

The Occupational Pension Schemes (Disclosure of Information) (Amendment) Regulations 2012

Public consultation

April 2012

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Introduction

This consultation seeks views on the draft regulations attached at annex A, the main purpose of which is to bring into line with the workplace pension reforms those regulations which require occupational pension schemes to disclose information to members and others (e.g. beneficiaries).

Existing DWP legislation sets out the information that private pension schemes are required to disclose to their members and others (e.g. beneficiaries). The main disclosure requirements are contained within three different sets of regulations. These are:

- The Personal Pension Schemes (Disclosure of Information) Regulations 1987 (statutory instrument (SI) number 1987 / 1110);
- The Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (SI number 1996 / 1655); and
- Regulations 18 – 18E of The Stakeholder Pension Schemes Regulations 2000 (SI number 2000 / 1403).

The disclosure of information regulations specify:

- the information to be disclosed;
- to whom the information is to be disclosed; and
- the timescales for disclosing the information.

Some information must be disclosed at specific times. For example, basic information about the scheme is provided to prospective and new members. Other information is disclosed annually or at a set time e.g. shortly before retirement.

Our longer-term intention is to have one set of disclosure regulations, which will update the existing provisions and set out, where possible, a consistent disclosure regime across occupational, personal and stakeholder pension schemes. We had intended to introduce the consolidated set of regulations in 2012 – in line with the introduction of automatic enrolment.

However, since the disclosure review was announced, the Red Tape Challenge to reduce the regulatory burdens has been introduced. All government departments are reviewing the level of current regulation with the aim of removing any unnecessary legislation. Members of the public are invited to offer their comments on regulations on the Red Tape Challenge website¹ which seeks views on whether or not existing legislation should be retained, simplified or removed. In the light of this, it has been decided to take forward the majority of the disclosure review as part of the Red Tape Challenge. This means that the next major set of changes to disclosure regulations for pension schemes is likely to be introduced in 2013.

¹ www.redtapechallenge.cabinetoffice.gov.uk

About this consultation

Who this consultation is aimed at

We welcome comments on the draft regulations from pension industry professionals, pension schemes, trustees, industry, pension scheme members and member representative organisations, but we would be interested in views from any source.

Purpose of the consultation

This consultation seeks views on the attached draft Occupational Pension Schemes (Disclosure of Information) (Amendment) Regulations 2012. These are expected to come in to force in October 2012 – in order to tie in with the introduction of automatic enrolment.

We are also interested to hear your views of the accompanying impact assessment on the effect of these draft regulations.

Scope of consultation

This consultation applies to England, Wales and Scotland.

Duration of the consultation

The consultation period begins on 24 April 2012 and runs until 22 May 2012. Please ensure your response reaches us by that date.

We usually consult for a period of twelve weeks, however in order to provide certainty to the pension industry we feel it is important that these amendments are in place to support automatic enrolment from October 2012. There was earlier consultation in 2009 and 2010 on the timescale for provision of basic scheme information.

Responses to this consultation agreed that in practice most schemes currently provide the information within the one month period. This amendment was not included in the 2010 amending regulations, pending the outcome of the Making Automatic Enrolment Work review. This consultation follows on from others and takes into account previous comments; it will run therefore for a period of four weeks.

How to respond to this consultation

Please send your consultation responses to:

Cathy Twamley

Level 1, Caxton House, Tothill Street, London, SW1H 9NA

Email PENSIONS.DISCLOSURECONSULTATION@DWP.GSI.GOV.UK

Please ensure your response reaches us by **22 May 2012**.

When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an

organisation, please make it clear who the organisation represents, and where applicable, how the views of members were assembled. We will acknowledge your response.

Queries about the content of this document

Please direct any queries about the subject matter of this consultation to:

Cathy Twamley

Level 1, Caxton House, Tothill Street, London, SW1H 9NA

Email PENSIONS.DISCLOSURECONSULTATION@DWP.GSI.GOV.UK

How we consult

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:

Central Freedom of Information Team

The Adelphi

1-11, John Adam Street

London WC2N 6HT

Freedom-of-information-request@dwpgsi.gov.uk

The Central FoI team cannot advise on specific consultation exercises, only on Freedom of Information issues. More information about the Freedom of Information Act can be found at www.dwp.gov.uk/freedom-of-information

The consultation criteria

The consultation is being conducted in line with the [Government Code of Practice on Consultation](#) (BIS). The seven consultation criteria are:

- **When to Consult.** Formal consultation should take place at a stage when there is scope to influence the outcome.

- **Duration of consultation exercises.** Consultations should normally last for at least twelve weeks, with consideration given to longer timescales where feasible and sensible. However, as mentioned above, this consultation will last for four weeks.
- **Clarity of scope and impact.** Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence, and the expected costs and benefits of the proposals.
- **Accessibility of consultation exercises.** Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is designed to reach.
- **The burden of consultation.** Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- **Responsiveness of consultation exercises.** Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- **Capacity to consult.** Officials running consultation exercises should seek guidance in how to run an effective consultation exercise, and share what they have learned from the experience.

