



Department  
for Work &  
Pensions

# The Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations 2014

Government response

---

July 2014

# Contents

Introduction.....	3
Background .....	3
The Draft Regulations.....	4
Section 1 – Overview .....	4
Section 2 – Citation, Commencement and Interpretation.....	5
Section 3 – Records of Member Information.....	6
Section 4 – Records of Transactions .....	7
Section 5 – Records of Pension Board Meetings and Decisions .....	8
Section 6 – Period for which records must be kept.....	10
Section 7 – Amendment of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 .....	11
Other issues raised in response to the consultation .....	11
AVCs.....	12
Quality of scheme records .....	12
Next Steps.....	13
Annex A: List of those who responded to the consultation .....	14

# Introduction

1. This consultation ran from 10 December 2013 to 17 February 2014 (consultation document can be viewed at:-  
[www.gov.uk/government/consultations/public-service-pensions-regulations-2014-record-keeping-and-miscellaneous-amendments](http://www.gov.uk/government/consultations/public-service-pensions-regulations-2014-record-keeping-and-miscellaneous-amendments) )  
and sought views on the draft Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations 2014 which:
  - set out the records that public service pension schemes covered by the Public Service Pensions Act 2013 are required to keep from April 2015, and
  - amend Regulation 16A of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (SI 1996 No. 1715) to remove an exemption to the late payment reporting requirements for public service schemes.
2. Annex A lists the 18 respondents to the consultation, and the Government is very grateful to them for providing their comments and advice on the draft regulations.
3. This document is divided into a number of sections with each: explaining the purpose of a regulation and the questions asked in the consultation; providing a summary of the responses received; and outlining any changes that we propose making to the draft regulation and/or explaining why we have not accepted suggested amendments. At the end of the document there is a section that covers other issues raised in the consultation, and the final section covers the next steps.

# Background

4. The Public Service Pensions Act 2013 (“the Act”) sets out a common framework for the creation of new public service pension arrangements; which are due to come into effect in April 2015 for most public service employees (civil servants, teachers, health service employees etc).
5. It provides HM Treasury with a number of powers in respect of these new pension arrangements, and gives (at section 16) the Secretary of State the power to specify the records that scheme managers responsible for running these new, and connected (existing), pension schemes, must keep.
6. The Act also extends the powers of the Pensions Regulator (“the regulator”), in respect of both new and existing public service pension schemes, in order

to introduce a system of independent oversight in the operation of these schemes.

7. Under these new provisions, the regulator is required to issue a Code, or Codes, of Practice containing practical guidance on the standards of conduct and practice expected of those governing and administering public service pension schemes in respect of a number of matters, including record keeping and reporting the late payment of contributions (section 90A of the Pensions Act 2004 as amended).
8. The regulator simultaneously undertook a consultation in Great Britain on its draft Code of Practice for public service pension schemes, and issued an interim report on 30 May. On 23 May it launched a consultation on the code in Northern Ireland which will end on 17 July. Once it has considered the comments received in this subsequent consultation, the regulator will provide a full consultation response noting where it proposes to amend the draft code and explaining why other suggested amendments are not being taken forward.

## The Draft Regulations

### Section 1 – Overview

9. The consultation explained that the regulations aim to set out the key pieces of information that managers of public service pension schemes covered by the Act must hold in order that these schemes can be effectively administered, with the correct benefits being speedily paid when due.
10. It noted that well run schemes were expected to hold the majority of the information covered by the draft regulations and that, consequently, the regulations were unlikely to impose significant additional burdens on schemes or participating employers.
11. In considering this aspect the consultation asked (Question 1):- *do the draft Regulations impose any unnecessary burdens on schemes or participating employers? If you think they do, could you please provide information on the nature of the burden, the costs of complying, and any alternative options that would reflect good administrative practice.*

### Summary of responses received

12. The clear view of those who responded to this question confirmed that the regulations did not pose any unnecessary burdens on schemes or participating employers.
13. A few respondents noted that there might be some small un-quantified additional costs incurred by employers in providing information to pension schemes, with one highlighting the possible impact on small employers. Only

one respondent provided an estimate of the possible additional costs that might be incurred by participating employers (with a range of £30 - £540 per employer) which they did not consider to be significant.

