

Disclosure of information (pension schemes)

Government response to consultation on draft regulations

November 2010

Contents

Introduction.....	3
Responses to consultation questions	4
Consultation Question 1: Are we correct to say the regulations will not require schemes to make any changes?.....	4
Consultation Question 2: Do you have any comments on the regulations generally, either technically or on the underlying policies?	4
Consultation Question 3: Do you agree the proposals will provide flexibility for schemes to achieve shorter, clearer and more concise annual benefit statements in defined contribution arrangements?	5
Consultation Question 4: Do you agree that after removing some of the mandatory information and making it available on request for stakeholder pension scheme members the annual benefit statement will still provide sufficient information?	5
Consultation Question 5: Do the proposed changes achieve the right balance between providing additional flexibility for schemes and meeting the information needs of members?	6
Commentary on revised regulations	7
Annex A – List of respondents to 2010 consultation.....	12
Annex B – Paragraph numbers in new regulations.....	13

Introduction

1. The Department carried out a public consultation exercise between 6 January and 1 March 2010 on draft amending regulations which:
 - simplify some aspects of the disclosure of information requirements applying to occupational, personal and stakeholder pension schemes; and
 - facilitate the use of electronic means of communication by these schemes.This followed an earlier (2009) consultation on a possible principles-based approach which has not, in the light of responses to that consultation, been adopted.
2. Twenty-eight consultation responses were received as part of the 2010 consultation exercise. The responses were mainly from pension scheme advisers and consultancies, pensions industry representative organisations, insurance companies, pension scheme trustees, member representative organisations and trade unions.
3. The Department is grateful to all those who took part. A list of respondents is contained in Annex A.
4. Overall, most respondents welcomed the draft regulations and the majority of comments concerned points of detail. As a result of the comments received, a number of changes have been made in drafting the Occupational, Personal and Stakeholder Pension Schemes (Disclosure of Information) (Amendment) Regulations 2010 (SI 2010 No. 2659). The regulations are available online at – http://www.legislation.gov.uk/ukxi/2010/2659/pdfs/ukxi_20102659_en.pdf
5. The following section summarises the responses received under each of the five questions posed in the 2010 consultation paper. This is followed by a commentary on the regulations, highlighting changes which have been made following the consultation exercise.

Responses to consultation questions

Consultation Question 1: Are we correct to say the regulations will not **require** schemes to make any changes?

6. It was observed that, as the consultation paper itself acknowledged, the change in the timescale for the provision of basic scheme information for new members, from 2 months to 1 month, is a tightening of a mandatory requirement, albeit that the change would not take effect until 2012. The proposed reduction was as a consequence of the automatic enrolment provisions to be introduced from October 2012. The subsequent review on how to make automatic enrolment work, announced by the Government on 24 June 2010, means that this amendment has been withdrawn. It is proposed that any necessary amendment will be made at a later date in the context of decisions arising from the review.
7. One respondent pointed out that the provisions covering how members can provide information and requests to schemes – and specifically including electronic means – could mean that some schemes might have to change existing procedures. These provisions have now been redrafted, as explained in the commentary on the regulations.

Consultation Question 2: Do you have any comments on the regulations generally, either technically or on the underlying policies?

8. Most respondents were satisfied with the approach taken in the draft regulations and considered that the decision not to proceed with an 'overarching principle' was well-founded.
9. Some would have preferred consolidation of disclosure provisions to have formed part of the current exercise. We were also asked whether the electronic communication provisions would be extended to information requirements set out in various other sets of regulations.
10. Due to the extensive degree of redrafting which consolidation would have entailed, we decided that it would be best to confine the changes made in the current regulations to substantive issues only. (The one exception is regulation 18 of the Stakeholder Pension Schemes Regulations 2000, where we considered a restructuring highly desirable given that we were adding new provisions to a regulation which was already very complex.) We will now consider whether a full or partial consolidation of the disclosure of information legislation should be undertaken, and how provision for electronic communication could best be made for relevant requirements contained in other sets of regulations.
11. Many detailed technical points were raised which have been very helpful to us in refining the draft regulations. The commentary section below highlights where and why changes have been made.

