

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

Government response to consultation

June 2012

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Introduction

Automatic enrolment into workplace pension saving will go live this year starting with the largest employers. These reforms will mean that employers will be obliged to automatically enrol eligible jobholders who meet age and earnings criteria into a qualifying workplace pension scheme and pay at least a minimum pension contribution based on a percentage of a band of qualifying earnings.

On 24 April 2012, we published a consultation **The Occupational Pension Schemes (Disclosure of Information) (Amendment) Regulations 2012**, together with draft regulations and a supporting Impact Assessment.

The consultation sought views and evidence on proposals to ensure that disclosure requirements for occupational schemes dovetail with the automatic enrolment provisions to be introduced in October 2012. The amendments have two purposes. First, to provide for a one month timescale for pension schemes to issue basic scheme information to jobholders, ensuring that prospective and new members of occupational pension schemes receive basic scheme information before the end of the automatic enrolment opt-out period as far as this is possible. Secondly, to ensure that disclosure regulations relating to the contents of basic scheme information cover the full range of scenarios by which workers may join or be enrolled into occupational schemes.

The consultation ended on 22 May 2012 and we received 18 formal written responses from a range of organisations including pension providers, pension advisers, accountants, employers, employer groups and lawyers. We are grateful to everyone who replied. There were no responses from individuals. A list of organisations that responded to the consultation is at Annex A.

This document presents an analysis of the responses to the consultation, our considerations, the evidence that we have taken into account for this review, and our final proposals. It is a companion report and should be read in conjunction with the consultation paper **The Occupational Pension Schemes (Disclosure of Information) (Amendment) Regulations 2012**.

The above document is available at:

<http://www.dwp.gov.uk/consultations/2012/pen-scheme-disclosure-reg-2012.shtml>

Background

What the consultation said

Existing 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) 1987 / 1110);
- The Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (SI 1996 / 1655); and
- Regulation 18 – 18E of the Stakeholder Pension Schemes Regulations 2000 (SI 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

Current legislation requires occupational pension schemes to provide basic scheme information to prospective members where practicable, and in any event within two months of that person joining the scheme. With the introduction of automatic enrolment, this could mean that members may not receive this information until after the one month opt-out period has expired. The consultation proposal was to decrease this two month period to one month to fall in line with the automatic enrolment opt-out period and make it more likely that schemes will disclose the information before the end of the opt-out window.

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.

In a previous DWP consultation in 2010 a similar proposal was made and concluded that such a change would have little impact on schemes, so any costs arising from the change would be negligible. This can be viewed using the following link:

<http://www.dwp.gov.uk/consultations/2010/pen-scheme-disclosure.shtml>

The Occupational Pension Schemes (Disclosure of Information) (Amendment) Regulations 2012 consultation also set out proposals to amend the basic scheme information which requires the scheme to describe in the basic scheme information how persons eligible to be members of a scheme are admitted to it. The current disclosure regulations do not cover the full range of scenarios which might arise following the introduction of automatic enrolment. It is therefore 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.

The automatic enrolment 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 until the employer has achieved active membership of the scheme. The list of pension scheme admission 'options' in paragraph 2 of Schedule 1 does not cover this scenario.

The consultation proposed changes to paragraph 2 of Schedule 1 to the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 to cover all admission options for occupational schemes. These changes will ensure that the following admission scenarios are set out by the scheme to prospective or new members in the basic scheme information:

- 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.

The accompanying Impact Assessment estimates a nil monetised cost or benefit to individuals or business as a result of the changes. This document can be viewed at:

<http://www.dwp.gov.uk/consultations/2012/pen-scheme-disclosure-reg-2012.shtml>

It is intended that the regulations are in place for October 2012 to coincide with the commencement of automatic enrolment.

Consultation Questions

We asked whether the draft regulations meet the aim of a better fit with the workplace pension reforms.

We asked if the regulations as drafted will achieve their objectives.

We asked if this change is manageable for schemes to implement from 1 October 2012.

We asked for any respondents to give reasons or explanation for their responses.

Responses to the consultation

We received 18 responses from a range of organisations including pension providers, pension advisors, accountants, employers, employer organisations and lawyers. There was overwhelming support for the changes with some minor technical comments and suggestions. There were three main themes to the responses received – technical responses (queries and suggested amendments to the draft regulations), timescales for implementation of the regulations and the support for the implementation of the regulations.

Technical responses

We received nine technical queries or proposed amendments these are summarised below.

Three respondents questioned whether the start of the one month period for scheme information being issued to the employee was from the point that **all** jobholder information is received. Jobholder information encompasses several pieces of information and the respondents wanted clarification as to whether the one month period commences from the basic information being received or **all** information being received.

Two respondents questioned whether there was a need to issue the basic scheme information to employees who have already expressed an interest to opt-out of automatic enrolment.

Four respondents made comments in relation to the revised paragraph 2 of Schedule 1 (draft regulation 2(4)) in relation to the new paragraph changes the ‘whether’ to ‘how’, and raises questions about whether the information could be viewed as being specific to an individual rather than generic.