## **Government response**

14. The Government notes the positive comments made by respondents to this question; that the draft regulations do not impose any unnecessary burdens on schemes or employers, and that whilst individual schemes and employers may incur some compliance costs, these are not anticipated to be significant.

## **Section 2 – Citation, Commencement and Interpretation**

15. The consultation noted that Regulation 1 sets out the formal name of the regulations and that they would come into force in April 2015; that Regulation 2 defined a number of terms used; and asked (Question 2):- *do you have any comments on the contents of draft Regulation 1 or 2?*

## **Summary of responses received**

16. Only a few responses were received in respect of these regulations. One noted that the term ‘scheme manager’ was not defined in the regulations, assuming that the definition in the Act applied. Two suggested that the term ‘member’ should be defined, and one suggested also defining ‘pension credit member’.
17. The final comment made in response to this question, noted the reform pressures facing schemes / employers and suggested that it may be appropriate to consider delaying the imposition of any penalties for non-compliance until 2016.

## **Government response**

18. The Government confirms that the definition of ‘Scheme Manager’ in the Act does apply to these regulations. Any terms defined in the Act will apply to secondary legislation made under the powers in the Act (unless the contrary intention appears) (see section 11 of the Interpretation Act 1978).
19. The Government has accepted that the regulations should be amended to define and clarify the category of scheme member to which the regulations apply.
20. In respect of the suggestion that any penalties for non-compliance are delayed until 2016, the regulator recognises the significant reform taking place in public service pension schemes. In considering how it can best support schemes to understand and meet their legal obligations, the regulator’s approach will be to focus on providing them with the appropriate guidance and help needed,

seeking to identify potential problems at an early stage and working with schemes to find appropriate solutions. In considering whether to use its regulatory powers, including any enforcement action, the regulator will take into account all of the circumstances and will act fairly and proportionately.

## **Section 3 – Records of Member Information**

21. The consultation advised that Regulation 3 sets out the records that schemes will need to keep on individual members / beneficiaries, as well as information relating to the different types of pension arrangements covered by the new regulatory structure.
22. Question 3 in the consultation asked: - *do you have any comments on the content of draft Regulation 3? Are there any additional records that should be added; any records that should be removed; or any other amendments that should be made?*

### **Summary of responses received**

23. While some respondents had no comments to make on draft Regulation 3 or advised that no amendments were necessary, others suggested various modifications. These included clarifying which ‘member’ the requirements applied to (see the comments noted in paragraph 16 about defining ‘member’); adding information in respect of tax matters, for example in respect of the Annual Allowance; and other additional personal information, including pension age, gender, marital status, date of marriage or civil partnership, part-time service, and unpaid leave.
24. One respondent suggested that in considering equality matters little data seemed to be held in respect of “protected groups” and speculated on whether there may be a case for including relevant equality data. Others suggested requiring schemes to hold e-mail addresses as an alternative to a postal address, and specifying that the postcode is separately noted. Another suggested that, rather than a detailed list of items, there should be a general provision covering such details as are necessary to calculate the benefits due.
25. One respondent advised that it was not appropriate to require schemes to hold the national insurance number of beneficiaries as this did not seem an essential piece of information, and that as schemes do not use the identification number given to employees by their employer, this item should be removed from the draft regulations.

### **Government response**

26. In considering the comments received the Government has sought to focus on the essential pieces of information that schemes need to hold about members and the pension arrangements they are administering. It recognises that schemes will hold significantly more information than will be covered by these

regulations, but the Government needs to make a judgement as to the key pieces of information that schemes must hold, and which will be subject to regulatory oversight. Given this, the Government has rejected including many of the additional items of information suggested in the consultation, such as marital status, e-mail addresses, or including a general ‘catch-all’ provision, but has accepted that schemes should record member’s gender.

