.gov.uk/1987/1110> and The Occupational Pension Schemes (Disclosure of Information) Regulations 1996) <http://www.legislation.gov.uk/1996/1655>, with one, consolidated, simplified and updated instrument. The purpose of the instrument is to ensure that the regulatory regime for the disclosure of information by occupational and personal pension schemes to their members is clear, up to date and supports the Government's aim of reinvigorating workplace pensions. A copy of the DWP strategy document "Reinvigorating Workplace Pensions" can be found at the following link:  
<https://www.gov.uk/government/publications/reinvigorating-workplace-pensions>

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

None

4. **Legislative Context**

- 4.1 These Regulations revoke the existing regulations which currently provide the basis for the private pension disclosure of information regime, and replace these with a single consolidated and simplified statutory instrument. This consolidation of the disclosure regulations has been undertaken because the existing disclosure regulations have been in existence for many years (they were introduced in 1987 and 1996 respectively) and have been amended on numerous occasions in that time to take account of evolving policy changes. The existing disclosure regulations therefore contain duplications and discrepancies in terms of what information must be provided by occupational and personal pension schemes as well as some duplication between the regulations and the information requirements set out by the Financial Conduct Authority (FCA). These regulations are part of the Government's "Red Tape Challenge" which aims to reduce the amount of Government regulation.

## **5. Territorial Extent and Application**

This instrument applies to Great Britain.

## **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*

7.1 This instrument replaces the two existing statutory instruments which set out the information that private pension schemes are required to give or make available to their members. The reason for replacing the existing regulations in this way is that those regulations have been in existence for many years, are difficult to follow due to the number of amendments made over the years and lack clarity. DWP launched a previous consultation seeking views on reviewing the disclosure regulations in 2009. Many respondents to that consultation favoured a consolidation of the disclosure regulations, and some suggested harmonisation of requirements across scheme types. This instrument addresses those issues as well as issues raised in the recent (February 2013) consultation on this proposed instrument. Additionally, as part of this consolidation, a number of changes have been made to ensure that the new regulations are clear and up to date. Furthermore, although the policy for the disclosure of information is broadly unchanged by these regulations, the new regulations do make a number of changes to the existing disclosure regime, some of which are as a result of comments made during the consultation. The new regulations:

- remove duplication between the regulations and the FCA rules on disclosure of basic scheme information to new members of personal pension schemes
- where possible, align the timescales for providing information which currently differ slightly between scheme types
- simplify the structure of the regulations to make them easier to understand
- simplify some of the requirements about the types of basic scheme information to be given to new and prospective members so that some of the more complex information, currently given as of course will in future be available on request
- simplify some of the requirements within non money purchase benefit statements, including allowing the trustees or managers of

the scheme to choose the most appropriate retirement date when calculating the amount of benefit payable.

- provide an exemption for money purchase annual benefit statements so that schemes can choose whether to issue the first benefit statement where no contributions have been credited or for occupational schemes where the member is in their automatic enrolment opt-out period. These changes also apply to the Stakeholder Pension Regulations 2000 but are worded in terms of “statement year”, which specifies the circumstances when a benefit statement should be provided to members.
- make changes to statutory money purchase illustrations to enable schemes the flexibility to use more personalised assumptions and that lump sums may be included in the pension illustrations. These changes also apply to the Stakeholder Pension Regulations 2000.
- change the requirement so that guidance on annuities for those approaching retirement no longer needs to be prepared by the Pension Regulator and be approved by the Secretary of State. The new requirement is that such guidance is prepared or approved by the regulator, but need not be approved by the Secretary of State.
- update the language used and ensure that the terms used are consistent (for example the new regulations use “give” instead of the existing use of a number of words which all mean the same thing such as “provide”, “furnish” and “make available”)
- clarify the intent regarding how information is given and the use of electronic communications, and ensure that such methods of communicating information may be used irrespective of scheme type or type of information which is being disclosed.
- make amendments to other private pension legislation to ensure that the methods for giving information are the same irrespective of the type of information being given and make it clear that information may be given by electronic methods.

7.2 Additionally, the instrument introduces a requirement for schemes to tell members if they intend to adopt an investment strategy (known as “lifestyling”) which results in funds being moved gradually into in lower risk investments as members approach retirement. This is being introduced in order to support the idea proposed in the Reinvigorating Workplace Pensions Strategy document that information to pension scheme members should be tailored to the life stage of the individual. A notification to inform or remind members that lifestyling is to be adopted is useful to members; particularly where the member intends to retire later than planned and may therefore prefer to take advantage of a longer period of equity investment.

7.3 Regulation 1 sets out the coming into force date of these regulations and revokes the existing disclosure regulations from that date.