Consultation Question 3: Do you agree the proposals will provide flexibility for schemes to achieve shorter, clearer and more concise annual benefit statements in defined contribution arrangements?

12. The majority of respondents agreed with the proposals, commenting that they were pragmatic and would:
 - give schemes flexibility to provide more concise statements; and
 - give members the opportunity to access more detailed information if they chose to do so.
13. Respondents welcomed the simplification approach and commented this was supported by the introduction of electronic communication amendments. A number of respondents observed however that, due to the costs of making changes, schemes may await a suitable time to redesign statements. Some respondents also raised concerns about the risks of members not following 'signposting' and considered that schemes would want to consider carefully the most effective design and wording of statements, ensuring in particular that risks associated with defined contribution pensions are properly appreciated.
14. Two respondents noted that the consultation did not invite comment on the actual calculation assumptions used in the statements, but acknowledged that the Board for Actuarial Standards – with whom the Department was working – were consulting separately on changes to the Technical Memorandum (TM1). We will continue to liaise with the Board for Actuarial Standards on the relevant actuarial calculations.

Consultation Question 4: Do you agree that after removing some of the mandatory information and making it available on request for stakeholder pension scheme members the annual benefit statement will still provide sufficient information?

15. Respondents who commented specifically on this question were satisfied the statement would still provide the core information required by members, noting this would help focus on the key information whilst still allowing the member to request the additional information. Again, it was suggested however that some schemes would continue to provide full statements to members rather than amend to a shortened version, to avoid costly changes to systems. It was also noted that schemes would still need to maintain their systems in order to provide the detailed information if requested by the member.

Consultation Question 5: Do the proposed changes achieve the right balance between providing additional flexibility for schemes and meeting the information needs of members?

16. Overall, most respondents took the view that the package did offer some worthwhile flexibility for schemes whilst including appropriate safeguards for members.

Commentary on revised regulations

17. This section explains the purpose of each of the provisions in the revised regulations, including a brief explanation where there have been changes as a result of the consultation exercise.
18. **Regulation 1** contains the citation and commencement arrangements. All provisions will come into force on 1 December 2010.
19. **Regulation 2** amends The Personal Pension Schemes (Disclosure of Information) Regulations 1987 (SI 1987/1110).
20. **Regulation 2(2)** inserts a definition of “electronic communication” into the regulations. For consistency the definition links to the Electronic Communications Act 2000. It also extends the definition of “excluded person” to include both electronic and postal addresses. Also, the revised provision now makes it clear that in these regulations “address” means postal address, except where otherwise stated.
21. A number of respondents felt that the definition of “excluded person” in the consultation draft did not satisfactorily deal with the difference between returned post and emails. The wording has been revised to address this. The legislation does not set out, however, precisely what steps should be taken before a scheme can be satisfied in any case that the last known electronic address is no longer valid. It will be for schemes to devise appropriate procedures in the light of their own circumstances.
22. **Regulations 2(3) and 2(5)** amend provisions relating to the requirement to give access to scheme documentation and other information on request, allowing schemes to discharge their obligations by placing the information on a website.
23. **Regulation 2(4)** amends provisions relating to what information must be sent with a projected illustration of future benefits (Statutory Money Purchase Illustration), allowing schemes to provide certain information separately from the main statement and utilising the new electronic provision to provide information via a website if they so wish. These amendments are connected to the amendments made by regulation 2(7).
24. The wording of new regulation 5(2), as substituted by this amending regulation, has been revised following consultation to make it clear that information which must accompany an illustration is only required where an illustration is actually provided. Similar revisions have been made in the regulations amending The Occupational Pension Schemes (Disclosure of Information) Regulations 1996 and The Stakeholder Pension Schemes Regulations 2000.
25. Following consultation we have also reconsidered the proposal to remove the requirement to provide a date of birth to the member with their annual statement. We have decided to keep this requirement to mitigate possible issues arising from late rebate payments and recoveries relating to contracting out.