Feedback on the consultation process

We value your feedback on how well we consult. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact our Consultation Coordinator:

Elias Koufou
Legislation Manager
Caxton House
Tothill Street
London SW1H 9NA
Phone 0207 449 7439

elias.koufou@dpw.gsi.gov.uk

In particular, please tell us if you feel that the consultation does not satisfy the consultation criteria. Please also make any suggestions as to how the process of consultation could be improved further.

If you have any requirements that we need to meet to enable you to comment, please let us know.

We will publish the responses to the consultation by 30 June 2012 in a report on the consultations section of our website www.dpw.gov.uk/consultations. The report will summarise the responses and the action that we will take as a result of them.

Chapter 1 – Changes required for 2012 in the Disclosure of Information requirements for Occupational Pension Schemes.

Background

1. For the reasons set out in the introduction, the next major set of changes to disclosure regulations for pension schemes is likely to be introduced in 2013. One of the benefits of taking forward the majority of the disclosure review as part of the Red Tape Challenge is that this approach avoids the possibility of one major set of changes to disclosure regulations in 2012 and another in 2013.
2. Current legislation requires occupational pension schemes to provide basic scheme information to prospective members, or if that is not practicable, to new members within two months of joining. With the introduction of automatic enrolment, this could mean that members may not receive this information until the opportunity for them to opt out of the scheme has expired. In such cases, it is proposed to amend the timescales for providing basic scheme information to new members subject to automatic enrolment, to make it more likely that schemes disclose the information before the expiry of the one month opt out period.
3. A similar proposal was made in a previous DWP consultation² where it was suggested that the timescale should be reduced from two months to one. Responses to that consultation agreed that in practice most schemes currently provide the information within the one month period. This amendment was not included in the 2010 amending regulations, pending the outcome of the Making Automatic Enrolment Work review. The previous consultation concluded that such a change would have little impact on schemes, so costs arising from the change would be negligible. In order to achieve the policy intention, the proposed timescale differs slightly to that in the previous consultation.
4. The policy intention is to ensure that persons who are subject to automatic enrolment receive basic scheme information before the end of the automatic enrolment opt-out period as far as that is possible. A description of the way it is proposed to achieve this is set out in paragraph 8 below.

² Disclosure of Information: Proposed Amending Regulations and Response to Earlier Consultation
<http://www.dwp.gov.uk/consultations/2010/pen-scheme-disclosure.shtml>

5. The other change which is needed for October is to amend the basic scheme information as regards how members are admitted to an occupational scheme. The current disclosure regulations do not cover the full range of scenarios which might arise as workplace pension reforms are introduced from 2012. The proposed changes will ensure that workers in all scenarios are covered by the disclosure regulations. This change is described in paragraph 14 below.
6. Together these changes are intended to ensure that this part of the disclosure regulations is in line with changes to be introduced under the workplace pension reforms.

Consultation questions

Question 1

Do you consider the draft regulations meet the aim of a better fit with the workplace pension reforms? It would be helpful if you could provide reasons for your answer.

Question 2

Do you think the regulations as drafted will achieve their objective? If not, why do you think that?

Question 3

Do you think this change is manageable for schemes to implement from 1 October 2012? If not, why do you think that?

Chapter 2: Amendments to the Disclosure of Information Regulations

Summary of amendments

7. The attached regulations would ensure that disclosure requirements for occupational pension schemes dovetail with the automatic enrolment provisions to be introduced in October 2012 under the workplace pension reforms.

Basic scheme information – required timescales

8. The intention is that those who are subject to automatic enrolment, automatic re-enrolment and those who opt in to pension savings from 2012 should, whenever possible, receive the basic scheme information prescribed in the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 before the expiry of the one month opt out period.

9. When enrolling an eligible jobholder into an occupational pension scheme, the employer needs to communicate with the trustees or manager to establish active membership for the jobholder. Within one month of the automatic enrolment date, automatic re-enrolment date or date on which a worker opts in the employer must give:
 - the jobholder the enrolment information in writing and
 - the trustees or manager of the scheme the jobholder information in writing.
10. The enrolment information sent to the jobholder does not contain the basic scheme information required by our disclosure regulations. Therefore we need to take steps to ensure the jobholder receives the basic scheme information before the end of the one month opt out period if possible. The start of this period is determined by actions undertaken by the employer so the occupational scheme is not well placed to know when the opt out period will start and end.
11. The most suitable start date for the one month window within which schemes are required to send basic scheme information to members is the date the scheme receives the jobholder information from the employer. This is suitable because the scheme will know this date in all cases, whereas the scheme may not know dates which determine the start of the opt out period such as:
 - the date the employer makes prescribed arrangements by which the jobholder becomes an active member; or
 - the date the jobholder is given the enrolment information.
12. In most cases we expect the employer will send enrolment information to the jobholder and jobholder information to the scheme within the space of a couple of days. When this happens, it is highly likely the jobholder will receive the basic scheme information within the opt out period. However, there can be no guarantee that all jobholders will receive basic scheme information within this window because the occupational scheme is not in possession of the information which determines the start of the opt out period.
13. Nevertheless, we think the jobholder will receive the basic scheme information within the opt out period in a sufficiently high proportion of cases to support the change we are proposing.