7.4 Regulation 2 defines specific terms that are used throughout the regulations.

- 7.5 Regulation 3 provides that questions about whether an organisation is a recognised trade union should be referred to an Employment Tribunal. This regulation updates the previous provisions which referred to an industrial tribunal as Employment Tribunals now deal with these matters.
- 7.6 Regulation 4 explains which of the following regulations apply to Occupational, Personal or Stakeholder Schemes
- 7.7 Regulation 5 provides for civil penalties to be imposed where a person fails to comply with the requirements set out in these regulations in relation to occupational schemes. This is unchanged from the previous provisions.
- 7.8 Regulation 6, in conjunction with schedule 2 sets out what basic scheme information must be given by scheme trustees or managers, to whom the information must be given and the timescales for providing that information. All basic information must be given to prospective members if practicable and to members who have not already been given the information. The information must be given to members within one month of the date the trustees or managers have received jobholder information, or where no jobholder information has been received, within 2 months of the person becoming an active member of the scheme. Where a request for the information has been made, the information must be given within 2 months of the request. Basic scheme information about personal pension schemes which was provided for in the Personal Pension Schemes (Disclosure of Information) Regulations 1987 has not been carried forward into these regulations in order to remove duplication of the disclosure requirements which currently exists between DWP legislation and FCA requirements.
- 7.9 Regulation 7 in conjunction with schedule 2, part 2 sets out what basic scheme information must be given by occupational schemes which do not come within the definition of such schemes, such as those which are not tax registered or which have been established under the Salvation Army Act 1963. The information must be given to prospective members if practicable, to members where it has not already been given within 2 months of membership beginning and to recognised trade unions within 2 months of a request.
- 7.10 Regulation 8 sets out the information which must be given where there has been change which results in an alteration to the basic scheme information which has already been provided. The time for providing this information is before, or as soon as possible after the decision to make an alteration to the scheme, and no later than 3 months after the decision to make the change takes effect.

- 7.11 Regulation 9 provides that information which explains any modification to the scheme by The Pensions Regulator must be given within 1 month of the modification taking effect.
- 7.12 Regulation 10 sets out the information which must be given where a former stakeholder pension scheme is removed from the Register of Stakeholder Pension Schemes. This information must be provided in the form of a statement that the scheme has been removed from the register, is no longer a stakeholder scheme and is required to start winding up. The information must be given no more than 2 weeks after the trustees are notified that the scheme has been removed from the register. This provision previously appeared in the private pension disclosure regulations and now forms part of the consolidated regulations.
- 7.13 Regulation 11, in conjunction with schedule 3, part 1 sets out the information that occupational schemes must give on request in relation to the constitution of the scheme, when and how that information must be given and to whom. The information must be given to relevant persons where it is relevant to their rights or prospective rights under the scheme, within 2 months of a request being made.
- 7.14 Regulation 12 in conjunction with schedule 3, part 2 sets out the information to be given on request by occupational schemes in relation to the scheme's annual report. The regulation provides that the information must be given to a relevant person where a request is made within 5 years of the end of the scheme year to which the information relates and where that information has not been given before. The information must be given within 2 months of the request.
- 7.15 Regulation 13 in conjunction with schedule 3, part 3 sets out other information which must be given by schemes on request, including information about funding principles and actuarial valuations. The information must be given within 2 months of the request being made.
- 7.16 Regulation 14 in conjunction with schedule 3 sets out the information about transfer credits which is to be given by schemes on request. This includes whether the member or prospective member is entitled to acquire transfer credits in exchange for a cash equivalent or transfer payment provided by another scheme and a statement of those credits. This information was previously required to be given as part of the basic scheme information, but following representations to a previous consultation calling for the basic information to be simplified, the information is now available on request, and must be given within 2 months of the request for it being made.
- 7.17 Regulation 15 states that the information in schedule 4 must be provided in the form of a summary funding statement. This statement must be given to all members except excluded persons (essentially persons for whom the trustees or managers do not have the present

electronic or postal address and in respect of whom the trustees or managers have had correspondence returned) and those whose only entitlement is to money purchase benefits. It is given within a reasonable period following the date by which the valuation report is received by the trustees or managers.

