



Department
for Work &
Pensions

The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013

Government response to the consultation

July 2013

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Introduction

The Disclosure of Information Regulations specify the information that must be disclosed by occupational and personal pension schemes in certain situations, to whom it must be disclosed and the timescales for doing so. Certain provisions require information to be disclosed at prescribed times, for example on joining a scheme or on an annual basis. Additional information must be disclosed at the request of the scheme member. Some of the information is required to be disclosed under European law as part of the IORP¹ directive.

The disclosure regulations aim to ensure that members (and others) are given a consistent level of information regardless of which scheme they are a member and provide schemes with the legal certainty of knowing what they need to provide and how it should be provided. This supports the Government's objectives for Reinvigorating Workplace Pensions².

On 18th February 2013 the Government published a consultation, **The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013**, together with draft regulations and a supporting Impact Assessment (IA).

The consultation sought views and evidence on proposals to consolidate, simplify, update and where possible harmonise requirements across scheme types. The consultation also asked whether respondents would welcome further consideration of a move to a more "principles-based" approach to information disclosure and how useful any supporting guidance would be.

The consultation ended on 14th April 2013. We received 49 formal written responses from a range of organisations including pension providers, insurance companies, lawyers, actuaries and member representative organisations. We are grateful to everyone who replied. A list of organisations that responded to the consultation is at Annex A.

This report presents an analysis of the responses to the consultation, our considerations, the evidence that we have taken into account, and our final proposals. It is a companion report to, and should be read in conjunction with the consultation paper, **The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013**, which is available at:

<http://dwp.gov/consultations/2013/occ-personal-pension-schemes.shtml>

¹ Institute for occupational retirement provision – Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision.

² <https://www.gov.uk/government/publications/reinvigorating-workplace-pensions>

It is intended that the regulations will be made and laid in Parliament as soon as possible after recess and come into force on 6th April 2014.

Background

What the consultation said

Existing private pension legislation sets out the information that schemes are required to disclose to members and others. The main disclosure requirements are currently contained within three different sets of regulations. These are:

- The Personal Pension Schemes (Disclosure of Information) Regulations 1987
- The Occupational Pension Schemes (Disclosure of Information) Regulations 1996; and
- Regulations 18 to 18E of the Stakeholder Pension Schemes Regulations 2000

The disclosure of information regulations specify:

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

The consultation proposed that the existing Personal Pension Schemes (Disclosure of Information) Regulations and the Occupational Pension Schemes (Disclosure of Information) Regulations should be repealed and replaced with one statutory instrument (SI) containing the disclosure requirements for occupational and personal schemes. Whilst in the consultation we did not propose to include the Stakeholder Pension Scheme Regulations in this consolidation, a number of amendments to those regulations were proposed in order to ensure that the rules in relation to benefit statements and the methods for giving information were aligned across Occupational, Personal and Stakeholder schemes.

As part of the exercise to consolidate the existing disclosure legislation, we also proposed to:

- Simplify the structure and language of the regulations
- Remove a number of personal pension disclosure requirements where these duplicate requirements set out in the Financial Conduct Authority Conduct of Business Sourcebook (FCA COBS)
- Update references and align some of the rules where these are currently different between scheme types
- Simplify some of the basic information which occupational schemes are required to disclose to prospective and new members, making some information, currently given as of course, available on request

- Make a number of changes in relation to benefit statements and statutory money purchase illustrations (SMPIs) with the aim of making these more flexible and relevant to members' needs. This included a question about the appropriate timing of the first SMPI to take account of the introduction of automatic enrolment; and
- Clarify the rules about giving information electronically either by email or by providing the information on a website, and amend other private pension legislation to make clear that all information may be given by electronic means and where this is done, that the same rules apply to all types of information.

In addition to the above changes to the existing regime, the consultation proposed to introduce an additional requirement for schemes to provide information about lifestyling, where schemes adopt this strategy. The consultation proposed that information about a scheme's strategy of investing members' funds in lower risk investments in the years approaching retirement should be given as part of the basic information to new members and again in the latter years of the pensions lifecycle, before decisions to move funds to such lower risk investments are made.

The consultation stressed the need to make the proposed changes as soon as possible in order to maintain a level of prescription that provides clarity for schemes about the information they are required to give to their members, whilst ensuring members receive consistent information irrespective of which scheme they are in and to ensure the disclosure regime is fit for purpose following the introduction of automatic enrolment. An October 2013 coming into force date was suggested.