27. On the point made about equality data, the Government’s view is that it would not be appropriate to require scheme managers to obtain information that is not relevant for pension purposes (the primary purpose for which data is collected).
28. It is also not considered appropriate for these regulations to stipulate the information that scheme managers will need to hold for tax purposes, as this will be covered by relevant tax requirements.
29. Whilst the Government has accepted that it would be appropriate for the regulations to clarify the category of member that the requirements apply to, it is not necessary to stipulate that schemes must hold a beneficiary’s national insurance number, or the employee’s identification number used by their employer. The regulations will be amended accordingly.

## **Section 4 – Records of Transactions**

30. This regulation sets out the records that scheme managers must keep in order to account for their scheme’s finances. The consultation noted that draft Regulation 4(a) required schemes to keep records of any contributions paid in relation to a member of the scheme in order to protect schemes, improve data, and enable them to comply with the duty to report the late payment of pension contributions (links to draft Regulation 7).
31. Question 4 asked: - *do you have any comments on the content of draft Regulation 4? Are there any additional ‘transaction’ records that should be added; any that should be removed; or any other amendments that should be made? And Question 5 asked:- Are there any alternative ways in which Defined Benefit schemes can be satisfied that member contributions are being correctly deducted and paid on time by participating employers, and which will satisfy the duty to report the late payments of member contributions to the Pensions Regulator and the member?*

## **Summary of responses received**

32. Whilst most respondents to Question 4 were content with the drafting of Regulation 4, others suggested a number of amendments. In addition to drafting amendments, these included: adding specific tax related transactions and cross references to the relevant legislation governing tax matters; providing for the recording of under and over-payments and any amounts written-off by schemes.

33. One respondent suggested that for schemes with more than one scheme manager, especially where each manager is responsible for a particular local area, the regulations should spell out the record keeping responsibilities of each manager when a member moves from one scheme manager's area to another.
34. There were a few responses to Question 5, which noted the circumstances or organisation of a particular scheme, but none provided a viable alternative option under which defined benefit schemes could satisfactorily meet the legal requirement to report the late payment of member contributions.

## **Government response**

35. As noted in paragraph 28, the Government does not think it would be appropriate to include in these regulations information or records that schemes should hold in order to comply with tax legislation.
36. In considering the recording of over-payments, under-payments and amounts written off, the Government accepts that it would be appropriate to amend the regulations to include amounts owed to the scheme that are written-off, as these represent potential or actual losses to schemes which are not captured elsewhere in the draft regulations, and the regulations will be amended accordingly.
37. On the point made about schemes with more than one scheme manager, the Government view is that this is outside the scope of the regulations, and is a matter for individual schemes to decide.
38. The Government notes that no case was made for a viable alternative approach under which defined benefit schemes could be satisfied that member contributions were being paid on time and which enabled the scheme manager to fulfil the legal duty to report materially significant late payments to the regulator and the member.

## **Section 5 – Records of Pension Board Meetings and Decisions**

39. Draft Regulation 5 sets out the records that the scheme manager must keep in respect of meetings of the Pension Board. Question 6 in the consultation document asked: - *Are there any additional pension board records that should be added; any that should be removed; or any other amendments that should be made to draft Regulation 5?* And question 7 asked: - *Are there any other bodies, in addition to pension boards, involved in the governance of these schemes whose meetings should be included? If there are, who are they and which, if any, of their records or decisions should be included in draft Regulation 5.*



## **Summary of responses received**

40. A minority of respondents suggest that a range of additional information could be added to Regulation 5, including the agenda and minutes of Pension Board meetings and any documents considered by the Board in reaching a decision.
41. A number of respondents suggested additional bodies that should be included in the regulations, particularly in respect of the Local Government Pension Scheme (LGPS) (for example decisions made by a Pension Fund Committee; any committee established under s.101 of the Local Government Act 1972; any Investment Committees, and any Regional and/or Sub-Regional Pension Boards).
42. It was also suggested that the regulations include meetings of the Scheme Advisory Board (SAB) established under section 7 of the Act, and any decisions taken by committees or sub-committees of the Pension Board to which decision making was delegated.

