



PENSIONS ALERT: WHAT THE NEW DISCLOSURE REGULATIONS MEAN FOR YOUR SCHEME DOCUMENTS AND PROCESSES

The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 ("**New Regulations**") come into force on 6 April 2014 governing the disclosure of scheme information by trustees to members, prospective members, their spouses or civil partners, beneficiaries and recognised trade unions.

From 6 April the existing regulations - which in the case of occupational pension schemes are the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 ("**Old Regulations**") - will cease to apply.

The main purpose of the New Regulations is to consolidate, harmonise and simplify the disclosure requirements for occupational and personal pension schemes into one set of regulations. Many amendments made to the disclosure requirements in the New Regulations are permissive, introducing flexibilities that trustees may find useful. However, there are also amendments that are mandatory and it will therefore be important for trustees to make any changes necessary to ensure that their scheme documents and processes remain compliant with the legislation when the New Regulations come into force.

In this alert we focus on occupational pension schemes and, by reference to the relevant scheme documents, provide a summary of the key changes of which trustees should be aware.

SCHEME BOOKLET - BASIC SCHEME INFORMATION

Most schemes use a scheme booklet to provide what both the Old Regulations and the New Regulations refer to as "basic scheme information". This is the information that has to be given to new scheme members. (Subject to a restriction on not having to provide the same information more than once in each 12 months, it also has to be provided, on request, to any person entitled to receive information.)

Changes to the basic scheme information

Most of the basic scheme information in the New Regulations is the same as in the Old Regulations. The changes are:

- Where the member has money purchase benefits, there is now an express requirement to include a statement providing specified information about the nature of these benefits.
- If the scheme uses lifestyling (that is, "*an investment strategy that aims progressively to reduce the potential for significant variation caused by market conditions in the value of the member's rights*"), specified information must be included which explains lifestyling.
- Information on whether transfers can be made to the scheme. The Old Regulations only required the information to be provided in relation to transfers under the Pension Schemes Act 1993 but the New Regulations are drafted more widely.

- The information to be provided about the Pensions Advisory Service, the Pensions Ombudsman and the Pensions Regulator must now include an electronic address at which each can be contacted.
- The wording of the information to be provided about each of the organisations above has also changed and whilst we think that wording that met the requirements of the Old Regulations would also meet the requirements of the New Regulations, if other amendments are being made, trustees could take the opportunity to refresh this information.
- Information on how and when benefits in payment are increased. This is wider than the relevant provision of the Old Regulations which only requires information to be provided where there is a power to increase pensions other than in accordance with statutory requirements.
- A summary of what can be done with a member's accrued rights where the member leaves pensionable service before normal pension age and a statement as to whether a charge may be made and that further information is available on request. This is very similar to a requirement in the Old Regulations (although less information now has to be provided about transfers) but it should still be checked that the newly worded requirement is met.

In addition, there is some information that no longer has to be provided in the basic scheme information, for example, as mentioned, some of the detail about rights to transfer out. However, trustees can continue to provide this additional information if they prefer to do so.

Who needs to be told about the changes?

The New Regulations require the basic scheme information to be given to prospective members, if practicable, and to "*members who have not already been given the information*" within two months of membership beginning.

Consequently the principal impact of the changes to basic scheme information will be on schemes which remain open to new entrants. They will need to update their scheme booklets (which could be by means of an addendum) for new joiners from 6 April 2014.

The New Regulations do not contain an obligation to provide the new basic scheme information to existing members as a matter of course but schemes will need to be ready to provide it on request.

As the information on lifestyling is something completely new to the list of basic scheme information (compared to the other new requirements which largely

vary existing requirements) it would be worth trustees considering whether to provide this information in the next general communication (such as a newsletter) that they issue to members.

ANNUAL REPORT AND ACCOUNTS

Where the scheme is one which has to produce a statement of investment principles (which will be the case for most occupational pension schemes), under the New Regulations, the investment report within the Annual Report and Accounts must also include:

- the trustees' policy (if any) in relation to the rights (including voting rights) attaching to investments; and
- the extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of investments.

In terms of the method of providing the Annual Report and Accounts, under the New Regulations where a person requests a hard copy of the document, it will be possible to instead give the person details of where the Report is publicly available.

EVENT-DRIVEN INFORMATION

Scheme changes

Trustees will already be familiar with the fact that when a material alteration is made to any of the basic scheme information, this has to be disclosed. This requirement remains in the New Regulations but two changes to note are that:

- recognised trade unions have been added to the list of recipients where the alteration is relevant to its members and basic scheme information has already been given to the union; and
- in terms of the timing for the provision of the information, it must be given before or as soon as possible after the change takes effect, subject to an overall deadline of three months after the change takes effect. In the Old Regulations, the reference to providing the information before the change took effect was limited to cases where it was practicable to do so and there was no reference to information being provided "*as soon as possible*" after the change takes effect. If it is possible to disclose the change more quickly than the end of the three month period, trustees will now have an obligation to do so and should therefore bear this in mind when scheme amendments are made.

Lifestyling

As well as requiring information about lifestyling to be included within the basic scheme information, the New Regulations require the information to be given between 5 and 15 years before the member's retirement date, unless it has already been given in the previous 12 months as part of the basic scheme information.