The consultation also recognised that some respondents to the Red Tape Challenge "spotlight on pensions" may welcome a move to a more "principles-based" approach to the disclosure of information. We therefore asked for views on such an approach, and in particular whether respondents would welcome further consideration of this approach.

We also noted that the regulations are intended to provide a straightforward framework but may not address areas of good practice in communications. We therefore asked for views on the usefulness of supporting guidance.

Responses to the consultation

Summary of responses

A total of 49 responses were received from a cross section of the pension industry, including responses from organisations representing the public and private sectors, trust and contract based schemes, third party administrators, lawyers, actuaries and organisations representing the interests of members.

None of the respondents suggested that the proposed regulations should not be made, although a number of useful representations were made, which have helped us refine some of the detail.

Responses were generally supportive of the proposed draft regulations and welcomed the move to greater harmonisation, consolidation and simplification which the proposed regulations achieve. In particular there were favourable responses in relation to the structure of the proposed regulations.

A number of comments were made suggesting that the proposed regulations were only a first step in the right direction and that more needed to be done in the area of consolidation and harmonisation of disclosure regulations. In particular, a number of respondents suggested extending the scope of the exercise to include the disclosure requirements currently contained in the Stakeholder Pension Regulations, whilst others recommended extending the scope of the exercise to include all DWP private pension disclosure requirements and a more fundamental approach to harmonise all workplace pension disclosure, having one set of rules and one regulator.

There was broad support for proposed measures to introduce a requirement for schemes to give information to members where lifestyling is to be adopted and to provide flexibility for schemes in relation to the assumptions to be used in the Statutory Money Purchase Illustration calculations.

A mixed response was received to the question of whether the DWP should consider moving to a more “principles based” approach to the disclosure of information, with some respondents welcoming further consideration of this approach, whilst others advised that the proposed regulations were clearer than the current regime and preferred these for the clarity and consistency they provided.

Responses to the question about additional guidance were varied, ranging from views that no additional guidance was necessary to welcoming consolidated guidance or more guidance that concentrated on specific areas, such as lifestyling or electronic communications.

There were also strong representations to delay the introduction of the proposals in order to give schemes time to implement them, in particular where the changes were prescriptive, such as with the proposed requirement to give members information about lifestyling. Comments were also made in relation to the timing of the first benefit statement, the inclusion of a lump sum in the pension illustration, the timescales for notifying material alterations to members and in relation to the guidance about annuities for those approaching retirement which the existing regulations require the Pensions Regulator to produce and the Secretary of State to approve. As a result of these, amendments to the regulations have been made.

In addition to answers to the specific questions raised in the consultation document, many respondents commented on various technical aspects of the draft regulations themselves. Such comments were particularly welcome and have been carefully considered. As a result, a number of drafting changes have been made to the regulations, although other than as mentioned above, the overall policy is unchanged.

Consultation questions

We asked the following questions in the consultation:

General

1. Do you agree these amendments meet the overall aims?
2. Do you foresee any problems with these regulations coming into force in October 2013, particularly relating to the new provision on lifestyling?

Consolidation

3. Do you agree with the scope of this consolidation?

Removal of some personal pension information requirements

4. Where our requirements duplicate FSA rules do you agree they should be removed? If not, which provisions should be retained and why?

Simplification

5. Do you consider the new structure of the regulations to be a useful change?

Changes to information to be disclosed

6. Do you think any of the changes will have any unintended consequences?

Basic information about the scheme

7. Are you content with the changes we propose to make to the basic scheme information which schemes are required to disclose?

New provision on lifestyling information

8. Do you agree that this requirement would be beneficial to members and that the wording of this requirement would cover all forms of lifestyling, including target date funds?

Benefit statements and Statutory Money Purchase Illustrations

9. Do you agree that the changes will allow schemes to provide more personalised statements?

10. Do you think changes need to be made to the timing of the first SMPI to take account of the introduction of automatic enrolment? If so what timing do you think would be the most appropriate?

11. Do you think the regulations allow for concise statements? If not, which elements of the regulations prevent this?

Electronic communications – amendments to existing provisions

12. Are you content with the proposed changes in relation to electronic forms of communication?

13. The existing regulations require certain information (such as the constitution of the scheme) to be available for inspection at a reasonable location. Do you consider that this method of communication is still appropriate given the availability of electronic communications?

Extension of electronic communications to further regulations

14. Do you consider that all the appropriate legislation has been included in the draft regulations?

A principles-based approach

15. Would you welcome further consideration of a principles-based approach to the disclosure of information as outlined in the 2009 consultation?