One respondent wished for clarification on what schemes need to do if they are not automatic enrolment schemes under current regulation 2(2) and one respondent queried the requirements under new regulation 4(2A) with regards to transitional arrangements from the original Occupational Pension Schemes (Disclosure of Information) Regulations.

Implementation timescales

Five responses were received on the proposed intended implementation date for the draft regulations for 1 October 2012. Three of these responses suggested that the regulations should be brought forward to 1 July 2012 to take account of the fact that employers with an automatic enrolment staging date of 1 October 2012 or 1 November 2012 may bring their staging date forward to 1 July 2012. Two responses were received to say that the regulation implementation date should not be brought

forward as this would not allow appropriate response times for employers and pensions providers.

One respondent stated that it would not be possible to implement the draft regulation changes for 1 October 2012 due to pressure of other changes relating to automatic enrolment on this date. Seventeen responses stated that the commencement date of October was possible with two responses advising caution on the one month timescale for basic scheme information to be received by the jobholder. Their concerns centred on the volumes that schemes would be experiencing for the first time and also the unknown factor of employers supplying appropriate jobholder information within agreed timescales.

Respondent support

Overwhelmingly respondents were supportive of the draft regulations and believe that these will aid the pensions industry and employers to perform their duties under automatic enrolment.

No respondents suggested that the proposed regulation did not go ahead, although one respondent expressed a wish to see these amendments also fall in line with those covered in the Red Tape Challenge.

No respondent provided any comments or evidence to indicate that these changes would have a monetised impact on industry and responses were given to support this assumption and also to agree that most scheme members are provided the basic scheme information within the proposed one month timescale.

Government's response

Technical responses

We note concerns with regards to whether the start of the one month period is when **all** jobholder information is provided to the scheme, or only the basic information. We consider that the reference to 'jobholder information' means all the information listed in regulation 3 of SI2010/772 and further clarification is not required.

We have considered the question of whether basic scheme information needs to be issued to jobholders who have already expressed an interest in opting out of automatic enrolment. This situation is not explicitly addressed in these regulations, and we do not think there is a clear way to enable schemes to identify such individuals. It is not our intention to exclude these people from receiving basic scheme information; our intention remains for all those who are automatically enrolled to receive the basic scheme information before the end of the opt-out window as far as this is possible.

We have amended the drafting of changes to regulation 4(2) to clarify the requirements in relation to non-automatic enrolment schemes, in response to comments. The changes to regulation 4(2) will require automatic enrolment schemes to provide basic scheme information within one month of receiving jobholder information, if it has not been possible to send the information to that prospective member earlier. For non-automatic enrolment schemes the requirements remain the same as now; they should provide basic scheme information to prospective members where practicable and within two months of the person joining the scheme.

New regulation 4(2A) does not introduce a new requirement as it is a restructuring of current regulation 4(2)(a) to make it easier to read following the insertion of the new provision for automatic enrolment schemes. Regulation 4(2)(a) deals with a transitional issue relating to when the Occupational Pension Schemes (Disclosure of Information) Regulations were first made.

Comments about paragraph 2 of Schedule 1 have been taken into consideration and the amendment re-drafted as a result to provide clarity. Schemes must provide generic information on the various ways members of the scheme can be admitted to it.

Implementation timescales

We acknowledge the responses suggesting that the regulations come into force on 1 July 2012 to fall in line with earliest possible staging date for automatic enrolment. It had initially been our intention to bring the amendments into force for this date, but legislative timescales made this difficult, so we propose to bring these regulations into force on the common commencement date of 1 October 2012.

Seventeen out of eighteen responses believed that the changes were achievable for 1 October 2012. Although the one contrary response has been noted the Department has concluded that a single response did not provide robust enough evidence to revise our commencement date.

Respondent support

As a result of the high level of support for these disclosure amendments it is our intention to bring them into force from 1 October 2012. We have considered the one suggestion that these amendments be brought into line with the wider disclosure of information review and feel that this does not provide sufficiently strong evidence upon which to delay the commencement date of the amendments. The Department is considering all regulations governing disclosure of information as part of the Red Tape Challenge (RTC) – and is grateful to those who have provided comments through the RTC.

Conclusion

The Government would like to thank all those people and organisations who have offered their views and advice in response to this consultation, and note in particular the consensus on the direction of travel to update this disclosure legislation. We have noted the queries raised and have made technical changes to the draft regulations.

Annex A: Respondents

Aon Hewitt

Association of Pensions Lawyers

Capita Hartshead

Chartered Institute of Personnel & Development

Elcena Jeffers Foundation

Friends Life

Law Society of Scotland

Legal & General

Mayers Brown LLP

Mercer

National Association of Pension Funds

National Employment Savings Trust

NHS Ayrshire & Arran

Prudential

Randstad

SPC

Standard Life

Wragge & Co LLP