

EXPLANATORY MEMORANDUM TO
THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES (DISCLOSURE OF INFORMATION) (REQUIREMENTS TO REFER MEMBERS TO GUIDANCE ETC.) (AMENDMENT) REGULATIONS 2022

2022 No. 30

1. Introduction

- 1.1 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

- 2.1 The purpose of this instrument is to make amendments to regulations governing the disclosure requirements for occupational and personal pension schemes. It will place new requirements on the trustees or managers of certain occupational pension schemes (defined contribution pension schemes) to ensure relevant beneficiaries are referred to appropriate pensions guidance, provided by the single financial guidance body or one of its delivery partners. They will be provided with an explanation of the nature and purpose of the guidance as part of the application process when a beneficiary applies to receive or transfer their flexible benefits. The requirements will ensure that a relevant beneficiary has either received appropriate pensions guidance or opted out of receiving such guidance before they can transfer or access their flexible benefits.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Great Britain.
4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

- 5.1 The Minister for Pensions and Financial Inclusion, Guy Opperman at the Department for Work and Pensions has made the following statement regarding Human Rights:

“In my view the provisions of the Occupational and Personal Pensions Schemes (Disclosure of Information) (Requirements to Refer Members to Guidance etc.) (Amendment) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument is the first instrument to be made under the powers inserted into the Pensions Schemes Act 1993 by section 19 of the Financial Guidance and Claims Act 2018¹.

¹ <https://www.legislation.gov.uk/ukpga/2018/10/section/19>

- 6.2 Section 19 of the Financial Guidance and Claims Act 2018 (which inserts a new section 113B into the Pension Schemes Act 1993), amongst other things, confers powers on the Secretary of State to make regulations placing duties on trustees and managers of certain occupational pension schemes to refer scheme members and survivors with rights or entitlement to flexible benefits (“relevant beneficiaries”) to appropriate pensions guidance when the beneficiary applies to transfer or receive their pension benefits. The regulations must ensure the member (or other relevant beneficiary) has either received the guidance or opted out of receiving it before they can transfer or access their flexible benefits.
- 6.3 During the passage of the Financial Guidance and Claims Act 2018 through Parliament, the Government stated its intention for regulations made under these powers to be informed by consultation². This instrument follows that consultation.
- 6.4 Section 18 of the Financial Guidance and Claims Act 2018 (which inserts a new section 137FB into the Financial Services and Markets Act 2000), amongst other things, imposes a duty on the Financial Conduct Authority (“the FCA”) to make rules to require trustees and managers of certain personal and stakeholder pension schemes to refer members and survivors with rights or entitlement to flexible benefits to appropriate pensions guidance when the beneficiary applies to transfer or access their pension benefits. The FCA have made provision for this in their Conduct of Business Handbook (CoB rules).

7. Policy background

What is being done and why?

- 7.1 The Pension Schemes Act 2015³, in particular the Pensions Flexibility measures within the Act (also referred to as Pension Freedoms and mainly defined contribution pension benefits) gives pensions savers more flexibility as to how they access their pension savings from the age of 55 onwards. As part of the changes, the brand ‘Pension Wise’ guidance was launched. This service, which was transferred to the Money and Pensions Service (MaPS), provides free, impartial guidance to help individuals aged 50 and over with a Defined Contribution pension to understand the options available to them. Pension Wise is funded through levies on the financial industry
- 7.2 Pension Wise has been shown to be helpful to those considering how to access their pension pot. Nine in ten appointment customers (91%) agree that Pension Wise helped them to consider their pension access options more thoroughly. A similar proportion (89%) felt they had learned something new from using the service⁴. However, many people still access their pension savings without utilising regulated financial advice or guidance, and this may leave them open to making decisions that are detrimental to their future income. In 2019/20, 50% of all pension pots accessed in the contract-based retirement income market were accessed without advice or

² [https://hansard.parliament.uk/commons/2018-02-01/debates/89991944-2774-4e6d-a0b0-3fa21ba189e2/FinancialGuidanceAndClaimsBill\(Lords\)\(SecondSitting\)#contribution-303FD963-7617-4BF8-8DBF-6E4527B3CC90](https://hansard.parliament.uk/commons/2018-02-01/debates/89991944-2774-4e6d-a0b0-3fa21ba189e2/FinancialGuidanceAndClaimsBill(Lords)(SecondSitting)#contribution-303FD963-7617-4BF8-8DBF-6E4527B3CC90)

³ <https://www.legislation.gov.uk/ukpga/2015/8/contents/enacted/data.htm>

⁴ <https://moneyandpensionsservice.org.uk/wp-content/uploads/2020/10/Pension-Wise-Service-Evaluation-report-2019-2020.pdf>

guidance⁵. This means many pots may be accessed by individuals who have had neither financial advice nor guidance and so may be at risk of making poor decisions. The Government, during the passage of the Financial Guidance and Claims Act 2018, therefore committed to test approaches to a Stronger Nudge to pensions guidance aimed at increasing the take up of Pension Wise guidance.