Guidance

16. We would like views on whether you feel any additional guidance would be useful to support the disclosure regulations and if so the type of details this should contain.

Wider pensions landscape

17. Are there any other issues that impact on disclosure that you feel need to be considered?

Responses to the consultation Questions

Question 1: Do you agree these amendments meet the overall aims?

Twenty-nine responses to this question were received. Of these the vast majority agreed that the amendments met the overall aims. A number of these suggested that although the proposals were a step in the right direction, more could still be done; in particular some respondents suggested that the Government give more consideration to fully harmonising the rules, working towards one set of requirements and one regulator.

Of those respondents who felt that the proposals did not meet their overall aims, all cited concerns over the approach to electronic communications set out in the legislation, having issues with the opt-out approach and concerns that the proposed regulations were more prescriptive than the current regime.

Government response

We welcome the general agreement from respondents that the proposals meet their aims, but recognise the concerns from some that there is more to be done in this area. We will continue to work with the Pensions Regulator and the FCA to achieve a more unified approach, but are confident that the new regulations will be clearer and will provide a sound platform on which further improvements can be built.

We have revisited the regulations about electronic methods of communication in the light of the responses, and the final regulations are no more prescriptive than the existing regime. The intention is that schemes may use electronic forms of communication, but that if they choose to do so, certain safeguards for members are built in (such as the ability to opt-out). These have been redrafted in the light of comments made, to ensure that the regulations meet the intent.

Question 2 - Do you foresee any problems with these regulations coming into force in October 2013, particularly relating to the new provision on lifestyling?

The majority of those who responded to this question suggested that the proposed coming into force date of 1st October 2013 was too soon. A number of these suggested that an April 2014 date would be more appropriate, with some responses suggesting that it would be helpful if the regulations were laid 6 months prior to the coming into force date. One respondent suggested deferring this provision until April 2015. Only 5 respondents suggested that bringing the regulations into force from October 2013 would not be a problem.

Government response

We have considered these responses and have decided to bring these regulations into force from April 2014. We aim to make and lay the regulations as soon as possible after summer recess. This will give schemes notice of the changes and will enable them to make the necessary preparations to ensure that they are able to comply with the prescriptive changes (the lifestyling provision) and to make preparations for those more permissive measures should they wish to do so.

Question 3 - Do you agree with the scope of this consolidation?

Of those who responded to this question, the majority agreed with the scope of the consolidation. However, a number of these responses suggested that they would have preferred the proposals to go further. Seven respondents suggested that the disclosure requirements for Stakeholder Pensions, which are currently set out in the Stakeholder Pension Regulations, be included in the consolidated regulations. Two respondents suggested including other private pension legislation which currently includes specific disclosure requirements in the consolidated regulations, whilst another three respondents indicated that it may be helpful to extend the scope of the exercise to include all disclosure requirements, including those currently required by the FCA, so that there was one set of disclosure requirements rather than as now, those prescribed by government legislation and those set out in the FCA COBS.

Government Response

We recognise the concerns of some respondents that the consolidation of the existing disclosure regulations does not go far enough. However there are persuasive arguments for retaining certain disclosure requirements within the specific legislation relating to that particular area. For example, we intend to retain for the time being the disclosure requirements relating to pension sharing on divorce and transfer values, amongst others, as we consider that keeping all requirements on these subjects together in one statutory instrument is helpful. However, we have amended these and other specific statutory instruments to ensure that the information may be given in the same manner as set out in the main disclosure regulations so that schemes can be confident that they may use the same methods of disclosure irrespective of the type of information they are giving to members. Similarly, we will keep the Stakeholder Pension disclosure requirements within the rest of the Stakeholder Pension regulations.

Some respondents argued that the disclosure elements of the Stakeholder Pensions Regulations should be included in the general disclosure regulations on the basis that they are not a product distinct from other personal pensions. This is a broader question about the future of Stakeholder Pensions rather than about the disclosure regulations. The Government has considered this point but believes there is still value in maintaining a distinct Stakeholder Pension product in legislation. For example, some employers may wish to use their existing Stakeholder Pension for automatic enrolment purposes, and others who are not part of the automatic enrolment world may wish to use the product.

Question 4 – Where our requirements duplicate FCA rules do you agree they should be removed? If not which should be retained and why?

