

*This Statutory Instrument has been made partly in consequence of a defect in S.I. 2013/2734 and is being issued free of charge to all known recipients of that Statutory Instrument.*

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STATUTORY INSTRUMENTS

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**2021 No.**

**PENSIONS**

**The Occupational and Personal Pension Schemes (Disclosure of Information) (Amendment) Regulations 2021**

*Made* - - - - - \*\*\*  
*Laid before Parliament* - - - - - \*\*\*  
*Coming into force* - - - - - [6th April 2022]

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 113(1), 113B, 153(1) and 182(2) and (3) of the Pension Schemes Act 1993(a) (“the Act”).

In accordance with section 185(1)(b) of the Act, the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

**Citation, commencement, extent and application**

- 1.—(1) These Regulations may be cited as the Occupational and Personal Pension Schemes (Disclosure of Information) (Amendment) Regulations 2021.
- (2) These Regulations come into force on [6th April 2022].
- (3) These Regulations extend to England and Wales and Scotland.

**Amendment of the Pension Schemes Act 1993**

- 2.—(1) The Pension Schemes Act 1993 is amended as follows.
- (2) In section 99(2A)(c) (trustees’ duties after exercise of option by member to take right to cash equivalent)—
  - (a) after paragraph (a) omit “or”;
  - (b) after paragraph (b) insert—

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(a) 1993 c. 48. Section 113(1) was amended by the Child Support, Pensions and Social Security Act 2000 (c. 19) and is further amended by section 38(1) and (2) of the Pension Schemes Act 2015 (c. 8) (“the 2015 Act”) with effect from a date to be appointed. Section 113B was inserted by section 19 of the Financial Guidance and Claims Act 2018 (c. 10). Section 153(1) was amended by paragraphs 3 and 25 of Schedule 4 to the 2015 Act. For the meaning of “prescribe”, “regulations” and “modifications”, see section 181(1) of the Pension Schemes Act 1993.

(b) Section 185(1) was amended by sections 122 and 151 of, and paragraph 46 of Schedule 3 to, the Pensions Act 1995 (c. 26) and by paragraph 80(a) of Schedule 5 to that Act.

(c) Section 99(2A) was inserted by section 50(2) of the Pension Schemes Act 2015.

“(c) the trustees or managers are unable to proceed with an application under section 95(1)(a) (ways of taking right to cash equivalent) because the conditions for proceeding with it under and pursuant to section 113B (occupational pension schemes: requirements to refer members to guidance etc.) have not been satisfied, or

(d) the trustees or managers are unable to proceed with an application under section 95(1) because the conditions for proceeding with it under and pursuant to section 137FB of the Financial Services and Markets Act 2000(b) (FCA general rules: disclosure of information about the availability of pensions guidance) have not been satisfied.”

(3) In section 101J(2B)(c) (time for compliance with transfer notice)—

(a) after paragraph (a) omit “or”;

(b) after paragraph (b) insert—

“(c) where a member is required under section 101G(4)(d) (restrictions on power to give transfer notice) to make an application under section 95(1) (ways of taking right to cash equivalent) in addition to giving a transfer notice, the trustees or managers are unable to proceed with it because the conditions for proceeding with it under and pursuant to section 113B (occupational pension schemes: requirements to refer members to guidance etc.) have not been satisfied, or

(d) where a member is required under section 101G(4) to make an application under section 95(1) in addition to giving a transfer notice, the trustees or managers are unable to proceed with it because the conditions for proceeding with it under and pursuant to section 137FB of the Financial Services and Markets Act 2000 (FCA general rules: disclosure of information about the availability of pensions guidance) have not been satisfied.”.

### **Amendment of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013**

3.—(1) The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013(e) are amended as follows.

(2) In regulation 2(1)(f), for the definition of “pensions guidance” substitute—

““pensions guidance” means information or guidance provided by any person in pursuance of the requirements mentioned in section 4 of the Financial Guidance and Claims Act 2018 (information etc. about flexible benefits under pension schemes);”

(3) In regulation 4(7)(g) (requirement of trustees or managers to provide postal and electronic address for request for further information or other enquiry), after “18B(3)” insert “or 18C(6) or (9)”.

(4) In regulation 18A(2)(h) (information to be given on request and on a member providing certain information), in sub-paragraph (b), after “benefits) and” insert “, subject to regulation 18C,”.

(5) In regulation 18B(1)(i) (information to be given on communicating with a member about what the member may do with flexible benefits), in the opening text after “paragraph (5)” insert “and regulation 18C”.

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(a) Section 95(1) was substituted by paragraph 9(2) of Schedule 4 to the Pensions Schemes Act 2015.

(b) 2000 c. 8. Section 137FB was inserted by paragraph 6 of Schedule 3 to the Pension Schemes Act 2015 and amended by section 18(2) to (7) of the Financial Guidance and Claims Act 2018.