- 7.3 The Money and Pensions Service (MaPS) commissioned the Behavioural Insights Team (BIT) to evaluate the impact of ‘Stronger Nudge’ interventions on the number of people who receive Pension Wise guidance before they access their pension savings. The approach was successful at increasing the number of pension holders booking and attending a Pension Wise appointment compared to business as usual. Approximately 14% of pension holders who did not report having received guidance before agreed to book an appointment. This was 11 percentage points more than the control group, where the proportion was 3%. Approximately 11% of pension holders attended a Pension Wise appointment, which was 8 percentage points more than in the control group⁶.
- 7.4 The intended effect is that more individuals take up the offer to receive Pension Wise guidance by requiring trustees and managers of occupational pension schemes to ensure that individuals have either received or opted out of receiving appropriate pensions guidance before proceeding with their application. The goal of this is to present taking pensions guidance as a normal part of the application process and to require members (and other relevant beneficiaries) to make an active choice to opt out of receiving guidance.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.5 The trustees and managers of certain occupational pension schemes are currently required to provide information about the availability of the pensions guidance service to members eligible for flexible benefits as detailed in the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (“the Disclosure Regulations 2013”) as amended by the Occupational and Personal Pension Schemes (Disclosure of Information) (Amendment) Regulations 2015. They are not required to ensure that members have received or opted out of receiving appropriate pensions guidance, or to facilitate the booking of an appointment to receive such guidance.

What will it now do?

- 7.6 This instrument amends the Disclosure Regulations 2013 to require trustees and managers of occupational pension schemes in scope to take additional steps when a relevant beneficiary applies to receive, or transfer with the intention of receiving, flexible benefits (broadly, defined contribution pension savings). Trustees and managers will be required to facilitate the booking of an appointment to receive appropriate pensions guidance provided by the single financial guidance body or its delivery partner (“Pension Wise appointment”) on the beneficiary’s behalf, as part of the application process. This can take the form of offering to book an appointment for the beneficiary or, in some circumstances, by providing the beneficiary with information on how to book a Pension Wise appointment.

⁵ <https://www.fca.org.uk/data/retirement-income-market-data>

⁶ <https://moneyandpensionsservice.org.uk/wp-content/uploads/2020/07/maps-stronger-nudge-evaluation-report-july-2020.pdf>

- 7.7 Before proceeding with the application, trustees and managers will be required to ensure that the beneficiary has received, or opted out of receiving, Pension Wise guidance.
- 7.8 This will ensure that relevant beneficiaries are made aware of Pension Wise guidance before accessing their pension savings, and remove the inertia introduced by beneficiaries having to book their own Pension Wise appointment.
- 7.9 Where a beneficiary wishes to opt out of receiving appropriate pensions guidance, they will be required to do so in a separate, active communication with the scheme, unless an exemption applies (see below paragraph 7.11). For example, they may have to complete an additional phone call, email, or postal or digital form, which is separate from their original application.
- 7.10 This will ensure that any decision not to receive appropriate pensions guidance is a considered one, and that beneficiaries do not default out of receiving such guidance.

Exemptions

- 7.11 The following relevant beneficiaries are exempt from the requirement to opt out in a separate interaction, but will still receive the offer from trustees and managers to facilitate the booking of a Pension Wise appointment:
- Those who request to transfer their flexible benefits to a different scheme;
 - Those who have received Pension Wise guidance in the past 12 months;
 - Those who have received regulated financial advice in connection with their application in the past 12 months;
 - Those who qualify for a Serious Ill Health Lump sum, which is defined as those in respect of whom the scheme administrator has received from a registered medical practitioner evidence of a life expectancy of less than one year.
- 7.12 Beneficiaries who request to transfer their pension savings for any purpose other than to access their savings, for example for the sole purpose of consolidation, will not be required to confirm they have received or opted out of pensions guidance before proceeding with their application. For these purposes, any transfer made by a member under the age of 50 is exempt from the requirements, as schemes may assume any transfer made by a member under 50 is for the purpose of consolidation.