## **Government response**

43. In considering the additional information some respondents suggested is included in the regulations, the Government's view is that whilst these are important documents, they are not as key to scheme governance as recording the decisions made, and should not, therefore, be included in the regulations.
44. In considering the responses to Question 7, the Government's view is that it is outside the scope of the regulations to cover the governance structures of specific public service pension schemes covered by the Act, for example the LGPS.
45. We have considered the case for including the considerations of SAB in the regulations. These Boards, which will be established across all defined benefit public service schemes, will provide advice to the responsible authority on the desirability of changes to the pension scheme, as well as to the scheme manager or Pension Board on the efficiency and effectiveness of the pension scheme. Given the different relationship between the SAB and the responsible authority, and that the SAB only provides advice and does not make decisions pertinent to benefit payments, the Government concluded that it would not be appropriate to include records of SAB meetings and considerations in the regulations.
46. On the suggestion that the regulations should be amended to cover the decisions of Pension Board committees which are not subject to ratification by the main Board, the Government accepts that any decisions made by these committees should fall within the scope of the regulations, and they will be amended accordingly.

## Section 6 – Period for which records must be kept

47. Regulation 6 provides for the minimum periods that the records covered by Regulations 3 to 5 must be retained, and Question 8 asked: - *Do you agree/disagree with the periods that records must be held for as set out in draft Regulation 6? If you disagree, how long do you think schemes should be required to retain these records?*

### Summary of responses received

48. Whilst a number of respondents were content with the proposed minimum periods in the regulations, others suggest that the periods should be longer. This was especially the case for records relating to the payment of refunds, and transfers to other pension schemes. Rather than stipulating a revised minimum period that these and other records should be held for, some respondents sought flexibility so that schemes could hold records for longer, including for example where cases were proceeding through the Courts and the information needed to be retained.
49. One respondent was concerned that records could be destroyed 6 years after a member had transferred from one part of a scheme, administered by one scheme manager, to another part of the same scheme administered by a different scheme manager. A concern was also raised that the wording of Regulation 6(1)(b) was too narrow, as it failed to capture other circumstances when entitlement to benefit ceased, e.g. transfer.

### Government response

50. The consultation draft of the regulations provided for a minimum statutory period during which the records covered by the regulations must be held, which was six years from the date of certain events. Following further consideration including legal advice, the Government has decided to remove regulation 6 from the final regulations.
51. However, the regulator is required to issue a Code of Practice on public service pension schemes that deals with duties relating to record keeping. It will, therefore, consider what practical guidance to give, and standards to set, in relation to the retention of records, alongside any other changes to the draft Code of Practice which may be appropriate in light of responses to their consultation on the draft code in Great Britain and Northern Ireland (NI), once the NI consultation period has ended.
52. In considering what guidance to give and standards to set, the regulator will have regard to the consultation responses DWP received to the question about the period for which records must be kept. The regulator will also have regard to its current position on the retention of records in trust-based schemes and how this may be relevant to public service schemes. The

regulator's view is that trustees and administrators of trust-based schemes should adopt a similar approach to Financial Conduct Authority regulated organisations, conforming with the general principle that 'records should be retained for as long as is relevant for the purposes for which they are made' and that they are likely to need to hold data for very lengthy periods of time.

## **Section 7 – Amendment of the Occupational Pension Schemes (Scheme Administration) Regulations 1996**

53. The consultation advised that Regulation 7 amended Regulation 16A of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (SI 1996 No. 1715), so that from April 2015 scheme managers of public service pension schemes covered by the 2013 Act would be required to report the late payment of member contributions to the regulator and scheme members, where this is considered to be of 'material significance' to the regulator. This change brings these scheme managers into line with the duty on trustees of private sector pension schemes to report such failures.
54. Question 9 asked: - *Do you have any comments on the draft amendments to the 1996 Regulations?*

### **Summary of responses received**

55. Most of the very few responses that were received on this amendment supported it. One respondent, with a large number of employers participating in their scheme, noted that the change could have resource implications.

### **Government response**

56. The Government notes that this amendment is generally supported by respondents.

## **Other issues raised in response to the consultation**

57. Two issues were raised in the consultation responses that have not been addressed in the earlier sections: Additional Voluntary Contribution (AVC) arrangements and the quality of records held by schemes.