Approaching retirement

The timing for the provision of information about the member's options (including, if applicable, information about annuities) in advance of the retirement of a money purchase member has been altered. Broadly speaking, there is a move from a requirement to provide information at least six months before retirement to a requirement to provide it at least four months before retirement. As under the Old Regulations, there are separate provisions that apply where the interval between the date on which the retirement date is specified and the date the benefits will become payable is shorter. This change provides more flexibility and trustees may want to consider amending their retirement processes to reflect this.

Benefits becoming payable

Flexibility has been introduced in the New Regulations so that where benefits become payable on or after normal pension age the information about the benefits only has to be provided before the benefit becomes payable if practicable. The Old Regulations simply refer to the information being provided before or within one month of benefits becoming payable.

In relation to death benefits:

- the New Regulations state that where there is an option for the beneficiary to select an annuity, specified information about annuities must be given before the benefit becomes payable;
- more generally, information to be provided to a potential beneficiary on a member's death must be given as soon as "possible" under the New Regulations as opposed to as soon as "practicable" under the Old Regulations, although subject in both cases to an overall limit of two months; and
- there is some additional information to be provided where the beneficiary does not have the option to select an annuity.

Benefits are altered

The requirement to provide information under the New Regulations only applies where the amount of benefit

payable alters, as opposed to where it "*is or is about to be altered*" under the Old Regulations.

Corresponding to this, the deadline for providing the information now only refers to the date that the alteration takes effect as opposed to also referring to the date the decision is made.

BENEFIT STATEMENTS

Flexibilities are introduced in the New Regulations about the information that must be included in benefit statements for members with rights to benefits that are not money purchase ("**DB members**") and benefit statements and Statutory Money Purchase Illustrations (SMPIs) for members with rights to money purchase benefits ("**DC members**"). Trustees may want to consider whether to take advantage of these flexibilities and we give some examples of them below.

DB members

- Flexibility is introduced for the trustees to specify the date on which it is assumed pensionable service ends, the date on which pensionable remuneration is measured and the date by reference to which death in service benefits are calculated when producing benefit statements for active members. There is also flexibility for the trustees to agree the date on which to assume pensionable service ends with the member.
- Rather than having to set out the accrual rate or formula for calculating benefits, the New Regulations simply require a summary of the method for calculating the benefits.

DC members

Flexibilities for SMPIs include that:

- it is only necessary to assume contributions will not continue in respect of "*non-contributing members*" rather than in respect of all deferred members;
- the set assumptions about the annuity that will be purchased have been removed from the legislation, although information must be given about the assumptions that are made; and
- the calculation of the amount of the pension may take account of a lump sum.

Amendments are also made in relation to DC schemes so that, broadly speaking, the provision of the first statement for a member is optional if no contributions have yet been credited or the member is in the automatic enrolment opt out period.

ACCOMPANYING STATEMENT

The Old Regulations specify that when certain information is disclosed, it must be accompanied by a written statement giving the postal address for the recipient to use for enquiries and to obtain further information about the scheme.

This requirement now takes the form of a more general provision that applies when trustees disclose information under the New Regulations and it must also include an electronic address. Trustees should therefore ensure that this information is in all of their standard communications that are used to comply with requirements of the New Regulations.

A NOTE ON PROCESSES

Disclosing on a website

If trustees wish to disclose by use of a website, a notification must be sent each time such disclosure is made. The Old Regulations make provision so that, if the trustees do not have an email address to which to send that notification and the recipient has not requested disclosure by hard copy, the trustees can send three notifications asking for an email address and noting the right to request hard copies. If the person does not respond, the trustees may then disclose by website without sending a notification each time.

This process has been updated in the New Regulations to require additional information to be provided in the final of the three notifications which essentially alerts the recipient to the fact that further notifications will not be sent. In addition, the New Regulations specify that the notifications can be in "documents" which is wider than the Old Regulations which referred to "letters".

The New Regulations also seem to specify that there are some disclosures by website in respect of which this process cannot be applied.

We would therefore suggest that trustees who are using this process in order to remove the need to send a notification each time an item is disclosed on the website,

review their processes to ensure that they remain compliant.

Other flexibilities on methods

Under amendments made to other legislation by the New Regulations, trustees may also be able to use electronic communications to provide other information, for example in relation to pension sharing.

The New Regulations also expand the number of scenarios in which, rather than providing a hard copy of a document, information can be given as to where it is publicly available.

Trustees may therefore want to review their communications strategy more generally in light of these amendments.

RESPONSIBILITY FOR PROVIDING INFORMATION

It is also worth noting that the New Regulations expressly state that trustees are responsible for compliance whether they give the information directly or indirectly through a third party. Whilst in our view this would have been the case even without the express wording, this is a useful reminder to trustees that even if their scheme administrators deal with disclosure for them, the trustees ultimately remain responsible.

TIMING AND FURTHER INFORMATION

The New Regulations come into force on 6 April 2014 and therefore any amendments which are mandatory should ideally be made in advance of that date.

If you would like further information on the new requirements or assistance with reviewing the documents and processes for your scheme, please get in touch with your usual DLA Piper pensions contact or contact Cathryn Everest at cathryn.everest@dlapiper.com.

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