Additional Changes and Amendments

- 7.13 This instrument also modifies the Pension Schemes Act 1993 to prevent trustees and managers from carrying out a relevant beneficiary's transfer request if the conditions set out in this instrument are not satisfied.
- 7.14 It also updates the definition of the term 'pensions guidance' set out in regulation 2 of the Disclosure Regulations 2013. Currently the Disclosure Regulations 2013 define the term 'pensions guidance' to mean guidance given by a designated guidance provider. This instrument defines the term 'pensions guidance' as information or guidance provided by any person in pursuance of the requirements mentioned in section 4 of the Financial Guidance and Claims Act 2018. This updates the definition of 'pensions guidance' such that it reflects the formation of the MaPS in 2018.
- 7.15 In addition, this instrument makes minor amendments to the Disclosure Regulations 2013 to disapply the requirement to provide information about the availability of the pensions guidance service provided by Pension Wise to a member where a scheme is

required to refer the member to receive appropriate pensions guidance, and to disapply the requirement to provide a postal or electronic address for further communication when the information concerning appropriate pensions guidance is given orally.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

- 9.1 Informal consolidated text of instruments is available to the public free of charge via ‘the National Archive’ website <http://www.legislation.gov.uk>

10. Consultation.

- 10.1 We published a statement of policy intent on 28 October 2020⁷. This statement set out our intention to implement the intervention tested in the Stronger Nudge trials (see para 7.3)
- 10.2 We conducted a public consultation on our draft regulations held between 9 July 2021 and 3 September 2021⁸.
- 10.3 In total we received 343 responses of which 49 were from a range of industry bodies and 294 were from individuals. The substantial majority of individual and industry respondents strongly supported our intention to increase the take up of Pensions Wise guidance.
- 10.4 A significant number of pension schemes disagreed with our proposal to require beneficiaries to opt out in communication solely for the purpose of opting out, seeing this as overly burdensome. However, other schemes, industry bodies, and charitable organisations supported the proposal as necessary to prevent opting out from becoming the path of least resistance for members.
- 10.5 Some respondents called for us to consider additional exemptions to the Stronger Nudge requirements, for small pots, transfers to overseas schemes, or on all transfers.
- 10.6 In response to the concerns raised at consultation, we have made changes to ensure the Stronger Nudge requirements do not place disproportionate barriers in the way of applications to transfer rights to flexible benefits, including small pot transfers. This includes disapplying the requirement for an opt-out notification to be given in a separate communication, solely for the purpose of opting out, on applications to transfer rights to accrued flexible benefits. We have also made a small number of minor changes in order to introduce greater clarity and ensure the regulations achieve our policy intent.
- 10.7 292 of the individual responses were a prepared campaign email, as part of the Good Guidance Now campaign, which called on the government to implement an additional policy in which individuals automatically have a Pension Wise appointment booked on their behalf at age 50. This issue was out of the scope of the consultation.

⁷ <https://www.gov.uk/government/publications/stronger-nudge-to-pensions-guidance-statement-of-policy-intent>

⁸ <https://www.gov.uk/government/consultations/stronger-nudge-to-pensions-guidance/stronger-nudge-to-pensions-guidance>

10.8 Full details can be found in the Government’s consultation response, published alongside this statutory instrument⁹.

11. Guidance

11.1 DWP does not intend to publish statutory guidance with this instrument. The Pensions Regulator will publish non-statutory guidance to provide details on what it expects of trustees and managers.

12. Impact

12.1 There will be an impact on business, primarily occupational pension providers however there is no significant impact on charities or voluntary bodies.

12.2 The impact principally stems from the additional costs to business from implementing the policy including updating I.T systems and increased administration costs. These administration costs consist of training and wages for administrative staff performing additional activities required by the legislation. The Equivalent Annual Net Direct Cost to Businesses of implementing the policy is £4.4million.

12.3 There will be an impact on the public sector bodies including the Money and Pensions Service who may have to deliver additional appointments to members as a result of the policy.

12.4 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses and, given the nature of the occupational pensions market, many small/micro schemes are administered by large/medium providers who will likely bear most of the impact of the regulations. Therefore, we do not consider that any further steps need to be taken to mitigate the impact on small business.

14. Monitoring & review

14.1 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Guy Opperman MP, Parliamentary Under-Secretary of State for the Department for Work and Pensions, has made the following statement under section 28(2)(b) of the Small Business, Enterprise and Employment Act 2015.

“Having had regard to the Statutory Review Guidance for Departments published under section 31(3) of the Small Business, Enterprise and Employment Act 2015, in my view, it is not appropriate to make provision for review in the Occupational and Personal Pension Schemes (Disclosure of Information) (Requirements to Refer Members to Guidance etc.) (Amendment) Regulations 2022.”

14.2 In the case of the measures in this instrument specifically, the net annualised impact on business would be less than +/- £5 million, which provides reason as to why a review clause would be inappropriate

⁹ link to consultation document

14.3 The Pensions Regulator (TPR) would be responsible for monitoring and enforcing compliance with the legislation. The businesses in scope would be required to report to The Pensions Regulator (TPR).

15. Contact

15.1 Rachel Larkin at the Department of Work and Pensions Telephone: 07584 643056 or email: rachel.a.larkin@dwp.gov.uk can be contacted with any queries regarding the instrument.

15.2 Simon Boniwell, Deputy Director for Pensions Strategy, Guidance and Dashboards, at the Department of Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister for Pensions and Financial Inclusion, Guy Opperman at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.