

## Annex B

### Member communications

#### **The Occupational Pension Schemes (Disclosure of Information) Regulations 1996**

1. The Occupational Pension Schemes (Disclosure of Information) Regulations 1996 apply to public sector pension schemes across the board (regulation 2(1) (b)).
2. The obligation in regulation 4(5) is that managers of a scheme “shall notify” members and beneficiaries of material changes to the pension schemes, which includes changes to members’ contributions, before the change if practicable, and within 3 months of the change taking effect if not (it will be highly unusual for scheme managers not to be able to inform members beforehand). This is an imperative: they have no discretion not to do so. The word “shall” is also used in a number of other places to confer imperative obligations in regulations 3 to 8. The word “notify” is capable of being interpreted widely, and will include letters, leaflets, and electronic communications among other means. Regulation 4(5) does not limit itself by stating that the notice shall be “in writing”. However, scheme managers are only under a duty to notify those members and beneficiaries who are actually affected by the scheme (regulations 4(5A) and 4(4)). In the case of contributions, this is limited to those active members paying them (although it may be good practice to notify deferred members who could return or are anticipated to return to work).
3. However, regulation 10(1) states that scheme managers “may” communicate the information by posted letter or by electronic communications (including emails, website postings, or a combination of the two). If electronic communications are used, they must be in a form that is capable of being stored or printed (with particular attention being given to any special requirements of disabled members or beneficiaries). This is easy to achieve with an email but a website posting may require an archive or a downloadable document. This regulation is not drafted in the imperative. Scheme managers have a choice whether to use these two methods or other effective methods. The fact that they have that choice does not exclude their ability to use other methods. Consultation with drafting lawyers has confirmed that this was the express intent of the draftsman.
4. This interpretation is consistent with the Ombudsman’s ruling in the Dunkley case. That ruling was made upon the basis of the old regulation 10, which also used the word “may”. The Ombudsman’s ruling that other methods than a mass mailing were acceptable methods of notifying members and beneficiaries of information was not challenged in the subsequent Court of Appeal case.
5. Regulation 10(2) provides for members or beneficiaries to opt out of electronic communications. If they do so, then electronic communications cannot be

used in their cases. However, this does not limit the other ways that the scheme managers can use their discretion to notify them.

6. Accordingly, scheme managers do retain a discretion to inform members and beneficiaries via the two methods set out in regulation 10, and also by other methods (subject to any opt out of electronic communications).
7. These Regulations are overseen by the Pensions Regulator, who has the power to punish any failure to comply with a fine of up to £5,000 per member. This is aside from the reputational damage that such a failure will cause.