Of the 23 respondents who specifically addressed this question the vast majority agreed that the duplication between the DWP requirements and those of the FCA should be removed. Over half of these agreed with the proposals not to carry forward regulations which duplicate the FCA COBS rules. However, although agreeing with the proposed removal of duplication in this area, some respondents did suggest that the ultimate aim should be greater harmony across all products removing all overlaps, pointing out that providers will still, under the proposed regulations, need to be conversant with the DWP and FCA disclosure regimes. Some suggest that it would be helpful for DWP and FCA to work together to remove duplicate requirements. Two respondents specifically disagreed with the proposal and argued that the regulations should remain with DWP

Government response

We note the general support for the proposals to remove the duplication of requirements between the DWP regulations and the FCA COBS, and will continue to work closely with the FCA to ensure the disclosure requirements are consistent and straightforward for schemes to apply.

Question 5 - Do you consider the new structure of the regulations to be a useful change?

The overwhelming majority of respondents welcomed the new structure and language of the proposed regulations suggesting they were a significant improvement on the existing regulations. A number of respondents did make suggestions in relation to how the structure could be improved further, particularly in relation to some of the headings to and the ordering of particular regulations. One respondent however argued that the new structure was unhelpful as it was not split by scheme type. Others suggested that the use of schedules was unhelpful as these were at times difficult to follow.

Government response

We are pleased that the majority of respondents found the proposed structure helpful and that most considered the new regulations to be an improvement on the existing ones. We welcome the constructive suggestions for how the regulations could be improved further and have made a number of changes to headings and the order of the regulations as a result of comments made which we believe will make the regulations easier to negotiate. We have retained the schedules as we consider that the approach in the regulations which separates the rules about to whom the information is to be provided and in what timescale from the detail about what information is to be provided, which is placed in the schedules, to be the most useful way of navigating what would otherwise be a complex statutory instrument.

Question 6 – Do you think any of the changes will have any unintended consequences?

Of those who responded to this question, over two thirds stated that they had not identified any unintended consequences. Eight respondents identified what they considered to be unintended consequences. These included concerns that the proposed requirement to provide information about lifestyling could cause confusion to members unless information about what to do with that information was included. Some respondents felt that the consultation document indicated that under the proposed SMPI amendments members could choose their own annuity assumptions and that schemes would therefore effectively have to offer bespoke illustrations to members which would significantly increase costs for schemes and be confusing for members. One response asked DWP to confirm whether the intention for the statement to be given on assumption changes was specifically in relation to the annuity assumption, and not in relation to any change which may affect the illustration. One respondent suggested that changes to basic scheme information requirements would require the revision of booklets providing the information and may be disproportionate to the importance of the information. Another suggested that the proposed regulations were more prescriptive in terms of how information could be given to members and believed this would have cost and administration implication for their particular scheme.

Government response

We are grateful to those who helpfully pointed out potential unintended consequences arising from the proposed regulations. In relation to the new requirement to give information about lifestyling where a scheme intends to adopt such a strategy, we believe that telling the member about this as part of the basic information on joining a scheme and again at a time when funds may be moved into less risky investments, at a time when the member may choose to influence investment decisions is appropriate. It is not however appropriate for the Government to suggest in the regulations what the member should do with the information given by the scheme, and there is no intention to extend the provision to include a requirement to give this type of information.

In terms of the changes to SMPIs, it was never the intention that the regulations contain a requirement that schemes must give members the choice of assumptions. We do not believe that allowing schemes to use more flexible assumptions will increase costs to schemes or be confusing for members. These changes are permissive and schemes are free to continue with the existing assumptions or change them as they see fit. Where schemes amend the assumptions used in the

projections they should provide a clear statement of the change. The regulations have been amended to make it clear that this statement relates specifically to the changes to the annuity assumption. These issues are discussed again at Question 9 below.

One respondent felt that that the draft regulations were more prescriptive about the methods which schemes may use for giving information to members. We can confirm that the new regulations are not intended to be more prescriptive than the existing regime and the regulations have been amended in the light of comments made to ensure they give effect to the intention that schemes may still use a variety of methods to communicate with their members, including electronic methods.

Question 7 – Are you content with the changes we propose to make to the basic scheme information which schemes are required to disclose?

Of those who responded to this question, the overwhelming majority were content with the changes, although some commented that they would welcome further harmonisation between DWP and FCA rules and a number of other respondents suggested that the requirement to provide information about additional voluntary contributions (AVCs) should be reinstated as many schemes still offer this. Of the 2 comments which were not expressly content, one was in relation to the methods of providing the basic information rather than the information itself and the other suggested that we should not remove the duplication between the FCA rules and the DWP requirements for basic personal pension scheme information arguing that the benefits of this are limited given that other disclosure requirements for personal pensions are still included in the regulations so schemes still need to refer to both sets of rules.