26. **Regulation 2(6)** substitutes new regulations 7, 8 and 9 for the existing regulation 7. New regulation 7 makes revised provision for the service of information (and documents) by a scheme. Schemes will, subject to certain safeguards, be able to provide information by email and by making it available on a website.
27. Schemes will not be able to fulfil their disclosure obligations by means of email or website if the member requests the information to be given in writing. And schemes can only provide the information electronically if they are satisfied the recipient will be able to access and store or print the information. Schemes must also take account of the needs of people with disabilities.
28. We received a number of consultation comments on the requirement contained in new regulation 7(3)(a)(ii), that electronic communications must be designed so that the recipient can print the relevant information. This was considered to be unnecessarily restrictive. The provision has now been changed so that the relevant information must be designed to be capable of being stored or printed.
29. New regulations 7(4) & 7(5) provide additional protection for existing members who are used to receiving information by post. If the scheme wants to convert from paper to electronic communication, the member must be given written notification and the opportunity to opt for continued paper communication.
30. The consultation draft of new regulation 8 (then numbered 7A) would have allowed a member to contact a scheme by post or electronic communication, but in the latter case only if the member reasonably considered that the communication was printable. Some respondents considered that this provision, which would have had the effect of requiring schemes to accept electronic communications, was problematical and it was pointed out that a scheme might have to change its existing procedures in order to be compliant. The revised new regulation 8 simply has the effect of requiring schemes to accept notifications or information requests from members by post. This leaves schemes free also to accept electronic communications from members if they wish, in which case it would be for the scheme to decide which methods (eg email, website) a member could use.
31. New regulation 9 (numbered 7B in the consultation draft) sets out the circumstances where information and documents can be made available on a website. Before a scheme can make information available via a website for the first time, it must write to the member's electronic or postal address advising them the information will be placed on a website. This notification must include the web address and details of how to access the relevant information (which in the case of personal information might include login and initial password details). It is for schemes to design these communications taking into account security considerations – in answer to the specific point raised by some respondents, we do not take the view that this regulation requires schemes to include a direct link (hyperlink) to a website page in a notification email.

32. If any further or updated information is placed on the website, the scheme must notify the member using either an electronic or postal address – unless new regulation 9(6) applies. This ensures that members receive a prompt that fresh information is available to them by visiting the website.
33. New regulation 9(6) allows a scheme to continue to post information to a website without sending any further communication to the member if they have written to a member at least three times asking for an electronic address, and the member has failed to respond either by providing an electronic address or by requesting paper communication.
34. **Regulation 2(7)** makes changes to the requirement to provide certain information that accompanies the illustration of projected benefits – the changes should be read in conjunction with regulation 2(4). They reduce the amount of information required to accompany the illustration, and allow certain information to be provided separately, making use of the new electronic provisions.
35. The information no longer required at all is:
 - a statement that the illustration should not be regarded as the only consideration by reference to which the member should make decisions as to his personal arrangements;
 - a statement to the effect that the provision of certain information is required by law; and
 - a statement to the effect that the information has been prepared by reference to certain assumptions set out in the relevant guidance.
36. The information that can be provided separately is:
 - a statement that assumptions have been made about investment performance and these may not correspond with actual investment returns;
 - a statement that the actual amount of pension payable depends on various considerations and these may differ from the assumptions made for the purpose of the illustration;
 - a statement specifying assumptions made in relation to future contributions to the scheme; and
 - a statement about assumptions made in respect of any contracting-out deductions and annuities.
37. Concerns were raised in the consultation by a number of respondents on the potential risk to members of removing the requirement to provide the statements listed in paragraphs 35 and 36 above. As a result, the regulations now include a requirement for schemes to provide a general statement that accompanies the illustration "to the effect that certain general assumptions have been made". It is not the policy intention that schemes should have to amend their current illustrations, as statements which satisfy the existing, pre-amendment regulations will remain compliant after the amendments take effect.
38. **Regulation 3** amends The Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (SI 1996/1655). The changes largely mirror

those to The Personal Pension Schemes (Disclosure of Information) Regulations 1987 described in paragraphs 19 – 37 above. The differences are outlined in the following paragraphs.