## AVCs

58. In considering the draft regulations, respondents questioned whether the regulations applied to existing public service AVC pension arrangements and, if they did, how the provisions would apply given that these arrangements are administered separately to the 'main' public service scheme.
59. Statutory public service AVC pension schemes that provide for persons of the same description as the main scheme will generally be 'connected schemes' as defined in section 4(6) of the Act. Consequently, these AVC schemes will be subject to the same governance and management provisions as the main 'scheme', including these regulations.
60. The Government's view is that it is not appropriate for the regulations to exempt specific schemes from the provisions of the regulations. However, the Act allows scheme regulations to specify exemptions to the Act's definition of 'connected', subject to HM Treasury consent (sections 3(5) and 4(6)).
61. The responsible authority for each public service pension scheme covered by the Act is, therefore, able to decide whether, given the particular circumstances of their AVC arrangements, they wish to use their scheme regulations to exempt AVC pension arrangements from being 'connected schemes'; either completely or in respect of specific legal requirements.
62. If responsible authorities for schemes (e.g. the relevant Secretary of State) decide to retain the AVC arrangement as a 'connected scheme' for the purpose of the Record Keeping regulations, schemes will need to work with their AVC providers to ensure that the legal requirements in these regulations are met.

## Quality of scheme records

63. On the point made in the consultation about the need for the records covered by these regulations to be accurate / up to date etc; the Government's view is that it is not necessary to include this in the regulations. This is because it takes the view that by creating an obligation to keep records this should be interpreted as meaning accurate records (as any obligation to keep "inaccurate records" would defeat the purpose behind the legislation.)
64. In addition, where personal data (such as names, addresses, date of birth) is being processed, the data controller will have to comply with the data protection principles set out in Part 1 of Schedule 1 to the Data Protection Act 1998. Processing of data includes obtaining, recording, holding, using, disclosing and erasing data, and the 4<sup>th</sup> data protection principle covers data being accurate and, where necessary, kept up to date. Consequently, public service pension schemes processing personal data will need to ensure that it is, and remains, accurate.

## Next Steps

The Government would like to thank all the organisations who have offered their views and advice in response to this consultation. We have noted the comments and queries raised and will make changes to the draft regulations where appropriate, before laying the Regulations in Parliament in the autumn, to come into force on 1<sup>st</sup> April 2015.

Once laid, the regulations will be available on the UK Legislation website:

<http://www.legislation.gov.uk/uksi>

This document is available on the Gov.uk website:

[www.gov.uk/government/consultations/public-service-pensions-regulations-2014-record-keeping-and-miscellaneous-amendments](http://www.gov.uk/government/consultations/public-service-pensions-regulations-2014-record-keeping-and-miscellaneous-amendments)

As previously noted, once the consultation in Northern Ireland is completed, the regulator will issue a full consultation response on its draft Code of Practice and draft Strategy in respect of public service pension schemes. Subject to Ministerial agreement, the regulator intends that the final draft of the Code is also laid in Parliament in the autumn.

The regulator's initial response to its consultation in Great Britain on its Code of Practice is available on its website at:

[http://www.thepensionsregulator.gov.uk/docs/regulating\\_public\\_service\\_pension\\_schemes\\_interim\\_report.pdf](http://www.thepensionsregulator.gov.uk/docs/regulating_public_service_pension_schemes_interim_report.pdf) .

The full consultation response and the final draft of the Code of Practice, and its Strategy document, will be available on this website once these are finalised.

# Annex A: List of those who responded to the consultation

Association of Principal Fire Officers  
Association of School & College Leaders  
Capita  
Cornwall Council  
Department for Education iro The Teachers' Pension Scheme  
GMB  
Heywood  
Law Society of Scotland  
Leicester, Leicestershire & Rutland Combined Fire Authority  
Local Government Association  
Mid and West Wales Fire and Rescue Service  
Ministry of Justice  
NHS Pension Scheme  
Prudential Assurance Ltd  
Staff Side of the Police Negotiating Board  
South Wales Fire and Rescue Service  
West Midlands Pension Fund  
Wiltshire Pension Fund