Basic scheme information – describing categories of persons eligible to be members of a scheme

14. The other change needed for October is to the basic scheme information which describes how members are admitted to an occupational scheme. The current disclosure regulations do not cover the full range of scenarios which might arise as workplace pension reforms are introduced from 2012. Therefore it is necessary to ensure that the whole range of ways that members can be admitted to the scheme are covered in paragraph 2 of Schedule 1 of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996.

15. For example, the reforms require jobholders aged at least 22 years and under pensionable age to be automatically enrolled into an automatic enrolment scheme. Having been automatically enrolled, the jobholder can decide to opt out – but is unable to do so *before* being automatically enrolled. The list of admission ‘options’ in paragraph 2 of Schedule 1 does not cover this scenario.
16. The policy intention is that the change to Schedule 1 of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 covers *all* types of occupational scheme, including those used for automatic enrolment. These changes will ensure that workers in the following scenarios are encompassed in the provisions of Schedule 1:
- Jobholders who are automatically enrolled or automatically re-enrolled into a workplace pension.
 - Jobholders who “opt in” to pension saving.
 - Those who wish to join pension saving.
17. Taken together these changes will ensure that this part of the disclosure regime is in line with changes to be introduced under the workplace pension reforms.

Commentary on the draft Occupational Pension Schemes (Disclosure of Information) (Amendment) Regulations 2012

The following summary explains the purpose of the regulations:

Regulation 1 – Citation and commencement

This regulation gives the title and specifies the date on which the regulations are proposed to come into force. It is suggested that the regulations come into effect from 1 October 2012 to coincide with the introduction of automatic enrolment into workplace pensions.

Regulation 2 – Amendment of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996

This regulation introduces definitions for jobholder information and automatic enrolment. It also provides that the timescales for providing basic scheme information to new members subject to automatic enrolment are reduced to one month from the date the pension scheme receives jobholder information from the employer. Finally, it amends the basic scheme information requirements regarding how members are admitted to an occupational scheme in order to cover the full range of scenarios which might arise.

Annex A – Draft Regulations

The draft Occupational Pension Schemes (Disclosure of Information) (Amendment) Regulations 2012

STATUTORY INSTRUMENTS

2012 No.

PENSIONS

**The Occupational Pension Schemes (Disclosure of Information)
(Amendment) Regulations 2012**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State for Work and Pensions makes the following Regulations, in exercise of the powers conferred by sections 113(1), (2)(e) and (3), 181(1) and [182(2)] of the Pension Schemes Act 1993⁽³⁾.

In accordance with section 185(1)⁽⁴⁾ of that Act, the Secretary of State has consulted such persons as the Secretary of State considers appropriate before making these Regulations.

Citation and commencement

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Disclosure of Information) (Amendment) Regulations 2012.

(2) These Regulations come into force on 1st October 2012.

Amendment of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996

2.—(1) The Occupational Pension Schemes (Disclosure of Information) Regulations 1996⁽⁵⁾ are amended as follows.

(2) In regulation 1(2) (interpretation)—

(a) after the definition of “independent trade union“, insert—

“jobholder information” means the information specified in regulation 3 of the Occupational Pension Schemes (Automatic Enrolment) Regulations 2010⁽⁶⁾;

(b) after the definition of “the auditor”, insert—

⁽³⁾ 1993 c.48.
⁽⁴⁾ Section 185(1) was amended by...
⁽⁵⁾ S.I. 1996/1655.
⁽⁶⁾ S.I. 2010/772.

Consultation – The Occupational Pension Schemes (Disclosure of Information) Regulations 2012

“automatic enrolment” shall be construed in accordance with section 3 of the Pensions Act 2008⁽⁷⁾.

(3) For regulation 4(2)⁽⁸⁾ (basic information about the scheme), substitute —

“(2) The information specified in Schedule 1 shall be given as of course—

(a) where practicable, to every prospective member, and where it has not been practicable to do so, such information shall be given to a person within 2 months of his becoming a member of the scheme, or

(c) where the scheme has received jobholder information in relation to a person, to that person within 1 month of the scheme receiving that information.

(2A) To the extent that any information specified in Schedule 1 has not previously been given to a member who was a deferred member of the scheme on 5th April 1997, such information shall be given to that member within 2 months of his becoming a pensioner member.”

(4) For paragraph (2) of Schedule 1, substitute—

“(2) How persons who are eligible to be members of the scheme are admitted to it, including whether they are subject to automatic enrolment, or can join on their own application”.

Date

Minister of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

⁽⁷⁾ 2008 c. 30.

⁽⁸⁾ The relevant amending instruments are