(c) Section 101J(2B) was inserted by section 50(3) of the Pension Schemes Act 2015.

(d) Section 101G(4) was substituted by paragraph 16 of Schedule 4 to the Pension Schemes Act 2015.

(e) S.I. 2013/2734, amended by S.I. 2015/482; there are other amending instruments but none is relevant.

(f) This substituted definition was inserted by regulation 3(2)(b) of S.I. 2015/482.

(g) Regulation 4(7) was amended by regulations 1 and 4(4) of S.I. 2015/482.

(h) Regulation 18A was inserted by regulation 7 of S.I. 2015/482.

(i) Regulation 18B was inserted by regulation 7 of S.I. 2015/482.

(6) After regulation 18B insert—

**“Requirement to refer members and survivors to guidance etc.**

**18C.**—(1) Where this regulation applies, the requirements in the following regulations to provide information on pensions guidance in Part 1 of Schedule 10 do not apply—

- (a) regulation 18A(1) and (2)(b) (information to be given on request and on a member providing certain information); and
- (b) regulation 18B(1) and (2) (information to be given on communicating with a member about what the member may do with flexible benefits).

(2) This regulation applies where the trustees or managers of an occupational pension scheme receive an application from a relevant beneficiary (“RB”)—

- (a) to transfer any rights accrued by the RB under the scheme except where paragraph (3) applies; or
- (b) to start receiving benefits provided by the scheme.

(3) This paragraph applies where the trustees or managers of an occupational pension scheme receive an application from an RB—

- (a) to transfer any or all of the RB’s rights to flexible benefits accrued under the scheme to a different occupational pension scheme which does not provide flexible benefits; or
- (b) to transfer any or all of the RB’s rights to flexible benefits accrued under the scheme to a different occupational pension scheme for the sole purpose of consolidating the RB’s pension entitlements.

(4) As part of the application process, the trustees or managers must ensure that the RB is—

- (a) referred to pensions guidance<sup>(a)</sup> accessible by the RB during an appointment with the provider of the guidance (“pensions guidance appointment”) which must include the facility for real-time human interaction between the parties during the appointment (whether face to face, by telephone or through another electronic medium) (“appropriate pensions guidance”); and
- (b) provided with an explanation of the nature and purpose of such guidance.

(5) Before proceeding with the application, the trustees or managers must ensure that the RB has—

- (a) received appropriate pensions guidance; or
- (b) opted out of receiving such guidance.

(6) For the purposes of paragraph (4), the trustees or managers—

- (a) must offer to book a pensions guidance appointment on behalf of the RB on a date, at a time and of a kind suitable for the RB;
- (b) where the RB accepts that offer, must book that appointment;
- (c) where the RB does not accept that offer, must provide the RB with details of how to book a pensions guidance appointment;
- (d) must not, and must explain to the RB that they cannot, proceed with the application unless—
  - (i) the RB has received, and notified them of receipt of, appropriate pensions guidance; or
  - (ii) the RB opts out of receiving such guidance by giving them an opt-out notification; and

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(a) “Pensions guidance” is defined in section 113B(6) of the Pension Schemes Act 1993.

(e) must explain to the RB that the RB can only opt out of receiving appropriate pensions guidance by giving them an opt-out notification.

(7) Where the trustees or managers receive an application in accordance with paragraph (2), the RB may not give an opt-out notification with that application or during the ensuing interaction with the trustees or managers required by paragraph (6) unless paragraph (11) applies.

(8) Paragraph (9) applies to any subsequent occasion after that referred to in paragraphs (2) and (6) on which the RB contacts and interacts with the trustees or managers in connection with the RB's application where the RB—

- (a) has not confirmed to the trustees or managers that the RB has received appropriate pensions guidance in connection with the application; and
- (b) has not provided an opt-out notification to the trustees or managers.

(9) Where this paragraph applies—

- (a) the trustees or managers must repeat the steps required by paragraph (6); and
- (b) the RB may not give an opt-out notification during the ensuing interaction with the trustees or managers required by paragraph (6) unless paragraph (11) applies.

(10) If, at any point during which the trustees or managers repeat the steps required by paragraph (6) in accordance with paragraph (9)(a), the RB confirms to the trustees or managers that the RB has received appropriate pensions guidance in connection with the application, the trustees or managers may treat the requirements of paragraphs (4) to (6) as having been satisfied.

(11) This paragraph applies where the RB confirms (verbally or in writing) to the trustees or managers that—

- (a) the RB has, no more than 12 months excluding the date of receipt before the trustees or managers received the application in accordance with paragraph (2), received—
  - (i) appropriate pensions guidance; or
  - (ii) regulated financial advice in connection with the application, provided by a financial adviser regulated and authorised by the Financial Conduct Authority to provide such advice; or
- (b) the RB intends to apply for a serious ill-health lump sum within the meaning of paragraph 4(1) of Schedule 29 to the Finance Act 2004(a).