Government response

We welcome the general support for this proposal, and the suggestion that the proposed removal of the requirement to provide information about the arrangements for AVCs should be reinstated. The regulations have been amended to include this provision.

We recognise that the proposed regulations do not remove the need for schemes to refer to other requirements, but do not consider that the arguments for retaining the duplication between the regulations and FCA rules for basic scheme information in relation to personal pensions are persuasive, particularly given the level of support for this proposal amongst other respondents. We will therefore proceed with this proposal, but continue to work closely with the FCA and others to identify where

further harmonisation may be achieved, or where guidance may be appropriate to help schemes better understand and discharge their disclosure obligations.

Question 8 – Do you agree that this requirement would be beneficial to members and that the wording of this requirement would cover all forms of lifestyling, including target date funds?

All the respondents who answered this question agreed that providing lifestyling information to the member would be beneficial, although the responses varied in relation to what the actual requirement should be and suggested that the proposed wording in the draft regulations may not work for all types of scheme, in particular in relation to the timing of the second notification. A number of responses suggested that this information should be included as part of the annual statement, whilst others argued that it would be more appropriate to inform members of the intention to move their funds into investments which carry less risk between 5 and 15 years before retirement, rather than between 4 months and 2 years before lifestyling is to be adopted, as proposed in the draft regulations.

Government response

We are grateful for the helpful responses to this question. These have been carefully considered, and the regulations have been redrafted to take account of the suggestions made. The requirement is that where a scheme intends to adopt a strategy of lifestyling the member must be told this as part of the basic scheme information and again between 5 and 15 years before their retirement. We believe this strikes the right balance between ensuring members have the information they need whilst allowing schemes to provide that information at the most appropriate time.

Question 9 – Do you agree that the changes will allow schemes to provide more personalised statements?

Of the 29 responses to this question, most agreed that changing the assumptions would allow for more personalised statements and welcomed the flexibility this

allowed. However, a number of those who agreed that the changes would allow for more personalised statements also raised specific issues, including concerns that any changes would incur a cost, that there may be potential for confusion as figures used may not be comparable across different schemes, concerns over members choosing their own assumptions (which could be administratively difficult and costly), that the illustration should include the lump sum and that the timing of any changes should be consistent with changes being introduced by FCA from April 2014. Of the four responses which explicitly disagreed, two were about the annuity assumption choice, suggesting that a single life annuity should be the basis for the illustration rather than allowing flexibility or members to choose and two preferred to retain the existing assumptions. A further two respondents neither explicitly agreed or disagreed, but made the point that the key is the need for statements to drive behaviour that will deliver good outcomes, suggesting a radical approach focussing on savings goals.

Government response

We welcome the general support for this proposal and acknowledge the concerns that have been raised. We feel SMPIs are important to members and the regulations set out the minimum requirement for these documents. The policy intention is for an SMPI to provide a member with regular information, in today's prices, so they can make effective decisions about the spending power of their projected pension. Without a projection the value of the pension pot can seem meaningless.

We acknowledge that there are many possible variations to the expected outcome from pension saving. We feel it is useful for schemes to be able to tailor the annuity assumptions they use to meet their member likely needs, whilst still keeping consistency across schemes as they will be required to use consistent assumptions as set out in the TM1. Including clear statements on the chosen assumptions should make this transparent to members.

This amendment is permissive so schemes can choose whether they want to make any changes. We hope that schemes will take this change into account in any future changes they make to their statements, perhaps when responding to the needs of new members under automatic enrolment. This could also include potentially giving members the choice to choose their own assumptions or providing on-line tools to provide a wider illustration of potential outcomes – encouraging engagement by members and increased awareness of annuity choices ahead of retirement.

Following the consultation the regulations have been amended to make it clear that an illustration may include lump sum payments, and the Financial Reporting Council are considering this as part of their associated revision of the AS TM1.

Question 10 – Do you think changes need to be made to the timing of the first SMPI to take account of the introduction of automatic enrolment? If so what timing do you think would be the most appropriate?

We received 25 responses to this question, the vast majority of which agreed that it would be useful to make a change to the timing of the first statement. Respondents made various comments including that a statement was not needed where no contributions had been made, or during the opt-out period and that any change should be permissive and should allow schemes flexibility about whether to issue a statement where no contributions had been made. A number of suggestions were made about the timing of the first statement, ranging from between six and twelve months of the first contribution to the end of the second scheme year. Others argued the timing could be linked to the employer's staging date. Only three responses suggested that a change was not necessary and of these, two suggested that a statement should not be mandatory where no contributions had been made.