39. **Regulation 3(4)** removes an obsolete transitional provision which gave schemes until 5 April 1998 to provide basic scheme information to members who were existing members of the scheme on 5 April 1997, immediately before this information requirement was first introduced. The consultation draft of this regulation contained the amendment reducing the timescale for the provision of scheme information to new members. This has now been omitted for the reason explained in paragraph 6 above.
40. The consultation draft also introduced a new regulation 4(4A) exempting NEST from various information requirements. Similarly, draft amending regulation 3 exempted NEST from the requirement to provide specified information to early leavers and draft amending regulations 4(9) and 5 provided exemptions in respect of information on employer-related investments.
41. A number of respondents queried whether these NEST-specific exemptions were appropriate. They took the view that NEST should be subject to the same requirements as other occupational schemes.
42. Following further discussion with NEST Corporation, we have withdrawn all the proposed NEST-specific exemptions from these amending regulations.
43. **Regulation 4** amends The Stakeholder Pension Schemes Regulations 2000 (SI 2000/1403). The changes largely mirror the changes made in relation to both the occupational and personal pension scheme disclosure regulations, described above, as well as removing some additional requirements which applied only to stakeholder schemes. They:
 - allow electronic communications to be used;
 - reduce the amount of information required to accompany annual illustrations;
 - allow certain information to be provided on a website rather than with the illustration; and
 - reduce the amount of information that has to be supplied on annual benefit statements by making some of the information that is currently mandatory available only on request.
44. Where schemes adopt the new, shorter annual benefit statement, they must however provide a summary of information on:
 - the total amount of member contributions;
 - the total amount of employer contributions;
 - the total amount of payments by HMRC;
 - the total amount of any deductions or payments from the member's account;and they must include a statement that the member can request all of the detailed information separately if they wish.

Disclosure of information (pension schemes) – Government response to consultation

45. The new paragraph 4 of Schedule 3 also provides that this information, like the previous mandatory information, is exempt from any amount of reduction or deduction under paragraphs (2) to (4) and (5)(c) of regulation 14.
46. The new regulation 18A(7) and paragraph 2 of Schedule 3 list information that was previously mandatory but need now be made available only on request. Only the information requested by the member needs to be provided within 2 months of the request being made.
47. Existing regulation 18 is lengthy and contains many paragraphs which cross refer to each other. The amendments made by these regulations would increase that length. Existing regulation 18 has therefore been consolidated. What was in regulation 18 is now in new regulations 18, 18A and 18B and new Schedule 3. Apart from the changes made as a result of consultation explained above, the consolidation does not change the effect of existing regulation 18 as amended by the consultation draft. The attached table (Annex B) shows the numbering of the provisions in the consultation draft of regulation 18 and what those numbers have become in the final regulations.

Annex A – List of respondents to 2010 consultation

Aon Consulting
Association of British Insurers
Association of Pension Lawyers
Aviva Technical Services
AXA Sun Life plc
Confederation of British Industry
DLA Piper UK LLP
Electricity Supply Pension Scheme
Eversheds LLP
Fair Pensions
Hewitt Associates Limited
Institute of Chartered Accountants in England & Wales
Investment and Life Assurance Group
Law Society of Scotland
Mayer Brown International LLP
Mercer Limited
Pensions Advisory Service
Pensions Management Institute
Pensions Ombudsman
Prudential
Royal Mail Pensions Trustees Limited
Sackers & Partners LLP
Society of Pension Consultants
Standard Life Assurance Limited
Tesco Stores Ltd
Trades Unions Congress
Travers Smith LLP
Unite

Annex B – Paragraph numbers in new regulations

Paragraph number in old Regulation 18	Number of provision in new regulations
(1)	18(1) – no change
(2)	18A(1)
(2A)	18A(2)
(2B)	18A(4)
(2C)	18A(5)
(2D)	18A(6)
(2E)	18A(7)
(2F)	18A(8)
(3)	18(2)
(3A)	18(3)
(4)	18(4) and (5)
(4A)	18(6)
(5)	para 1 Sch 3
(5A)	para 4 Sch 3
(5B)	18A(2)
(5C)	18B(1)
(5D)	18B(2)
(5E)	18B(3)
(5F)	18B(4)
(5G)	para 5 Sch 3
(5H)	para 2 Sch 3
(5I)	para 6 Sch 3
(5J)	para 3 Sch 3
(6)	para 7 Sch 3 (information) and 18A(9) (the rest)
(7)	18A(10)
(8)	information provisions now in regs 18C to 18E
(9)	18(7)
(10)	18(8)
(11)	para 8 Sch 3