- 7.18 Regulation 16 in conjunction with schedule 5 sets out the information which must be given by occupational schemes on request to members about benefits other than money purchase benefits. The information to be given depends on whether the member is an active member, deferred member or pension credit member. The information must be given as soon as practicable and no later than 2 months after the request, provided the information has not been given in the last 12 months.
- 7.19 Regulation 17 in conjunction with schedule 6 sets out the information that must be given by schemes in relation to money purchase benefits. This information includes the amount of contributions credited to the member, the value of the member's accrued rights, an illustration of the amount of the pension that is likely to accrue to the member at their retirement date (that may include a lump sum) and statements relating to the illustration. The schedule also sets out how the illustration must be calculated. This regulation introduces a new exemption so that personal and occupational schemes can choose whether to issue the first benefit statement where no contributions have been credited and also for occupational schemes where the member is in their automatic enrolment opt-out period. For personal pension schemes the information must be given no more than 12 months after the date the person became a member of the scheme or where schemes choose to use the exemption no more than 12 months after the date contributions are first credited and each year thereafter. For occupational pension schemes the information must be given no more than 12 months after the end of each scheme year or where schemes choose to use the exemption and contributions are later credited for the first scheme year a statement for this period needs to be sent out no later than 12 months after the end of the second scheme year. The same rules apply but due to the specific requirements of the Stakeholder Regulations which allow schemes to determine their own statement year in which a benefit statement must be provided to a member, there may be occasions where contributions are credited within the first statement year but are not disclosed within the first benefit statement. The regulations are therefore amended to require schemes to still inform members of these contributions sometime within the following benefit statement year.
- 7.20 Regulation 18 sets out the information to be given if schemes intend to adopt an investment strategy (known as "lifestyling") which results in funds being moved gradually into in lower risk investments as members approach retirement. This is a new requirement. Where a scheme contains provision for a "lifestyling" strategy it must give

members a statement explaining what lifestyling is, that it will be or has been adopted and from when. This information is to be given as part of the basic scheme information and again between 5 and 15 years before retirement.

- 7.21 Regulation 19 and schedule 7 set out the information which must be given by pension schemes where the member is entitled to money purchase benefits before the member retires, in relation to accessing scheme benefits. The information includes a statement that the member has the opportunity to select an annuity and that the person can select the annuity provider and general information about annuities. The timescales for providing this information have been simplified and aligned between occupational and personal schemes at 4 months before the member reaches retirement or the date the trustees or managers expect the member to access their rights or as soon as possible after the member and trustees have agreed the date on which the member will access their rights.
- 7.22 Regulation 20 and schedule 7 sets out the information which must be provided by occupational schemes to a person where the pension has, or is about to, become payable, including the information that must be given where the person has the opportunity to select an annuity under the scheme (such as a statement that the person has the opportunity to select an annuity, that they can select the annuity provider and an explanation of the different features of annuities), and the timescales for providing that information. The information is listed in part 2 of Schedule 7 and must be given before benefit becomes payable if practicable or within one month after benefit becomes payable. Where benefit becomes payable on a date which is before the members normal retirement age, the information must be given within 2 months of benefit becoming payable. The information that must be given where a person may select an annuity must be given before benefit becomes payable.
- 7.23 Regulation 21 sets out the information which must be provided where the member or beneficiary has died and a person may be entitled to exercise rights or options under the scheme as a result and the timescales for providing that information. These timescales have been aligned between personal and occupational schemes at as soon as possible but no later than 2 months after the date the scheme managers or trustees receive notification of the death. The information which must be provided is the same information in relation to annuities as required under regulation 20 where the person may select an annuity and otherwise is information about the person's rights and options on the death of the beneficiary, the procedures for exercising them and provisions under the pension payable may be increased.
- 7.24 Regulation 22 sets out the information which needs to be given where there are changes to the benefit payable. This information must be

given either before or within 1 month of the date on which the decision to change the benefit takes effect.

- 7.25 Regulation 23 in conjunction with schedule 8 sets out the information that personal pension schemes must give when they have begun winding up. It provides that this information must be given to all members apart from excluded persons. The notification that the scheme is to be wound up must be given within 1 month of the decision and other information (such as information about the value of the member's accrued rights and the member's options for preserving or transferring them) must be given within 4 months of the decision to wind-up.
- 7.26. Regulation 24 in conjunction with schedule 8 sets out the information that must be given by occupational schemes which have begun winding up. For schemes which began to wind up after 6<sup>th</sup> April 1997, specified information must be given to all members and beneficiaries (apart from excluded persons) as soon as practicable and no more than 1 month after the date the scheme begins to wind up. For schemes which began winding up before that date specified information about winding up must be given once within 12 months of the time it was last given until the scheme is wound up.
- 7.27 Regulation 25 sets out the circumstances in which certain information is to be given by occupational schemes when winding up is complete. It provides that the information must be given to the member or beneficiary as soon as practicable but no later than 3 months after the scheme trustees or managers have done what they can to discharge the scheme's liabilities for the member.
- 7.28 Regulation 26 sets out the methods and rules by which information may be given, such as by sending the information to the member's last known postal address, sending to the member or beneficiary's email address or making the information available on a website. This regulation also provides the rules and safeguards which must be applied where information is given by electronic means.
- 7.29 Regulations 27 and 28 set out further conditions in relation to giving information on a website, including the requirement to give a notification to the recipient when information is made available on a website for the first time, and a requirement to send a less detailed notification where subsequent information is made available on a website and the circumstances in which that further notification need not be given.
- 7.30 Regulation 29 sets out methods by which information may be made available to members, such as making it available free of charge for inspection and the circumstances when a charge may be made.