Government response

We agree it is sensible to amend the regulations as we cannot see the benefit of requiring schemes to automatically issue pension statements for new members where no pension contributions have yet been credited to the scheme and there are no accrued benefits and no projections are possible or the member is in their opt-out period when their first statement is due. The regulations have been amended to take this into account. We acknowledge this could sometimes cause administrative difficulty so this change is permissive, schemes can continue to send a statement in these circumstances if they wish to do so.

Question 11 – Do you think the regulations allow for concise statements? If not which elements of the regulations prevent this?

Of the 24 responses to this question, the vast majority advised that they thought the regulations allowed for concise statements, although some did make additional comments. It was suggested that FCA rules require more information than the DWP

regulations so add complexity to the statement (although no specific examples were given), that pension scheme computer systems don't always allow for these types of statement and that the new drafting of the SMPI regulations may still not allow for signposting. No representations were made suggesting that the regulations specifically prevent concise statements, although two respondents commented that adopting more personalised statements may lead to longer statements with more complexity. Four responses commented that including more personalised assumptions led to long statements and suggested that an example of a concise statement would be useful, one questioned what "concise" meant and another accepted that concise statements could engage members but that such statements needed to be sufficiently detailed to allow members to understand them.

Government response

We are pleased that the vast majority of respondents agree that 'concise' statements (for example two or three pages with signposting to a website) are achievable. We have liaised with the FCA but could not identify any specific FCA rules that add additional complexity to annual statements. Neither do we do think the new flexibility to annuity assumption choices will add greater complexity to a statement – the only addition being a statement clearly explaining the changes that have been made since the last statement. We would like to also confirm that the SMPI regulations continue to allow for signposting, and certain information can be provided separately to the pension illustration.

Government is keen to see pension providers present their annual statements and SMPs in a format that is clear and concise, using plain English, and in a way that helps members have trust and confidence in pension saving. We are seeing improvements and plan to keep working with industry to encourage good practice in this area.

Question 12 – Are you content with the proposed changes in relation to electronic forms of communication?

The majority of those who specifically answered this question confirmed that they were content with the proposed provisions. However, a number of these did make further comments on this issue, which included the need for consistency in this area between the DWP regulations and the FCA rules on electronic disclosure, concern that the 3 strikes rules were onerous and a suggestion that the regulations could go further and require schemes to have a website on which to post all generic information about the scheme. Only three respondents specifically said they were

not content with the proposals, arguing that members should be required to opt-in to these forms of communication rather than having the right to opt-out and that communications should be permissible via an employer.

Government response

The proposed regulations for the methods by which information may be given are intended to clarify the regulations which came into force in December 2010. The actual policy on how information is to be given is unchanged. The Government's position is that the disclosure regulations set out the rules which apply to all schemes for all types of information. These provide that schemes may give information by electronic methods but if they do so, schemes must know the member's electronic address and where information is to be placed on a website the communications must be designed so that members will be able to access, store and print the information.

One respondent highlighted the need for consistency in this area between the DWP regulations and the FCA's rules for personal and stakeholder pension schemes, although they did not state what the differences are. The FCA rules require information to be provided in a durable medium³ or via a website that meets the FCA website conditions (if the website is not itself a durable medium). In practical terms the FCA's requirements are little different to the DWP's regulations. The DWP regulations require the communication to be designed so that the member may access, store and print it, which is essentially the same as the FCA "durable medium" requirement. We do not consider that there is any requirement that prevents schemes from designing electronic communications which are engaging and accessible and meet both sets of rules.

We have amended the regulations in the light of the comments received to ensure that they deliver the intention that schemes may give information by post, use electronic methods of communication or give the information via an employer or by hand, but where electronic methods are used the rules set out in the regulations, which provide safeguards for members, must be followed. We have also amended the regulations to clarify that the member must be advised that the scheme proposes to use this method of communication where that method is not already employed and that the member may request in writing that information is not given by this method, which was the original intention.

The general rule for placing information on a website is that a notification must be sent to the member's postal or email address the first time such information is given in that manner, explaining that the information has been placed on the website and where and how it may be read. Each time further information is placed on the

³ <http://fshandbook.info/FS/glossary-html/handbook/Glossary/D?definition=G1286>

website the scheme must notify the member of this by sending a notification to the member's postal or electronic address. However, where the member's email address is not known and the member has not opted out of getting information electronically, the "three strikes" provision permits schemes which have made at least 3 attempts to request the member's e-mail address and to advise the member that they may opt-out of electronic communication, to no avail, to place that information on a website without further notification. The intention is that schemes which have made every effort to obtain a member's email address or the member's opt-out of electronic communications, do not have to continue to give notifications to members by post or by hand each time information is placed on a website. The new regulations clarify this provision in the light of comments received.