(12) In this regulation —

- (a) “appropriate pensions guidance” has the meaning given in paragraph (4)(a);
- (b) “opt-out notification” means a notification given to the trustees or managers of an occupational pension scheme for the purpose of confirming that RB is opting out of receiving appropriate pensions guidance in connection with an application;
- (c) “pensions guidance appointment” has the meaning given in paragraph (4)(a);
- (d) “regulated financial advice” has the meaning given in article 53 of the Financial Services and Markets Act (Regulated Activities) Order 2001(b) (advising on investments);
- (e) “relevant beneficiary” means, in relation to a pension scheme—
  - (i) a member aged 50 or over; or
  - (ii) a survivor in relation to a member, who has a right or entitlement to flexible benefits under the scheme.

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(a) 2004 c. 12. Paragraph 4(1) was amended by paragraph 28(2)(b) of Schedule 16 to the Finance Act 2011 (c. 11) and paragraph 1(4) of Schedule 5 to the Finance Act 2016 (c. 24). Paragraph 1(5) of Schedule 5 to the Finance Act 2016 inserted paragraph 4(2A) which sets out the meaning of “uncrystallised rights” in paragraph 4(1)(ca)(ii).

(b) S.I. 2001/544; relevant amending instruments are S.I. 2003/1476, 2016/392, 2017/488, 2017/500 and 2017/701.

## **Record-keeping requirements of trustees and managers**

**18D.** The trustees or managers of an occupational pension scheme must, in respect of a relevant beneficiary within the meaning of regulation 18C(12)(e)(a) (“RB”), keep a record of—

- (a) the receipt by the RB of appropriate pensions guidance within the meaning of regulation 18C(12)(a) in connection with an application made by the RB under regulation 18C(2); and
- (b) the provision to them by the RB of an opt-out notification within the meaning of regulation 18C(12)(b) in connection with an application made by the RB under regulation 18C(2)—
  - (i) where the RB has confirmed to them under paragraph (11) of regulation 18C one or more of the matters referred to in sub-paragraphs (a) and (b) of that paragraph;
  - (ii) in any other circumstances.”.

Signed by authority of the Secretary of State for Work and Pensions

*Name*  
[Parliamentary Under Secretary of State]  
Department for Work and Pensions

Date

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Pension Schemes Act 1993 (c. 48) (“the Act”) and the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (S.I. 2013/2734) (“the 2013 Regulations”) as follows.

Regulation 2(2) and (3) amends sections 99 and 101J respectively of the Act. These amendments disapply the requirements imposed on trustees or managers of occupational or personal pension schemes that provide money purchase benefits to carry out a qualifying member or their survivor’s request to transfer their pension benefits within six months of the date of their application or giving of a transfer notice. They disapply those requirements where the trustees or managers are unable to proceed with an application under section 95(1), or a transfer notice under section 101G4, of the Act because the conditions set out in regulations made under section 113B of the Act, or in rules made under section 137FB of the Financial Services and Markets Act 2000 (c. 8), relating to the receiving of pensions guidance, or the opting out of receiving such guidance, have not been satisfied (with regard to occupational pension schemes, see further below in relation to regulation 18C).

Regulation 3 amends the 2013 Regulations.

Regulation 3(2) corrects by updating the definition of “pensions guidance” in the 2013 Regulations.

Regulation 3(6) inserts new regulations 18C and 18D into the 2013 Regulations. Regulation 18C sets out the procedures which the trustees or managers of an occupational pension scheme must follow to ensure that a “relevant beneficiary” (as defined in paragraph (12)(e)) (“RB”) has received “appropriate pensions guidance” (as defined in paragraph (12)(a)) and the conditions that must be satisfied after they receive an application from an RB on or after [6th April 2022] to transfer rights accrued under the scheme or to start receiving benefits provided by the scheme. New regulation 18C(3) exempts applications for a transfer of rights to flexible benefits (as defined in regulation 2 of the 2013 Regulations) where the transfer is to another scheme which does not

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(a) As inserted by this regulation 3(6).

provide any such benefits or for the sole purpose of consolidating the RB's pension rights. Regulation 18C also sets out the circumstances in which the RB may opt out of receiving appropriate pensions guidance. Regulation 18D sets out the related record-keeping requirements of the trustees or managers.

Regulation 3(3) to (5) makes consequential amendments to the 2013 Regulations. Regulation 3(3) amends regulation 4(7) so that the requirement in that regulation (for trustees or managers to provide a postal and electronic address for any request for further information or other enquiry from a member) does not apply where information is given verbally by trustees or managers in accordance with new regulation 18C(6) or (9). Regulation 3(4) and (5) consequentially amends regulations 18A and 18B, respectively, to disapply the requirements in those regulations to provide information on pensions guidance where the new regulation 18C applies.

[A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from...]