- 7.31 Regulation 30 provides that where trustees or managers make arrangements for information or documents to be given by a third party, the responsibility for that information being given remains with them.
- 7.32 Schedule 1 – Defines the types of schemes to which these regulations apply.
- 7.33 Schedules 2 – 8 list the detailed information which must be given in accordance with the above regulations.
- 7.34 Schedule 9 – Contains amendments to miscellaneous private pensions legislation which are either consequential on these consolidated regulations, or which amend other private pensions legislation to ensure that all information provided for in those instruments may be given by electronic means in the same manner as prescribed in the main disclosure regulations.

- ***Consolidation***

- 7.35 These Regulations consolidate the requirements previously contained in two existing statutory instruments which are repealed once the new regulations come into force.
- 7.36 Where this instrument amends other private pension legislation (paragraph 7.40 refers), informal consolidation will be included in due course in the Department’s “the law relating to Social Security” (The Blue Volumes) which are available at no cost to the public on the internet at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/>

## **8. Consultation outcome**

- 8.1 The Department undertook formal consultation on a draft of these Regulations between 18<sup>th</sup> February 2013 and 14<sup>th</sup> April 2013. The consultation was for less than twelve weeks because there had been a previous consultation in 2009 on similar proposals (see paragraph 7.1 above) and continued informal consultation with a number of stakeholders throughout 2012/13, so stakeholders were already familiar with the subject matter.
- 8.2 There were 49 formal responses to the consultation. These came from a range of organisations including pension providers, insurance companies, pension industry representatives, employers, lawyers, actuaries, accountants and organisations representing pension scheme members. The responses were generally supportive of the proposed regulations, welcoming the consolidation and simplification that the new regulations achieve, although some, whilst welcoming the new regulations, suggested that the Department should go further in terms

and work towards a single disclosure regime with one regulator. We note these suggestions and although these concerns are broader than the scope of this instrument will continue to work closely with the FCA and Pensions Regulator to ensure that the disclosure requirements are consistent and straightforward. The majority of those who expressed a view (23 respondents of 26 respondents) were particularly pleased with the structure of the new regulations which will be easier for scheme managers and trustees to navigate and apply than the regulations they replace. There was also support for the measures to introduce a requirement for schemes to tell members that they will adopt a strategy to move their funds into lower risk investments in the latter stages of the pensions lifecycle (known as “lifestyling”), and to provide schemes with flexibility to use more personalised assumptions in the statutory money purchase illustration calculations.

- 8.3 It was originally proposed that the new regulations would come into force from October 2013. However, there were strong representations in response to the consultation to delay the introduction until April 2014, to give schemes time to make changes to their systems and notifications in order to be able to comply with the new requirements. We therefore intend to make and lay these regulations in October 2013, but commence them from 6<sup>th</sup> April 2014. We also received a number of comments suggesting that the time of issue of the first benefit statement should be changed so that no statement need be issued where no contributions have been made by the end of the scheme year or where the member is in the automatic enrolment opt-out period. Respondents also made suggestions about the proposed timings for the issuing of lifestyling information. The draft regulations take account of these representations.
- 8.4 There were a number of technical suggestions from respondents in relation to the drafting of the regulations. These have been carefully considered and the proposed regulations take account of these where appropriate.
- 8.5 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-2013>

## 9. **Guidance**

The proposed regulations provide a straightforward framework for pension schemes to engage with and inform their members, but make few fundamental changes to the disclosure requirements which have been in place for a number of years. However, some respondents to the consultation indicated that they would welcome some form of guidance in addition to that already available via the Financial Conduct Authority and The Pensions Regulator. The Department is considering whether additional guidance would be helpful and how this would align with existing guidance.

## **10. Impact**

10.1 The impact on business is an estimated saving of £10.7 million. A full impact assessment is attached to this memorandum and is published alongside it on: <http://www.legislation.gov.uk>.

10.2 The impact on the public sector is negligible.

## **11. Regulating small business**

11.1 The legislation applies to small business. These regulations place a burden on pension scheme providers. However, small businesses do not usually administer pension schemes and therefore impact on small business is expected to be negligible.

11.2 There was a wide ranging consultation on the draft Regulations. There were no issues raised about the effect of these Regulations on small business.

## **12. Monitoring & review**

No formal post-implementation review is planned, but the operation of these Regulations will be monitored on an on-going basis by means of representations and feedback from the pensions' community and the Pensions Regulator.

## **13. Contact**

Paul Needham at the Department for Work and Pensions Tel: 0113 2324949 or email: [paul.needham@dwp.gsi.gov.uk](mailto:paul.needham@dwp.gsi.gov.uk) can answer any queries regarding the instrument.