Question 13 – The existing regulations require certain information to be available for inspection at a reasonable location. Do you consider that this method of communication is still appropriate given the availability of electronic communications?

Around two thirds of those who responded to this question considered that schemes should continue to be able to make certain information available for inspection at a reasonable location. The main reasons for this were that not all members have access to electronic forms of communication, and not all schemes offer websites. Around a third of respondents did feel that this method of communication was out of date and that the information which may currently be made available by this method could be placed on a website.

Government response

We have considered the responses and although a number of respondents felt that making paper documents available for inspection at a reasonable location was an outdated practise, we consider that the arguments for continuing to allow this method of giving information to be persuasive. The new regulations therefore retain this provision.

Question 14 – Do you consider that all the appropriate legislation has been included in the draft regulations?

Over half of those respondents who answered this question agreed that all the appropriate disclosure legislation had been amended so that the methods for giving all types of information are in line with the main disclosure regulations. Of those who did not agree, a number made helpful suggestions about other legislation they considered should also be amended, whilst others raised more general queries, in relation to consistency of rules between DWP and FCA, and guidance, which are dealt with elsewhere in this response.

Government response

We are grateful for the helpful suggestions made in relation to other legislation which would benefit from amendments to ensure the methods of giving information are consistent irrespective of the type of information being given. We have included further amendments to specific private pensions statutory instruments, in the light of these comments. Some respondents highlighted other areas of DWP legislation, not confined to disclosure of information, which they felt needed to be amended. For example it was suggested that the level of actuarial information required in annual reports be expanded. We are grateful for these comments, but do not consider it necessary to amend regulations where existing information requested of trustees is sufficient for them to demonstrate they are meeting their minimum requirements, such as through actuarial valuations.

Question 15 – Would you welcome further consideration of a “principles based” approach to the disclosure of information as outlined in the 2009 consultation?

Thirty two respondents answered this question directly. Of these 13 agreed that either a principles based approach would be welcome or should at least be given further consideration. However, a number of these also suggested that if this were adopted it would need to be supported by additional guidance or underpinned by some level of prescription. Six respondents were equivocal in their response, stating they could see advantages with a more flexible approach but also noting the benefits of prescription. Some of these also pointed out the need to comply with European

legislation in this area and the difficulty of finding a practical solution. A further 13 respondents specifically disagreed with the idea of a principles based approach, pointing out that the proposed regulations were sufficient and needed time to bed in, that the prescriptive nature of the regulations gave much needed clarity and consistency for schemes and that a move to a principles based approach could potentially erode member protection and safeguards, may not result in a radical change and may not comply with current or future EU legislation.

Government response

As in the previous consultation on this proposal, the responses suggest that there is no overwhelming desire to move to a principles based approach. Whilst a number of respondents feel that a move to such an approach would be helpful, this is tempered by a recognition that such an approach is not without difficulties. In view of this we will bring the new regulations into force as planned (although from April 2014 rather than October 2013). We are confident that the new regulations are a step in the right direction, are easier for schemes to read and apply and allow some elements of flexibility whilst also providing clear rules so that schemes are aware of their disclosure obligations and members can be confident that they will be given the information they need about their pension at the appropriate time and by the most appropriate method.

Question 16 – We would like views on whether you feel any additional guidance would be useful to support the disclosure regulations and if so the type of details this should contain.

Of those who responded to the question, under half considered that either no further guidance was necessary or would only be required if a “principles based” approach were to be adopted. Amongst these responses were comments that the new streamlined regulations negated the need for guidance, that the existing guidance was sufficient and that the need for guidance could be reviewed once the new regulations had “bedded in”. A similar number stated they would welcome additional guidance. Of these, some suggested that there should be joint DWP/FCA guidance covering all aspects of disclosure and two respondents suggested that guidance from The Pensions Regulator would be useful, including templates and case studies. The remaining five responses suggested that guidance would be helpful, but in specific areas only, including electronic communications, lifestyling and language.

Government response

We are grateful for the helpful responses and note that a number of respondents indicated that additional guidance on disclosure would be welcome whilst a similar number considered that further comprehensive guidance was not necessary. This is consistent with the responses received to the earlier consultation which indicated that a best practice guide may be helpful.

As mentioned in the consultation document, we will continue to work with TPR, FCA and the pensions industry to explore in more detail where additional guidance supporting that issued by the regulator and FCA would be beneficial.

Question 17 – Are there any other issues that impact on disclosure that you feel need to be considered?

A number of respondents suggested areas from the wider pensions landscape which may have an impact on disclosure in the future. These included the need to ensure that the disclosure requirements fit with European legislation, with reference being made to the EIOPA report on good practice in pensions communications and the PRIPS and IORP directives which could have the potential for conflicting requirements. Concerns were raised over the volume and consistency of guidance, particularly in relation to small employers and the introduction of automatic enrolment. Mention was also made of the need to ensure that disclosure of information was taken into account in the work on transparency of charges and automatic transfers of pension pots. Specific research projects were also mentioned, including those being undertaken by ABI, NEST and Share Action.

Two respondents suggested that changes should be made in relation to information to be included in the summary funding statement arguing that information about scheme modifications and refunds of surpluses are rare events and such information should only be required where such events have occurred. Another issue was raised about the requirement for statements to include an explanation of any change in the funding position since the previous statement was issued. It was argued that the statement should explain how the funding position has changed since the last actuarial valuation or report, rather than since the last statement was issued.

A suggestion was also made that the regulations be changed to allow a reasonable period for the Statement of Investment Principles (SIP) to be updated following a decision to change investments.

Government response

We are grateful to those who made suggestions about other issues which may impact on the disclosure of pension information. We will continue to ensure that disclosure of information is taken into account in the work the Government is taking forward, for example in the area of transferring small pension pots and automatic enrolment and transparency for charges. We will also continue to monitor developments in the wider pensions landscape, including those raised by some respondents, to ensure that disclosure requirements continue to meet the needs of members whilst being straightforward for schemes to comply with.

In relation to suggested changes to the summary funding statement, our view is that this was introduced to ensure transparency for scheme members and these factors were considered sufficiently important when the requirements were introduced for their inclusion to be mandatory. We have received no previous representations suggesting these requirements are burdensome. Our view is that if no such events have occurred, it is not burdensome to say so. This makes the position clear for members, some of whom may otherwise be prompted to enquire about them. We also consider that scheme members should be told how the funding position has changed since they were last told about it, and it therefore remains appropriate for the comparison to be with the previous statement. There are no plans to introduce a period for the SIP to be updated following a change to investments. The period in which an SIP must be updated following a change of investment policy is set out in the Occupational Pension Schemes (Investment) Regulations 2005 (SI 2005/3378), and so falls outside the scope of the proposed regulations, which simply require that where the investments do not accord with the SIP, the annual report must explain why.

Conclusion

The responses to the consultation were generally supportive of the proposals. A number of suggestions were made, particularly in relation to the date the changes come into force, the wording of the proposed lifestyling requirement and the timing of the first annual statement. Additionally, a number of technical suggestions were made in relation to the drafting of the regulations. These have been considered and where appropriate further amendments to the regulations have been made.

We believe the new regulations are simpler than the existing disclosure regime and provide much needed clarity regarding the information schemes are required to give to their members and how that information may be given, helping ensure members get the information they need, when they need it and by the most appropriate method.

The Government is grateful to all those who responded to the consultation.

Annex A

Respondents to the consultation

Aegon
Age UK
Aon Hewitt
Aquila Heywood
Association of British Insurers
Association of Consulting Actuaries
Association of Member Directed Pension Schemes
Association of Pension Lawyers
Aviva
Buck Consultants
Capita
Confederation of British Industry
Cornwall Council
Financial Reporting Council
Friends Life
General, Municipal and Boilermakers Union
Greater Manchester Pension Fund
HISL Ltd.
HMT
Hogan Lovells
Hymans Robertson
Institute of Consulting Actuaries
JLT Benefit Solutions
KPMG
Legal and General
Local Government Association
Mercer
Merchant Navy Officers Pension Fund
National Association of Pension Funds

National Employment Savings Trust
National Federation of Occupational Pensioners
NHS Pension Scheme
Pensions Research Accountants Group
Prudential
Royal Mail
Sackers
SAUL Trustee Company
Share Action
Society of Pension Consultants
Standard Life
The Actuarial Profession
The Law Society of Scotland
The Pensions Advisory Service
The Pensions Management Institute
The Pensions Regulator
The Pensions Trust
Towers Watson
Trade Union Congress
Wragge and Co